



F -- PLANNING COMMISSION
PUBLIC HEARING
MINUTES & TESTIMONY

FILE COPY

Department of Land Utilization
City and County of Honolulu

Minutes

Public Hearing
September 15, 1981

The Department of Land Utilization of the City and County of Honolulu held a public hearing on Tuesday, September 15, 1981, at the Ewa Beach Community-School Library starting at 10:00 a.m. This hearing was held in compliance with Ordinance No. 78-65. This hearing was held jointly with the Planning Commission under Chapter 205, HRS, and the Planning Commission Rules Relating to Administrative Procedures.

PRESENT: Ian McDougall, Public Hearing Officer for Department of
Land Utilization
Gail Baron, Public Hearing Officer for the Planning Commission
Edmund Young, Staff Planner

APPLICATION: CONDITIONAL USE PERMIT--STOCKPILING OF CORAL DREDGED
FROM THE BARBERS POINT DEEP DRAFT HARBOR (81/CUP-12)

APPLICANT/OWNER: James Campbell Estate
AGENT: Walter P. Thompson, Inc.
LOCATION: End of Malakole Road - Ewa
TAX MAP KEYS: 9-1-14: portion of 2
9-1-15: portion of 1

REQUEST: The proposal is to permit stockpiling of dredged coral on lands unsuited for any agricultural purpose due to lack of soil, water or forage grasses.

NOTE: This hearing was also held to consider a State Special Use Permit. The parcel is within the State Agriculture District.

The Public Hearing Officer read the notice of public hearing which was published, in accordance with law, in the Monday HONOLULU ADVERTISER of August 31, 1981.

The notice of public hearing for the State Special Use Permit was published, in accordance with law, in the Saturday HONOLULU ADVERTISER and STAR-BULLETIN of September 5, 1981.

A representative of the applicant was present.

The Public Hearing Officer called upon the Staff Planner to describe the proposal.

EDMUND YOUNG:

It's an application to permit stockpiling of dredged coral from the Barbers Point Deep Draft Harbor within an I-3 Waterfront Industrial District and AG-1 Restricted Agricultural District.

The application is processed in accordance with Section 21-1.13(c,5) of the Comprehensive Zoning Code for Conditional Use Permits and State Land Use Commission Rules and Regulations and Planning Commission Rules Relating to Administrative Procedures for the State Special Use Permit.

The zoning is I-3 Waterfront Industrial District of approximately 4 acres and AG-1 Restricted Agricultural District of approximately 173 acres for a total of 177 acres. Within these Districts, the I-3 Waterfront Industrial District and the AG-1 Restricted Agricultural District, the requested use is permitted as a Conditional Use Permit.

The Detailed Land Use Map and the Development Plan have not been adopted for the area.

The State Land Use Commission designation is Urban of 25 acres; Agriculture of 152 acres. Since the proposed use is not expressly permitted in the State Agriculture District, a State Special Use Permit is required.

The proposed stockpiling area is not within the Shoreline Management Area under Ordinance No. 4529. However, a portion of Tax Map Key 9-1-14: 2, whereon exists the deep draft harbor, is situated in the Shoreline Management Area. The Shoreline Management Area, which is the major permit, was approved by the City Council on December 12, 1978, for the deep draft harbor.

The site is used for coral quarrying under City Planning Commission Variance No. 374, effective as of June 25, 1959, and the rest is vacant land.

The site is located at the end of existing Makakole Road. The surrounding area is in the Campbell Industrial Park.

The Environmental Impact State was accepted by the Office of Environmental Quality Commission on September 1, 1978.

The agencies comments: 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.

The purpose is to provide the three areas, as shown on the map here--Areas I, II and III, for stockpiling of coral dredged from the Deep Draft Harbor in Ewa. An estimated 10.6 million cubic yards of coralline material will be dredged. The life of the stockpiling is expected to be 30 years.

The site to be encompassed by Disposal Areas I, II and III has been used for many years by the Cyprus Hawaiian Cement under the City Planning Commission Variance No. 374. There is no vegetation covering the ground in the area. Surrounding this site to the north, south and east is a thick barrier of keawe trees and haole koa bushes. Behind this lies fields of sugar cane. The nearest residential area is approximately 3/4 mile away to the northeast which would be the Honokai Subdivision on Farrington Highway.

The site of Disposal Area III is an existing keawe grove. After clearing of the site, a barrier of trees surrounding the area will act as a visual and pollution buffer to surrounding industrial businesses. The closest distance to a work area will be approximately 300 feet.

All of the disposal sites are located away from the everyday activity of the Campbell Industrial Park. The land has never been used agriculturally.

Because a Special Use Permit is required for the proposed use, as stated by Mrs. Baron, the State Land Use Regulations require that the proposed use be examined with respect to guidelines for determining whether or not it is "unusual or reasonable." In reply to Part V. Special Permits Tests to be Applied, the applicant has submitted the tests which are in the Director's Report to the Planning Commission.

The site is not listed as prime, unique or other important agricultural lands designation by the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii Classification System. The Land Study Bureau's overall (Master) soils productivity rating of the proposed site, on a scale of A through E, with A representing the highest, classifies this site as E, which is the lowest.

Act No. 221, effective June 21, 1979 states Special Permits for land the area of which is greater than 15 acres shall be subject to approval by the State Land Use Commission. If less than 15 acres, the Planning Commission has the authority to act on it.

IAN McDOUGALL: Thank you Mr. Young. Could you for my edification point out on the aerial photograph that you have the three disposal areas?

EDMUND YOUNG: Yes. On the aerial map, Disposal Areas I, II and III are here and also this map here (the stockpile plan) it's also Disposal Areas I, II and III.

IAN McDOUGALL: And is the bulk of Area I in the State Urban designated area?

EDMUND YOUNG: That is correct.

IAN McDOUGALL: And the other two are in the State Agricultural area?

EDMUND YOUNG: Except for this .37 acre and this 3-1/2 acres. This (pointing to map) is the State Land Use Boundary Line. The green is the Ag land.

IAN McDOUGALL: All right. Thank you.

Is there a representative of the applicant that would care to elaborate on the staff presentation at this time.

WALTER YOSHIMITSU: Yes, I will.

IAN McDOUGALL: Could you come forward and please use the microphone and identify yourself for the record.

WALTER YOSHIMITSU: Yes. Thank you. I am Walter Yoshimitsu with the Campbell Estate and my function is to manage the Campbell Industrial Park. And I think that--first of all I think that the thing that is really important is the fact that the harbor itself has already been approved and what this permit that we are seeking merely does is to allow the very function that was already permitted, which is the harbor, to store the coral material. And I think the use is consistent because, as it was pointed out, Cyprus Hawaiian Cement is already in the business of coralling material within that area and what we are going to do is merely use that area to stockpile coral from the dredged harbor.

The Industrial Park, as it was pointed out, is exactly that--there is no residential community close by. The most--the closest residential community is the Honokai Hale and the other one on Makakilo; so the impact to residents is very minimal.

One of the things that was brought out that the Health Department was concerned about, the fugitive dust, in the EIS and also within the contract document specifications, the contractor is obligated to not only water during the stockpiling process but also to plant vines after the stockpiling has been completed. So that would minimize any fugitive dust that might be admitted from the stockpiling process.

The other is that the contractor again is also obligated to take care of any storm runoff--that is either by the process itself or because of berms that they would be obligated to construct to contain the runoff from the coral. The contractor would also have to worry about where the storm water runoff would be and they would have to take mitigative action to correct anything that might occur.

So I think that from every standpoint I think that stockpile is necessary, of course, for the process that has already been approved, and that all action is taken to make sure that we don't have any adverse impact on the community or within the Industrial Park. And it is an Industrial Park and the nature of the stockpiling itself is consistent with the use within the area.

IAN McDOUGALL: Thank you very much.

We will go to the registered speakers at this point. Dr. Charles Beamer to be followed by Carl Young.

Dr. Beamer are you representing the Ewa Neighborhood Board No. 23?

CHARLES BEAMER: That's right.

IAN McDOUGALL: Thank you.

CHARLES BEAMER: At our regular meeting of the 10th of September, 13 members present, 12 recommended approval of the Conditional Stockpiling Permit and one opposed.

On one point we were not aware of this Disposal Area here, No. 1. We voted on this primary disposal area here.

IAN McDOUGALL: I think in that regard the hearing notice was only referring to Disposal Areas II and III because Disposal Area I is in the State Urban District. Is that correct, Mr. Young?

EDMUND YOUNG: That is correct.

CHARLES BEAMER: Basically, we recommended approval on Areas II and III.

IAN McDOUGALL: Thank you very much. Carl Young.

CARL YOUNG: My name is Carl Young. I am happy to have the opportunity to come here. Whether our voices will be listened to is another matter but we are happy to be here.

I just would like to comment briefly on the previous two speakers--My friend, Walter, and I've never met this gentleman before.

For one thing, the harbor has--right now I think this week is being the appropriation of \$10.7 million. The first appropriation is still being debated in the U.S. Senate and I think the National Wildlife Federation which is opposed to the harbor as one of the 12 most wasteful water projects has met with the two Hawaii Senators and I am informed that they could be in the State.

Secondly, oh yes, Dr. Beamer was it?

CHARLES BEAMER: Yes.

CARL YOUNG: I think one clarification on your Neighborhood Board or maybe two of them. One is that from your correspondence I think to the Army Corps of Engineers with DLU you mentioned that the--this issue is not on the agenda, right?

CHARLES BEAMER: On the previous--the end of August, it was not on the agenda. We had a consensus of opinion. On the 10th of September, it was on the agenda.

IAN McDOUGALL: Excuse me, Mr. Young. We would appreciate it if you would direct your comments to the two permits--

CARL YOUNG: It's very relevant.

IAN McDOUGALL: And not try to debate with other people.

CARL YOUNG: Yes, I'm not here to debate. I'm just trying to clarify a point because if you listen--

IAN McDOUGALL: I understand but we are here to consider two permits regarding stockpiling.

CARL YOUNG: Right. Very good. If you listen carefully, you're going to see the connection. Thank you for bringing that point out. Okay, I'll turn to my testimony right now.

(See attached written testimony.) At this point, let me mention that the harbor is on the Waianae Coast and yet the Waianae Neighborhood Board was never consulted. (Paragraph 3 after second sentence)--To my knowledge this has never been brought out. As Mr. Young pointed out--Mr. Young could be my uncle but whatever we must get the facts straight. I don't know if we're related but we've got the same last name. He mentioned that there is no agricultural

uses or whatever--nothing is being used for agricultural and I think that that's an error because several farmers have been evicted and these farmers have been there since 1946--at least one of them. (Paragraph 3 after third sentence)--So these 5 points that have been okayed by the DLU, one point is that it's okay with the General Plan but I say it's not--and a lot of us say it's not. (Page 2, paragraph 4 after third sentence)--Let me just digress. These are the reviews of this preliminary draft and they all say that the initial draft put out by ARCH is totally unacceptable. The final draft has not yet been reviewed--I have with me today the final draft, okay. Today we're giving the permit to Campbell Estate to destroy the site and yet the final draft has not been reviewed. I'm not even sure it's been released.

At this point, let me read Mr. McCoy's letter. (See attached written testimony.)

IAN McDOUGALL:

Thank you Mr. Young. With regards to your request on contested case hearing, I think the Hearings Officer for the Planning Commission has already indicated that the Planning Commission has such a process available. The portion of the hearing with regards to the Conditional Use Permit is not subject to contested case hearings but is a legislative hearing on advisement by the Corporation Counsel so it will not be possible to postpone that part of the hearing.

Thank you very much for your testimony.

Kanui-Gill to be followed by Margaret Apo.

Kanui-Gill is apparently not present. Margaret Apo is apparently not present. Georgette Meyers--she's apparently not present.

CARL YOUNG:

They are just coming. They're on the way I think--Waianae is pretty far.

IAN McDOUGALL:

I have a registration for a Pat McCoy but have you already---

CARL YOUNG:

Yeah. Right.

IAN McDOUGALL:

read into the record the testimony? Thank you.

Marie Olsen--she's apparently not present.

CARL YOUNG:

If we take a recess, they might be here.

IAN McDOUGALL: Eric Enos?

ERIC ENOS: Here.

IAN McDOUGALL: Do you care to testify?

ERIC ENOS: Yes.

IAN McDOUGALL: Could you come forward please?

ERIC ENOS: My name is Eric Enos. I am speaking for the Waianae Land Use Concerns Committee which is one of the original plaintiffs that was opposed to the Deep Draft Harbor. We feel that this project is not necessary. We have already submitted a lot of testimonies but basically we feel that this project is not necessary. It's going to do a lot of ecological damage to the area. The use of the land does not fit community development as we see it. We see it as bringing in high migrations of people to fill some very low-paying jobs and this provides some very heavy problems in the way of social needs of the land in the Waianae Community which they both impact. That means housing cost will increase, cost of land will increase. The availability of water, as you know is a big problem, and that is one of the problems that we face out in Waianae.

We look toward employment in terms of ocean and agriculture and keeping the community in this fashion. We believe that this kind of development slated with the Deep Draft Harbor is going to bring a City and we feel that a City is not something that we raise families with. It creates slums--the end product of Cities in slums, we feel that our products of crimes are going to increase and we feel it is not in the best interest of Oahu and Waianae.

IAN McDOUGALL: Thank you. Angel Pilago--come forward please.

ANGEL PILAGO: My name is Angel Pilago. I work at Waianae Rap Center and do some work at the Kaala Farm Project---some of the big projects we have down in Waianae.

Again, a lot of the concerns and issues sharing how they affect us, we have shared before many times and a lot of these things haven't been or may be addressed or clarified in a way that we can see be of benefit to us. But I would like to now speak to you just as a resident of the Leeward area.

(See attached written testimony.)

IAN McDOUGALL: Thank you very much. Mr. Pilago was the last registered speaker.

CARL YOUNG: Can we ask your "Aloha" for a recess? We have a whole bunch of people that are---

IAN McDOUGALL: As indicated at the beginning of the hearing, the Planning Commission will keep their portion of the hearing open and they are to reconvene this afternoon at 1:30 p.m. on the 6th floor of the Municipal Building in the Liquor Commission Hearing Room, so if you can contact your people that are coming, they can attend that portion of the hearing at 1:30. Unfortunately, it's going to be downtown.

GAIL BARON: Ian, I would like to say one more thing.

IAN McDOUGALL: Yes, go ahead.

GAIL BARON: After reporting to the Planning Commission today, they will more than likely continue the hearing on this case on September 29 at 1:30. Please note, however, that their consideration will be strictly on the request; that is, stockpiling of dredged coral and their decision on the State Special Use Permit has to be based on the 5 tests that I mentioned at the opening of the hearing. Those are set out in Part V of the State Land Use Commission District Regulations to determine if the application constitutes an "unusual and reasonable use" and can only be based on those 5 tests.

James Campbell Estate is the applicant. However, the opponents are represented by several different parties here. We need to identify one person to come forward and represent the group of opponents to appear before the Planning Commission that's correct-- there can only be two parties in a contested case.

CARL YOUNG: In a contested case? That's today or the 29th?

GAIL BARON: On the 29th. So if you folks would get yourselves together and then appoint one person. Certainly everyone is welcomed but one person would have to speak for the opponents. And I ask you to address yourselves to those 5 tests.

IAN McDOUGALL: Let me get one point straight. You're suggesting they appear on the 29th rather than this afternoon-- is that correct?

GAIL BARON: You're welcome to come forward this afternoon if you wish because the Planning Commission has that item on their agenda. However, to give you time to organize and come forward, you may wish to come back on the 29th but you're welcome to attend this afternoon's hearing also and speak. Anyone may speak at this afternoon's hearing for any length of time.

HANALEI NIHEU: What's the 5 tests?

GAIL BARON: I'll read them to you again.

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

"That the desired use would not adversely affect surrounding property."

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

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

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

I'll share these with you at anytime if you would just call my office.

HANALEI NIHEU: The first step--what does that mean?

GAIL BARON: This is from the State Land Use Commission Rules and Regulations.

HANALEI NIHEU: It says something about--in these 5 tests, the first one, what does that mean? I still don't understand.

GAIL BARON: Well, perhaps, we could discuss this over the phone sometime if you would leave your name and phone numbers with me. I'll be glad to discuss this with you at length. It's not something that I could just answer in a couple of minutes.

CARL YOUNG: The P.C. meeting this afternoon--the SUP is the only one thing on the agenda?

GAIL BARON: That's right.

CARL YOUNG: Oh, it might be all over afternoon then?

GAIL BARON: That's right.

CARL YOUNG: If we appear there, does that mean it would precede the appearance on the 29th or---?

GAIL BARON: Assuming the Commission continues this to the 29th, then it would be continued, but if you appear this afternoon and they make a decision this afternoon, then that would be the final decision.

CARL YOUNG: We have no contested case hearing unless ah---

GAIL BARON: Well, the fact that you're appearing this afternoon means you're representing the opposing party.

CARL YOUNG: Right, but in these case hearings, we usually have the right to cross examine. Who are we going to cross examine?

GAIL BARON: Right. I assume that Campbell Estate would be present this afternoon.

CARL YOUNG: (inaudible)...public defender to hear the case.

GAIL BARON: Well, I am assuming that the Planning Commission would hear your discussion and continue the case to the 29th.

CARL YOUNG: But there's no obstacle to continue the case to the 29th now.

GAIL BARON: I see none now.

IAN McDOUGALL: Is there anyone else that have not registered that would care to present testimony at this time?

WALTER YOSHIMITSU: I don't have a testimony but I have a question. What grounds do you need to contest?

GAIL BARON: None as far as I know.

WALTER YOSHIMITSU: None whatsoever. Just to verbally contest it?

GAIL BARON: Yes.

IAN McDOUGALL: There being no registered speakers, I will announce that on the Conditional Use Permit the Director, Michael McElroy, will make a decision on that permit by October 15, 1981. Those people that have registered will receive a copy of that decision and, of course, the applicant will receive one automatically.

There being no further business I will close the public hearing on the Conditional Use portion. The State Special Use Permit portion of the hearing remains open as indicated by the Hearings Officer for the Planning Commission. They will convene at 1:30 this afternoon.

HANALEI NIHEU: Excuse me. Since this guy didn't show up, is it all right if I read it?

IAN McDOUGALL: Okay, on the basis of a late arrival, I will open the public hearing to receive one additional piece of testimony. Would you care to also submit that after you read it for the record?

HANALEI NIHEU: Yes.

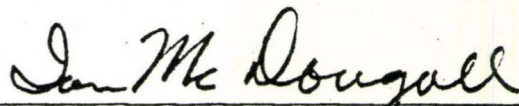
IAN McDOUGALL: Please come forward and identify yourself and on whose behalf you're giving the testimony?

HANALEI NIHEU: Hanalei Welokiheiakeaa'eloa Niheu. This testimony is written by Ray Catania, a resident of Waianae and it goes as follows:

(See attached written testimony.)

IAN McDOUGALL: Thank you. There being no further business with regards to the Conditional Use Permit, I will again close the public hearing and remind you that the State Special Use Permit proceedings are still open. Thank you very much for attending.

The public hearing was closed at 10:55 a.m.



IAN McDOUGALL, Public Hearing Officer
Department of Land Utilization



GAIL BARON, Public Hearing Officer
Planning Commission

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Attach.

SOCIETY FOR HAWAIIAN ARCHAEOLOGY

March 11, 1980

President:
Patrick V. Kirch
Department of Anthropology
Bernice P. Bishop Museum
P.O. Box 19000-A
Honolulu, Hawaii 96819

Mr. Kisuk Cheung, Chief
Engineering Division
U. S. Army Corps of Engineers Division
Pacific Ocean
Building 230
Fort Shafter, Hawaii 96858

Dear Sir:

Thank you for the opportunity to review the report on the "Archaeological and Paleontological Investigation at Kalaeloa (Barber's Point) Hono'uli'uli, Ewa, O'ahu, Federal Study Areas 1a and 1b and State of Hawaii Optional Area 1" by Hallett H. Hammett and William H. Folk. The Society for Hawaiian Archaeology does not have a standing committee for peer reviews and as a result an ad hoc committee, of which I am the chairman, was formed for the specific purpose of reviewing this report. Each of the committee members has reviewed the report and we have all discussed it at length. In addition, we have considered a letter we received from Dr. Carl C. Christensen, a co-author with Dr. P. V. Kirch of Appendix II of the subject report.

The deficiencies of the subject report fall into two major categories: (1) mechanical problems and (2) general problems. Mechanical problems plague the entire document and make the reviewers task an onerous one. Typographical errors abound; grammatical mistakes are unacceptably frequent; non-standard, ill defined and infelicitous terminology obscures the content and the intent of many of the author's propositions and contentions; and the absence of nearly half the figures and illustrations, the discussion of the chronometric data, table 7 and the entire artifact appendix make the entire document so incomplete as to render any review extremely difficult. We do not have the inclination or the time to undertake the task of editing the report. We presume that subsequent editing and proof reading, as well as inclusion of the absent figures and other data, will enhance the readability and quality of the report. Correction of all the mechanical problems however cannot remedy the fundamental general difficulties apparent in the report.

Virtually no attempt has been made to relate the data from the study area to the results of the previous and on-going research at Barber's Point or anywhere else in Hawaii. The consideration of observations, generalizations and hypotheses generated elsewhere in the vicinity and throughout Hawaii is a very obvious and fundamental omission of this report

The chronological framework of the study area is not thoroughly discussed anywhere in the document. In spite of the problems with available chronometric samples, (both basaltic glass and carbon), a more complete picture of the chronology of the study area could have been constructed with the use of comparative data from other portions of Barber's Point as well as inferences from the study area samples themselves and the stratification within the subject area sites.

The problem of the relationships between man and the extinct avifauna is not adequately addressed. In dealing with such an important problem in an area that is uniquely suited for its solution, every possible effort should be expended to that end. Fluorine and amino acid racemization analyses have yet to be applied to avifauna bones in the deposits. Such analyses should provide valuable additional data. Pollen analyses, as well as sediment analyses aimed at gathering paleoenvironmental and depositional data are also necessary.

The midden data collected during the excavations are not tabulated or analyzed in sufficient detail. It is standard practice to present the midden contents of each excavated site in a table arranged by excavation unit (usually 1 x 1 meter squares), by level or layer and by faunal and floral species. While the midden contour maps in the subject report are useful in terms of understanding general distribution of midden throughout the sites, tables such as those described above are necessary for distributional and comparative purposes.

Analyses of the artifacts recovered and their intra and inter-site distribution are very limited. For example, little attempt is made to determine correlations between quantity and types of artifacts on one hand and site type, size, location or midden contents on the other. No attempt is made to explain or even mention that 48 of the total area's 55 samples of basaltic glass came from one site (page 104). In one of the few cases where artifact assemblages are mentioned, contradictory statements are made. On page 143 it is stated that site 2710-2 and 2710-5 were elements in a kauhale (household) because they had "similar assemblages"; but on page 178 they are said to "have significantly different artifact assemblages". No mention is made of the apparent lack of correlation between the amount of fish bone in a site and the number of fishhooks found.

There are a number of problems with the treatment of the cultural strata in the excavated sites. It is assumed, for example, that in all sites, stratum I is a mixed layer and that its contents were churned up from stratum II. In sites such as 2701-1 (page 70, figures 15 and 16) however, the distinctly different midden distribution patterns seem to suggest that stratum I is, at least in part, evidence of a later occupation. The absence of cross section drawings in many sites increases the reader's problems in interpreting the data as presented.

The distribution and inferred function of the stone structures is inadequately addressed. For example, the stone structure in site 9682 (pages 99-104) is scarcely more than a square meter in floor area, yet it is associated with the heaviest midden concentration in any of the sites. No mention is made of this combination of factors nor is any attempt made to explain it. It is stated in several site descriptions that the stone structures were constructed at the beginning of a site's use. In the few cross sections that are available, the foundation stones rest at a level well above the base of cultural stratum II (e.g., page 100, figure 36; page 104) indicating that at least portions of the structures were constructed at some time after the sites were settled. A related phenomenon may be the concentrations of midden material and artifacts that occur in squares with structural walls. It could not be determined whether these concentrations were found within the walls or beneath them.

Given the importance of the work conducted at Barber's Point, it would have behooved the authors to spend all available time and manpower pursuing the major thrust of the study: the recovery and analysis and interpretation of data relating to the prehistoric human habitation of the area. If the length of the various report segments are any indication of the relative efforts put into each, Appendix III seems to have been overemphasized. Though the historic period in the study area certainly has inherent interest in its own right, it appears that an inordinate and largely spurious amount of work was undertaken on the wartime history of the area. In relation to the archaeological work, Appendix III is, for the most part, irrelevant.

In general, the organization of the document is less than conducive to review. The lengthy scope of work and summary of results could more comfortably be placed elsewhere in the document. Certainly a summary is out of place in the first 20 pages of a report such as this. The scope of work more appropriately belongs in an appendix while the explication of the research design should build on preceeding discussions of previous and on-going research as well as the chapter on physical geography.

The intent of the various legislative mandates for mitigation of impacts on sites eligible for inclusion on or listed on the National Register of Historic Places was to ensure that archaeological sites valuable for the information they contain were not destroyed as a result of Federally sponsored or licensed undertakings. Because mere collection and description of artifacts and midden and other raw data did not effectively mitigate impacts to archaeological sites, implementing regulations require interpretation and analyses of the data and material collected. The overriding, fundamental deficiency of the subject report is the appalling lack of synthesis, of integration of data collected during this project into a cohesive description of prehistoric human habitation in the Barber's Point area, and of scholarly, professional interpretation of the data collected. In our opinion, the report fails to fulfill the intent of the various Federal regu-

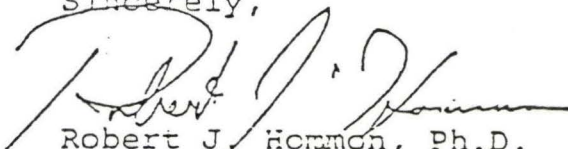
Mr. Kisuk Cheung
March 11, 1981
page four

lations and legislation under whose aegis the work was performed. The report does not fulfill the requirements of 36 CFR 66 (proposed) nor does it conform to generally accepted guidelines that the Advisory Council on Historic Preservation uses to evaluate reports produced under memoranda of agreement with that agency. For such a work, dealing with so significant an area, to reach its professional reviewers in so sloppy a state, reflects poorly both on the authors of the report and its sponsors.

So major are the revisions that must be undertaken to remedy the various deficiencies noted above, that we suggest that the Corps of Engineers reject the subject report as inadequate and require a completely rewritten draft report. The new draft should then be forwarded to the same reviewers for re-evaluation when it is completed. Should the Corps adopt this suggestion, the Society would appreciate receiving at least three copies of the document for review as well as a period of 30 days in which to review it.

Again we appreciate the opportunity to review and comment on this document. Should you have any questions regarding this review, you may contact the Society at the above address.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Robert J. Hommon', is written over the typed name.

Robert J. Hommon, Ph.D.
Chairman, Ad Hoc Committee to Review the
Hammatt/Folk Report on Barber's Point

23 March 1981

Dr. Hallet H. Hammatt
Principal Investigator
Archaeological Research Center
Hawaii, Inc.
P. O. Box 285
Lawai, Kauai, HI 96765

Dear Dr. Hammatt:

Your draft Barbers Point Harbor archaeological report (Contract DACW84-79-C-0010, Mod. No. P00001) was sent for review and comments on 12 February 1981 to the following individuals or agencies:

<u>Reviewer</u>	<u>Replies</u>
a. State Historic Preservation Officer	
b. Heritage Conservation Recreation Service, Interagency Archeological Services	
c. Advisory Council on Historic Preservation	
d. State Department of Transportation, Harbors Division	
e. Dr. Storrs Olsen, Smithsonian Institution	Incl 1
f. Dr. Patrick Kirch, Bishop Museum	Incl 2
g. Dr. Paul Rosendahl	Incl 3
h. Mr. Bertell Davis	Incl 4
i. Pacific Association of Professional Anthropologist, c/o Dr. William Kikuchi	
j. Society of Hawaiian Archaeologists, c/o Dr. Robert Hommon	Incl 5

Formal written comments have been received from all reviewers as noted except the first four agencies and Dr. Kikuchi. All written reviews were very negative and the State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) have indicated by telephone that their reviews are also negative. Most of the reviews and feedback from SHPO and ACHP conclude that the draft report, as currently written, does not comply with the proposed guidelines for "Recovery of Scientific, Prehistoric, Historic, and Archaeological Data: Methods, Standards, and Reporting Requirement" (36 CFR Part 66) which are incorporated into the Contract Scope of Work, Item 3b. None of the archaeologists reviewing the draft report believe that the report complies with your Research Design (12 October 1979 and 10 March 1980). As the draft report is currently written, we agree with these two general conclusions. More than cosmetic changes will be needed for revision into a new draft report.

2.2.6

23 March 1981

Dr. Hallet H. Hammatt

Per Scope of Work, we are including copies of all written reviews for your Information. Also per Scope of Work, you will be required to consider only those comments which have been approved by the Contracting Officer. In reading through the letters, you will find much repetition in the critical comments as well as each reviewer tending to draw on different specific examples to demonstrate his particular concerns. To aid you in your preparation of the next draft of the report, we will indicate by asterisks (*) those comments in the review letters which we believe are constructive or legitimate in light of the requirements in the contract Scope of Work and the Research Design. You may consider all other comments in the review letters at your option. We are also inclosing a summary list of our own concerns, suggestions and recommendations (Incl 6). Please concentrate on completing any recommended analyses and revising the report at this time since it is already behind schedule. You may wish to respond to specific comments of the reviewers, but please wait until a satisfactory report and your contractual obligations to the Corps are completed.

Your final report is currently scheduled for submission by 3 April 1981. We believe this may not allow for sufficient time for you to complete further analyses and finalize the report. Because of the complexity and severity of the review comments, request that you prepare a pre-final draft which will be provided to all reviewers for a shortened review period of three weeks. Within four weeks after the submission of the pre-final report to the Contracting Officer, additional comments will be provided if needed for preparation of the final report in the required 50 copies. I suggest the following revised timetable:

Submission of pre-final draft by 17 April.

Review period - 20 April to 8 May.

Comments returned to Contractor - 12 May.

Submission of final report - no later than 1 June.

Please contact us as soon as possible so that we may discuss and process a further extension to the contract.

In summary, we believe that it is in both of our interests that the final report on archaeological and paleontological data recovery at Barbers Point be satisfactorily completed and accepted within the professional scientific community.

Sincerely,

6 Incl
as

CLARENCE S. FUJII
Authorized Representative of the
Contracting Officer

MAJORITY LIST OF COMMENTS

General Review Comments on Draft Barbers Point Harbor Archaeological Report (Contract DACW84-79-C-0010)

<u>Item</u>	<u>Page</u>	<u>Comment</u>
1	General	Draft Report needs careful editing to correct typographical errors, misspellings (particularly scientific names) and poor grammar. Please note Dr. Kirch's comments in this regard.
2	General	Draft report needs missing figures, tables and sections Input. Recommend placing sections dealing with "Summary of Results" and "RECOMMENDATIONS" at the end of the main report. You may wish to integrate the "Summary of Results" into your "Barbers Point Perspective."
3	Title Page	After "US ARMY CORPS OF ENGINEERS" place in parenthesis "(U.S. Army Engineer District, Honolulu)" and also "State of Hawaii Department of Transportation, Harbors Division." Below that: "Contract No. DACW84-79-C-0010, Mod. No. P00001."
4	Abstract	Revise the Abstract as needed in light of your response to these and accompanying comments and your further research.
5	Introduction	Much of this material could be profitably placed in later sections, particularly when results are summarized. Suggest discussing here why some changes in outside analyses were changed from the Research Design.
6	Overview Maps	Maps must contain a legend differentiating between archaeological and paleontological sites. Also recommend that for visual analysis of inter-site relationship, you include two or more maps similar to those in your 1978 report for the State showing more detail of larger areas including sinks, stone walls, midden areas and sites excavated.
7	Scope of Work	Change the tense of verbs as appropriate to indicate that various actions have already taken place.
8	8	Bottom line is nonsensical. Based on work to date, please feel free to clarify your hypotheses or redefine them. No deletions.
9	21	Last paragraph: Suggest that after "appropriate federal" you insert, "or state agency."

<u>Item</u>	<u>Page</u>	<u>Comment</u>
10	26-29	This section is adequate only in describing what previous researchers did but not in describing their findings, observations, hypotheses and generalizations. Since this data recovery work is in part the culmination of the previous research, we believe that it is appropriate for you to expand your discussion of the previous work to serve as a background for the derivation of your research objectives and research hypotheses discussed now on pp. 7-9. Therefore, the "PREVIOUS RESEARCH" section must precede the "Research Design" section and they need not be separate sections.
11	30-31	Recommend expanding your discussion to provide greater clarification of the criteria upon which your sampling was based. Extract some of these criteria from Table 1 and discuss.
12	Table 1	Provide a list of previous Bishop Museum sites numbers for appropriate sites.
13	58-59	Clarify screening procedures (use of 1/4-inch and 1/8-inch mesh screens). There are inconsistencies within the report (p. 11 and p. 163), and between the report and the Research Design. Address the possible biasing of samples of midden and basaltic glass flakes that your techniques may have generated considering comments by Davis, Rosendahl and Kirch.
14	168-175	Please complete the midden analysis with a detailed site-by-site analysis of per Research Design (pp. 13-14). We strongly concur with the other comments on the need for greater statistical analyses of the midden data which may shed light on site and feature functions.
15	168-177	This or a later section should provide statistical spatial distributional analyses of the artifacts to test hypotheses dealing with intensity of occupation and feature function, including manufacturing and food preparation. What is the relationship between artifacts used for marine resources exploitation and the inter- and intra-site distribution and density of shell-fish and fish bone?
16	188	Provide the data on basaltic glass and other forms of dating. Per Research Design, include a discussion of sourcing of the basaltic glass. We strongly concur with other comments on the need to beef up

the report with a thorough chronological analysis. If you did not attempt to date organic materials other than charcoal, please provide an explanation, particularly the nonextinct petrel. Based on the comments received to date and your subcontractors comments, we recommend that some of the bird, rat, or lizard bone be dated by flourine or amino acid techniques as noted in the Research Design (p. 14). If the results are not available for the final report, they may still be made available to the scientific community.

17 192-193

The draft report does not include any systematic analysis of site or feature size, function, or pattern distribution as required to test the second, third, fourth, fifth hypotheses. We concur strongly with Dr. Kirch's observation on this matter. If you feel that such analyses are inappropriate, be prepared to thoroughly justify your opinion in a specific section analyzing settlement patterns. A qualitative narrative is not sufficient.

18 193...

There is also no systematic summary analysis of agricultural potential, vegetation reconstruction and a thorough discussion of environmental change. It is not at all clear whether you have performed the work outline in the third paragraph of Page 12 of the Research Design relating to sedimentary and pedological analysis, and exploratory pollen analysis for the basis of making an estimation of the extent and nature of Hawaiian planting in the study areas. We believe further inferences may be drawn from Appendices I and II together with the above data to help determine the nature and extent of the prehistoric Barber's Point environment and how it changed over time. Any dating that you performed should be worked into this discussion.

19 191

The discussion of the "Barber's Point Perspective," as noted in Item 2, should incorporate a discussion of the research hypotheses and the results of the testing of them. This section must also relate your findings to previous observations, generalizations, and hypotheses developed by previous researchers at Barber's Point. These findings must also be related to pertinent archaeological research elsewhere in Hawaii and in Polynesia if appropriate. Data Recovery studies to comply with the Federal guidelines must be research oriented.

ItemPageComment

20

Appendix II

If Archaeological Research Center Hawaii cannot work out a compromise wording of Appendix II with Dr. Kirch of Bishop Museum, then the original submission by the Museum must be included in the Report with appropriate pagination changes.

21

Appendix III

Suggest you beef up the earlier period from Contact through 1940 with information drawn from the Lewis (1969) and Barrera (1975) reports. Please also show either in this Appendix or in the main body of the report, how you believe archaeological structures may have been modified during the historic era.



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 121
HONOLULU, HAWAII 96809

DIVISIONS:
CONSERVATION AND ENFORCEMENT
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

APR -6 1981

Mr. Kisuk Cheung
Chief, Engineering Division
Corps of Engineers
Building 230 (PODED-PV)
Fort Shafter, Hawaii 96858

Dear Mr. Cheung:

SUBJECT: Proposed deep draft harbor, Barbers Point
Hono'uli'uli, Oahu.

Review of the draft report:

Archaeological and Paleontological Investigation at
Kalaeloa (Barbers Point), Hono'uli'uli, 'Ewa, O'ahu,
Federal Study Areas 1a and 1b and State of Hawaii
Optional Area 1.

Let me begin by apologizing for our delay in providing you with this review. The archaeological sites in the Barbers Point area are important to Hawaiian archaeology, and this review has had a high priority with my staff. Unfortunately, our office recently lost the staff archaeologist familiar with the Barbers Point projects, causing some delay in our review of the report. In addition, the poor quality of the draft made it necessary to do a thorough review and not just read the report and make a few brief recommendations.

Thank you for the numerous documents provided along with the draft report. They made our review a lot easier.

After reviewing the draft report, we have a number of comments and recommendations to make.

1. [The report does not mitigate the adverse effects of the proposed construction projects on cultural resources in Barbers Point. This is because the major research problems outlined in your scope of work have not been sufficiently addressed in the report.]

2. With regard to problem "i", the relationship between Hawaiian occupation and the Barbers Point ecosystem, the report has documented "consistent patterns of faunal succession that are doubtless a reflection of wider environmental changes in vegetation and other biota." (p. 266) However, the report also states that "if a complete picture of paleo-environmental change in the region--including the problem of man's role--is to be achieved, we feel that further paleo-malacological analysis is imperative." We agree with this recommendation. ✓
3. [With regard to problem "ii", the history of Hawaiian occupation at Barbers Point, the report states that "these sites remain undatable by reliable and readily available methods, and a schematic chronological ordering of sites can be based only on nonquantitative criteria." (p. 192)

However, no chronological ordering of sites (based on non-quantitative criteria) is presented anywhere in the report. Furthermore, the summary of human and environmental succession given at the end of the report (pp. 197-8) is general enough to have been written before this research was done. In addition, it does not appear that quantitative dating techniques have been applied to an adequate sample, as only four charcoal samples were tested and only two sites were dated by basaltic glass hydration ring measurements.

4. [With regard to problem "iii", the Barbers Point settlement patterns, an attempt to determine the existence of seasonal and permanent habitation in the area met with negative results, and the authors conclude that "further testing ... could show that the Barbers Point middens comprise an inadequate sample or that other variables must be taken into account." (p. 174) ✓

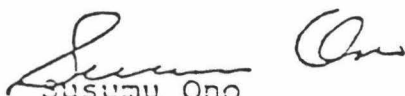
We agree that more midden analysis needs to be done. We also recommend that the final report contain an overall plan view of the project area illustrating the relationships of the various features discussed in the report including sinks, stone walls, midden areas, and sites excavated.

5. (4615) [With regard to problem "iv", the relationship between previously unknown and extinct endemic avifauna and the indigenous human population, the report says: "additional research is required to establish the absolute age of the fossils, the length of deposition in each significant sink, and the relative ages of deposits from different sinks." (p. 216). We agree with these recommendations. We hardly need to point out that the fossil sinks of the Ewa plain are one of the outstanding paleontological resources of the Hawaiian Islands.

6. [With regard to problem "v", the Barbers Point cultural pattern as a unique adaptation to a unique environment, the report does not directly discuss this issue. What is missing is a comprehensive analysis that compares and contrasts the archaeology of the Barbers Point sites with what is known for other areas of Oahu and Hawaii.

As in
In summary, this report has made a limited attempt to study the research problems outlined in your scope of work. The results seem to indicate the study area has the potential for answering the research questions proposed, and additional study is recommended.]

Sincerely yours,



Susumu Ono
Chairman of the Board and
State Historic Preservation
Officer

United States Department of the Interior

450 Golden Gate Avenue, Box 36062
HERITAGE CONSERVATION AND RECREATION SERVICE
PACIFIC SOUTHWEST REGION
SAN FRANCISCO, CALIFORNIA 94102

IN REPLY REFER TO:

PSW200

April 7, 1981

Kisuk Cheung
Chief, Engineering Division
Corps of Engineers
Pacific Ocean Division
Building 230
Fort Shafter, Hawaii 96858

Dear Mr. Cheung:

We have received and reviewed the draft report, "Archeological and Paleontological Investigation at Kalaeloa (Barbers Point), Hono'uli'uli, 'Ewa, O'ahu, Federal Study Areas 1a and 1b and State of Hawaii Optional Area 1," prepared by Hallett H. Hammatt and William H. Folk of the Archeological Research Center, Hawaii, Incorporated. The following comments and recommendations were prepared to assist you in determining the adequacy and the appropriate means of finalizing the above document.

{Based upon substantive review of the Scopes of Work and the Research Designs prepared and accepted by your office, this draft report does not provide sufficient data or analysis to comply with contract expectations. The report, in its present form, is also unacceptable as a data recovery document under current Federal standards. The report needs major revisions, additional research as specified by the Research Design and Scope of Work, and it is suggested that the Corps of Engineers require a second review draft before authorizing production of the report.

Specific review comments include the following:

1) The report contains innumerable typographic errors, sentence fragments and grammatical problems. It is suggested that a thorough editing be accomplished prior to finalization.

2) It is inappropriate to prepare a draft report which does not include all the expected information of a final. Graphics including site maps, comparative locational maps for site clusters, frequency and "midden weight" figures, and plan views are absent and should be included during the draft stage of report preparation. Other more crucial forms of information are missing - these will be discussed below.

3) Certain terms have been used which are not clearly defined. These should be clarified in the final report. Included are:

- "prehistoric (?) " - The purpose of contracting with a professional archeologist was apparently to resolve this question, not to continue it. Specifically, why is this used?

- "upward reworking of cultural remains" (p.64) - Does this pertain to disturbance created after deposition? If so, has this been done by

natural or cultural significance?
midden constituents?

"midden weight" (p.65) - What does this term mean? and what is its analytical significance?

4) The testing program proposed to evaluate the data recovery needs of various sites is unjustified. It seems that stratified sites are considered superior in some way to shallow, potentially single component sites. This is inaccurate and counter-productive if the focus of the research design is to explicate settlement pattern and variable activity areas. Single component sites may be indicative of periods of population expansion, economically specific activities or similar phenomena which, if left unanalyzed, would result in either a failure to accomplish the goals of the research design or specious conclusions. It should further be realized that this applies equally to sites with no midden accumulation. By ignoring their existence, character, and location, little will be learned of the total settlement system.

5) Testing the vertical and horizontal distribution of cultural material at a habitation site by using a one meter square unit is inadequate to accurately delineate the potential for a site to yield significant information worthy of recovery. To further reduce such testing to 25 centimeter square "trenches" is reprehensible. Such testing would indicate nothing about the formal variation present within a site.

6) A formal report of the results of the testing program should be prepared in order to develop a justifiable presentation of the proposed data recovery scheme. This has not been done, leaving the chosen recovery sample in a status of "take my word for it".

7) Of those sites subjected to data recovery, what is the volumetric displacement on each as a result of excavation? Presently, only surface area is given.

8) Chronological control, the paramount goal of recovery and analysis, has not been accomplished. Twenty two obsidian hydration samples were taken from two sites, (p.192) and 4 carbon samples were taken for radiometric analysis. The carbon dates are referred to as "modern" or "submodern" (p.192), although accurate presentation of the results is lacking. The hydration studies are insufficient to inform the research design of the contemporaneity of sites and their spans of occupation. Numerous forms of relative and absolute dating proposed in the research design have not been accomplished. These include amino acid racemization, fluorine analysis, C^{14} analysis of additional organic samples (including shell and bone), and related pedological and stratigraphic studies. It is recommended that these analyses be completed prior to the preparation of an analytical report.

9) It is inadequate to conclude that settlement patterning exhibited in the project area is a "general lack of clustering or loose clustering (p. 193)". How can even a vague statement like this be made without chronological control of when sites being compared were occupied? The analysis of settlement pattern, like chronological controls, was an important foci of the research design, but was never undertaken.

10) Faunal analysis is incomplete. A complete identification of faunal remains has not been accomplished. A brief presentation of conglomerate weights of bird bone does not indicate the purpose of such analysis. Attempts to conclude anything about the subsistence orientation of the inhabitants of

Barber's Point through time will be unsubstantiated as long as such analysis is left unfinished. Was there butchering? Is there evidence of seasonality? These questions are vital to an understanding of the occupation of the area, and to discerning the relationship between human agents and certain faunal extinctions which have taken place there.

11) The authors assume that the habitation sites present are representative of common status people (p.20). If this is so, then a clear explanation of the nature of the common person's habitation site should be forthcoming. It is not. Further, if these sites are so redundant throughout the Hawaiian Islands then it is presumed that the hypotheses generated within the research design should be that much more practical and testable. Unfortunately, this has not been the case - no goal of the research design has been attained.

12) In numerous places the authors assert that the sites were recently occupied and that the intensity of human activity was extremely low (p. 19,88, 193). There is no immediate evidence to support this or any other conclusion. Such conclusions should be formed on the basis of analysis of recovered data, not by opinion and preliminary studies accomplished outside of the project area.

13) The hypothesis on page 172 relating the amount of shellfish or fishbones on a site with the degree of occupation (sporadic to continuous) is rife with unstated and potentially confounding variables. The proposed test of this hypothesis (p. 174) by determining the correlation coefficient of fishbone to shellfish remains by site is inappropriate to test this ill-defined and unsubstantiated hypothesis.

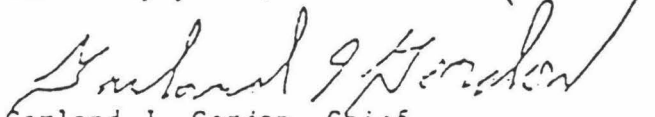
14) Historic research on post contact occupation of the Barber's Point area has not been accomplished. The post 1940 research on "Camp Melancholy" is good but totally unfocused in relation to specific goals relating to the project area. What of the purported habitation by Hawaiian cowboys? What is the nature of this occupation? Similarly, what of the Campbell Estate, sugar plantations and logging operations?

15) A master catalog of artifacts and faunal remains should be prepared.

16) Both the malacological and paleontological avifauna studies are relatively good reports when compared with the archeological. Unfortunately the avifauna study is incomplete, and both reports fall short of potentially significant conclusions concerning the degradation of the area's environment because they lack chronological control. Such studies were possible and should have been a primary focus of analysis, along with midden, stratigraphic, settlement and related analyses.

If you need further information please contact me or Mr. Leo Barker at (415) 556-7741.

Sincerely yours,


Garland J. Gordon, Chief
Interagency Archeological Services Division

cc: HI. SHPO
ACHP, Denver attn: Jane King

file

Meeting of the Planning Commission
Minutes
September 15, 1981

The Planning Commission held a meeting on Tuesday, September 15, 1981 at 1:30 p.m., in the Liquor Commission Conference Room, Honolulu Municipal Building, 6th floor. Chairman William Pacheco presided.

PRESENT:

William Pacheco, Chairman
Leslie Hirahara, Vice Chairman
Martha Cairl
Randall Kamiya
Harriet Kane
Yukio Kitagawa
Shigeyuki Nakatani

DEPARTMENT
REPRESENTATIVES:

Gail Baron, Executive Secretary
Steve Lim, Corporation Counsel
Calvin Ching, Staff Planner
Bruce Nagao, Staff Planner

MINUTES:

The Minutes of July 28, August 18 and September 1, 1981 were deferred to the next meeting.

UNFINISHED BUSINESS
PUBLIC HEARING
ZONE CHANGE REQUEST
R-4 & R-6 RESIDENTIAL TO
P-1 PRESERVATION
AINA HAINA
INITIATED BY CITY COUNCIL
(FILE 81/Z-5 EY)

The public hearing held September 1, 1981 was kept open for representatives from the Department of Public Works.

The public hearing was continued.

SUPPORT TESTIMONY

1. John R. Evans, Professor,
University of Hawaii

EVANS: This area of the valley lies mauka of approximately five or six areas which have encountered slides in the past 15 or 20 years. It is the same soil type. It is identified in surveys in the islands of the State of Hawaii as a Lualualei stoney clay. In keeping with good engineering practice, I always make a preliminary survey from this and get something about the typical properties of the materials that we are discussing. This particular case has been classified as very highly plastic clay that has high ...-well potential. It is unsuitable as a topsoil ... is porous, sticky and very plastic

HUMPHRIES: But that goes into Puahala Road and comes through Puahala Village. That's my point. You're taking the traffic through there to reach that site. If those two lots were not there, you would not reach the rest of that tract.

STAFF: The roadway is an existing roadway and is not part of the two lots. There are two existing dwellings and they drive up through Kulauli.

HUMPHRIES: Has any thought been given to using the other road there that goes around the golf course instead of going through that community? We talked about widening it and improving it at one time. They're starting out with a small development but that's a lot of land there, 300 and some. If they ask for more housing later, where is all that traffic going to lead? It can go along their own property and come out.

2. Mr. Richard Matsunaga, Architect for Team Pacific, said Mrs. Humphries raised a valid point which he felt should again be addressed to the golf course owners who might be able to work something out.

TESTIMONY AGAINST

None

The public hearing was closed, on motion by Mr. Kamiya, seconded by Mr. Hirahara and carried.

ACTION The Commission accepted the Director's recommendation and recommended approval of the request, on motion by Mr. Kamiya, seconded by Mr. Hirahara and carried.

AYES: Cairl, Hirahara, Kamiya, Kane, Kitagawa, Pacheco
NOES: None
ABSENT: Nakatani

PUBLIC HEARING
STATE SPECIAL USE PERMIT
(STOCKPILING OF DREDGED
CORAL FROM BARBERS POINT
DEEP DRAFT HARBOR)
EWA
JAMES CAMPBELL ESTATE
(FILE 81/SUP-6 EY)

A public hearing was held to consider a request for a State Special Use Permit to allow stockpiling of dredged coral from the Barbers Point Deep Draft Harbor on 177+ acres located at the end of Malakole Road, Tax Map Keys: 9-1-14: Portion 2 and 9-1-15: portion 1.

Publication was made in The Honolulu Advertiser and Star Bulletin on Saturday, September 5, 1981.

Mrs. Gail Baron, Executive Secretary, reported the following: "This morning the hearing, which I attended as the Hearings Officer for the Planning Commission, and Ian McDougall as the Hearings Officer for the Department of Land Utilization, was convened to hear testimony regarding the conditional use permit and state special use permit.

It was a combined hearing at Ewa Beach Community School Library. The public hearing notice was read, procedures were discussed with the groups that were in attendance. They were told what the procedure would be and that I would report back to you this afternoon. We received the testimony and it turns out that there are two sides to this issue. There are people against the granting of the state special use permit. Most of those people are here. Written testimony is available to you also."

STEVE LIM, DEPUTY CORPORATION COUNSEL: Because there was an adverse party in this proceeding, they agreed that we would hold the hearing only on the state special use permit. Ian McDougall will be handling the conditional use permit for DLU and that won't concern us here.

Basically we will have a presentation of the adverse testimony. Can we have a representation by the other people?

CHAIRMAN: I'll read their names - Georgette Myers, Kahea Kau, Carl Young, Hanalei Niheu, Mrs. Marie Olson.

CARL YOUNG: In terms of contested hearing, the other two groups - the Waianae Land Use Concerns Committee and Na Opio Aloha Aina - will be contesting.

LIM: Do you want the department to give the presentation over again?

YOUNG: We've already heard it. It's not necessary but we'd like to present ours.

LIM: Gail, you want to give a summary of what was heard this morning?

BARON: There were six speakers. First we heard from Walter Yoshimitsu who was the manager of Campbell Industrial Park speaking in favor of the application.

Dr. Charles Beamer, Neighborhood Board No. 23, representative. At their September 10th meeting, 13 members were present, of which 12 voted for approval of the application.

Carl Young expressed a concern with proceeds of the sale of coral. At that time he asked for a contested case hearing.

Next we heard from Eric Enos from the Waianae Land Use Concerns Committee, with concerns about environmental damage and migration of people who hold low-income jobs, housing and land shortages in the area, and concerns about ultimate development of the area around the harbor.

Number five, was communication from ... Pilago, Waianae Rap Center. His testimony is provided in writing.

Sixth person was Ray Ticunya. His testimony is also available to you here.

LIM: Mrs. Lyman do you have the minutes from the morning hearing?

LYMAN: No I don't. That's to be submitted for the record by DLU.

LIM: First we should have the applicant represented by Mr. Yoshimitsu present his case.

YOSHIMITSU: I'm Walter Yoshimitsu with the Campbell Estate and I'm managing Campbell Industrial Park.

To give you a little background, the issue I'm going to address myself to is stockpiling and not the merits of the harbor itself. That's already been accomplished, within the Planning Commission itself in which we had numerous hearings for rezoning of the land for harbor purposes. What we're here for is the state special use permit which really addresses itself to the stockpiling itself, and not so much the fact that we need or don't need a harbor.

The area around there is basically agriculture and that's why we're coming in for a permit. But the agricultural use has been nonexistent. It's just zoned Ag. and overgrown with keawe and halekoa. The uses around it have not been and is not suitable for agricultural uses. There's some contention that maybe we're missplacing some agricultural uses. To my knowledge there are only two people who have been in the industrial park who were raising pigs. They were not missplaced because of the harbor. The Navy condemned the land for flight clearance safety purposes. Another was a pig farmer further mauka which was not consistent with the kind of use that we want in that industrial area. He was asked to move but they were not moved because of the harbor.

As far as the stockpiling is concerned, I think we've addressed ourselves to the issues that primarily the land is not suitable for agricultural use, and that we will take all mitigating action to make sure there's no fugitive dust in the area by the contractor watering the coral as it's processed or dredged in the harbor. The contractor will have to make sure that there's no runoff storm water into the water basin itself. So, there's a lot of protection as to the environment of the stockpiling issue itself.

As far as the additional traffic, the only factor would be the trucks that are necessary to get the coral material dredged out of the ocean to the stockpile area. There will be no increase in traffic within that industrial park. There will be no need for additional posts. There will be no need for additional police. There is no additional strain on the city itself other than what is already there. There are no additional expenses on the city's part.

The areas that we're talking about are three stockpile areas on 177+ acres. The coral as we estimate will be in place for about 30 years. The fact of the windfall profits Campbell Estate might accrue through the sale of coral might overstate that with the coral taking up approximately 177 acres in 30 years, of course you'd be taking down in period of time but yet tying up - let's say for 15 acres, at least half of that. If you were to pay rent on industrial land for that period of time, the windfall profit that might be accrued for the sale of coral diminishes quite rapidly.

I think the idea of the coral stockpile is not going to be adverse to any of the populace around. There is a small subdivision, for Honokai Hale which is just mauka of there and about 600 homes in Makakilo. The visual impact, I think you can see it from Makakilo because it's up on a hill. But otherwise, after the stockpiling is complete, the contractor is obligated to plant vines on the coral to reduce the visual impact, and secondly because of the dust situation that might accrue.

I think all the potentials that are necessary to make that coral stockpile one that first of all, would not be a blight on the land. It won't be an impact visually on the residents around nor from the residents in the industrial park.

I think it's consistent with surrounding industrial uses. We have a cement plant. Just mauka we have two refineries and other industrial uses within the industrial park. I think the fact that you have a coral stockpile area is not inconsistent with the uses of the area. I think based on these things, we should get our special use permit approved.

CHAIRMAN: If you do go into this and the recommendation is in your favor, will that interfere with the ingress and egress of the Honokai Hale Subdivision?

YOSHIMITSU: Right now there's no visible ingree/egress from the Honokai Hale Subdivision directly down to the harbor area. Right now the only means for them is to come around and come down the main boulevard into the industrial park.

HIRAHARA: Wasn't this job bid about three weeks ago?

YOSHIMITSU: August 28th.

HIRAHARA: Is the dredged material going to be taken on state or on Campbell Estate land?

YOSHIMITSU: It's always intended to be on Campbell Estate land.

HIRAHARA: At the time of the bid, did you handle all your permits? Did the Corps of Engineers have the permit?

YOSHIMITSU: I'm going to answer that question by going in a roundabout way. Right now the area is being used by Cypress Hawaiian Cement for coralling purposes. The section we're applying under is excavation which is presently being done by Cypress Hawaiian Cement. As a matter of fact, the variance is held by Cypress Hawaiian Cement. So what we're planning to do is not new. It's already being done. The only thing they're not doing is to stockpile. They're digging the coral and taking it over to the plant.

In answer to your question, one of the things the Corps said we would get is the permits for this project. One of the comments they made is because they are a government agency, the harbor project itself is - first of all, we've conveyed the land to the State of Hawaii. It'll be a state harbor and the contracts are being let by the Corps of Engineers. Our only connection is because the storage is going to be on Campbell Estate land, we are going to secure the permit. The Corps' contention is that the permit is not necessary.

HIRAHARA: It supercedes the City and the State.

YOSHIMITSU: That's right.

HIRAHARA: But you're here to get the permit?

YOSHIMITSU: That's correct because we didn't want to, as evidenced by the number of people here some people are in opposition, so we wanted to go through the regular procedural channels and acquire the special use and conditional use permit, although on advice of the Corps that it was not necessary.

HIRAHARA: It's a very large project, \$49 million or so, that maybe they could get around the permit. Is the Corps going to go ahead and dredge regardless?

YOSHIMITSU: I'm going to have to defer that to the Corps.

HIRAHARA: When did you first find out about the harbor?

YOSHIMITSU: We've talked about the project now for many years, 15 or 20 years.

HIRAHARA: But this was like a last-minute preparation to secure the permit, a last minute decision?

YOSHIMITSU: Yes, until there was a fair certainty that the harbor project was going to go through, there was no need to get a permit yet. Until the Corps was satisfied that bids were to come in fairly reasonably and the project might be a go-project, and there were other things that we waited for also. We had to realign some pipelines and so forth, and there was a hesitancy to do that until there was some assurance.

HIRAHARA: But this assurance was at least six months ago. I guess I feel you were somewhat remiss in applying for this permit but now the bid is out, you're under fire. We're under fire now to issue a permit. I don't see why you took so long in coming to us.

CHAIRMAN: Mr. Yoshimitsu, the Corps of Engineers approval was sufficient for you to carry on what you want to do now?

YOSHIMITSU: That's correct.

CHAIRMAN: So over and above that you want to come through the proper procedures?

YOSHIMITSU: That's correct.

KITAGAWA: I don't understand this proper procedure if you really don't have to have our permission for this special use permit. Supposing this body were to deny, then what would happen?

YOSHIMITSU: It would be speculation on my part what the Corps might do. As I said, this is a Corps and State of Hawaii project. If it were permissible, yes, we would allow them to store the coral on Campbell Estate land.

KITAGAWA: So what you're saying is, what we might say may not have any bearing on your final use of the property.

YOSHIMITSU: I don't know. I know when we were before the Planning Commission, the estate had made the conclusion that regardless of what the city and the state had the power to do, we still went through the proper procedure to acquire the proper permits. So inspite of the fact that the state had the right to do the project without the city zoning, we proceeded to get city zoning.

HIRAHARA: Were there any environmental impact statements required for this?

YOSHIMITSU: It was done some years ago. Covered in that EIS was how they were going to stockpile that coral and what was going to be done with it.

HIRAHARA: So everything is in order as far as the U. S. Government is concerned.

YOSHIMITSU: That's right.

KANE: I didn't understand the reasons that they came in for the zone change for the harbor and I don't understand why you're here for the SUP either. I hear the words and they're the same but it doesn't make any sense to me.

Maybe I can understand something else about this in lieu of that. They're going to take all that coral presently on state land and put it on your land. How much do you have to pay them for that I wonder?

YOSHIMITSU: Free. The Campbell Estate because of the Will, we can't just give away land. So the 200 some acres conveyed to the state for the harbor project itself, there was no compensation. The compensation would be for--

KANE: You get the material.

YOSHIMITSU: Yes.

KANE: They get the hole in the ground when they're done.

YOSHIMITSU: That's correct, and also the availability of land down the harbor for shoreside facilities.

HIRAHARA: About how much do you think it's worth?

YOSHIMITSU: I don't know. The report says ten million cubic yards. We were just talking about that before. I think the comment was made if someone was to give us \$5 million today, we'd probably take it.

HIRAHARA: That's cheap.

YOSHIMITSU: The reason is this when first estimates were made, I think we were optimistic as to the worth of the coral but since then we have had conversation with the people who might be able to use the material, which would be Cypress Hawaiian Cement, the pipe companies Ameron, Lone Star, PC&R, to see if they would like to take the contract over and be the operator, and if you will, get some of this windfall. Heretofore we have been unsuccessful in finding one primarily because the coral itself after boring tests have not come to be what we would consider to be good coral. The quarry content is extremely high. If Cypress Cement were to use that coral, they would have to spend a lot of money to improve the coral.

KANE: What's the size of the site the harbor is to occupy?

YOSHIMITSU: 246 acres initially, and the harbor itself from the water basin is approximately 96 acres.

KANE: Is that about the area that was rezoned? I can't remember how many acres it was we heard last year.

YOSHIMITSU: The total area zoned I-3 would be the area within the harbor proper itself.

KANE: Was 246. How much an acre is land worth out there right now approximately, that grubby land that's not good for anything except piling junk on?

YOSHIMITSU: I can give you within the industrial park itself and not in that kind of magnitude until we make a final analysis but on 15-acre site there was an exchange made at \$6 a square foot, and

on smaller sites, maybe \$7 a square foot it would be about \$305,000 an acre. Calculated that's \$7 times 43,500.

KANE: Outrageous isn't it? Can you give me some kind of notion what this land in question in the area we're discussing today would be in relationship to \$305,000 an acre?

YOSHIMITSU: I don't know exactly. Are you questioning the area that's now zoned I-3 or the stockpile area which is now Ag.?

KANE: Let's take the Ag. Just give me your best guess. If you were going out to buy it, what would you consider a fair price?

YOSHIMITSU: Again I can't answer you directly because if you look at comparables, depending on what the ultimate use is going to be, if you're going to buy it for Ag. you're a fool because as I stated before you can't grow too much on it.

KANE: Okay taking that into consideration, what would you pay for it?

YOSHIMITSU: The only way a person would purchase that land would be if there's hope of rezoning. Then the buyer would look to see what likelihood of that ever happening. So, I don't know. It could go as high as \$20,000 to \$40,000 an acre if they think they could get it rezoned.

KANE: Only if it could be rezoned?

YOSHIMITSU: A person would buy it with anticipation.

KANE: And if that anticipation was not very strong, it would be worth quite a bit less than that you would say, maybe \$10,000 an acre?

YOSHIMITSU: I don't know. The prices in the Waianae area are about \$30,000 or \$40,000 an acre of Ag. land.

KANE: But, you can still grow things over there. You mean the good ag. land in Waianae?

YOSHIMITSU: Still on a speculative basis.

KANE: But you can grow things on it.

YOSHIMITSU: I don't know.

(There were no further questions of Mr. Yoshimitsu.)

TESTIMONY AGAINST

1. Marie Olson, Member, Aina O Waianae (Submitted written testimony dated September 15, 1981, copy attached)
2. Nanakuli Sisters written testimony dated September 15, 1981, presented by Georgette Myers, copy attached)

3. Georgette Myers, Nanakuli Homestead resident

MYERS: My name is Georgette Myers. I am a native Hawaiian and I'm very angry about this hearing. First of all, I just heard of this hearing last nite. I was one of them who opposed the harbor for many reasons but the most important one is that there are 300 historical sites there that live history, I'll remind you of the Hawaiian culture, dating back to the 1600s. The schools can use this area for education on the basis of the truth of Hawaiian History.

Why is it I was supposed to go to the Ewa hearing and when I got there, it was over already. Then I was told there was going to be another hearing here. My concern is why are they having the hearing at Ewa when the harbor is on the Waianae side? There should be a hearing at Waianae. A lot of people don't even know about this hearing. To have public input, the hearing should be held in the evening when a lot of people in Waianae can attend. We didn't even hear about this hearing.

CHAIRMAN: It's been published in the Advertiser and Star-Bulletin. All of these meetings would not happen if we did not publicize. That's according to law.

MYERS: I am a welfare recipient. They don't give money to me just to buy a newspaper so I don't have the money.

CHAIRMAN: How about a cadillac?

MYERS: I don't even have a cadillac. Luckily I came on a carpool.

CHAIRMAN: Your brother over there he smiled up there.

MYERS: He doesn't even have a car.

Anyway, I wanted to say that I've been going out to the historical sites. I met a lot of farmers down there. There's not only two pig farmers. There's vegetable farmers, chicken farmers. They said that the land where they're going to fill in the coral, the land isn't good for agriculture. Now, just what kind of agriculture do they want? Livestock is good enough. We can eat. The pig stinks but you can eat pig.

There's a lot of vegetable farmers. I have a friend who had a farm in there who was a pig farmer. She told me they had to leave on account of the harbor. She didn't say they were going to be moving because they wanted to move.

CHAIRMAN: Any questions of the young lady?

KANE: I just want to make a comment, Mr. Chairman. I'm glad you brought up the problem of notification, Georgette, because it is

a real problem. I just want to acknowledge that I appreciate it's a real problem. The law provides that we must advertise in the paper. We do. I don't get the paper everyday and when I do see it everyday, I don't read all the legal notices. So it's a perennial problem in this country. I don't want you to think that we don't appreciate that it is.

MYERS: Well, I don't have the money to afford it.

KANE: Even if you did, you could miss them a lot. That's the point. Our governmental system, I think, has not found a way to overcome that problem without spending tons of money with all sorts of individual letters.

CHAIRMAN: The fact that there was dredges in the tentative harbor, how much would that affect you folks if it's not near any agricultural land where they could really derive some benefit out of the vegetation?

MYERS: Well, we heard there will be another hearing on the 29th and because a lot of us weren't notified, we're willing to wait until the 29th and report then.

CHAIRMAN: Like for yourself, how would it affect you?

MYERS: For me, eventually those historical sites, I would be denied the true history. The fact that there is history there which would be destroyed on account of the harbor and the coral landfill.

CHAIRMAN: Does the fact that it might create many jobs in that area for you people who are hard pressed for employment?

MYERS: Well, it is a fact that Waianae is a high unemployment area. But that's all the developers have been promising us, jobs, and yet a lot of my brothers and sisters don't have a job over there. They can't even guarantee us a job.

KAMIYA: Do you understand that this particular hearing is just for the 177+ acres that's going to be used to stockpile the coral?

MYERS: Yes, I understand.

KAMIYA: It has nothing to do with the harbor.

MYERS: Yes, I understand.

KAMIYA: You mentioned the historical sites. Where are they located?

MYERS: If I take you there I could show you but if I were to look at the map, I wouldn't know where it is.

KAMIYA: There is already a quarry operation. Areas 1 and 2 are already in operation. There's another area that's sugar cane land

which is being used to grow cane. I'm wondering where the sites are if those things are in existence. You know whether they're within the 177 acres?

MYERS: There are 300 historical sites. I saw a little of that not all of it.

(There were no further questions of Mrs. Myers.)

4. Mr. Kahea Kau (Presented written testimony on behalf of Na Opio Aloha Aina)
5. Mr. Amos Hanalei Soli Niheu, Member, Protect Kahoolawe Ohana

Requested hearing deferral to read archaeological report and make a presentation at the next meeting on this item.

6. Carl Young representing the Waianae Land Use Concerns Committee

YOUNG: I speak for the Waianae Land Use Concerns Committee. We stand in opposition to the DLU's and the Honolulu Planning Commission's approval of this CUP and the State SUP that would dump the dredged coral on to the historic sites at Kawailoa, Barber's Point, the eastern end of the Waianae coast.

The Waianae Land Use Concerns Committee has been party to several suits in the past against the harbor which we feel results in high immigration into Waianae and will be flooded with the low-paying jobs. We feel that a city is not a place to lay the family with slums and crime. Members of our group have for generations fished in the Barber's Point area. Over the years the fish population has been dwindling.

The Waianae Neighborhood Board was never consulted about this hearing. Only the Ewa Neighborhood Board was asked to comment and yet the harbor is on the Waianae coast.

Let's look at the coral itself. For one thing, the coral is not the state's to give away and therefore not Campbell's to sell. Coral is a mineral. Thus the proceeds should go to the Hawaiian people under the 5(f) clause of the Admissions Act.

In the recently signed coral sales agreement of August 20, 1981 between Campbell Estate and Aina Nui Corporation - Aina Nui Corporation is composed of the trustees themselves, for the most part. This agreement says two very interesting things that are especially relevant for today's hearing. The rationale or at least one of them for approving the permit is that the sale of this coral for the use of cement will somehow benefit the public. If you look at the sales agreement, you cannot use this coral for cement without the approval of Campbell Estate. If you examine the coral itself, one-third of that coral will be quarried. But two-thirds of that coral which is below sea level is salty. At least one-third of that coral is usable for cement.

This agreement is probably to keep prices artificially high to protect tenants who are also selling cement. Also, one interesting thing about the sales agreement--

STEVE LIM, DEPUTY CORPORATION COUNSEL: Excuse me, Mr. Young, we will be dealing only with the SUP and how it affects the land in question. As far as the sales of the coral, etcetera, that was all part of litigation that was in court already.

YOUNG: This is something new.

LIM: Can you tell the Commission how the sale relates to the SUP?

YOUNG: Yes. The agreement points out that the Estate will be selling about 1-1/2 to 2-1/2 million dollars of coral per year for 30 years. You multiply that and you get \$70 million worth of coral that Campbell Estate is getting, giving us the taxpayers just 1-1/2 million dollars worth of land.

LIM: How does that relate to the agricultural lands?

YOUNG: I'm getting to that point. I was answering a point that was raised earlier.

Part of the testimony presented earlier by DLU or Campbell Estate pointed out that the coral pile will be invisible, covered by shrubbery. If my figures are right, that's 20 feet high. So it's going to be very, very visible.

There are five points. I'd like to address myself to point two, that this is consistent with the City and County's General Plan. The entire project is contrary to the City and County's General Plan which say that Ewa will become a secondary urban center, only if there's a spillover or overflow from Honolulu, if this overflow ever does occur. The State has a slow-growth priority but as Alvey Wright, former head of the State DOT once said - he now works for Senator Inouye, key proponent of this disastrous project - the proposed harbor will be the cradle of the second city on Oahu.

Furthermore, the State has agreed to let Campbell Estate control the developments on their land which means that we taxpayers are letting a private concern plan a harbor that we paid for, and we will be paying for a long, long time to increase consumer prices. Because, when they build the harbor they will increase the shipper's, the users fee. This user fee is passed down to the consumer. In other words, the only person to gain in this project is the Estate.

I'd like to cover another point, point number four about unusual conditions, trends or needs. Indeed, very unusual conditions have occurred since the land use district boundary was established. It was originally agriculture and was rezoned to urban which is a very unusual condition. As has been brought out earlier, several large scale pig and poultry farmers have been evicted. I think today's hearing is the first time it's been on record that large scale pig and poultry farmers have been evicted because of this harbor.

Therefore, I propose two things. One, that the hearing be postponed and reconvened as a contested case hearing. Two, that the hearing also be rescheduled on the grounds that the Army Corps of Engineers has violated its mandate to protect the historic sites at Kawailoa, sites that the State's own Department of Land and Natural Resources calls very important. In their own words quote we hardly need to point out that the fossil sinks of the Ewa Plains are one of the outstanding physiological resources of the Hawaiian Islands end quote.

There are two community groups in Waianae - Na Opio Aloha Aina and the Waianae Land Use Concerns Committee - which opposed the deep draft harbor. Na Opio Aloha Aina means the youth who love the land. It's motto is e malama pono i ka aina nana mai ke ola which means take care of the land because it gives us life. The future belongs to the youth of Waianae, Ewa, all of Oahu regardless of race. The ocean subsistence is endangered by this harbor. Farming's endangered by the imminent rise of land values. These two groups formally request that the hearing be turned into a contested case hearing.

This leads us to the crucial topic of violations of the intent of the National Environmental Protection Act. I'd like to go to point number one under the five tests, how it's consistent with the land use law and regulations. The Waianae Land Use Concerns Committee is on record criticizing the violation of the National Environmental Protection Act in that the long range impact which the EIS process is supposed to address fully, were not addressed, such impacts as local fishing and farming in the area.

But, a second violation is occurring today at this hearing because what the EIS says is that all adverse impacts must be mitigated. But the impact on the historic sites has not yet been mitigated. ARCH, the consultant group, which was mandated to mitigate the impacts, just released their preliminary draft a few months ago. The Corps of Engineers sent the draft out to the reviewers and the reviewers called it totally unacceptable. The final draft has not yet been reviewed and it is said that the final draft is basically the same as the preliminary draft. In other words, again totally unacceptable.

I will be reading, in a minute, a letter from the Society for Hawaiian Archaeology one of the reviewers, that discusses this and asks for a delay in the dredging until adequate studies can be made.

The State's DLNR in its review of this study also requested that quote, additional study is recommended, end quote. Another was with the federal government, Department of Interior and they said quote, the draft report does not provide sufficient analysis to comply with contract expectations end quote, and that the quote, report in its present form is also unacceptable as a data recovery document under current federal standards end quote.

Now we come to the Army Corps of Engineers. They pointed out in a letter to ARCH that quote, all written reviews were very negative and the State Historical Preservation Office and the Advisory Council for Historic Preservation also indicated by phone that the report was negative end quote, and that they all conclude that it quote, does not comply with the proposed guidelines end quote. So, the Corps agrees with the two conclusions of these reviewers. My conclusion was that it was unacceptable. Secondly, that further study was needed. In fact they said quote, more than cosmetic changes would be needed end quote. So these are very serious charges. It goes contradictory to point number one where the land use laws, in other words preservation of historic sites, must be protected and preserved.

This is a letter from Patrick McCoy who is Chairman of this ad hoc committee to review this particular study. This is addressed to Mr. McElroy, dated today (see copy of letter attached).

To conclude, we would like to request continuance and also that the Corps of Engineers make all their data available. We had asked the archaeologists to come in. They have said normally they get meeting slips sent to them but no meeting announcement was sent to them for this particular hearing. They are interested in coming in to provide expert witness at a later time. We also request a special hearing out in Waianae, if possible. The final request would be to have further notices sent out by your group sent to our people.

CHAIRMAN: Mr. Young, we will defer this. What we will want is new information. What you have presented here today is all recorded. So get together with your people and present new information the next time around.

YOUNG: The site is very significant. As a matter of fact, archaeologists call it a classic text book case. Hawaii will become famous in all history text books because of investigations that are going on out there. This would never occur unless study is done.

CAIRL: I would personally like to know more about the 300 historic sites, some of those sites.

KANE: Carl, what archaeologists did you have in mind?

LIM: Since Mr. Young is going to be a party along with other people that came today, he should present his case so he's going to be responsible for calling the witnesses.

Another thing I'd like to clarify is that right now we haven't had too much real factual testimony. When we resume in the contested hearing, the parties which would be Campbell Estate, the two community groups would have an opportunity to cross-examine each others witnesses. You can cross-examine each other right now or can wait until the next meeting.

KITAGAWA: I'm a little confused because I'm in the same boat as Randy. I'm trying to stick to the application which is storage. I appreciate the fact that there is some connection to the harbor because that's where the stuff is going to come from. But, are you saying for example that the historic sites are bare where they're going to store which has not been covered in the EIS or the archaeological study?

YOUNG: What the reviewers are saying is that ARCH supposedly did a study that was totally unacceptable. Even ARCH themselves in their recommendations want further studies done.

KITAGAWA: Then supposing Campbell Estate were to say okay, we won't stockpile. Then I guess we won't have this permit hearing but you would still be opposed to that? What I'm trying to find out is are you opposed to the stockpiling per se or are you opposed to the harbor?

YOUNG: Our Waianae Land Use Concerns Committee has filed suit twice. We're worried what's going to happen to Waianae when this huge project is built. They want jobs but they've suggested on many occasions that maybe West Loch at Pearl Harbor is adequate or the existing barge harbor should be kept and maybe turned over to the local fishing industry.

I think Mrs. Apo was going to come and make testimony today that ... Dock in Pearl Harbor is empty and could be used. There's a lot of other alternatives that have not been examined by the legislature or by anybody.

KITAGAWA: So I take it your basic underlying concern is the harbor and may not be the stockpile or am I putting words in your mouth?

YOUNG: Yes. It's generally to separate the two.

KITAGAWA: For example, if they were to stockpile it right in Campbell Industrial Park on one of the lots there, then what?

YOUNG: There's a lot of issues involved for all the land exchange itself. Coral is worth \$70 million and we're getting \$1.5 million worth of land.

KITAGAWA: Okay, I think I know where you're coming from.

HIRAHARA: Where did you get the \$70 million from?

KAMIYA: Mr. Chairman, a point of order. We know there's a lot of controversy involved in the product, the coral. It is not for us to determine whether the price is too high or the price is too low. I've sat through this harbor hearing once and I don't want to go through it again because I know what it means to all of you. Those things are not new because it's part of negotiation from long time ago. I think a lot of guys know when you negotiate you've got to negotiate price whether it's land or what. You've got to negotiate something.

So what I'm saying is it's up to you as Chairman to decide whether we're going to work on 177 acres and it's use or whether we're going to take the whole harbor.

CHAIRMAN: I think that's a foregone conclusion. I think we just go to work on what the request is for.

YOUNG: But for the taxpayer, it hurts so--

CHAIRMAN: Carl, this is what's before the Commission, nothing else. It doesn't say anything about digging a harbor or how much. Our only interest is on the request for the 177 acres.

YOUNG: Mr. Chairman, I commend for your very good job so far. It's a tough job you have.

CHAIRMAN: Thank you. Any other questions?

KAMIYA: I want to make sure of the historic sites involved on these 177 acres, please get the information to us.

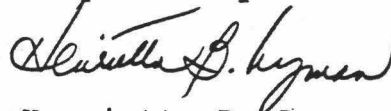
(There were no further questions of Mr. Young.)

The matter was deferred to September 29, 1981.

ADJOURNMENT:

The meeting adjourned at 4:53 p.m.

Respectfully submitted,



Henrietta B. Lyman
Secretary-Reporter

My name is Kahea, and I am a student. I had heard about this meeting just this morning, and felt that it had concerned me. I am in the Na'Opio Aloha Aina and strongly oppose the deep draft harbor. There should have been some early notice since this is a public hearing concerning the people of the Waianae Coast. I feel it was wrong of you folks to not let the public know about this hearing. There were a lot of people against this harbor, approximately 8,000 residents disagreed with the construction of the harbor. I left school, just to attend this meeting. It is very important to me (us) that we fight for what we feel is right. The meeting should be brought down to our side.

Kahea Akao
9-15-81

KAHEA' AKAO
84-345 B MAWAO AVE.
NANAKULI, HAWAII 96792
* KA'OPIO ALOHA AINA

DEPARTMENT OF LAND USE COMMISSION
PUBLIC HEARING - Ewa Beach Community Library
September 15, 1981 - 10:00 A.M.

GENTLEMEN:

It is most distressing to be advised about this hearing at 10:00 P.M. last evening. It is common knowledge that the subject of this hearing will most assuredly affect our Nanakuli-Waianae Community profile of atmosphere, attitudes et cetera. If this is a public hearing then the general public should be heard, especially those that will be directly affected by it.

Therefore, as a concerned Nanakuli-Waianae resident and on behalf of other uninformed concerned residents, I request this public hearing be continued in the Nanakuli-Waianae area, at an evening hour so all may be given equal opportunity to be heard pro and con on this vital and important development which will affect us as well as Ewa Beach.

Thank you,

Sincerely,

Marie Olsen

(Mrs) Marie Olsen

Kupuna Adviser Na Opio Aloha
Aina o Waianae,
Member Nanakuli Hawaiian Home-
steads Assn,
WMHC Advisory Committee Chairperson

My address:

Marie Olsen,
89-602 Haleakala Avenue
Waianae, Hawaii 96792

9/15/81

I'm speaking on behalf of our group.
The Nanakuli sisters, we have 14 members.
We all go to a printing school. At a
printshop in Waipau. Its called the
Makāainana printshop. The purpose for this
shop is to help stress community. To teach
skills to help us to get jobs. This is
the first time we heard of this heard-
ing, it was a member of our group. told
us at our meeting last night. We all
~~oppose~~ the Harbor and we demand the
hearing to be out at Waianae at a evening
time where all of us could be there to
speak out. we are the public.

Thank You

89-346 Mano Ave.

nanakuli, 96795

Georgette Meyers
8. - 346
Mano Avenue
96792

My name is Georgette Meyers and I'm a native Hawaiian, I live in Nanakuli Homestead. And I'm very angry about this hearing. First of all I just heard about this hearing last night. I was one of them who oppose the Harbor for many reasons. But the most important one is that there are 300 historical sites there. That's true History I'll remind you. of the Hawaiian Culture dating back to the 1600's. The schools can use this area for education on the Bases of the truth, of Hawaiian History.

Why is the hearing in Ewa? the Harbor is on the Waianae side. There should be a hearing out in Waianae. A lot of people don't even know about this hearing. And to have public input the hearing should be in the evenings were the ~~working~~ people can go and give ~~public input~~ there say.

Georgette Meyers.

Aug. 14, 1981

Dear Sirs,

I was very angry to hear that this important meeting was scheduled during the day without most Waianae people knowing anything about it.

I work during the day like thousands of other Waianae residents and many of us would be at this meeting if it was held during a week night in our community. Why? Because the deep draft Harbor is located on the Waianae Coast and will definitely affect us and our rural life-style. Campbell Estate and the State have no right

stealing coral that belongs
to the Hawaiian people and
then dumping this coral on
ancient Hawaiian historical sites,
destroying them forever.

I must warn you, don't
let Campbell Estate get away
with this crime or thousands
of people will get very upset.

Please reschedule this meeting.

Mahalo,
Roy Catania
Waianae resident

10/2/81 checked phone book,
for address: No Roy Catania
No Catania with
668-prefix

My name is Angel Pilago, and I speak to you as a resident of the Leeward area. I urge this body to deny approval for a conditional use permit, and a State special use permit as applied for, by the estate of James Campbell.

It is unfortunate that we come here to witness coercion of the Hawaii State Government by the estate of James Campbell. The State have been manipulated into mandating and advocating a fallacious allusion of immediately requiring a second Deep Draft Harbor and infrastructure at Barbers Point.

The allusion is that a scenario of future economic and population projections warrants the need for a second Oahu Deep Draft Harbor. In actuality, the opposite is true.

A substantial increase of population would be necessary to accumulate enough capital just to maintain the proposed complex and its other cost burdening facets.

In essence, taxes and other cost producing factors to operate a questionable facility with questionable benefits to the individual consumer.

It is well known, that should the proposal go through, the estate of James Campbell would reap millions in short term dollars; and, unassessable millions in its long term plan. These monies need not be accountable to the people.

What then is accountable? The concept of democracy demands that elected officials are accountable to the individual citizens of their constituency. Why then does the State condone a corporate monopoly? And, why does the State condone the monopoly's control that serves itself from beginning to end? Again, I speak to you only as a resident of the Leeward area and I ask you, the People of Hawaii, WHY?

I stand in opposition to the Dept. of Land Utilization's and Honolulu Planning Commission's approval of the Conditional Use Permit and State Special Use Permit to Campbell Estate to dump the dredged coral onto the historic sites at Kalaeloa (Barber's Point) in the eastern end of the Waianae Coast.

For one thing, the coral is not the State's to give away and therefore not Campbell's to sell. Coral is a mineral, thus the proceeds should go to the Hawaiian people under the 5(f) clause of the Admissions Act. In the recently signed coral sales agreement of August 20, 1981 between Campbell Estate and Aina Nui Corp (which is composed of the trustees themselves for the most part) it says two very interesting things that are especially relevant for today's hearing. The rationale, or at least one of them, for approving the permit is that the sale of the coral for the use of cement will somehow benefit the public, but the sales agreement says that the coral will not be used for cement without prior approval by Campbell Estate. This is probably to keep prices artificially high to protect tenants who are also selling cement. Also the sales agreement points out that the Estate plans to sell from \$1-1/2 million to \$2-1/2 million worth of coral yearly for 30 years. That's up to \$75 million that will be made from the coral while we taxpayers through the State Government got in exchange land worth only \$1-1/2 million.

Another point. The coral pile will be 20 feet high and thus very very visible to the public, and won't be hidden by the shrubs as DLU claims. Furthermore, there have been several evictions of chicken and pig farmers due to the harbor construction. The entire project is contrary to City and County General Plans which say that Ewa will become a secondary urban center only if there is a spill over or over flow from Honolulu, if that ever does occur. The State has a "Slow Growth" priority and as Alvery Wright of the DOT once said (he now works for Sen. Inouye, the key proponent of this disastrous project): The proposed harbor will be the cradle of the second city on Oahu. Furthermore, The State has agreed to let Campbell Estate control the developments on their land meaning that we taxpayers are letting a private concern plan a harbor that we paid for and will be paying for for a long time through increased consumer prices that shippers will force on us because they have to pay increased user fees for this proposed harbor. In other words, the only person to gain is the Estate.

page 2 testimony

Therefore, I propose two things: One, that the hearing be postponed and reconvened as a contested case hearing. Two, that the hearing be re-scheduled on the grounds that the Army Corps of Engineers has violated its mandate to protect the historic sites at Kalaeloa, sites that the State's own DLNR calls very important, in their own words, "We hardly need to point out that the fossil sinks of the Ewa plains are one of the outstanding paleontological resources of the Hawaiian Islands."

There is a community group in Wai'anae, Nā 'Ōpio Aloha 'Āina, which has long opposed the deep-draft harbor. It means "The Youth who love the land" Its motto is E mālama pono i ka 'āina, nānā mai ke ola which translated is Take care of the land, it gives us life. The future belongs to the youth of Wai'anae, of Ewa, of O'ahu, of all of Hawai'i regardless of race. The ocean subsistence is endangered by the harbor. The farming is endangered by the imminent rise in land values. Nā 'Ōpio formally requests postponement and reconvening as a contested case hearing.

This leads us to the crucial topic of violation of the intent of the National Environmental Protection Act and its Impact Statements. The Wai'anae Land Use Concerns Committee is on record criticizing the violation of NEPA in that the long-range impacts which the EIS process is supposed to address fully were not addressed, such as impacts on fishing and farming.

A second violation of NEPA is occurring right now with this hearing. The EIS says that all adverse impacts must be mitigated, but the impact on the historic sites has not yet been mitigated. AEC ARCH which got the contract to mitigate this problem released its preliminary draft which according to its reviewers was totally unacceptable. The final draft has not yet been reviewed and it is said that the final is basically the same as the preliminary. Enclosed is a letter from the Society for Hawaiian Archaeology that discusses this and asks for a delay in the dredging until adequate studies can be made. The State's DLNR in its review also requested that "additional study is recommended." The Dept. of Interior said that the "draft report does not provide sufficient data or analysis to comply with contract expectations" and that the "report in its present form is also unacceptable as a data recovery document under current federal standards." The Army Corps of Engineers pointed out that "all written reviews were very negative and the State Historical Preservation Office and the Advisory Council for Historic Preservation also indicated by phone that the report was negative" and that they all conclude that it "does not comply with the proposed guidelines." The Corps agreed with the two general conclusions of unacceptability and further study and said that "More than cosmetic changes will be needed." These are very serious charges. The hearing must be rescheduled until the final reviews are submitted by the peer archaeological groups.

Thank you.

Carl Young
Sept. 15, 1981

SOCIETY FOR HAWAIIAN ARCHAEOLOGY

15 September, 1981

President:
Patrick V. Kirch
Department of Anthropology
Bernice P. Bishop Museum
P.O. Box 19000-A
Honolulu, Hawai'i 96819

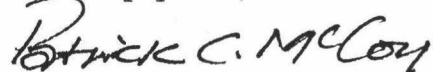
Mr. Michael M. McElroy
Director
Department of Land Utilization
City and County of Honolulu
650 South King Street
Honolulu, HI 96813

Dear Mr. McElroy:

The Society for Hawaiian Archaeology has formed an ad hoc committee to review the final draft report on "Archaeological and Paleontological Investigation at Kalaeloa (Barber's Point), Honouliuli, 'Ewa, O'ahu, Federal Study Areas 1a and 1b, and Hawaii Optional Area 1." While the review has not yet been completed owing to late receipt of this document, the members of the committee are of the opinion that this report, like the earlier drafts, is inadequate in terms of fulfilling either the general or specific tasks set forth in the Revised Scope of Work and in the Revised Research Design. There is, moreover, a consensus of opinion that the report fails to meet the standards and reporting requirements set forth in 36CFR Part 66 (42 Federal Register 5374, January 28, 1977). In short, we seriously question the acceptance of this report as constituting adequate mitigation of the impacts of harbor construction on the archaeological and paleontological resources in the Barber's Point area. It is our recommendation that additional salvage excavations should be undertaken prior to any further land alterations in this area.

We are grateful for the opportunity to present this testimony and would be happy to provide you with a copy of our final review of the subject report on which decisions of far-reaching importance are now being made.

Sincerely yours,



Patrick C. McCoy, Ph.D.
Chairman, Ad Hoc Committee to
Review the Hammatt/Folk Report on
Barber's Point

Meeting of the Planning Commission
Minutes
September 29, 1981

The Planning Commission held a meeting on Tuesday, September 29, 1981 at 1:35 p.m., in the Liquor Commission Conference Room, Honolulu Municipal Building, 6th floor. Chairman William Pacheco presided.

PRESENT:

William Pacheco, Chairman
Leslie Hirahara, Vice Chairman
Martha Cairl
Randall Kamiya
Harriet Kane
Yukio Kitagawa
Shigeyuki Nakatani

DEPARTMENT
REPRESENTATIVES:

Gail Baron, Executive Secretary
Steve Lim, Deputy Corporation Counsel
(present at 2:00 p.m.)
Henry Eng, Assistant Director, Zoning
Calvin Ching, Staff Planner
Bruce Nagao, Staff Planner

MINUTES:

The Minutes of August 18, September 1 and 15, 1981 were approved, on motion by Mr. Hirahara, seconded by Mr. Kamiya and carried.

The Minutes of July 28, 1981 were approved, as corrected.

UNFINISHED BUSINESS
ZONE CHANGE REQUEST
R-4 & R-6 RESIDENTIAL TO
P-1 PRESERVATION
AINA HAINA
INITIATED BY CITY COUNCIL
(FILE 81/Z-5 EY)

The public hearing held September 1, 1981 was closed September 15, 1981 and action deferred to the next meeting on September 29, 1981.

CHAIRMAN: The first item on the agenda is the Aina Haina zone change which is Tax Map Key 3-6-4: 1 and 3-6-24: 1. Existing use, the land is

vacant. There's no DLUM adopted for the area and there's no Development Plan adopted for the area. It's proposed for Preservation. Request, the applicant requests a zone change from R-4 and R-6 Residential District to P-1 Preservation District in conformity with the proposed Development Plan for the area.

Public hearing held September 1, 1981 was closed September 15, 1981 and action deferred to the next meeting September 29, 1981 which is today.

Publication was made in The Honolulu Advertiser and Star Bulletin on Saturday, September , 1981.

Mr. Calvin Ching presented the Director's report recommending approval of the request.

There were no questions of staff regarding the Director's report.

No one was present to speak either FOR or AGAINST the request.

The public hearing was closed, on motion by Mr. Hirahara, seconded by Mrs. Cairl and carried.

ACTION: The Commission suspended its rule for deferral and recommended approval of the request, on motion by Mr. Hirahara, seconded by Mrs. Cairl and carried.

AYES: CAIRL, HIRAHARA, KAMIYA, KANE, KITAGAWA, NAKATANI
PACHECO
NAYES: NONE
ABSENT: NONE

DINNER RECESS 5:30 P.M.
RECONVENED AT 7:00 P.M.

PUBLIC HEARING
UNFINISHED BUSINESS
STATE SPECIAL USE PERMIT
(STOCKPILING)

EWA
JAMES CAMPBELL ESTATE
(FILE 81/SUP-6 EY)

The public hearing held September 15, 1981 was continued two weeks for an evening meeting.

CHAIRMAN: Before we begin, our Counsel, Steve Lim, will advise us on the procedure.

COUNSEL LIM: Is Alan Murakami here? Alan, would you step forward please?

ALAN MURAKAMI: I'm Alan Murakami.

COUNSEL LIM: I had a discussion with Alan over the telephone today and he indicated that they had some problems with the notice procedures in this case. I'd like to clear that before we even start the hearing.

MURAKAMI: Fine

COUNSEL LIM: I reviewed the public notice in the newspapers and it appears that we published notice of the public hearing for September 15th one time in the daily newspapers of the Star Bulletin and Advertiser on September 5, 1981. So it's my opinion that we didn't follow the APA requirements for the newspaper notice. Now, we can either defer the hearing because of the defective notice and we can republish the notice and start all over again or we can do the hearing tonight but you'd have to waive your notice requirement.

MURAKAMI: Well, as representative for Na Opio Aloha Aina, I don't believe I can waive that right. There were procedural protections under the statute and as a party that's been granted that status at a prior meeting of this Commission, I don't feel I can waive some of those requirements set up by the legislature in 91/91 which requires

specific notice to the parties mentioned by the Commission as a participant in a contested case proceeding. Those requirements are entirely different for a party in contested cases and it's even more specific for publication.

COUNSEL LIM: Okay. What we're confronted with is a problem. We don't have the prehearing procedures like the Land Use Commission does so the Commission here doesn't know who's going to be a party until the day the hearing starts. That's what happened at the last meeting of September 15th. We note now it's September 24th and I think you had representatives from all your organizations at that prior public hearing and they requested specifically this date in the evening for a meeting to accommodate their interests. So if you want to have the hearing tonight because these people are here then we can go ahead but you have to waive it. If you don't want to waive it then we can't hold the hearing.

MURAKAMI: You're saying the public hearing notice was defective.

COUNSEL LIM: Right.

MURAKAMI: That's separate and apart from contested case proceedings which I am raising objections to which require a special notice under Chapter 91, and that in addition to the public hearing notice is defective and which cannot be waived. The request that was made, I think, included a request that the hearing be conducted in Waianae or at least on the Leeward Coast. I guess you were one vote short to relocate. As a result, I don't believe that everybody that could have been here is here for this particular hearing. We do have some participants from the previous hearing but not all that probably could have made it have made it.

So I guess what I'm saying is while we are perfectly happy to accommodate what the Commission's schedule is in terms of trying to expedite this particular permit, we don't believe it's appropriate to proceed tonight. However, I would be perfectly willing to work with all of you in trying to accommodate a schedule and have the adequate notice and the opportunity to prepare. I think it's necessary in this kind of proceeding.

I apologize for not submitting something in writing but our president has made it very difficult for me in the last past couple of days in responding to all the public assistance that have been flooding our offices.

COUNSEL LIM: It's going to be our position that because we don't know who the parties are until the hearing starts and Chapter 91 speaks of that situation where you can't ascertain the identity of the parties, this sufficient notice would be the two publications in the newspaper at least 15 days prior to the hearing. That's the rule that we subscribe to. But in this case, now that we know you're a party and because you don't want to continue with the hearing, we'll provide you with the APA notice 15 days prior.

I don't think we can proceed if they don't want to waive the notice requirements.

CHAIRMAN: Is that your stand?

MURAKAMI: Yes.

CHAIRMAN: We'll have to adjourn.

MURAKAMI: Mr. Chairman, it will raise a legal point and probably cloud the proceedings if we did proceed. It becomes a statutory mandate. So I don't feel I have the power to waive that.

COUNSEL LIM: Any party can waive any procedural defects. That's in the APA also.

CHAIRMAN: Are you willing to do that?

MURAKAMI: No, we're not.

COUNSEL LIM: Do we have anything the Campbell Estate people want to say for the record?

DIANE KISHIMOTO: I'm Diane Kishimoto, Counsel for Campbell Estate. The estate appreciates the difficulty the Commission is being placed in. I understand this meeting was scheduled at this time at the request of the opposing party by various representatives of the Waianae community. So we are here prepared to put on testimony. We've lined up our witnesses and got them here. The opposing party knew about this hearing for two weeks and yet we appreciate the position the Commission is in. So if you feel you must continue, we will accede to the wishes of the Commission. Of course, we are anxious to have this matter decided as expeditiously as possible. The delay is to the detriment of my client so we would be interested in knowing how soon the reconvened hearing would be scheduled.

COUNSEL LIM: Because the opposition party requires 15 days certified notice, it'll be at least 15 days when we'd make our next scheduled meeting. What we'll do is the Executive Secretary will be sending out certified notices to all the parties concerned.

KISHIMOTO: If we could please have the identity of the opposing party. That was one of the difficulties in preparing for this hearing because we didn't know who'd be on the other side.

COUNSEL LIM: Mr. Murakami, are you prepared to present a list of your parties and witnesses to the opposing Counsel?

MURAKAMI: I have not prepared a list.

COUNSEL LIM: Could you give her an informal list later then?

MURAKAMI: If we could sit down and agree to some procedure, I'd be happy to do that.

KISHIMOTO: We have disclosed who our witnesses are. We signed up on the list the witnesses that would be testifying tonight.

MURAKAMI: We don't have notice of that. The parties also have the right to cross-examine.

COUNSEL LIM: I don't think you're entitled to a list. In any event, we won't be holding the hearing so let's not take up everybody's time.

HIRAHARA: Mr. Chairman, could we have a recess?

CHAIRMAN: We'll take a 15-minute recess.

RECESSED AT 7:15 P.M.
RESUMED AT 7:30 P.M.

CHAIRMAN: Counsel Murakami, you did agree that on the 20th we would meet again on this request. Is that true?

MURAKAMI: Yes.

NAKATANI: Mr. Chairman, I'd like to make a motion that we meet on October 20th at 1:30 p.m., here in this room.

HIRAHARA: Second.

CHAIRMAN: It's been moved and seconded that we meet on the 20th at 1:30 p.m. here in this room. Martha?

CAIRL: Could we meet at 2:30 p.m. instead of 1:30 p.m.?

CHAIRMAN: I don't think that'll be a problem. Any problem if we meet at 2:30 p.m.?

NO RESPONSE

NAKATANI: I'll amend my motion to 2:30 p.m.

HIRAHARA: Me too.

CHAIRMAN: Okay, we'll meet here October 20th at 2:30 p.m. All in favor raise your right hand.

(The motion was unanimously carried.)

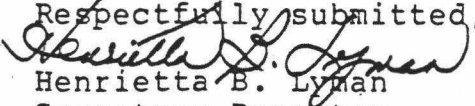
AYES: CAIRL, HIRAHARA, KAMIYA, KANE, KITAGAWA, NAKATANI, PACHECO

NAYES: NONE

ABSENT: NONE

ADJOURNMENT:

The meeting adjourned at 7:40 p.m.

Respectfully submitted,

Henrietta B. Lyman
Secretary-Reporter

Meeting of the Planning Commission
Minutes
October 20, 1981

The Planning Commission held a meeting on Tuesday, October 20, 1981 at 2:30 p.m. in the Planning Conference, City Hall Annex. Chairman William Pacheco presided.

PRESENT:

William Pacheco, Chairman
Leslie Hirahara, Vice Chairman
Martha Cairl
Randall Kamiya (present at 4:30 p.m.)
Harriet Kane
Yukio Kitagawa
Shigeyuki Nakatani

DEPARTMENT
REPRESENTATIVES:

Gail Baron, Executive Secretary
Steve Lim, Deputy Corporation Counsel
Henry Eng, Assistant Director, Zoning
Department of Land Utilization
Calvin Ching, Staff Planner

MINUTES:

The Minutes of September 15 and 29, 1981 were deferred.

REVOCATION OF STATE
SPECIAL USE PERMIT TO
ESTABLISH KAHE POINT
RECREATIONAL THEME PARK
(FILE 77/SUP-2 HE &
77/CUP-3)

This matter was published in The Honolulu Advertiser and Star Bulletin on Saturday, October 3 and 5, 1981.

CHAIRMAN: Our Counsel, Steve Lim will make some opening statements.

COUNSEL LIM: Mr. Chairman, the reason for this meeting was in order to show cause to Oahu Corporation in that their special use permit for the Kahe Point Theme Park which was Special Use Permit No. 77-273, issued November 14, 1977 appears to have lapsed because of their failure to comply with Condition No. 14 which was to obtain a building permit to cover the entire first phase of the project. The applicant had received a one-year extension of time and then a six-month extension of time. Both of those ran out on April 14, 1980 which was the date that the building permit was to have been obtained. As far as we know, the building permit has not been obtained for this project.

I believe present today are Mr. Matthew Pyun representing the Oahu Corporation. I also have two other parties representing the other parties to the Supreme Court case in this matter. Could you please come forward to make your presence known, Allan and Stephanie?

CHAIRMAN: It's been moved and seconded that the Director's recommendation be accepted. All in favor, raise your right hand.

(The motion failed for lack of a majority vote.)

AYES: CAIRL, KANE, KITAGAWA, PACHECO

NAYES: HIRAHARA, NAKATANI

ABSENT: KAMIYA (present at 4:30 p.m.)

PUBLIC HEARING
STATE SPECIAL USE PERMIT
(STOCKPILING)

Public hearings held September 15 and 29, 1981 were continued for legal notification requirements.

EWA

JAMES CAMPBELL ESTATE
(FILE 81/SUP-6 EY)

CHAIRMAN: At this time we'd like to call on the staff to give their presentation.

CALVIN CHING: My name is Calvin Ching. I am the Branch Chief for Zoning, Department of Land Utilization.

Mr. Chairman and Members of the Planning Commission, the applicant, Campbell Estate, has applied for a State Special Use Permit to allow stockpiling of dredged coral in three areas within a 177-acre site in Ewa near the Campbell Industrial Park, identified by Tax Map Key 9-1-14: portion of 2 and 9-1-15: portion of 1.

An estimated 10.6 million cubic yards of coralline material will be dredged from the construction of the Barbers Point Deep Draft Harbor. The life of the stockpiling is expected to be 30 years.

The site to be encompassed by disposal areas I and II has been in use for many years as the coral quarry operations for Cyprus Hawaiian Cement. At present, there is no vegetation covering the ground in the area. Surrounding this site to the North, South and East is a thick barrier of Keawe trees and haole koa bushes. Behind this lies a field of sugar cane. The nearest residential area is approximately .60 of a mile to the Northeast.

The site of disposal Area III is an existing keawe grove. After clearing of the site, a barrier of trees surrounding the area will act as a visual and pollution buffer to surrounding industrial businesses. The closest distance to a work area will be approximately 300 feet.

We evaluated the application in terms of the five tests to be applied and find that the proposal has met all the criteria for a special use permit, as delineated in the State Land Use Regulations. On this basis, the Director of Land Utilization recommends approval of the State Special Use Permit for this project. A Conditional Use Permit for this use was approved by the Director on September 24, 1981.

CHAIRMAN: At this time, we'd like to hear from the people for this request. Counsel Diane Kishimoto.

DIANE KISHIMOTO: Mr. Chairman and Members of the Commission, good afternoon. I'm Diane Kishimoto, Attorney for the Estate of James Campbell which is applying for a special use permit to allow stockpiling of coral on 177 acres on land in the State Land Use Agricultural District. The coral is going to be dredged or excavated from the Barbers Point Deep Draft Harbor.

The needs and the environmental/sociological impact of this harbor have been addressed by the Land Use Commission in 1979 and again presented before the Planning Commission in 1980 in connection with rezoning of the harbor area itself.

With me to testify on behalf of the application are Oswald Stender, Chief Executive Officer of Campbell Estate, who will be testifying generally as to the description of the property, the surrounding area, past, present and intended use of the property.

Also testifying on behalf of the application will be David Stox with the U. S. Army Corps of Engineers who will be testifying regarding federal requirements regarding archaeological resources on the site.

Also testifying on the application will be Dr. Hallet Hammett who's an archaeologist.

Available as resource witnesses, should the Commission wish to ask questions, are Dr. James Marigos who will be testifying on the environmental impact of the proposed use of the property.

Henry Nakashima is also with the U. S. Corps of Engineers who can testify as to the intended use of the property from the point of view of contract requirements in general engineering matters.

Finally Winona Char who's a botanist.

The law provides unusual and--

COUNSEL LIM: Excuse me, Miss Kishimoto. Maybe we should have appearance by the other counsel. What we'll do is have the appearance by the other counsel and then the Planning Commission executive secretary will run through some of the procedural requirements we have gone through.

CHAIRMAN: Counsel Murakami?

ALAN MURAKAMI: I'm Alan Murakami, Counsel for Na Opio Aloha Aina.

COUNSEL LIM: Mr. Murakami, at the other hearing we also had representatives from other groups. Are you also representing the Waianae Land Use Concerns Committee?

MURAKAMI: No, I'm not.

COUNSEL LIM: Is Mr. Carl Young representing that group?

RESPONSE INAUDIBLE

COUNSEL LIM: So the only party you're representing is Na Opio Aloha Aina.

MURAKAMI: Yes.

BARON: The application of Campbell Estate for the State Special Use Permit and Conditional Use Permit was accepted by Department of Land Utilization on July 1, 1981 and the public hearing was opened on September 15, 1981. Legal notice for that hearing was published in the Advertiser and the Star Bulletin for the State Special Use Permit on September 5, 1981. A combined hearing for the CUP and SUP was held in Ewa on September 15th and a report was made to the Planning Commission that afternoon at their regular meeting. At the request of opponents to the application, that hearing was continued to September 29th. Subsequently DLU granted the CUP on September 24, 1981. The minutes and results of that request are included in the record.

September 29th, 1981 the hearing was continued. That was a special evening hearing at the request of the opponents of the application. At that time opposing parties indicated notification was inadequate and the meeting of the evening was postponed. Renotification was published according to Chapter 91 of the Hawaii Revised Statutes. Legal notice appeared in the Honolulu Advertiser and the Star Bulletin on October 3rd and 5th and any known parties were notified by certified mail, return receipt requested.

COUNSEL LIM: As far as the procedure for this hearing goes, we will be having the petitioner Campbell Estate, the Petitioner, present their case first followed by Na Opio Aloha Aina. We will have presentation of opening statements, presentation of evidence, cross examination of each witness, rebuttal evidence and final argument. Do we have any questions regarding procedure?

MURAKAMI: You want to mention the list of witnesses?

COUNSEL LIM: The order of witnesses will be put on by counsel in their case-in-chief. We may have one witness taken out of turn, Dr. Schwind, from Department of Agriculture.

KISHIMOTO: Yes. We believe in order to save Dr. Schwind's time, we will permit him to be called out of order by counsel for the opponents.

COUNSEL LIM: Very well. At this time, may I have everyone stand who intends to testify at the hearing and I'll swear them in as witnesses.

Would you all raise your right hand. Do you solemnly swear and affirm that the testimony you give will be the truth, the whole truth and nothing but the truth?

RESPONSE FROM THOSE STANDING IN AUDIENCE: Yes.

KISHIMOTO: Before counsel for Na Opio Aloha Aina calls Dr. Schwind, since I eagerly launched into my opening statements, may I just finish it.

I would like to point out that the law provides that unusual and reasonable uses within agricultural districts, other than those for which the district is classified, may be permitted if the following tests are satisfied. First is that the use is not contrary to the objectives sought to be accomplished by the land use law regulations. Second, that the use would not adversely affect surrounding property; third, that such use would not unreasonably burden public agencies to provide roads, sewers and so forth. Fourth is whether unusual conditions, trends and needs have arisen from district boundary regulations established. Fifth is that the land upon which the proposed use is sought is unsuited for the use permitted in the agricultural district.

That is the Land Use Commission regulations and this Commission has added two additional tests - one being that proposed use will not substantially alter or change the and special character of the land and its present use, and the last, that the proposed use will make the highest and best use of the land involved for the public welfare.

It's the position of the applicant that all seven of these tests are met as the evidence we will present tonight will show.

CHAIRMAN: Counsel Murakami, would you like to make your opening statements?

MURAKAMI: As Counsel for Na Opio Aloha Aina we are prepared to show tonight, number one, this is not the proper proceeding to go through in order to get this land classified for the use it will be used through the special use permit. There are several other cases that have recently come about that indicate the use of special use permits would probably be misused in recent history because of the extended nature that special use permits have been allowed for various types of uses on agricultural land.

We will show that the projected use for this property is merely one phase of a massive urbanization project that is intended to eventually put between 200,000 and 300,000 people in this area and expand the industrial functions of the Campbell Industrial Park as well as the Cypress Cement Company and their affiliates which would make this probably one of the most massive urban development projects on Oahu in history.

The position of Na Opio Aloha Aina is that this kind of application should be viewed just exactly for what it is. It is an attempt to get urban use out of currently classified agricultural land.

The legislature is looking further in this area that it intends, as a result of this land use law which we are today solving, that agricultural lands as classified should deserve the maximum protection. This was the basic reason for the passage of the land use law in 1961, I believe the date was. There was some flexibility built into that system as the special use permit procedure allows. However, in view of the extent of the use that is being proposed, the more than temporary nature of the projected use of the stockpile and the amount of land involved, I believe this Commission should find it's inappropriate for this permit to be issued under these rules and regulations and that you should dismiss the application and require that the applicant go through the district boundary amendment process which is to provide maximum protection for the agricultural land that this application involves, as well as the surrounding agricultural land a lot of which is prime agricultural land, which could be affected as a result of the irrevocable decisions to permit new sources which would hasten the urbanization and permit resources which would make it much more attractive for other lands in this area to be reclassified for urban use.

I believe as a part of this showing, we will attempt to mainly address two of the tests that are enumerated by Miss Kishimoto in her opening statement. Those are the first two tests which develop compliance with the land use law and effects on surrounding property.

At this point, we would like to call Dr. Schwind.

CHAIRMAN: Dr. Schwind, give us your name and position in the case.

SCHWIND: My name is Paul Schwind, Chief Planner for the Department of Agriculture. I'm here before this Commission in response to a letter dated October 8, 1981 from Willard T. Chow, Director of the Department of General Planning requesting my presence here to answer questions on the site of the special permit application.

INTERROGATION OF PAUL SCHWIND BY COUNSEL MURAKAMI

MURAKAMI: Dr. Schwind, would you give us a brief rundown of what your current position is?

SCHWIND: The Department of Agriculture reviewed the application for special permit in question here. We commented in writing to the Department of Land Utilization on August 28, 1981.

Q: I'm sorry I wanted your position with the Department of Agriculture.

A: Sorry, I thought you asked my position in this case. My position as I stated earlier is chief planner of the Department of Agriculture.

Q: What responsibility would that entail?

A: Responsibilities entail managing the planning function of the Department of Agriculture and all that entails.

- Q: Does that make you responsible for reviewing decisions on various decisions your department makes?
- A: Well, my office prepares for the Chairman of the Board of Agriculture who is Jack K. Suwa, correspondence which goes out over his signature regarding matters such as this case as well as other duties.
- Q: So primarily your responsibility deals with providing the input to any particular, official recommendations your department makes.
- A: Yes, that's correct.
- Q: Have you taken a look at the proposed use of the subject parcel in this case?
- A: We reviewed the application for the special permit which is the subject of the hearing today.
- Q: As I understand it your department has favorably recommended the application be accepted.
- A: If I may, I'll read from the department's written review of this particular case, the letter of August 28, 1981 which states the Department of Agriculture has reviewed the subject petition and offers the following comments. The Department does not object to granting of the special use permit for the intended use. We have given our support to the deep draft harbor project in the past as indicated in the attached memorandum dated May 16, 1980, which was directed to George Moriguchi then Director of the Department of General Planning.
- We note that the Petition for Land Use District Boundary Amendment, Docket 878-449 for Barber's Point Deep Draft Harbor states on page 8, I quote the areas to be occupied by the stockpile are on Campbell Estate land mostly in the agricultural district. They are not included in the petition area. We suggest that Statement A of the Outlook on State Special Permit Application supplemental information be appendaged to indicate that the intended use is not permitted on agricultural lands according to the land use law regulation, which is why a special permit is required.
- Q: So it's the position of your department that there is no way that an ag. use can be made of this property with the projected activity that the applicant proposes.
- A: In the letter referred of May 16th, 1980, we made some comments about the particular site. If I may, I'd like to quote from that. I think it's also relevant.

Referring again to the memorandum May 16, 1980 from John Farias to George Moriguchi, Chief Planning Officer, regarding the proposed Barber's Point Harbor. Department of Agriculture is in support of Bill 52 which has to do with

this matter relating to the rezoning of properties for the proposed Barber's Point Harbor. The properties in question are not agricultural lands of importance and they're classified as E lands in the land study bureau detailed land classification. As such they consist of rocky, shallow soil unsuitable for machine cultivation. The lands are of no agricultural value to the Oahu Sugar Company which has no plans to cultivate them. The tertiary economic impact of the harbor project on surrounding Ewa districts lands are expected to be minimal, depending on the proper application of governmental land use policies to direct and control the residential development and urbanization of leeward Oahu.

Impacts of the harbor project which will be beneficial to agriculture will include improved facilities to service the movement of livestock, feed materials and fertilizer to production areas in Waianae and Ewa. Also, the coral which is dredged to be obtained from construction of the project will provide a valuable source of calcium for crop production on Oahu.

Those were our comments on May 16 regarding basically the same project which is now before you for a special permit.

- Q: In reference to those comments for the harbor, let me direct your attention to a condition that appears in the recommendation that was made that the tertiary effects of this commitment would not be substantial. It would depend upon the actions of the City and County and State in terms of further urban development. What did the department exactly have in mind in terms of that condition?
- A: Well as you know, all changes of land anywhere in the state from agricultural to urban is subject first to action by the Land Use Commission, and second, to any action by the county in pursuit of its general plan, development plan as the case may be, as well as zoning ordinances. So that any urbanization in the Ewa Plain or elsewhere would have to go through a multi-stage review process. We feel that this process is sufficient to provide for beneficial urbanization and prevent urbanization of agricultural lands that would have adverse impacts. The project doesn't always work perfectly but in general the project has worked quite well over the last 15 to 20 years that it's been in effect.
- Q: Dr. Schwind, have you made any study of the eventual effects of urbanization on surrounding agricultural lands?
- A: Surrounding what property, this property?
- Q: Any property in general that is being urbanized?
- A: That's a pretty big question. What do you have in mind?
- Q: Well, I'm asking you whether you've made a study concerning that particular comment.
- A: It's a little hard to answer your question.

KISHIMOTO: Mr. Chair. , it appears that Mr. Murakami is really going beyond the scope of the application before the Commission. We should be concerned about the impact of the stockpiling on these three pieces of property.

MURAKAMI: To the contrary. I think I should have the opportunity to inquire into the basis for the various recommendations made. One of those bases includes the particular training experience on some of the improvements in terms of the particular issue at hand, that is, the effect on the property and surrounding property in terms of potential agricultural use.

SCHWIND: I'd be happy to answer the question but could you rephrase it a little more precise so it will help me?

MURAKAMI: All right. You've not made an independent study of a particular case in which urbanization of a parcel of land is having an effect on surrounding agricultural land?

SCHWIND: I would say as a general rule, we try to analyze in every case that comes through my office, we look into the private resources we have at whether we feel there might be an impact from granting of the particular action such as this on surrounding property.

In this particular case, I think I summarized the impacts as we see them reading the text of the memorandum of May 16, 1980. We do something like that kind of analysis on several hundred applications every year that come through my office--special permits, zoning amendments, subdivisions, land use boundary amendments at the Land Use Commission and so on, as well as environmental impact statements. I think you can see that in terms of the number of such pieces of paper that move through my office, that works out to about one per day, I have one staff member assigned to do that. We tend to do a fairly brief review. So I think in response to your question, yes we try to look at impacts. We don't do a detailed dissertation on each one of these things.

I hope that answered your question. I'm not sure.

Q: I'm not sure either considering the review of the Corps of Engineers final environmental impact statement.

A: Our department did review that document as I recall. That was before I actually went to the Department of Agriculture but I think our files reflect review and comment on that EIS you're referring to.

Q: Was your department at anytime concerned about the possible effects of the easing of urbanization in the Ewa area as a result of similar type projects?

A: We're always concerned about the possibilities of such events but as I stated, in this particular case we felt the direct impact of the harbor project would be positive and beneficial and the tertiary impacts would-- First of all, it's very hard to pin down and secondly, those impacts are

really subject to a whole variety of land use controls which I mentioned earlier. So we concluded that the probability of adverse impact from this particular harbor project were really not there. We've made different conclusions but those aren't to this particular area.

Q: In your mind Dr. Schwind, you have considered the stockpile of coral here as a part of the total Barber's Point project, have you not?

A: Yes in the sense that the stockpiling of coral is part of this whole property.

Q: Was the department concerned with the EIS' representation that coral development would directly or could hasten more rights for conversion of the agricultural lands to urban uses?

A: We were certainly aware that representation was made and we did consider. But as I stated, our finding was when we looked at the EIS that-- First of all when you review an EIS, you're reviewing not so much the project itself but the statement, the document, the EIS. Of course those impacts were addressed in the EIS. Secondly, when it came to the project itself - to go back to our May 16, 1980 memo which I read in its entirety - I think the beneficial impacts are there and the adverse impacts simply are not significant in this case.

Q: So your conclusions are dependent upon certain actions of the state and county to prevent agricultural lands from being transferred to urban lands.

A: Yes, but I think that's true of everything you look at. You can't spin a web of hypothetical connections from one project to others ad infinitum. You have to look at each case on its own merits and we try to do that too.

Q: As a planner do you agree this particular project would hasten the urbanization of land in that area?

A: No, I don't agree that this particular project would hasten the urbanization of lands throughout the Ewa area because for one thing you nor I could define what kind of urbanization we're talking about here.

Q: I'm speaking of the conversion of agricultural land into urban land.

A: You mean land in the agricultural district? I think the area of this special permit will be put to basic urban use when the permit is granted, yes.

Q: I'm talking about the secondary effects.

A: I certainly haven't quantified what those effects would be. If you're asking me for my professional opinion, it is that you're looking at industrial growth in the urban area is what this project is all about. The land use impact will not be that great because we have an industrial park, at the Barbers Point already, the deep draft harbor will

serve that area, it will serve the entire Island of Oahu, it will probably permit some degree of industrial growth in the immediate area adjacent, which you can see through the map before the Commission this kiawe land, Class C land. We're not talking about a vast urbanization impact on thousands of acres. That kind of change would be due to other ... of the deep draft harbor project.

Q: So it's your conclusion that this deep draft harbor is unrelated to urbanization of the Ewa area?

A: I would say it's substantially unrelated in the sense that you're trying to draw attention to.

Q: Substantially unrelated to the haste of urbanization--

LIM: Excuse me Mr. Murakami, I think we're getting away from the issue at hand which is use of the 177 acres and we're starting to drift off again into the deep draft harbor. I'd like to confine the discussion tonight to that 177 acres. If you feel there is a tie in to the effects of the surrounding lands, could you ask the witness specifically what kind of effects you're talking about.

MURAKAMI: Well, I think that this line of questioning is relevant because this witness acknowledges this is part and parcel of the harbor project. I cannot separate the fact that there's going to be stockpiling dredged from the harbor from the impact on the harbor. This is a phase of the harbor project.

LIM: Whatever the witness feels is part of the project right now doesn't matter but the Commission's view is we're dealing with the 177 acres for stockpiling. We're not going to talk about the merits or demerits of the Barbers Point. We've already gone through that hearing. I know it's difficult to separate the two but in terms of the actual effects, we'd like to hear those instead of the general concerns about effects on the surrounding area because of the harbor, in chief, rather than the 177 acres.

MURAKAMI: We're suppose to be in good position because although we allowed Dr. Schwind to go out of turn, a lot of his testimony relates to the secondary effects of the stockpiling which would come later.

LIM: Well, could you ask him about those secondary effects?

MURAKAMI: If I'm allowed to ask hypothetical questions.

LIM: We're having difficulty, I believe, in that your hypotheticals are a little general and we don't know where you're going. We don't know what facts you're trying to pull out of Dr. Schwind or whether you're just trying to pull out general statements that could be used as admissions against his department.

MURAKAMI: I am merely questioning the basis for their recommendation that the harbor for this particular property would have no impact on urbanization of that area. It's a tertiary question of mine.

FROM THE AUDIENCE: My name is Leo Young. I'm a Deputy Attorney General. I'm the attorney representing the Department of Agriculture. In listening to this, the witness has stated that as to the 177 acres of land, it's classified as Class E land and of no agriculture use.

Secondly I'd like to point out that Dr. Schwind has appeared at the request of Mr. Murakami, not through a subpoena but as a courtesy to Mr. Murakami. I find it rather irregular that if he summons Dr. Schwind that he then treats him as a hostile witness. I think that's inappropriate.

MURAKAMI: First of all, court rules do not apply in these proceedings. Secondly, I think Dr. Schwind is a needed resource that he has the function of acting as one of the chief planning officers of the Department of Agriculture. I had to call him based on the recommendation the department made.

LIM: So you've asked him what his basis for their recommendation for approval of the permit was?

MURAKAMI: I'm exploring those various areas, yes. They have stated that there would be no significant and tertiary effects, I believe, conditioning that recommendation on approval or reactions of the state and county agencies involved in the land use planning process. So I'm exploring the basis for his recommendation which I think is key to this whole case.

LIM: Could we have an offer of proof as to what you're exploring?

MURAKAMI: My offer of proof is like I said. It's an attempt to identify the bases for the particular recommendation that there would be no significant effects as the result of this activity to preserve agricultural land. I think I have the opportunity of asking how long does that mean in the future, and what effects did he look at, as well as the particular uses which he contemplated this land could be put to.

KISHIMOTO: And I believe, Mr. Chairman, that question was asked and answered.

MURAKAMI: Well, I don't believe so but I'm asking for a ruling from the Chair. That's where I'm to go and that's my offer of proof.

LIM: The question you just framed which was what was your basis for recommendation is a proper question. I think he's already answered it but maybe you can more narrowly pin your subsequent questions.

Dr. Schwind, do you understand the question?

SCHWIND: I'd like to have the question rephrased.

MURAKAMI: Your memo of May 16, 1980 refers to classification of these lands and therefore of no significant agricultural use?

SCHWIND: That's correct. The lands are of no agricultural value to the Oahu Sugar Company as a quotation from the memo which has been previously read into the record.

Q: Is your recommendation conditioned then on the use that Oahu Sugar would purchase the land only?

A: Part of it.

Q: Could there be further use of that land by other agricultural interests?

A: Theoretically yes. Planning deals with a lot of theoretical questions like that. If you're looking at the Island of Oahu, 380,000 acres, theoretically you could put all sorts of things in all sorts of places but practically speaking, no. I don't think the particular site we're looking at here has any real potential agricultural use. But that's a judgment. That's not a fact. That's a matter of opinion.

Q: As a part of your judgment I'd like to ask whether you consider any other agricultural use other than cultivation of crop?

A: Have I considered any other use? In what sense? Would I go out and start a farm there or might somebody else?

Q: Have you considered use of this land by anyone else than Oahu Sugar for other than cultivation?

A: Again I'm not clear of the question. Considered in what sense?

Q: In making your recommendation, was your consideration of the use of this land for livestock done?

A: I think you can see from the memo we didn't discuss that question.

Q: In terms of your recommendation here, your primary recommendation seemed to be focused on benefits to the agricultural use to movement of feed and livestock in and out of the Ewa area. Is that a fair characterization of the recommendation?

A: That's a fair characterization of impact that we foresaw again as somewhat hypothetical. I don't know that there were any firm plans to provide the coral dredged for those particular purposes but it could take place. And if it

does, then it becomes a beneficial impact. We would hope these beneficial impacts would occur.

Q: Part of the memo itself does not mention what the potential effects are of whatever current users of the ag. lands in the area are.

A: There are no current users of the particular site so that doesn't really enter into the picture.

Q: Dr. Schwind, have you ever gone to the area in question?

A: I've been in the general vicinity. I don't at this point recall if I've been on this exact site of the special permit.

Q: Have you had an opportunity to talk to any of the existing farmers in the area?

A: What area again because there are no farmers anywhere close to this particular site that I'm aware of.

Q: You haven't talked to any farmers within a mile of the site?

A: I have not personally, no.

Q: So you're not familiar if any current use is being made of the area immediately surrounding the immediate vicinity?

A: Again could you put a number on it? How immediate are we talking about?

Q: About a mile radius.

A: I'm aware to the best of our department's information, there are, I think, two farm operations approximately 1-1/2 miles from the special permit site in the vicinity of Honokai Hale. Looking at my notes here, that's at least a mile from the subject property, give or take.

Q: Have you considered this existing use of land in the area near the subject property in making your recommendation? Do you understand the question?

A: Have I considered the use of--

Q: Present use of the land that is being used right now.

A: Which land?

Q: The farm which you referred to earlier. Those two parcels.

A: Specifically, no.

Q: In your opinion, Dr. Schwind, is it possible to use the kind of land that we have here Class E with corraline base for pig farming?

A: As I stated earlier, theoretically anything is possible but then you have to realize that applies to enormous areas of the state so it's not going to be just this particular site.

Q: Are you familiar with the type of soil on which this farm that you referred to is operating?

A: I haven't investigated that particular site because again

as I stated earlier, when we are given applications like this, we go on a case by case basis. We review the soil of the subject property of an application. We investigated this special permit site. It's Class E.

On other occasions we looked at some of the prime agricultural land which is in sugar cane which is in the general area here. That was in regard to another case. That's why we haven't looked at the particular site you're referring to now with these two farmers because to my knowledge there hasn't been a land use special permit case directly impacting them.

Q: So you're not asked to look at potential effects of surrounding properties?

A: I think we've covered that quite a bit. We do it in a very general way. It does not cover specifically, no.

Q: Is it a fair statement to make that lands that surrounding or immediately adjacent to the area, surrounding this particular subject area has much prime ag. land?

A: Again how far away you want to go?

Q: A mile to 1-1/2 mile radius.

A: I'm not sure. There's some of the outer reaches of the Oahu Sugar Plantation lands some of which is prime land within a mile or two of this site, yes.

Q: ... the Ewa Plain does contain quite substantial amounts of prime agricultural land?

A: The Ewa Plain as a whole?

Q: Yes.

A: No. That's a pretty widely recognized fact.

Q: Dr. Schwind, has the state ever been approached through your office to assist any of the current farmers in the area in terms of any problems they're having, operating or even existing?

A: Not directly through my planning office that I'm aware of.

Q: (Changed tape at this point) ... studies by the Department of Tropical Agriculture concerning poultry farming.

A: You referring to the industry now?

Q: Yes.

A: I'm generally familiar with it.

Q: Is it generally true based on your position and judgment that less than 30% of all unprocessed pork that's fresh, frozen, chilled, are produced by local industry?

A: Yes. That's basically true. Most of our livestock industry locally produce only a fraction of the total amount of meat products consumed.

LIM: Excuse me Mr. Murakami. We seem to be going into a little general discussion of agriculture at least in the Ewa Plain. Would you confine the discussion to the 177 acres?

MURAKAMI: I want to bring out that this report recognizes the increasing urban pressures on swine industry ... poultry farmers. Those pressures may not be directly related to direct impact on the immediate farm at hand that based on this study, pressures do come in a secondary kind of nature. My offer of proof on this matter is that this is something that's happening ...

LIM: I believe the land in question is zoned AG-1 and under those zoning regulations, swine production is not allowed. That's why I'm having a hard time with relevancy of the question.

MURAKAMI: At the same time, Mr. Chairman, one of the tests that's applied here is whether or not the uses as allowed or is possible in the particular area in this district is agriculture. This is the land use law. These uses in the ag. area are allowed in terms of Chapter 205.

LIM: Our basic problem is we're having a hard time relating what you're asking Dr. Schwind to the 177 acres of stockpiling. I think he's already said swine production could be affected, etcetera but in terms of the 177 acres, we can't make that final connection.

MURAKAMI: I'm not trying to say there's swine production on the 177 acres.

LIM: I don't think we want you to say that. We want you to confine your questions to a narrower area. We're getting into broad concerns about agriculture on the Ewa Plain and Dr. Schwind could answer questions about that all day long and still not help the members of the Commission decide the case.

MURAKAMI: My question at this time is to allow Dr. Schwind to answer some general questions about the status of the poultry and swine industry which is relevant to the proceedings here.

LIM: Why is it relevant?

MURAKAMI: It's relevant because of the proximity of farms which are in current use in swine and poultry production. In addition, the general characteristics of those farms match those of this particular area and the immediate surrounding area. But for the policies of the state, it could be utilized for such activity.

LIM: I believe Dr. Schwind is not the right person to ask. He's only generally concerned with the area in question. He knows there are a couple of farms. He doesn't know exactly

where. I think the petitioner has the representative who knows the lessees and whoever's presently situated on the land. You could probably cross-examine them on that point.

MURAKAMI: Granted. However, I'm interested in getting from Dr. Schwind his own testimony about the particular problems of the industry in general.

LIM: That's what I mean about getting into general questions. You could probably ask him one question, whether you feel the 177-acre SUP has any effect on swine or poultry production in the Ewa Plain, and I think that would take care of his area of expertise.

LEO YOUNG: Mr. Chairman, I agree with Mr. Lim's comments. The question of the availability of land, the particular lands at a reasonable price to foster the growth of agriculture is, of course, our concern. I believe the line of questioning is presenting a very one-sided view of what Dr. Schwind does. Whereas, in fact, one of his major functions at the state is to develop agricultural parks. Dr. Schwind is negotiating and in the process of and completing an agricultural park in the Kahuku area and has worked with Campbell Estate in various other--

MURAKAMI: I object. I believe he's testifying.

CHAIRMAN: Counsel Murakami, just a moment.

LEO YOUNG: This is just a matter of clarifying. You're making a point about the quality and the reasons why Dr. Schwind recommended that this is not of any agricultural use. And, concentrating on that - and I'm pointing to your line of questioning - it seems to be the impact of agricultural land. I'm saying it's unfair to say that on this particular project, this particular recommendation adversely affects agricultural production in here. What I'm saying is that you've got to look at the inside of the coin and what is being done. Perhaps it might be said this particular land is not practical for agricultural development. However, it may play a part in developing more fertile land for agricultural use.

CHAIRMAN: You want to respond to that, Counsel Murakami?

MURAKAMI: I'm not sure what I'm responding to. However, I think once again I am trying to get to the basis of Dr. Schwind's recommendation. I think it's a fair question to ask what considerations he gave to the industry in general, it's effects on agriculture in the area. I think it's relevant to showing that the eventual use of this particular property and the surrounding property could be damaged in terms of ag. uses.

LIM: You understand the question, Dr. Schwind?

SCHWIND: I appreciate the statements of my Counsel because as a witness I can really only respond to questions. I can't get on the soap box here.

Now to put this thing in perspective, to the best of our knowledge as stated there are two farms perhaps a mile or so from the subject property. There are hundreds of other farms on Oahu, many of them livestock farms. Livestock farms are particularly concentrated on Windward Oahu and Waianae. So when you're looking at the impact on agriculture, it's something like a special permit. You have to take into consideration where the primary concentration of agricultural activities are.

The other point I want to make is that is it true really that livestock industry in the state has some potential for some expansion. They do provide - by that I mean the swine, poultry and beef industry - well under a half of our total fresh meat requirements. But again, to try to relate that to this particular site is a little difficult.

As a matter of fact, I should point out there's a major feed lot in the industrial park itself which is a kind of agricultural/industrial use depending on the perspective. These are the kinds of things that are in the back of our minds looking at cases like this. We do deal with impacts in very general ways. I grant you that. It's not that we don't consider them but we have to put them in some kind of perspective. We're not always 100% accurate or correct but we do the best we can.

HIRAHARA: The point that you're trying to make is this 177 acres has some influence on industry, urbanization competing against agricultural land. Is that the main point you're trying to make? I concur with that, okay?

MURAKAMI: Yes.

CHAIRMAN: Counsel Kishimoto?

KISHIMOTO: Dr. Schwind, is the area immediately surrounding this predisposal area, say within a mile, is any of that, much of that prime ag. land?

SCHWIND: I'd say in the immediate vicinity there's no prime land. When you start to get half a mile to three quarters of a mile away, you certainly get into the first big hill. The farther away you go the more likely you are to run into some prime land. We've had to demonstrate that on a map for it to make any sense.

KISHIMOTO: Is this subject property rated on the ALISH, Agricultural Lands of Importance in the State of Hawaii?

SCHWIND: It's unclassified under the one you refer to which leaves it equivalent to the Class E land in the ... In other words, the subject property is the junkiest kind of land for agricultural use where you're tilling the soil.

KISHIMOTO: Thank you, I have no further questions.

COUNSEL: Counsel Murakami?

MURAKAMI: If I maybe permitted to ask two general questions with respect to this industry analysis.

CHAIRMAN: Go ahead.

MURAKAMI: Dr. Schwind, is it a fair characterization of this swine industry analysis put out by the Department of Agriculture that pork production is centered on the Island of Oahu, that Oahu has become increasingly vulnerable to urban pressures which is making alternate land areas available for swine production not readily available?

SCHWIND: I would say that's generally true on the Island of Oahu.

Q: For the poultry industry, isn't it true as a result of a similar study on poultry industry by the College of Agriculture that the writers of that report were seeking to bring out or highlight that we need to limit or prevent the rezoning of agricultural lands to other uses, and to make agricultural lands available to qualified farmers on long tenure basis to keep the bulk of poultry production on Oahu?

A: Again on the context of that report looking at Oahu and the entire state, it's generally been true, sure. It's true for a lot of other industries as well if you want to get into that.

Q: Dr. Schwind, you have before you, you referred to some notes as to the location of prime ag. in the area. Would you make that available to the Commission for their consideration?

A: It'll be a bit difficult. It's a sketch. I'd be happy to leave this with you but--

KISHIMOTO: I don't know what's being passed out there.

MURAKAMI: It's a map.

KISHIMOTO: I haven't seen it.

LIM: Counsel Kishimoto, do you know what that is?

KISHIMOTO: Mr. Chairman, if counsel for the opposition would quickly make identification of whatever it is he proposes.

MURAKAMI: Mr. Chairman, before you, you have a map which he will utilize to locate prime agricultural lands.

KISHIMOTO: That's not the map that was passed out to the Commission.

MURAKAMI: Well I'm asking Dr. Schwind if that's their map.

SCHWIND: Is what we're talking about identified in--

KISHIMOTO: No. That's why I'm asking for a foundation and identification. I don't anticipate having any objections to the admission of the map but I'd like to see a foundation laid.

MURAKAMI: Dr. Schwind, based on the map before you, could you translate what you have in your notes, the location of prime agricultural land?

SCHWIND: What I have before me again has been identified - is a xerox copy of a portion of the Agricultural Lands of Importance in the State of Hawaii which is the so-called ALISH Map for a portion of the Island of Oahu, including the general area of the subject property.

MURAKAMI: Does that map accurately summarize the location of various classifications of land under the ALISH system?

SCHWIND: I'm looking at the handwritten legend here. It says based on soil conservation survey, it's stretching it a bit, but the legend indicates unclassified area, prime area, unique area, other important ag. land area. Those were categories on the maps developed and adopted for the Board of Agriculture as part of the ALISH system, based on soil conservation survey data. I don't know how technical you want to get about this. I recognize this xerox sheet as a portion of the ALISH map which contains three soil categories. The legend seems to be generally correct.

MURAKAMI: Subject to check, would that suffice as foundation for the accuracy of this map?

LIM: As Counsel Kishimoto indicated, she probably wouldn't have any objection to admission of the exhibit. I just would need an offer of proof as to why you're putting it in. In other words, what do you intend to show by bringing the map in?

MURAKAMI: As a matter of legislative policy, the legislature has striven to protect as much ag. land as possible. In view of the possibilities of urbanization of this area, the Commission should know about the existence of these lands as it relates to future development of this area. This project is merely a part of it.

LIM: The purpose of introducing the exhibit is to show where, in fact, the prime ag. lands are and the area.

MURAKAMI: Yes, in general.

LIM: Dr. Schwind, is that a fair characterization of what this map shows?

SCHWIND: I think I'd better clarify one thing. If we're going to discuss this portions of the map of the ALISH soils classification, and bring into it legislative policies, I'd be very careful because the legislature is not recognizing the ALISH system. In fact our department has been very active in trying to get the legislature to use the ALISH system as a basis for land use policy. To this date the legislature does not officially recognize the ALISH system. They, in fact, still go by the old land bureau study system which is the Class A, B, C, D, E system that we've referred to a little earlier. Even in that sense, the old land bureau study system of soil classification is used only as a basis for distinguishing between certain agricultural subdivisions, some of which require deed covenants on subdivisions and others which do not. At the present time, there's no explicit use of either the land study bureau or the ALISH system as a policy basis for determining whether a special permit should be granted, boundary amendments made by the State Land Use Commission or what have you. Depending on what way you're going with the questioning, I want to have that clearly established.

MURAKAMI: But this is a representation that your department has followed in terms of making assessments in locations--

SCHWIND: What representation this department has followed?

MURAKAMI: That this map shows locations of various prime ag. lands under the ALISH system.

SCHWIND: I thought we already agreed to that.

CAIRL: I don't understand what unique lands are.

SCHWIND: For one thing, unique lands are not shown on this particular piece of the map. What we have on this map refers to the soil classification, are some of the prime lands on Oahu and some of it, so-called other important lands.

Unique lands elsewhere on Oahu off this particular xeroxed sheet you have are areas in pineapple production, are lands which have good soil, prime soil. They're not irrigated lands. That's one of the reasons they're classified unique. Other examples are some of the

wetland areas such as watercress, taro cultivation areas. That's why they don't appear on this particular sheet because the map is small.

KITAGAWA: Counsel Murakami, I'm trying to follow your line of questioning. Are you alluding to the fact that if the 177 acres⁺ is used for storage, that would have an effect on the hog and poultry industry?

MURAKAMI: The use of the word stockpiling in this case is a misnomer. This is clearly going to be an industrial use. Production, actually, of the materials are being used for various types of industrial uses.

LIM: Dr. Schwind, before we go any further, they have some handwritten legends on the bottom lefthand of the xeroxed ALISH map. Are those correct interpretations?

SCHWIND: As clear as I can make out, yes. I grant you it would be a little more verifiable if they place it on a portion of appended legend from the larger map sheet. But actually I can vouch for the legend here indicating unclassified, prime, unique, and other. Also, the existing urban development - I was going to mention that - there's a dash line shown on this handout indicating existing urban development. I don't know quite what that means. It looks as if it means state land use urban district. I think that's subject to verification by the Land Use Commission. But just off the top of my head it looks like what he's labeled as existing urban development is the state land use district boundary.

MURAKAMI: I think that's why I said subject to check. I think we can allow this in presentation to the Commission.

LIM: Okay. We will label this as Exhibit N-12 and it will be represented as a xerox of the ALISH Map of that area.

MURAKAMI: I don't think I answered Commissioner Kitagawa's question.

KITAGAWA: I don't think you did.

MURAKAMI: Okay. As I mentioned in my opening statement, we're merely trying to call a spade, a spade. Our contention is that this is merely a phase of a much bigger urbanization project, and that we're trying to show this on the basis of the fact that stockpiling really - it is called that but it appears to be much of an industrial or urban type of use.

Future testimony will indicate there is much more conflict than merely what the stockpiling is really for. I do believe when you look at its totality, it will lead to the conclusion that there are potential severe secondary effects that will be derived from the project.

KITAGAWA: Because the land is being used for something else?

MURAKAMI: Because the uses that will be related to the so-called stockpiling are related to further urbanization type activities ... for the area.

KITAGAWA: Maybe that's where I'm having problems, Mr. Murakami. I'm not sure whether you're asking whether the land can be used for agriculture. And if it can be used, are you saying therefore the land should not be used for stockpiling? I'm not sure where you're leading your questioning to because it seems to me fairly clear that the testimony from Dr. Schwind is saying that yes, other uses can be made rather than cultivation. Yes, it may have some effect to the industry as a whole. I don't know what else we can get from this particular witness.

MURAKAMI: Correct. I'm done with my questions.

CHAIRMAN: The Commission is going to take a dinner break and return here at 7:00 p.m.

LIM: Before we end, I'd like to take a couple of procedural things up. Just prior to the hearing, we had a pre-meeting between Mr. Murakami, Miss Kishimoto and myself at my office on October 9, 1981. At that point we exchanged witness lists and exhibits. He also had a request for issuance of a subpoena for production of documents followed by Mr. Murakami and was received by Department of General Planning on October 7, 1981.

At the prehearing conference on October 9, 1981, we discussed the elements in the subpoena. First of all, it's the Planning Commission's view that the subpoena power is vested in the Commission for the Commission's benefit, not for any party to present their case for them.

Secondly, we went through the subpoena with counsel and I believe that among the items listed there were approximately 18 items that they requested. Some of them were privileged information because they belong to Campbell Estate internally. Some were public record and some were irrelevant and the balance of the items requested were provided voluntarily by the Petitioner, Campbell Estate.

For clarity of the record, I'd just like make sure that is an accurate representation that happened as far as the request for subpoena of documents. Are you satisfied with the documents that you have been able to receive, Mr. Murakami?

MURAKAMI: No I am not. I would have made a request otherwise but if you have a ruling for the Commission, that's what we live with.

LIM: Okay, I'll just go down piece by piece as to each of the items on the subpoena.

MURAKAMI: I'm not saying that's not what happened. I'm saying I'm not satisfied on what I got but that is the ruling of the Commission.

LIM: Right. Would you want me to go down number by number and say why or why not?

MURAKAMI: I prefer to see it in writing. We'd just take up you folks time.

LIM: I'll include that in the offer.

If you have any further exhibits such as the map which you just produced, could you give them to us prior so we don't have to go through all that rigmarole.

CHAIRMAN: The Commission will recess for dinner break.

RECESSED AT 5:30 P.M.
RECONVENED AT 7:00 P.M.

CHAIRMAN: The meeting is reconvened. We will now hear from Counsel Kishimoto.

KISHIMOTO: Our first witness is Oswald Stender.

STENDER: My name is Oswald Stender. I'm the Chief Executive Officer of The Estate of James Campbell.

INTERROGATION OF OSWALD STENDER BY COUNSEL KISHIMOTO.

Q: Mr. Stender, as Chief Executive Officer, are you currently familiar with the property and subject of the application now before the Commission?

A: I am.

Q: Are you familiar with the past, present and intended use?

A: I am.

Q: Are you familiar with the surrounding property?

A: Yes.

Q: Why has Campbell Estate applied for this special use permit?

A: Under the arrangement which we have with the Corps of Engineers and the state, because the coral is to be stored on Campbell property, we decided that we needed to go through the permit process that was required by regulation and that's the procedure we're following today.

- Q: If this land is not used to stockpile the coral, where would the coral be stored?
- A: There are other alternatives considered. One was to build the harbor offshore and use a cut-and-fill and balance off the cut-and-fill. The other was to dispose of the coral by dumping it in the ocean. The question was whether that would be more harmful by dumping it into the ocean or storing it on the property. Because, the coral has a resource value for sand, coral chip, road base, that sort of thing.
- Q: About how long do you expect to have the coral on the land?
- A: It's a guess. We've had guesses anywhere from ten years to 30 years. We really don't know. It depends on what conditions are over the next 10 or 15 years as to what the marketability might be for coral. So it's really an unknown. Now, we think maybe 30 years.
- Q: Would you please describe the property as well as the surrounding property.
- A: As you see on the map, Areas 1 and 2, it's basically light shown on that map because it's been quarried by Hawaiian Cement. We have an option agreement with Hawaiian Cement which guarantees them a coral supply for four years. All of that coral will come out of that area. So 1 and 2 has been quarried before. We're just putting the coral on top of the area that's already been quarried.
- Area 3 is the dark area to the right (referring to map) which is in kiawe right now. It's unused.
- Q: Would you describe the property which surrounds the subject property.
- A: The surrounding property, of course, is to the extreme right and we say makai of Malakole Road, has been under development as a major industrial center for the last 19 years. It started planning in 1954. Standard Oil was the first industrial tenant out there in 1958 and since that time we've had more than 100 different industries occupying approximately 1300 acres of land. The plan is the entire area will be developed to industrial uses as the need arises.
- The area mauka of the map, on the upper side of the map, is kiawe. As you go further, there's some cane and then to the left, kiawe to the next white strip which is the railroad, and then cane beyond that.
- Q: And makai of the property?
- A: Makai of the property, part of it is Standard Oil. Part of it is the refinery. That little blue block is Camp Malakole which is military property.

Q: Makai of sposal Areas 1 and 2, wh is that?
A: That would be Chevron's Refinery.

Q: Also that white area (referring to map) which is labeled Harbor Basin?
A: The barge harbor which is the existing harbor now which would be extended into the deep water port which would occupy most of that white area (referring to map).

Q: What was the land that's the subject of the petition being used for?
A: As far as I can remember - and I've been with Campbell Estate for 20 some-odd years so I've followed this harbor development or the park development for all those years - Hawaii Meat Company use to graze cattle in that area. The benefit of grazing in that area is the kiawe bean which the cattle ate. There was no grass. The water was very limited.

About ten years ago, Hawaii Meat signed their grazing lease to Tong Ranch. They terminated their use of the property because there wasn't sufficient feed or water in the area to continue the expense of moving the cattle in and out of the area. It's been vacant ever since.

Q: That was 1974?
A: That's right.

Q: Was it just this property that was covered by the Tong Ranch lease or was it the surrounding property as well?
A: Surrounding property as well.

Q: Which part? Could you indicate their reference to the map?
A: Mauka of the white area, next to the left of the white area, and then stockpile Area 3 that we're talking about.

Q: Are there any farms, sugar, that sort of thing in the vicinity?
A: Not within the stockpile area or the kiawe area.

Q: What about the pig and chicken farms?
A: They're located mauka of the railroad which is a distance from the stockpile area.

Q: Would you point that out on the map for the Commission, please?
A: We have a group of farmers in what we call ... area, chicken farmers here (indicating), and hog farmers in here. The stockpile area is here. This is one, two and three. This is all kiawe. The sugar cane is here. The old railroad right-of-way I speak about is here (indicating).

Q: While you're up there, what's the nearest residential area?

A: It's Honokai Hale which is just off the map here.

Q: About how far away is that?

A: About three-quarter mile from the site.

Q: Of those paying chicken farmers, how many are there?

A: If I recall correctly, there are three farmer leases in that area.

Q: So these are Campbell Estate lessees.

A: Yes.

Q: I take an accusation or illusion to the fact that these people might be evicted because of the harbor or--

MURAKAMI: I object to the characterization of that statement. I don't think there's anything in evidence that reflects allegations to eviction or threats.

KISHIMOTO: If I may, I'll rephrase my question. What is the status of the leases of those farmers?

CHAIRMAN: Thank you.

STENDER: The farmers have probably been in that area for the last 30 or 40 years. We have put them on short-term tenancies on a year to year basis. The reason for that, of course, is that we do have plans for use of that property.

One, Hawaii Cement has an option to quarry the coral ... Secondly as the area develops or grows, the farming use would be incompatible with the surrounding use and we are presenting working on a plan along with the State Department of Agriculture to create an agricultural park out in Kahuku. Hopefully we will relocate as many of the farmers as possible out in Kahuku.

CONTINUED QUESTIONING OF OSWALD STENDER BY COUNSEL DIANE KISHIMOTO

Q: Are the farmers being asked to move have any connection with the harbor or stockpiling?

A: It has nothing to do with them, the harbor or the stockpiling.

Q: What is the county and state land use classification for the property and surrounding area?

A: The 177 acres is zoned agriculture. The development plans - well, you have to operate under the DLUMs right now which is interim zoning, is industrial.

Q: What was the land use classification and zoning for the immediate adjacent properties?

A: Everything to - of course, the white area is basically where the harbor goes and that's about 240 some-odd acres zoned urban and zoned to a harbor use. To the right of stockpile Area 3 is all zoned urban I-2 which is heavy industrial. The surrounding is in agricultural zone.

Q: When was the adjacent land, particularly the harbor area, rezoned in the land use boundary redesignation?

A: I think the land use redesignation was in 1979 and the county zoning was in 1980.

Q: At the time this boundary redesignation was requested, why didn't Campbell Estate ask to have the adjacent land included in the boundary redesignation?

A: You mean rezoned to urban?

Q: Well, there are three parcels we're talking about that appears on the state land use map.

A: To get anything rezoned before the Land Use Commission or even before the county, you have to show a need for that industrial use. We really don't have any industrial use so we could not - it wouldn't make any sense to go in and get any rezoning for industrial or urban uses if we don't have a need for it. We have other land zoned for urban industrial uses surrounding which are adequate to take up the need.

Q: By industrial-type use you mean industrial park. You're not excluding coral and stockpiling.

A: No.

Q: Why has Campbell Estate allowed disposal Area 3 to remain unused for so long? Why wasn't it put into agricultural use?

A: It's always been planned that would be part of the expansion in the industrial park. As the need arose, we would have the land to convert to industrial uses. It's in our longterm plan.

Q: Was there any determination made by Campbell Estate as to suitability of that land for agriculture?

A: From our own experience, we're involved in all sorts of agriculture on one other property. The land preparation - well, for one thing there's no soil out there. The terrain is very dense coral with kipukas all over the place.

From our own experience, development of the industrial park area, we found that it cost us \$3 a foot to bring the land to grade. That area floods to begin with. That's one problem, drainage. The other, in order to grade the land and make it level and usable for any use, it's going to cost you about \$3 a foot. So you're talking about quarter of a million dollars for an acre. So it's totally uneconomical to convert that land, to

spend that kind of money to convert it and make it usable for any other use other than some urban, industrial kind of use.

Q: There is that area between disposal Area 2 and disposal Area 3 which is labeled limited access area. What is that and why is it there?

A: There's an area that has to be limited for the range markers for the line of sight as they come into the harbor.

Q: Where's that?

A: It's between Areas 1 and 2. And between Areas 2 and 3, we have set aside an area for preservation of *euphorbia skottsbergii*.

Q: *Euphorbia skottsbergii*?

A: *Euphorbia skottsbergii* is a plant that has been identified by botanists as possibly being an endangered species. It has been nominated to the endangered species list although not yet designated.

Q: That's why that area is set off and not in the stockpile area.

A: Yes. That area will be fenced out, preserved until some determination is made.

Q: Were these plants found anywhere else in the vicinity of the property we're talking we're talking about?

A: The plant was brought to our attention back in 1976. We have been looking to locate them elsewhere. We found some mauka of that area. We have transplanted some in an area that's just off the map near the boundary between our property and the air station. We found quite a number on the Barber's Point Naval Air Station itself.

Q: Is Campbell Estate involved in any sort of program to propagate this plant?

A: Yes. We've been doing this since 1976. We employed Kauhana Nursery ... (end of Tape 2). They were planted at the end of the park. We have three plots now that have the plant propagated.

Q: Did the environmental impact statement prepared for this general area or any other study prepared for the Campbell Estate or which you would have knowledge, identify any other endangered plants or animal species on the subject park area or vicinity?

A: No. There was one other plant which was identified but it's on military property on Camp Malakole which is not our property. It will not be impacted by the stockpiling. Other than the *skottsbergii* on our property, there's been no animal life that's endangered.

Q: As chief executive officer for Campbell Estate, are you familiar with government and private requests for access

to state lands for scientific inquiry, and what's Campbell Estate's policy in this regard?

A: Our policy has been if there is scientific interest on activities on Campbell property, we cooperate in permitting them access, particularly with this area since it had been identified as having some scientific interest among the scientific community.

We also do that on lands that - Campbell Estate owns property to the ridge of the Waianae range. In the Honouliuli forest, we have pretty much closed off that area to the public because they have identified certain plant species which are endemic to Hawaii. The only people we'll allow in the area are the Forestry people, the Trail and Mountain Club, the Sierra Club, the Bishop Museum and the University Botany employment. That's the extent to which we'll try to protect where we can.

Q: To whom have you permitted access to the subject property for scientific inquiry?

A: The groups that have entered the property under our permit to the Corps of Engineers and State of Hawaii.

Q: And which groups are those?

A: Bishop Museum. A number of archaeological teams have gone through that area. Permits issued directly from the Campbell Estate have been to the University of Hawaii. More so, Bert Davis has been out there for the last four years, I think, doing studies, the Bishop Museum and the Fish and Wildlife Service.

Q: That's the Army Corps.

A: The U.S. Fish and Wildlife Service came to us because they were interested in looking for the scottsbergii population in and about the harbor area.

Burt Davis from the University of Hawaii is working on some studies under his own program.

We've dealt with the Bishop Museum on a couple of other things, not specifically related to the harbor. They've been involved in studies surrounding the harbor or within the planned harbor area for the Corps of Engineers.

Q: Jumping back a little bit to the scottsbergii. How successful have attempts at propagating the plant been?

A: I think so far - because we're early in trying to determine the characteristics of the plant - the success rate is 30%.

Q: Will you describe the intended use for these two parcels when the special use permit is granted? You mentioned coral stockpiling. What's the coral stockpiling going to

consist of? How will it be brought in?

A: Under the contract which the Corps of Engineers have called for bids on, the contractor is to devise a method by which he will dredge the harbor and transport the coral. That could be done through a flume, pipe and pump or it could be trucked.

Q: Is the coral going to be wet, dry or what's it going to be like?

A: I think part of it will be dry and part of it will be wet.

Q: What are these piles going to look like?

A: We had submitted with our application a stockpile profile which indicates that the piles would probably rise - I think the slope is 1 to 2 - maybe 25/30 feet up in the air. We'll have a berm surrounding it to contain runoff, for any water that might be transported with the coral would be contained within the stockpile area. If there's any overflow, it would be channeled to the harbor basin to the point before they open the harbor to the ocean.

Q: Under the contract and the plans, no water will be coming off the site.

A: No. We have issued a right-of-entry to the state and to the corps which strictly prohibits them from flooding adjacent areas.

Q: Will the coral grow dusty?

A: Could be if it's not wetted down.

Q: So what steps are going to be taken to control dust?

A: During construction period the contractor is required to meet all state, federal and county regulations of dust control. Upon completion of the project, he's required to landscape by planting vines and irrigating them to be sure that they grow on the stockpiles, hoping that they cover well to prevent any dust emission.

Q: You been making reference to the proposed contract to the harbor. Are you familiar with this contract?

A: Generally, yes.

Q: I draw your attention to - for identification, Petitioner's Exhibits 2A, 2B and 2C. Are these the portions of the proposed contract that refer to the berm and vines that you referred to?

A: Yes basically.

KISHIMOTO: We offer these three exhibits into evidence.

LIM: So received.

- Q: How soon, if this permit is granted, do you expect the Corps will start to stockpile?
- A: Depending when the Corps issues the order to proceed to the contractor, could be two to three months, maybe four months.
- Q: Will any urban-type amenities need to be constructed for this proposed use, particularly I'm referring to things like roads, electrical installations, sewers, drainage, police-fire protection, water?
- A: The stockpiling would require none of these things.
- Q: Are the roads leading from the expected site of the dredging and excavation public or private?
- A: They're private.
- Q: What is the intended use of the land when the coral is removed?
- A: Hopefully by that time we'll have a need for some industrial development on the property?
- Q: Is it that stage then when you'd be applying for the appropriate boundary redesignation?
- A: Yes.
- Q: What is the intended use of the coral? Do you know what you're going to do with it?
- A: We've done several exploratory studies. We think some of it could be processed and used for concrete sand, golf course sand, base course. The cement plant will use a bit of it for the cement stone that they need as an ingredient to make cement. Some of it will be used to make concrete hollow blocks, coral chips and that sort of thing.
- Q: When the harbor area was reclassified to the agricultural to urban district, was the Land Use Commission informed of your intent to stockpile coral on these agricultural lands?
- A: Yes. The coral stockpile has always been a part of the permit process.
- Q: So when the zoning application of the harbor was before this Planning Commission, they also reported stockpiling?
- A: Yes. Testimony was given regarding stockpiling.
- Q: Going back to potential drainage problems, what assurance do we have that those berms will be adequate to prevent runoff and drainage problems from this property?
- A: They have been engineered and designed that way by the best known methods that engineers have. Hopefully it works. That's the best we can do.

Q: So under the contract if these berm could be insufficient, what does the contractor have to do?
A: He has to correct the problem.

Q: By stopping dredging or--
A: He has to stop work until he corrects the problem.

Q: What is a berm?
A: It's like building a wall or embankment to contain, but this one is made out of coral.

KISHIMOTO: I have no further questions.

QUESTIONING OF OSWALD STENDER BY COMMISSIONER HIRAHARA

HIRAHARA: I have a question.

Still this thing before us states the disposed dredged and excavated material shall remain the property of the government. Is this a mistake?

STENDER: No. It remains the property of the government until the contract is over. The contractor and the government will have control of stockpile until the contractor has completed work or unless we work some arrangement where they would turn over the stockpile in the interim.

Q: It says if the material is dredged, it's going to be piped over to the other disposal area, then the berm will be made. It says you can pipe the coral over there directly and have a wastewater return channel to the new harbor basin.

A: Right. If you pipe it over with a lot of water then they have to contain the runoff so that it stays within this (indicating) area or channel it back to the basin if there's an overflow. The basin will be closed off while they're working on it so the sediment wouldn't get back to the ocean.

Q: So they're going to make berms around there and take all this space and stockpile it 20 or 30 feet. That's a calculated height. Have you thought of stockpiling it higher?

A: I really don't know why - well, first we have to determine cost of pumping which is more a consideration, the cost of hauling up the hill as against the area you take of the height. That's a cost benefit thing.

Q: Of this 177 acres, what is the total area Campbell Estate owns that hasn't been filled, that you have control?

A: This is (indicating) Standard Oil Refinery. They own that in fee. Camp Malakole is owned by the Federal Government. There's 240 acres which was conveyed to the State. Campbell Estate owns everything else around there.

Q: What's everything else, 1,000 acres or more?
A: There's 38,000 acres in Ewa. In this area there's maybe 1,000 acres.

Q: Of this 1,000 acres you said it was zoned agriculture because there's no need to zone it to commercial or urban.
A: The urban zone right now is the harbor area which runs like this (indicating), along Malakole Road to here, then parallels - this is the main access road to the park - to here. It's all urban although still in cane. Everything downtown of that is urban. The rest is agriculture. There is, recently zoned by the Land Use Commission, under contest by Life of the Land, another 640 acres of urban which runs basically around the harbor boundary to here (indicating), around here, and then runs back this way.

Q: So a substantial chunk would be reserved for this coral.
A: Yes.

Q: Can anyone buy agricultural land from Campbell Estate?
A: Campbell does not sell land. The will says the trustees shall not sell or dispose of the assets of the trust unless it's to the obvious interest of the estate. The only obvious interest would be if there was a tax resale.

Q: Can they lease the remaining 800+ acres?
A: Yes.

Q: Are you leasing it, the area that's approximate to the dredge disposal site?
A: None of it is leased. This is (indicating) the area where the Tong Ranch use to graze cattle but they haven't been in there for about 10 years.

Q: You don't have to answer this but are you contemplating rezoning immediately after this material is stored?
A: After we've disposed of the coral?

Q: Yes.
A: If there is a need we will ask for rezoning, yes.

Q: Storage Area 2?
A: Our master plan shows that all of this area will be industrial use some day. Whether it's 20, 30, 40, 50 years, we have no idea. If there is a need, we will ask for the zoning.

Q: The question I'm leading to is the land being taken away from farmers? If it's really not available to farmers--
A: That's what it is. It's really not available to farmers. The highest and best use and the most economical use of this property from an owner is its highest and best use. So we fully intend to put it to its highest and best use if there is a need.

Q: The need is not now.
A: Not now.

Q: Now is not the right time?
A: That's right.

Q: That's the only reason why you haven't gone for the zoning change?
A: That's right.

HIRAHARA: Thank you.

QUESTIONS OF MR. STENDER BY COMMISSIONER CAIRL

CAIRL: Did you state that before this land was set aside for stockpiling of coral, there was a company already digging coral out of the site?
STENDER: Yes.

Q: In other words, they were already and have been - how long has that been?
A: 10 to 12 years.

Q: So for 10 or 12 years they have been disturbing the archaeological sites, supposedly?
A: Yes, if they have been cause we don't know.

Q: Well supposedly.
A: Yes.

Q: It isn't something new that's going to happen.
A: No.

CAIRL: Thank you.

QUESTIONS OF OSWALD STENDER BY COMMISSIONER KITAGAWA

KITAGAWA: You had mentioned that the coral is going to be used for many purposes and that you already have Hawaiian Cement in there with a permit to mine.
STENDER: Yes.

Q: The contract to sell coral, is this the same Aina Nui Corporation?
A: Okay. Aina Nui Corporation is the corporation owned by the estate. It's a subsidiary by the estate when the estate started investing in mainland property and started to get into development to shield the estate from possible adverse impact on the estate's assets. So in order to do development projects or management projects, the trustees formed three corporations. One, the James Campbell Corporation which is a holding company. That company, of course, owns Aina Nui Corporation which is the development company. Of course, the investment company was a management company.

The objective of these companies is to take properties and develop it.

Q: That corporation is going to handle the sale of the coral.
A: They may and they may not. Because of the timing and we had no idea what the condition the coral was going to be in when it got out of the ground, we couldn't negotiate a contract with anyone because we had no basis for negotiating, not knowing the condition of the coral. We put Aina Nui in there as a temporary corporation. If you read the documents carefully, we have the right to amend the contract, dispose of it to someone else. So, someone else may do it. Aina Nui may do it. They may do it in partnership with someone.

Q: Let me come to the point. Who's going to do the coral mining?

A: Hawaiian Cement. There's a lot you can do with the coral so as not to disturb a lot of this land. Hawaiian Cement has an option agreement which we signed with them 12-15 years ago which gives them the right to quarry all in this area (referring to map). This goes on to the year 2040, I think. They have the appropriate permit and contract to do it. We hope they could use some of the coral that comes out of the harbor.

CHAIRMAN: I want to interject. I think we're getting away from the issue. They've got this land that they want to put this gravel on. This is a big issue today. We're picking on stuff, mineral, composition of the coral and everything, I think that has no bearing on this issue. They want to know if they can get a special use permit for that 177 acres of land.

KANE: I didn't hear anybody mention composition of soil but anyhow--

CHAIRMAN: Mineral or whatever it was.

Counsel Kishimoto, are you done with your witness?

KISHIMOTO: Yes I am.

KANE: I have a very basic question. My question is since we are only hearing an SUP for so many acres of ag. land, why do all of our maps show us as the subject area that 177 acres and a whole lot of urban designated land. I don't know why.

BARON: DLU staff isn't here and perhaps I can answer that. This report was prepared with the Conditional Use Permit in mind. The Conditional Use Permit is granted for all that area whereas we're only considering part of that site.

KANE: This is another of those inadequate reports we've had.

KISHIMOTO: Actually it's part of 1, a little bit of 2 and a little bit of 3.

Portions of 1 and 3 have been covered by the conditional use permit.

CHAIRMAN: Thank you, Counsel Kishimoto. Any more questions by the Commission? If not, we'll ask Counsel Murakami to cross examine, if that is your desire?

CROSS EXAMINATION OF OSWALD STENDER BY COUNSEL MURAKAMI

MURAKAMI: Yes it is.

Mr. Stender, from your testimony there's been no contemplated ag. use of this particular parcel?

STENDER: None.

Q: I heard a couple of contradictory things. The stockpile and resultant activities such as the sand, gravel, you're not contending that's any kind of ag. activity are you?

A: No they're not.

Q: You mentioned this was pursuant to some kind of master plan. Is that a plan that is ... to be the Honouliuli self-contained city, developed by David Wolbrink?

A: Donald Wolbrink?

Q: Donald Wolbrink?

A: Donald Wolbrink's plan did form a part of that plan, yes. This plan was developed back in 1958. Actually the planning started in 1954, adopted by the trustees in 1958, zoned in 1958 by the county, and we've been following that plan. It was Harlan Bartholomew and Associates that developed that plan.

Q: What plan are you referring to when you say Harlan Bartholomew?

A: Harlan Bartholomew development plan for the Campbell Industrial Park adopted in 1958. The planning commenced in 1954.

Q: That was the plan for the industrial park area.

A: Yes.

Q: Does the Wolbrink plan remain the overall plan for the area?

A: The purpose of the Wolbrink plan is that we had an overall master plan with detailed planning for part of Makakilo, West Beach, the industrial park, Honouliuli Beach, Leeward Estate. The Wolbrink plan was to tie all of these projects together so there's some sense of coordination for access, future roadways, mass transit and utility systems and other things. It's a long term 50-100 year plan for whatever comes about.

Q: That plan does envision development of the deepwater project?

KISHIMOTO: Excuse me. I fail to see how all this testimony, though very interesting, is relevant to the application before the Commission.

MURAKAMI: This particular area is the very core of our case. That is that this area is not even being contemplated for an ag. use and yet they're going for a special use permit for 177 acres of ag. land. Aside from the issue of whether or not the soil or whatever cultivation value there, the fact remains that if this is a permanent use being sought, this is the wrong procedure to go through.

LIM: I think the point you're trying to bring out is that due to the overall master plan of Campbell Estate, that they intend to develop the entire Ewa Plain in some sort of second city, right?

MURAKAMI: That is part of it.

LIM: Okay. I think tonite we're concerned with the immediacy of the 177 acres in ag. right now. What they plan to do or what in fact will happen later on, is not a concern of ours because they're asking for unusual and reasonable use in an ag. zone. Whether they plan to develop a second city there or not has no bearing upon what we decide as to the 177 acres for use within the next two or three years.

KISHIMOTO: I think the opposition is well aware there is a difference in standards applied. What we are applying for here is a temporary use. We're not contending that there is a need at this time for a boundary redesignation or something that would be permanent. As Mr. Stender has testified maybe it's anticipated sometime in the distant future that stockpile land will in fact be used for urban land use but we don't know when.

LIM: In the future, let's frame our objections and you can frame your response. We'll just rule from the Chair instead of getting into an argument.

MURAKAMI: May I call to the Chair's attention the second test of this proceeding is that the desired use does not adversely affect the surrounding property. Mr. Stender has testified that there is a master plan in effect, that it is going to lead to increased urbanization in this area, industrial use, and the two or three farmers are going to be adversely affected.

KISHIMOTO: Mr. Stender did not testify that the stockpile will be necessarily to increase urban use. We're separating the stockpile issue from the master plan issue. The stockpile is not under that master plan.

MURAKAMI: Mr. Chairman, if there's going to be a ruling that we cannot look at some of the secondary effects of this particular proposed use, then we're all wasting our time.

CHAIRMAN: That's true because that isn't the issue. The future plans they have, has nothing to do with what we're talking about. They want land to put coral. They want permission from the City to do that. You're talking about 20-30 years. They already said they don't have any plans beyond that. How can we justify what you're saying if it's not pertinent to this issue?

MURAKAMI: I believe the rules on the special use permit proceeding is to allow for some flexibility in the land use law. The land use law contemplates coordinated and consistent planning schemes in order to designate certain lands for certain uses. If we allow the special use permit proceeding to be used on a gratis scale that this is being contemplated, then I think the exception is going to swallow up the rule, and in that sense, contrary to the land use law. In that sense, what I'm trying to raise at this point is that the admitted plan of the estate is to develop and use the area for urban use. The coral and stockpiling and the operation resulting therefrom are clearly within an urban use. It's not agriculture. It's not rural. It's in conservation.

KISHIMOTO: Let me turn your argument around then. If this were going before the Land Use Commission and we were going for a boundary redesignation, I'm sure your argument would be well what are you going to do once the coral is gone? We don't know. But you know there's a need for it 30 years from now. No, we don't. Well then we fail to see need for boundary redesignation.

CHAIRMAN: Just a minute. I don't we should get argumentive on the point. Let's stay with the issue. Let's not get off the issue. We can't rule otherwise.

CAIRL: When you were before us before, the first time, my understanding at that point was that your objection to the stockpiling there was the fact that 300+ archaeological sites were going to be covered up. So far this evening, I haven't heard anybody say one single word about that and yet that was the grounds that you were going to come back and talk to us about.

LIM: That will be covered later, I'm sure. As far as what's going on right now, by the very nature of the thing, the special use permit is for a temporary use. You're basing your argument on the long term effects and whatever long term Campbell Estate has. I think the point you want to bring out that they do indeed have a plan for urbanization

of the area: hat may or may not come e, that has come out. The Commission's heard that. So, perhaps you could proceed with some other questioning.

NAKATANI: Why don't we take a ten or fifteen minute recess so that the counsels and the Chair can get together.

RECESSED AT 3:45 P.M.
RECONVENED AT 4:00 P.M.

CHAIRMAN: The meeting is reconvened. Are you done with Mr. Stender?

CONTINUED CROSS EXAMINATION OF OSWALD STENDER BY COUNSEL MURAKAMI

MURAKAMI: No.

Mr. Stender, is it the estate's policy at this time to relocate as many of the farmers who have leases from the estate to the Kahuku ag. lots?

STENDER: Yes.

Q: Are you aware of any objections by these farmers of possible problems related to distance?

A: Yes.

Q: And the reason was more cost associated with the Kahuku location?

A: Distance was a problem. Some of them felt that it was too far.

Q: You don't contemplate having ag. park within the Campbell Estate area, do you?

A: Unfortunatly all the land in Ewa is either in pineapple use or sugar cane.

Q: But there's no plan for pig or poultry farmers.

A: No.

Q: By the way, you have visited those farms up there, have you not?

A: I'm familiar with the land but I haven't been there recently.

Q: In your opinion, would those farms operate equally as well on the subject property?

A: I doubt it. I think those farmers pick up and move. This is a big problem with a lot of farmers who are operating under conditions that are pre-regulation that have been adopted--how they have to build a pen, disposal of waste and that sort of thing. It's almost impractical.

Q: Aside from the logistical problems--

A: It's not just a logistic problem. It's a site location cost problem. In order for a farmer who's been operating out there under Board of Health rules three years ago, if

he were to pick up and move some place else, he could never afford the infrastructure required - unless he comes in favorable on some sort of subsidy. I don't know. Our experience in talking to a lot of farmers is the major problem out in Ewa is water.

Q: As to your operation of the stockpiling, you envision systematic removal of that coral stockpile for eventual processing?

A: Yes.

Q: Would that entail additional equipment?

A: Yes. It might require crushing, screening.

Q: On the coral disposal site?

A: Probably.

Q: And can you give us an idea what the cost of equipment that might be available for that operation?

A: We did a preliminary study that indicated an initial investment that we did back in 1976-77, \$2 million equipment cost.

Q: That would be equipment storage costs, sheds--

A: We wouldn't need any sheds.

Q: This would be for crushers.

A: It would be no different than the crushing operation you see at Makakilo. It would be no different than the crushing operation in Kailua. It would be a similar operation except there would be no excavating being carried out.

Q: Most of this dredged coral is going to the cement property nearby?

A: We hope so.

Q: That's going to entail some trucking there.

A: No more than what's being carried there now.

Q: Mr. Stender, in your long experience as executive director for the estate, you've been pretty involved with the estate's planning in the city concerning the use of land?

A: Yes.

Q: In your opinion, would it not be true that if for example the use of this property was converted to the uses you're stating, that the immediate surrounding areas that are not currently zoned urban or designated urban, would those properties not become more economically attractive for other enterprises which are contemplating eventual urban uses?

A: Could you break up that question?

Q: Okay. One of the attractions of storing the coral on this site is its approximate location to the current cement operation, is it not?

A: It's more because the practicality of being next to the harbor and trucking it away from there.

Q: But one of the major biases for it being in your area--

A: If you're getting to the question about the cement plant, we would frankly like to see the cement plant use this material. The major problem they have right now is that the soil content of the coral, the kilns will not handle processing that material at this time. You would have to convert the plant to clean out the coral before you can process it. So it is a problem. We'd like to see that problem resolved because that would then surely solve the problem of disposing of that coral.

Q: Does the estate contemplate some future use of the land immediately mauka of the site being proposed?

A: We have no plan for the use of that land around the harbor in the stockpile at the present time. I did indicate we have an area that's zoned urban along the main access road that comes to the industrial park. If anything would happen for future expansion of development in that area, it would occur in that area. But, it's already zoned.

Q: Aside from the normal appreciation of land values that have been occurring, would you expect in your opinion that the lands which surround this disposal site and the harbor would increase as a result of those activities in construction of the harbor and the disposal site?

A: I really don't know if that question is pertinent.

KISHIMOTO: Yes. Objection as to the harbor. We're talking about the stockpile.

MURAKAMI: Again, my question goes to the effects that can be contemplated on the harbor.

CHAIRMAN: Counsel Murakami, we don't care about the harbor.

LIM: I believe the question relates to the appreciation value of the land, etcetera. We're going to rule that's irrelevant to this hearing. So, I'll sustain the objection....(changed tape)

Before Mr. Stender leaves, a couple of things were requested by Mr. Murakami in his request for production of documents.

One related to the lease documents relating to the use of lands within two miles of the subject property. Mr. Stender has covered that in his testimony. Do you have

any other questions relating to that on him? That was the basis for my denying your request was that Mr. Stender would be available for questioning at the hearing.

MURAKAMI: My further questions would have gone to other farmers that are covered in that request. I don't think there's any testimony about that.

LIM: Okay. Maybe you should ask Mr. Stender about that before he leaves.

Also, the second issue went to correspondence and communications between the estate and their leasehold tenants which I think were the farmers, and also to the accounting of revenues from the leases from 1950 to 1981.

The last portion about the accounting of revenues is irrelevant, but the second portion relating to the terms of the lease and why the lessees were placed upon yearly tenancy was answered by Mr. Stender.

If you have questions about the other pig farmers, etcetera, you should ask him that question.

CONTINUED QUESTIONING OF OSWALD STENDER BY COUNSEL MURAKAMI

MURAKAMI: Mr. Stender, is it the policy of the estate at this time to not grant long term leases to any of the farmers that are currently under leases to the estate?

STENDER: In that location yes.

Q: Again, the purpose of that is because you feel there is no place for the farmers within the estate, in their current location.

A: First, primarily that land is committed to Hawaiian Cement for quarrying purposes. In anticipation of that happening, we've told the farmers they can stay there on a year-to-year basis until - and they should make plans to relocate. That gives them a period of time to relocate.

The second part of it, of course, the State Land Use Commission recently zoned 640 acres adjacent, which is the West Beach project, which then the farmers are incompatible to that development if it does occur. So it's just for the fact that it's an incompatible use in that area at this time.

Q: Would you clarify incompatible use?

A: Well, not too many people like to live next to a piggery, chicken farm, that sort of thing.

Q: So I take it the position of the estate is that the redesignation of these lands into urban, that is a higher priority use than the farmers.

A: We're not asking for any redesignation of urban lands.

Q: Well, the estate has made some judgment as to what is compatible and noncompatible.

LIM: Excuse me, I don't think that's the issue.

MURAKAMI: Well at this time I'd like to respond to the objection. I know we can argue the point later. However, the facts under our argument is set around whether the state has found that urban uses are economically more viable than farm uses. One of these relevant to that showing is what's happening to those farmers? That is the basis for my questions. It goes again to the test of whether the desired use would not adversely affect the surrounding property.

In addition, the special permit must conform to the objectives of the land use law. One of the objectives is to preserve ag. lands where possible.

LIM: We are going to sustain the objections to the questions based upon the fact that Campbell Estate's plans for the property can be whatever they want them to be because they are the owners of the property in fact. I think the responsibility of the government in this case is to protect ag. lands where they need protecting. The Campbell Estate position has been that the lands in question are not viable ag. lands.

So if you have any other questions relating to the viability of the subject parcel for agricultural use, then we'll entertain those questions but if not - I guess you have no further questions.

HIRAHARA: I have a question.

QUESTIONING OF MR. STENDER BY COMMISSIONER HIRAHARA

HIRAHARA: Mr. Stender, will the stockpiling have an effect on the quarrying by Hawaiian Cement? Will they have to move to an area where the farmers are? In other words, if there wasn't any stockpiling, they would be at the existing area. Because of the stockpile, they have to relocate and take more area and put pressure on the farmers there.

STENDER: The stockpile area I and II will be stockpiled in the area that they have already quarried. Stockpile area III, they have no rights to quarry in that area. So they will not disturb this. Their contract provides for them to move in an orderly sequence going mauka.

Q: So regardless of the stockpiling, there's no pressure or need for them to move further or accelerate their move.

A: No. In fact, we hope they could use this coral so they wouldn't have to continue the quarrying operation.

Q: Why don't you want them to--
A: The stockpile?

Q: Yes.
A: We'd like to. The problem is the salt content--

Q: Oh no. Why don't you want them to - aren't they going to ravish the land by quarrying?
A: When we did that coral contract, that was back in early 1960. It was a wilderness out there. It didn't seem like it was a problem to go in and shave off the top. They have to quarry in such a way that the land could be used for urban uses later. So, the quarrying has to have an intersequence to a specified grade so when it's finished it's usable. That's the plan. The land has to be graded some day. This is one way of doing it and accomplishing both things.

Q: So the coral used by Hawaiian Cement can't be used for fill?
A: It could be used for landfill. We just never had the need.

Q: So the coral can't help you at all for fill.
A: It could if we needed it but we just don't need it.

Q: If you can't sell it to Hawaiian Cement, you have to market it commercially and they may stay longer than 30 years if nobody buys it?
A: That's right. The users of the material would be Ameron which uses maybe 500,000 yards a year of concrete. Hawaiian Cement uses maybe 200,000. The problem is most of the rock as the ingredient they use to make concrete is blue rock. They have several specs that require certain gradation. Coral is too light. It's good for hollow block. Ameron, Halawa, PC&R, they've got their own quarry. Why would they buy off of us to make concrete? That sort of thing has a lot of questions that has us a little worried. Who else we going to sell the rock to? If they're going to build H-3, that's a good source. Hawaiian Cement is the most logical user of the material but we have the salt problem.

QUESTIONING OF MR. STENDER BY COMMISSIONER KITAGAWA

KITAGAWA: Did you say Hawaiian Cement cannot mine area III because they don't have lease?
STENDER: Yes. We didn't give them a lease primarily because it's flat already. That land is low. The only way they can take coral out of there is to dig a hole. We didn't want them to dig a hole. So we never gave them rights to quarry in stockpile area III.

Q: But I suppose you could do that, could you not?
A: Dig a hole?

Q: Yes.

A: Then we'd have to worry about filling it up later.

Q: You could fill it with the stockpiling.

A: You could do that but it's senseless to go dig out a hole, fill it back up and then try to dispose of the excess material.

Q: I understand that. My point is why go into a new area if you're already going to be using that area for stockpiling?

A: You mean go and stockpile in area III?

Q: No. Why let them mine somewhere else when in fact where you're going to be stockpiling you're going to use the soil from there?

KAMIYA: The reason is they're going out so they got to grade the land anyway.

STENDER: Stockpile area III, there's not enough elevation to take the coral off the surface. The coral from the harbor is too salty so they can't use it unless they convert the plant and have an investment in the plant. So right now until that's done, you couldn't use the coral from the harbor for cement manufacturing. We don't want them to go dig a hole.

KITAGAWA: The point then is if you can't find a way to use the salty coral, then the stockpile might remain more than 30 years.

STENDER: It would remain a long time, yes.

KITAGAWA: And how high is it going to be?

STENDER: About 30-35 feet.

CHAIRMAN: Is that land below sea level?

STENDER: Well, in stockpile area III there are some low areas.

CHAIRMAN: Any other questions?

ADDITIONAL QUESTIONING OF OSWALD STENDER BY COUNSEL MURAKAMI

MURAKAMI: Are there other farmers in the area?

STENDER: No, unless you know of one you want to tell me about.

Q: So in that photograph up there, you cannot identify any existing farmers?

A: Other than those that I pointed out.

Q: Have there been recent history of farms in that area within say five years?

A: There was a hog farmer who was along Malekole Road not shown on that map. The Navy condemned the property for the runway of extension 4. He was relocated because he fell within the flight hazard zone of Runway 11. In this case, his lease was terminated by the Navy.

Q: For clarification, you are including in there any kind of dairy operations?

A: That's in there now?

Q: Yes.

A: There are no dairies in there now. Rawlins Dairy. There was a dairy which was the one condemned by the Navy was at the end of the runway. He was purchased out by a hog farmer that farmed that area. Even he was condemned by the Navy. That's the only dairy that I recall that's ever been out there in the Barbers Point area.

CHAIRMAN: If there are no further question, I'd like to thank Mr. Stender again for appearing and testifying on behalf of this request.

KISHIMOTO: Our next witness is David Sox.

CHAIRMAN: Give us your name and position, Sir?

SOX: My name is David Sox. I'm a social and environmental specialist with the U. S. Army Corps of Engineers, Pacific Ocean Division.

INTERROGATION OF DAVID SOX BY COUNSEL DIANE KISHIMOTO

KISHIMOTO: Mr. Sox, how long have you served in your present position?

SOX: Approximately six and a half years.

Q: Did your responsibilities include insuring U. S. Army Corps of Engineer project compliance with federal requirements relating to have ... resources?

A: Yes. I have the staff responsibility for insuring that their projects are in compliance, compliance with the federal laws including the writing up and monitoring of archaeological contracts, ... contracts and preparation of some historical studies.

Q: Are you actually involved in giving approval yourself?

A: No, I make recommendations along with my section to my superiors.

Q: Are these federal requirements relating to archaeological resources applicable to these properties and if so, why?

A: Yes, by the National Historic Preservation Act of 1966 in the National Environmental Policy Act of 1969, the Corps is required to identify all historic or archaeological properties in areas which maybe affected by the project

and to determine whether they may be significant enough to be eligible for the national register of historic places.

Q: Why are the federal requirements applied to these three parcels?

A: Because federal funds are being expended in these areas.

Q: You started to describe what the federal requirements are in regards to the SUP area. Can you now describe what has been done by the Corps to insure compliance with these regulations?

A: In 1975 we sponsored a study by Bishop Museum to identify the presence or absence of archaeological sites. There had been an earlier study by a graduate student and we utilized his report. We hired Bishop Museum. They did a study. They reported the presence of a great number of archaeological sites. Based on that, we went back to Bishop Museum in 1976.

Q: By great number, what do you mean by that?

A: I don't remember exactly the number.

Q: Were they in the thousands or hundreds?

A: No. I believe there were 75 or 80. Based on that study, we did an intensive study which identified more sites on the order of about 200 additional sites.

Q: Did they cover just these three parcels or more than that?

A: The intensive survey in 1976 covered parcels I and II and portions of stockpile area III. We did identify we did have very significant facts out there, and we decided determination of eligibility and concurrence of that eligibility in 1976 for a fairly large area called the Barbers Point Archaeological District.

Q: What did that district encompass?

A: I'll show you on the map. It includes an area approximately bounded by here (indicating), along the railroad, along this boundary here, up this way, down here and included Camp Malekole down here.

LIM: Mr. Sox, to clarify the record, you've pointed out an area which would appear to be in a band surrounding the subject area.

SOX: That's right. We found no archaeological sites in areas I and II.

KISHIMOTO: How about in three?

SOX: We did find archaeological sites in here.

LIM: For the record, could we have people when they refer to maps not to go here, there, here, there because the record won't be able to tell where you're pointing at.

CHAIRMAN: Counsel Kishimoto?

CONTINUED QUESTIONING BY COUNSEL KISHIMOTO OF DAVID SOX

KISHIMOTO: Mr. Sox, would you continue.

SOX: Based on our 1976 survey, we requested a determination of the eligibility requested and it was approved by the Department of the Interior.

Thereafter in 1977, we made a determination of no adverse effects for sites within the harbor area itself. This was based on the fact that the sites were significant only for the information which could be extracted by salvage archaeology for data recovery. The sites of themselves were not significant, such as the heiau. That determination of no adverse effect was concurred by the State Historic Preservation Officer and the Advisory Council of Historic Preservation. The latter agency is a presidential agency which has the responsibility for monitoring activities affecting sites which are eligible for the national register.

In 1977 we sponsored a further salvage archaeology study by Bishop Museum in which they salvaged sites in the harbor area. At that time we did not have permission from our Washington headquarters to consider disposal areas as areas which we could conduct archaeological studies. We had a change in policy at that time. In fact, we argued for one in the latter part of 1978 and we received permission to do further archaeological studies in the disposal areas, particularly area III.

We conducted a further study by Bishop Museum in 1979 which identified a number of other archaeological sites as well as paleontological sites that has sink holes containing fossil bird bone and other fossil animals.

In 1980 we went back to the State Historic Preservation officer, the Department of Interior in determining eligibility of this area also for the national register. It was added to the Barbers Point archaeological district.

In the meantime, the State Department of Transportation did a study which in some respects went over the same area we did which was with Mr. Burt Davis who identified and mapped very accurately most of the sites in the state area as well as the federal area.

Q: What federal area was this study made?

A: The federal area we considered the harbor area - actually the harbor that's going to be excavated as well as dredged. When we made the determination of eligibility of disposal area III, we then requested a determination of no adverse effect as we had previously for these areas as well. This was concurred again by the State Historic Preservation

officer and Advisory Council for Historic Preservation in the fall of 1979. Based on that determination, we conducted salvage excavation for data recovery which was conducted by Archaeological Research Center of Hawaii. The final report was approved by the Advisory Council Historic Preservation and accepted by the State Historic Preservation officer.

Q: First of all your ruling of no adverse effect was a finding that there is nothing on site that requires preservation.

A: That's right.

Q: And the purpose of this Archaeological Research Center of Hawaii study was to salvage, to recover those items of archaeological value that were on the site that was determined should be recovered.

A: That's right.

Q: And having this report accepted by the state and federal agencies is essentially a determination by the agencies that data recovery has been satisfactorily accomplished.

A: That's right. Based on the determination of no adverse effect in 1979 and the previous one for the harbor area, we were in compliance with the federal regulations for completing the procedures which the Advisory Council and Historic Preservation are set up to assure that federal projects protect archaeological resources or historic sites which are on the national register. Once the final report had been approved by the Advisory Council and accepted by the State Historic Preservation officer, we felt that we were in full compliance with both the letter and intent of the law.

Q: As part of your data recovery process and ARCH - Archaeological Research Center of Hawaii, to save time I'm going to call it ARCH - was this report submitted for any sort of review by any other archaeologist?

A: Yes. To begin with, I'm not an archaeologist so I rely heavily on advice from both the private sector and public sector archaeologists, that is the state and federal offices. The original work contract which tells the contractor what to do was based on advice from an ad hoc committee of archaeologists in the private sector as well as the public sector.

A research design was prepared to address certain research questions of hypotheses. This research design was subject to review by the State Historic Preservation office and accepted by the Advisory Council for Historic Preservation. The draft report was also submitted to the state and federal agencies as well as to a peer review by archaeologists. Based on the comments and they were very extensive by the state, federal and private archaeologists, the report was revised twice. The third

revised draft was submitted to the State Historic Preservation officer and Advisory Council for their approval as well as to the Department of Interior. We received comments from the Advisory Council and the State Historic Preservation officer. The State Historic Preservation officer accepted and the Advisory Council approved. It was subject to extensive peer review.

The final report has been submitted to the private sector archaeologists. Their peer reviews are coming in. There will be an appendage to the final report when it is published and released to the public.

Q: What is the function of these peer reviews?

A: The purpose of the peer review is to show, to provide, to burgeon opinions and publications of what they might consider adequate archaeology.

Q: So this is in essence, the Corps' recognition that in archaeology the experts are going to differ.

A: Yes. We recognize that in archaeology there are often great differences between archaeologists.

Q: During the course of construction and stockpiling, would there be an archaeologist available on call should anything be turned up in the course of excavation and stockpiling?

A: Yes. It's our standard policy in construction projects to have an archaeologist on call. We will be letting a contract to an archaeologist. The purpose of the contract is to have the archaeologist on call in case we discover anything previously unknown in the stockpile area or anywhere in the harbor construction area.

Q: How much money has been spent in all these archaeological studies and reviews?

A: Approximately \$175,000 of federal money and I believe about \$135,000-\$140,000 of state money, so around \$300,000.

KISHIMOTO: I have no further questions.

I'm sorry I passed out some documents which are labeled as exhibits. I'm sure you must be wondering what they are. They did not come up in the course of the testimony. I'm going to ask Mr. Sox to briefly identify them.

SOX: The exhibit number 3 is the letter which the State Historic Preservation officer concurred in determination of no adverse effects for the harbor area itself. Four is a letter to the Advisory Council requesting a determination of effects. Five is concurrence of no adverse effects. Six is the concurrence determination of no adverse effects from the State Historic Preservation officer for the disposal area, essentially disposal area III. Number 7 is the concurrence in that determination of

no adverse effects by the Advisory Council which is the letter which actually completes the compliance procedure. That letter did not require an approved report although we did submit a report for approval by the Advisory Council. Letter 8 is concurrence of no adverse effects from the Advisory Council. Letter 9 is the approval of the final report which includes the disposal area. Number 10 is the acceptance of the final report on the disposal area by the State Historic Preservation officer. Exhibit 14 is a copy of the letter we received from the Advisory Council to a Director of Environmental Policy Institute which had written a letter requesting information about the status of our archaeological work and which more or less concerns our compliance with the federal regulations regarding archaeological protection.

KISHIMOTO: Petitioner's exhibits labeled numbers 3 through 10 and 14 for identification are offered into evidence.

CHAIRMAN: Counsel Murakami?

CROSS EXAMINATION OF DAVID SOX BY COUNSEL ALAN MURAKAMI

MURAKAMI: Is it Doctor Sox?

SOX: No, I'm sorry.

Q: I'd like to ask you some questions on your peer reviews. We may as well start off by identifying some that have recently come in. I'm handing you a document that has a letterhead citing Waianae Archaeology, signed by Patrick Bicoy, Jane Almiriba, Coralee Carter and Sarah O. Collins. It's dated October 20, 1981. Do you recognize that document?

A: Yes.

Q: Is that a document received today that is one of the peer reviews?

A: Yes.

Q: Secondly, I'm showing you a copy of--

LIM: Excuse me, do we have that in exhibit?

MURAKAMI: I gave that at the beginning of the hearing.

CHAIRMAN: Continue Counsel.

CONTINUED CROSS EXAMINATION OF MR. SOX BY COUNSEL MURAKAMI

Q: To continue again, I show you a letter with the letterhead of Bishop Museum dated October 6, 1981, signed by Patrick Kirsch. Is that one of the peer reviews?

A: Yes it is.

Q: I'm showing you now copy of a letter dated October 15, 1981 from Paul Rosendahl, Ph.D., Incorporated ... Archaeologist, signed by Dr. Rosendahl. Is that a true and correct copy of what we've received in response to request for peer review?

A: Yes.

LIM: That's Exhibit N-2.

MURAKAMI: I'll go to 3 now.

LIM: Okay. I'll read you the numbers and tell you what exhibits they are.

This is for Na Opio.

MURAKAMI: Would you mark the Society of Hawaiian Archaeology letter

LIM: That letter is 20 October 1981. That letter is N-1.

MURAKAMI: The map is N-1. Should this be N-2?

LIM: No, the map is N-12. N-2 is Paul Rosendahl October 15, 1981 letter.

N-3 Bishop Museum, 6 October 1981.

N-4 Department of the Army, 18 May 1981.

N-5 United States Department of the Interior, 7 April 1981.

N-6 is DLNR letter of April 6, 1981.

N-7 is March 23, 1981 letter with U. S. Government letterhead.

N-8 is Advisory Council on Historic Preservation dated March 20, 1981 to Mr. Chung.

N-9 is Society for Hawaiian Archaeology, March 11, 1980 letter.

N-10 is Bishop Museum, 22 February 1981 letter.

N-11 is the Assessment of Archaeological Resources prepared for Legal Aid.

N-12 is the xerox of the ALISH map of the area.

KISHIMOTO: I gather Mr. Murakami that you are planning to introduce these letters into evidence.

MURAKAMI: I desire to get Mr. Sox to authenticate these letters and to move them into evidence.

KISHIMOTO: On the ground that they were received by the Corps?

MURAKAMI: Yes.

KISHIMOTO: Are any of these people who wrote these letters here to be cross examined?

MURAKAMI: No, they're not.

CHAIRMAN: Counsel Murakami, are you ready to question Mr. Sox at this time?

MURAKAMI: Yes I am. I would move those documents into evidence.

CHAIRMAN: Have we concluded with the exhibits?

LIM: You have an objection?

KISHIMOTO: Yes I do on the grounds that if these letters are to be offered as testimony, none of the writers of the letters are here or available for cross examination.

LIM: It's our policy that we accept any and all exhibits that have any relevance at all. We will be accepting all exhibits presented by all parties. They will be coming in for what they're worth. I think it's up to counsel to present cross examination. If you need additional time to present rebuttal, we will have your opportunity to present rebuttal evidence.

CHAIRMAN: Is that satisfactory?

LIM: Yes. Both parties have a lot of hearsay in their exhibits.

CONTINUED CROSS EXAMINATION OF DAVID SOX BY COUNSEL MURAKAMI

MURAKAMI: ... (changed tape) current revised report prepared by ARCH have not changed substantially from what the previous drafts had been?

SOX: Yes.

Q: And is it their conclusion at this time that they had not provided a point by point critique of the various objections because they believed that such would be redundant in view of their previous comments in the ARCH report?

A: Yes.

Q: Isn't that previous list of comments contained in their letter to Mr. Chung, listed as N-9?

A: Yes.

Q: Isn't it the conclusion of the Hawaiian Archaeology that the revised report would not comply with federal

regulations and legislation under whose agencies the work was performed?

A: Yes.

Q: And is there a similar conclusion as to the compliance with guidelines used by the Advisory Council on Historic Preservation?

A: Yes, that's a fair conclusion.

Q: In that March 11th letter to the Corps, was not one of the major conclusions that the ARCH report was inadequate and required a complete rewriting in order to be anywhere near adequate to comply with federal guidelines?

A: Yes.

Q: So based on their letter, their conclusion was the same today.

A: That's what the letter states.

Q: Directing your attention to N-2 from Dr. Rosendahl. Does Dr. Rosendahl essentially attach the substance of his prior peer review to his letter of October 15, 1981?

A: Much of it is the same although the conclusions and recommendations are different.

Q: In his letter to you, does he not, in fact, state that he considered at one time a review of the third revised draft as possibly a waste of his own time?

A: That's what the letter states, yes.

Q: Is that because he felt the substantive defects were still present in the survey?

A: That's what the letter states, yes.

Q: Has not Dr. Rosendahl concluded that the work documented in the third draft final report of ARCH has been a waste of public funds?

A: That's what he states.

Q: Has he, in fact, characterized the study as archaeological work that constitutes a little more than documentation of the construction of archaeological sites?

A: That's what the letter reads.

Q: In fact, does he not in fact recommend a redoing of the complete survey by a research committee of professional archaeologists working in Hawaii for the cooperative investigation of the archaeological resources at Barbers Point?

A: He does not recommend redoing the complete study, no.

Q: Does he recommend initiating and sponsoring formation of a research committee to conduct a cooperative investigation?

A: Yes.

Q: I'm referring to N-3, letter from Dr. at Kirsch of the Bishop Museum. Has not Dr. Kirsch reconsidered his ... to the adequacy of the report?

LIM: Excuse me, Mr. Murakami. It appears that what you're doing is using Mr. Sox to say yes, yes, yes, yes, that's what the paper says. The papers are in evidence so they will be speaking for themselves. Maybe you could save all of this for your argument. If you have any further questions in terms of Mr. Sox field of expertise, you could ask him those questions. I see your tactic to pull out some points right now. However, if you're going to introduce these into evidence, the Commission will be reading everything that you've introduced. You could probably best point out your arguments through your final argument pointing to exhibits, rather than asking Mr. Sox about each one.

KISHIMOTO: In addition, I have one further objection to the exhibit marked N-11. That is not something that has been authenticated as having been received by the Corps. It refers to totally different sites on Molokai. I fail to see the relevancy in all of that. I'm objecting on the grounds of relevancy.

MURAKAMI: I think N-11 will become relevant later.

KISHIMOTO: Does this mean you're not offering that into evidence?

MURAKAMI: I will not offer it into evidence at this time.

CHAIRMAN: Okay. Mr. Murakami?

CONTINUED CROSS EXAMINATION OF MR. SOX BY COUNSEL MURAKAMI

MURAKAMI: In your background, the peer reviews that you have solicited and received at this point, come to the conclusion that the current survey, third revised draft, is totally inadequate for the purpose for which it is used, intended, would you say?

SOX: Of the peer reviews we've received to date, we still have two more outstanding. One was submitted this day of the meeting. We have one more expected to come in. Of the peer reviews we've received, they conclude the report is inadequate, yes.

Q: Did you understand that the so-called approval by the State Preservation Office of the third revised draft, the office has in effect rendered a favorable opinion as to the adequacy of the ARCH report?

A: The State Historic Preservation officer did not approve the report. My understanding is he does not have the authority to approve the report. That question should maybe be directed to somebody from the State Historic Preservation Office.

Q: Maybe my understanding then is the office has accepted but not approved the report. Is that merely a procedural requirement to satisfy the requirements of the federal regulations?

A: No. Procedural requirements don't actually require receiving approval or acceptance to the Advisory Council of the report. The determination of no adverse effect letter which was written in 1979 - concurrent to that letter by the Advisory Council for Historic Preservation did not include the requirement that we submit to them the final report. Sometimes it does, sometimes it doesn't. In this case, they did not include that requirement nor did the Historic Preservation Office. In any case, we did submit the report to them for review and the final report was accepted by the Historic Preservation Officer and approved by the Advisory Council of Historic Preservation.

Q: Can you explain what you mean when you say the office accepts that and not approves it?

A: They thank us for the copy of the report. They stated it would make a useful addition to their library. They stated that the archaeological search in the Barbers Point area represents a linemarker of sorts for studying the Hawaiian past. They recommend the report be published for public distribution. Again, they also recommend the final report be published along with a good peer review. We mean that as an acceptance of the report rather than an approval.

Q: Turning your attention to Advisory Council on Historic Preservation, in that case you would deem acceptance of the report to be approval.

A: Yes. This is a letter dated June 30th from the Advisory Council on Historic Preservation to Mr. Chung of the Corps of Engineers. It states in part, we have reviewed the third draft report and further, we are favorably impressed by the improvement of this draft demonstrated over that which was initially reviewed. Again they recommended that it be published with the inclusion of a professional peer review.

Q: Isn't that, in fact, a requirement as they say to strengthen the report itself, the inclusion of peer reviews?

A: Yes.

Q: So at this point, in terms of the assessment of the adequacy of the survey, you have the peer reviews of Doctors Kirsch, Rosendahl, Members of the Society of Hawaiian Archaeology. Are there any others?

A: Bert Davis.

Q: Is it not true that in general their peer reviews unanimously provide a negative review on the inadequacy of the survey that was produced by ARCH?

A: That is their conclusion but there's one more view coming in.

Q: These are the reviews upon which you rely in order to determine whether the substance of the survey is adequate from an archaeological standpoint?

A: We rely on the opinion of the Advisory Council on Historic Preservation and the State Historic Preservation Officer for compliance with the federal regulations. I think the members of the Corps can, in terms of their concurrence of our previous determination of no adverse effect, acceptance compliance.

Q: But I think you stated there has been no acceptance by Historic Preservation Officer.

A: Only approval. They accepted the report.

Q: Do you know the Advisory Council has actually gone to look at the Barbers Point area?

A: They were here in January of 1981 and I believe they told me one of the members who reviews the report was going to look out and planning to go to Barbers Point. I'm not sure what he did.

Q: In terms of going over the report, is that your basic function in this proceeding, to coordinate the archaeological survey and encourage peer reviews in view of federal requirements for this type of survey?

A: Yes.

Q: You don't really go over the proceeding.

A: Not really.

Q: Does the Corps view the findings at the site at Barbers Point in terms of their national significance in terms of their archaeological and paleontological value?

A: The Corps acknowledges the latest comments of Dr. Kirsch in stating that the paleontological resources appear to him didn't have any national significance.

Q: You say you concur with that?

A: We acknowledge that. I'm not sure whether we concur. We feel there are certain national significance. Otherwise they wouldn't be on the national register.

Q: At this point is the Corps willing to allow dredged coral to be dumped on the site as it stands?

A: The Corps acknowledges that peer reviews have made many valuable points and suggestions relating to alleged deficiencies in the final report, and in response to this public concern for what they believe to be inadequate archaeology. When we get all the peer reviews in, we will be evaluating all the material, comparing them and in consultation as needed with the State Historic Preservation Officer, Advisory Council of Historic Preservation and the private sector archaeologists. We will be evaluating possible options to respond to these concerns.

Q: In other words, you're saying that that project has not been completed at this point.

A: We feel we are in legal compliance with the federal procedures. However, we recognize that these peer reviews have possibly identified a point which they feel needs to be further studied and we have an open mind and we will consider potential options to address these needs.

MURAKAMI: No further questions.

CHAIRMAN: Thank you Counsel Murakami. Counsel Kishimoto?

KISHIMOTO: Yes I have some rebuttal questions.

Mr. Sox, I have a letter before you dated November 30, 1980 from ... Olson to Mr. Chung. Is this a letter in the files of the Corps?

SOX: Yes it is.

KISHIMOTO: Since we had not initially intended to introduce it since it might be part of Mr. Murakami's presentation, I don't have copies for the Commission. We will provide them at a later date.

CHAIRMAN: Okay.

REBUTTAL QUESTIONING OF DAVID SOX BY COUNSEL KISHIMOTO

KISHIMOTO: Was Dr. Olson one of the people to whom the draft ARCH research was submitted?

SOX: Yes. Dr. Olson was also a consultant with ARCH. He's a paleontological specialist with the Smithsonian Institution. He also a consultant to the Bishop Museum on the Corps project in 1976 and 1977.

Q: Was Dr. Stuart's comments of the ARCH report essentially favorable?

A: They appear to be so from this letter, yes.

KISHIMOTO: Mr. Chairman, I offer into evidence Petitioner's Exhibit Number 16.

CHAIRMAN: It's accepted.

KISHIMOTO: Are the people who conducted these peer reviews, were they ever in consideration for the contract that had the \$50,000 or so dollars for the original study that has been critiqued?

SOX: Under the ARCH engineer selection procedure by which we selected ARCH in 1979, there was one other firm which included one of the reviewers from the Society of Hawaiian Archaeology on the draft report.

Q: And, if, in consultation with the State Historic Preservation Officer, the Corps made the determination

that if, even though not required by law, you might have additional work done at the site, are the people who are critiquing the ARCH report, people who would be in competition for the contract, which I think the Corps would be paying for any additional work?

A: First of all we have to prepare firm options as to what our response to the ... are. So its purely to speculate on what the Corps might do.

Q: But say the off-chance that somebody made a determination that more work would be done, these people would stand to benefit from--

MURAKAMI: Objection. The witness has been asked to answer the question and he's also speculating as he has stated.

CHAIRMAN: I'll sustain the objection.

MURAKAMI: Thank you.

CHAIRMAN: You won one round, partner.

MURAKAMI: Now I've got to relish that.

May I have some recross on what he's just said?

CHAIRMAN: Proceed.

RECROSS EXAMINATION OF DAVID SOX BY COUNSEL MURAKAMI

MURAKAMI: To your knowledge, Mr. Sox, is Mr. Olson an archaeologist?
SOX: He's a paleontologist.

Q: Would he be qualified to pass comment on the archaeological value of the ARCH survey, the archaeological portion?

A: I know he has worked with archaeologists quite a bit. He'd be qualified certainly to comment on the paleontological portions of it.

Q: Which is Appendix 1 right, which he wrote?

A: And 2.

Q: And he wrote both appendices, right?

A: He wrote Appendix 1.

Q: So he's commenting about his own work, isn't that right?

A: Yes.

Q: Secondly, are you familiar with the work of Mr. ... Sonoda?

A: Yes.

Q: Are you aware of his recommendations of the irreplaceable and unique resource that he sought in the fossil deposits at Barbers Point?

A: Which document are you referring to?

Q: I have a document which was prepared by Mr. Sonoda for some testimony to present. And, it has some subsidy in the 1995 Honolulu Harbor Masters Commission. Are you familiar with that?

A: I have never read about that.

Q: Are you familiar that he has given high value to the paleontological research value of the site at Barbers Point?

A: Yes. Some of his work is included in the report sponsored by the Corps of Engineers in 1976 and 1977. It's part of the basis upon which the Barbers Point archaeological district was determined eligible for the National Register of Historic Places.

Q: Is it not true that he consulted with Dr. Olson?

A: Yes. Dr. Olson was brought under subcontract to the Bishop Museum to provide expertise on the paleontological resource, the fossil sink holes.

Q: Have all the sink holes been tested?

A: No. There's thousands of sink holes. They have not been tested. The law requires us to provide a reasonable recovery of data from the area.

Q: Do you know that Mr. Sonoda has recommended that all the significant sink holes in the area be tested before the storage of coral is accomplished on the property?

A: I don't believe he recommended that all of them be tested. He identified in Stockpile Area 3 based on sample survey that there could be several thousand sink holes containing bird bones.

Q: And he was recommending that these be excavated or salvaged?

A: No. He recognized that not all of them could be salvaged.

MURAKAMI: I have no further questions.

CHAIRMAN: Counsel Kishimoto?

KISHIMOTO: Dr. Olson then was hired in order to conduct the paleontological study of the site.

SOX: That's right.

CHAIRMAN: Any further questions? If not, thank you for coming this evening, Mr. Sox. Counsel Kishimoto, you have another witness?

KISHIMOTO: I'd like to recall Mr. Stender very briefly to authenticate a letter.

Mr. Stender, I have before you a letter marked Petitioner's Exhibit No. 12 from William Kikuchi, Ph.D. Is this a copy of the letter that Campbell Estate received?

STENDER: Yes it is.

KISHIMOTO: I offer Petitioner's Exhibit No. 12 into evidence.

CHAIRMAN: Accepted.

MURAKAMI: Mr. Chairman, I'd like to move Exhibit N-13 into the record.

LIM: We have that in the record. Once we conclude the hearing tonite, we'll go over the exhibits to make sure everybody has the proper record.

CHAIRMAN: Counsel Kishimoto, do you have another witness?

KISHIMOTO: Yes. Our next witness of Dr. Harold Hammet.

HAMMATT: My name is Hallett Hammatt. I am Vice President of Archaeological Research Center of Hawaii.

INTERROGATION OF DR. HAMMATT BY COUNSEL KISHIMOTO

KISHIMOTO: Dr. Hammatt, what is Archaeological Research Center of Hawaii, commonly referred to as ARCH?

HAMMATT: It is a private archaeological company which was founded 18 years ago. It's on the island of Kauai. The President is Francis K. W. Ching. It's been involved 15 years in doing archaeological research in the state, doing generally this type of work in historic preservation.

Q: What type of archaeology work does ARCH do?

A: Our company does archaeological reconnaissance, archaeological survey, archaeological excavation and planning.

Q: What is archaeological reconnaissance survey salvage?

A: These are the categories of the kinds of work that are likely to be required, requested by people who are involved in control of or who own their own archaeological sites which they plan to modify in some way or they plan to preserve in some way.

Archaeological reconnaissance - I'll give you a basic walk through - archaeological survey is a detailed examination of the sites and mapping of archaeological sites, and preparing a sometimes very lengthy report of the sites and their significance, their location and general description and recommendations for what the following work should be.

Archaeological excavation is actual under the ground examination of the sites to determine what kind of cultural content they have, what kind of layers are associated with the site. In the case of Barbers Point, our work was archaeological excavation.

Q: What is otherwise known as salvage?

A: Some people call it salvage. As I understand, the word is not too favorable right now. They use the word data recovery. It means the same thing. Basically it's excavation of sites which are deemed to be of research value, to recover the material and the information contained before their possible destruction.

Q: Does ARCH work with private or public organizations?

A: Both.

Q: If it's not a breach of your confidence of your clients, would you name a few of these organizations? Things that would be a matter of public record.

A: We have done work for about ten state agencies including the Department of Transportation. We've done work for most of the county governments, Maui County, Kauai County, Hawaii County. We've done work for the U. S. Army Corps of Engineers, the U. S. Navy. We've done work for private people including Moana ... Corp., Bishop Estate, to mention a few.

Q: You characterize the work of ARCH as an archaeological consultant. Is this a new field?

A: It's a new field in the sense that you're talking about 20 years. Basically this field is an outgrowth of various antiquities of laws passed over 15 or 20 years, or certainly more within the past 10 years. I think the two laws that Dave mentioned was in 1966 which required federal agencies, the state agencies, who are using federal funds to conduct archaeological studies. The counties followed up with this, for example, Hawaii County having an ordinance on the books which requires archaeological studies of private developers.

Q: What triggers your client's need for your services?

A: There are many reasons why people come to us. The most usual one is that people have a need or desire to alter the landscape in some way which will affect the archaeological sites. So they need to know two reasons, one they want to satisfy themselves that they are meeting their public concerns. After all this legislation was an outgrowth of public concerns. And, they want to satisfy themselves for the sake of their own image and conscience. Also to satisfy the various departments so they can get their permits.

Q: So either its a matter of conscience or law, making sure they're not destroying something that needs to be saved.

A: Or a combination of the two.

Q: What is archaeology?

A: Archaeology is the study of the remains of past cultures for the purpose of reconstructing ... of human behavior.

Q: Will you describe briefly your educational background?

A: I have a Bachelor of Arts Degree from the University of Pennsylvania. I have a Master of Arts Degree in Archaeology from the University of Edinburgh in Scotland. I have a PHD in Anthropology with a specialty in Archaeology from Washington State University.

Q: In the course of your training in archaeology, did you have any educational training in archaeological methodology?

A: Yes.

Q: What is archaeological methodology?

A: Archaeological methodology is basically a study of all the methods that go into determining how to gather information about the past.

Q: What was the nature of your educational training?

A: It was, I would say, part and parcel of training in archaeology involving both field work and other

Q: Did you have training in geology and stratigraphics and could you explain what that is?

A: Geology and stratigraphics is a field which is connected very closely in the sense that when you're studying archaeological study you're also looking in the dirt for what you find and the dirt has a story to tell. The rocks of the site have a story to tell. The study of stratigraphics, of course, is a study of the sedimentary layers which compromise archaeological sites. They may not be an archaeological site. They may be outside of the archaeological sites. Their sequence, chronology, origin tell us about the sites themselves.

Q: Did you have any training in soil pedology and again brief us on that?

A: Actually soil pedology is another term for soils. At Washington State University, one of my specialties was in quarternary research. The PHD program there has a special series of courses, and special study which is involved in quarternary stratigraphy which is basically the study of the deposits of the last million years, particularly in application to archaeology. I was trained in the soils department at Washington State University and also by Professor ... who is under the Department of Anthropology and who is a specialist in quarternary stratigraphy.

Q: Did you have any training in material culture or prehistoric ... and could you describe what those are?

A: Yes. That is another specialty in archaeology which involves reconstructing past economy. Material culture,

of course is the artifactual material and actual physical remains and in archaeological sites and forming a conclusion about past activities on the basis of the studies which remain.

Q: Did you have any training in typology and explain what that is?

A: Typology is the study basically of style of the artifacts, what the style means. Styles of anything, even the things used today, change in time. That change is a reflection of the activities of the culture which produces those changes. Therefore it has a direct relationship and relevancy to reconstruction of the past.

Q: Did you have any training in rock analysis and could you explain what that is?

A: Actually it's a culmination of a couple of others. Actually that's a study of rocks. In Hawaii, we're particularly concerned with rock flakings. Mostly when you study archaeology you're dealing with cultures that did not have iron or metal. The people used rocks. They broke rocks and patterned tools which were useful to them, adzes. Lycop analysis is the study of the patterns of breaking rocks and the patterns and the technology to manufacture these tools.

Q: Did you have training in ...?

CHAIRMAN: Counsel Kishimoto, I believe you've established the tremendous credentials of this person already, and you've gone back into it. I think it's about time you turn the corner.

Q: Just two more. Have you had any training in paleontology material, environments, and also Hawaiian archaeology?

A: Part of the program at Washington State was concerned with paleontology. I had course and field work in fossil paleontology. Basically paleontology is the study of bones, either human paleontology or other kinds of bones. In the case of Barbers Point, paleontology involved the study of bird bones.

In terms of environmental archaeology, it was connected with the same thing. I had courses at Washington State involved with Hawaiian Archaeology. I've been active in Hawaiian Archaeology since 1976.

Q: Why was ARCH hired to conduct the archaeological study of Disposal Area 3?

A: ARCH was asked to conduct the study by the U. S. Army Corps of Engineers in 1979--

LIM: Excuse me, Counsel. Are you requesting that he be allowed to testify as an expert witness?

KISHIMOTO: Not at this time. There are a couple of more questions I need to ask. I'd like to establish what. The Commission has indicated it wishes to get to the crux of the matter. By the questions I ask, his testimony - I should have his credentials.

CHAIRMAN: Proceed.

KISHIMOTO: How was ARCH selected?

HAMMATT: I think Dave Sox testified to that.

Q: In preparation for your work in Disposal Area 3, did you run previous studies in the area and what are they and what do they cover?

A: There were a number of previous studies going back to, I believe, 1970 was the first interest in Barbers Point.

Q: Are these studies summarized in the documents before you as Petitioner's Exhibit N-13.

A: Yes, in which there are seven.

KISHIMOTO: These are the previous six or seven studies that you did consultant work at Area 3. We offer these into evidence.

CHAIRMAN: Accepted.

KISHIMOTO: Now what did your study add to Disposal Area 3 consist of?

HAMMATT: There are a number of steps involved. Basically the federal project involves federal funds. There's a lot more steps required in doing archaeology than for example, private projects. The first step basically is preparing research design which took somewhere between three or four weeks in which we very carefully went through all of these previous reports, one in particular which was by the Bishop Museum which was an archaeological survey of a portion of the area which we were to do the excavation. The other report which was relevant was done by ARCH and also by Bertel Davis which was a survey on another portion which we were asked to conduct excavation.

At the preparation of this research design we submitted to the Corps of Engineers which was sent off to the Advisory Council Historic Preservation Office for their comments.

Q: After you got the blessings of the research design, what did you do?

A: At that point, we started the project itself. The first phase of the field work was relocating the sites. One portion of the area hadn't been surveyed since 1977 which indicates the sites were very well vegetated. So the first step was to relocate the sites on the ground.

Q: Were you also on the lookout for any sites that weren't covered by the previous study?

A: Yes. We covered the area very carefully. We were on the lookout for new sites that had previously been recorded

but had been destroyed by activities that had taken place in that area. We found that some sites had, in fact, been destroyed.

Q: How many sites did you eventually locate?

A: In this particular area which we were asked to do, I believe there were 125 more or less.

Q: What is a site? Are we talking about big sets of walls or heiaus?

A: I can define an archaeological site and then next I can characterize the site.

Q: Particularly with reference to this area.

A: An archaeological site is any residue of past ... generally by stone structures. In some cases sink holes which have archaeological material inside them which is not recognizable on the normal surface of the ground.

Q: Do archaeologists disagree over a particular thing on the ground in the site?

A: Ever since there's been a field of archaeology, there's been disagreement in the studies.

Q: Why is that?

A: When there really is a site, most archaeologists will not disagree in the shape of the area.

Q: Why the disagreement? Is it over what causes were caused by man?

A: Exactly. In fact in this area that is a concern because there are a number of natural processes taking place at Kawaihoa which could rearrange rocks. Features which look like archaeological sites may not be.

Q: Talking about the sites at Disposal Area 3, what types are we talking about heiaus, villages?

A: We're talking about several different kinds of sites. We're talking about small shelters - what we call C-shaped shelters which could be a quarter of the size of this table for putting a couple of chairs around in a circle; rectangular structures with walls maybe as high as this chair and maybe 10 feet by 5 feet; what we call ahu which are stonepiles which may be there for a number of different reasons - somebody decided to pile up some stones to mark a place, maybe an altar, some kind of fishing shrine. Then as I mentioned before, the small sinks that served as temporary shelters.

Q: Once you relocated these, what did you do next?

A: After we relocated the sites and in the process of examining the site, we'd see which would be the one most affected and most fruitfully excavated.

Q: How did you make this determination?
A: First of all it was stated in the research design we were interested in reconstructing disposal activity areas, concentrations of artifactual material, concentrations of food residue, which formed some kind of pattern in relation to the sites, to associate with. We also wanted to establish some stratigraphic framework for the area.

Q: How did you determine these criteria were met?
A: Well, we tested. There were 88 sites.

Q: You tested all the sites?
A: No. There were a total of 148 sites. Eighty-eight were selected for testing. Twenty-six were selected for more extensive excavation.

Q: Is there room for disagreement among the experts as to whether a site after testing is worth further excavation or examination?
A: Again it depends on what you're trying to find out. If you disagree on what you're trying to find out then sure there's going to be disagreement. If you don't disagree on what you're trying to find out, then there's probably still disagreement.

Q: You said you selected 26 sites for further excavation. Was this done in consultation with anybody?
A: Again as part of our job as far as our contract stated in the scope of work by the Corps of Engineers, we were required to submit a report of the results of the testing in two phases. One for the state and one for the Corps of Engineers. In addition we were asked to submit monthly reports on the progress of the work.

Q: So in consultation with state and federal agencies you determined which sites.
A: Right.

Q: Okay. What did you do once you identified these 26 sites for further excavation?
A: Then once we got approval, we proceeded to excavate the sites in a systematic manner and in most cases entirely excavate the sites.

Q: What do you mean entirely excavate the sites?
A: If you don't mind, maybe I could look through this report. We would lay out a north, south, east, west grid across the site, and excavate from the center of the site outwards towards all four directions, and excavate in any one direction in one meter squares until essentially we ran out of site. This included dismantling walls of the sites and excavating underneath the walls for two reasons. One was to establish the stratigraphic relation,

if possible, of the structure itself to the underlying deposits. The other to recover material that may have been dropped under the walls.

Q: How did you determine how far out, how far down you had to dig?

A: As far as how far out, it's a question in some cases of when we ran out of earth. You cannot excavate a trench in places in coral without dynamiting.

Q: What about in cases where you didn't run out of dirt?

A: We extended the excavation to a point at which there were culturally sterile deposits, and we felt that going out further wouldn't add any more information to what we had about that site.

Q: How far down did you dig?

A: Down to the bedrock or to the culturally sterile layer which is called strata free.

Q: Is there room for disagreement among the experts as to how far out when you start digging out?

A: Well, if I had an opportunity to show people these sites in the field, I don't think there would be disagreement. I think on paper there probably would be room for disagreement.

Q: In the course of your digging, how did you sort through what you found?

A: All the material excavated was put into screens. This is a standard archaeological procedure. I notice there were some comments about screen size. Because of the rocky nature of the strata, we put a four-inch screen on top of an eight-inch screen. We filtered the material through both of these mesh sizes and extracted the material out of both of these screens.

Q: As a result of your excavations, what sort of things did you find?

A: We found bone and shell fish hooks. We found basalted glass. We found tools which included coral. We found shell material which was the residue of human meals.

Q: Are any of these things useful? Are these typical Hawaiian artifacts?

A: The artifacts themselves as a group in their components are fairly typical of what you'd find in a small habitation.

Q: What did you do with these things that you found?

A: They were returned to our laboratory on Kauai and analyzed.

Q: Did you map these sites so you could also locate or trace back from reference where you found these things?

A: There's a map. In all cases of sites excavated, there's a very, very carefully documented record of what we did.

You'll find it in a typical sequence describing excavation of the site there's a site plan. It shows the site from plan view. There's also a cross-section of the site showing the strata ... relationships. There's also a plan of the grid that we imposed on the site and the one layer trenches that were excavated on that site.

KISHIMOTO: May I interrupt. I know the commissioners are trying to keep up with what we're seeing. I just have one other copy which if you'll identify - I believe this is Petitioner's Exhibit Number 15, a copy of ARCH's report, the one that you're now referring to.

HAMMATT: Yes.

KISHIMOTO: I'll submit this report into evidence.

HIRAHARA: It's voluminous.

CHAIRMAN: Accepted.

MURAKAMI: I never received one. I'd like a copy that I can keep for a while.

LIM: You can come down and either inspect hers or inspect ours.

CHAIRMAN: Counsel Kishimoto, can you make that available to Counsel Murakami?

KISHIMOTO: We can make it available for his inspection but the cost of reproducing it is excessive.

MURAKAMI: That doesn't solve the problem of allowing me the opportunity--

CHAIRMAN: Let me say this. We're not going to take any action tonite. We're not going to take any action on it. As a matter of fact, we're going to continue this case to November 3rd. Would that give you sufficient time to review?

MURAKAMI: If I can get a physical copy, yes.

KISHIMOTO: I'm concerned about the Commission's decision on this.

CHAIRMAN: There's no time limit.

LIM: As far as the time limits, the Commission has to hold a public hearing within 90 days after acceptance of the application. We've done that already. The only other time constraint is 30 days after the close of the public hearing we have to take final action. In effect, we're in the middle period so we don't have any problem.

KISHIMOTO: Going back to the report.

HAMMATT: Yes. After the maps I just described, we also did density contour maps. That's something like a topographical map of the site. Instead of using elevation lines, we used mid-weight lines. This was for the purpose of identifying the patterns of each disposal which was one of the problems mentioned in the research acceptance. We also did this for the artifact distributions for each strata which meant two maps for the digging and two maps for the artifact distribution.

Q: Now what did you do with the things you collected? Did you keep everything?

A: Everything we collected is still in the laboratory at ARCH on Kauai.

Q: What's left of the site that you excavated?

A: They are left essentially the same. I don't think they have been touched since that time.

Q: Is there anything left at the sites you have excavated?

A: In some of the sites there maybe one or two trenches left but in most cases everything was excavated. If you were to go out to the site today, you would see flat coral bedrock.

Q: Was any attempt made to date the things that you found?

A: Yes. There were two dating methods applied to date the archaeological sites. One was radio carbon, wood charcoal. We submitted four of the best samples that we retrieved at the sites. In all four cases the results were modern, gave modern dates.

Q: What's the significance of that?

A: The context in which the charcoal was recovered and the association in that context with the material told us that we should have gotten older dates than we did. So our conclusion was that the charcoal was in some way contaminated and that the dates were therefore not reliable.

Q: Unreliable?

A: Unreliable. The second method that we used was basaltic glass dating. In previous studies there had been a general conclusion - I know when the Bishop Museum salvage expeditions in the area on being kind of one-sided - that the Barbers Point area, Kalaeloa, had been occupied by late prehistoric times. In the case of the dates that we got, we dated approximately 11 samples. We collected more than 11 pieces of basaltic glass. However when the thin section is glass, it was very high in titanium magnetite. The content of that mineral rendered the thin sections of

the glass were opaque and we were unable to read the migration lines.

Q: First of all, did you test all of the samples of this glass that you found in the area?

A: Right.

Q: And you found that most of them were not usable.

A: Some of them were not usable. The ones that we got basaltic glass dates from. We got some very interesting results which question the conclusions of the age and the occupation of the site that previously had been made. However, we started to use a new technique. Let's say expanded the technique of basaltic glass dating.

The first time last year our company started doing basaltic glass dating in conjunction with Dr. Leo Takuchi of ... College. As we developed the method, of course right from the beginning we dated all the glass surfaces and expecting to find the dates clustered around 1700-1800 A.D. in conformity with the other studies. We did not find that to be the case. We found the dates going all the way back to 10,000 B.C.

Q: Why is this glass dating reliable and the carbon dating is not?

A: Glass dating has different - I won't say it's more reliable. I'll say the variables involved with the dating itself are different.

Q: So what you're saying is you made the determination that this site, the carbon dating maybe unreliable but you were able to use the data that you--

A: We were able to use the standard formulas for the calculation of hydration line date to the sites and we were not able to use the grade of carbon samples to arrive at an age for the site.

Q: Were any other dating techniques used?

A: No.

Q: Why not?

A: There were a number of other alternatives considered. There were two other kinds of organic material that were recovered from the sites, bone and shell. In both cases this is considerably less organic material and is less concentrated than wood charcoal. We used larger samples. Radio-carbon dating of shell is the poorest and unreliable. It has never been attempted in Hawaii on a systematic basis. We felt if this was going to be attempted, then it should be a fairly long term cooperative effort with a grade of carbon dating using modern samples for comparison.

Q: So in essence then collecting samples have a lot to do with dating but you didn't actually do it.

A: We did not do the dating.

Q: But you collected samples so that if somebody at a later date wants to do this type of dating, it can be done.

A: Right. I will also refer to the dating of the specimens of fossil bird bone which are now in the process of being analyzed at the Smithsonian Institution. There is an effort internally with the Smithsonian Institution to date the bird bones.

Q: Was any portion of your work at the site subcontracted out?

A: Yes. There were three portions of the work that were subcontracted. The main subcontractor, one of the three, was Dr. Stuart Olson of the Smithsonian Institution. From his continuing study of the fossil bird bones, his conclusions are contained in Page 221, Appendage 1 of the report.

Q: Did Dr. Olson indicate any desire to go back to the site?

A: It is my understanding from my last discussion with Dr. Olson that his recommendation is that further work should be done on the fossil bird bones in the Ewa Plains but that he felt further examination of the sink holes which is where he recovered the bird bones in Disposal Area 3, he did not feel justified. I think his conclusions were the result of the fact that we spent many days in the field with him and examined - I wouldn't say safely every sink hole in Disposal Area 3 but we examined many hundreds of sink holes in that area. He was able to very quickly select the ones that he wanted to further examine.

Q: What other studies were done?

A: The second study was a shell study, land snail study by Dr. Carl Christiansen and Dr. Frank Birch, both of the Bishop Museum.

Q: Their reports are included in the appendix.

A: Their report is Appendix 2 right after Olson's one.

The third study was a study of historic or modern Camp Malekole. It's a very thorough military history of the establishment of the U.S. Army Camp Malekole which is on the northern side of the area under discussion. It was the site of a military camp from 1940 to after the war. The gentleman who did the study for us, Mr. Robert ..., retired from the U.S. Marine Corps, has developed into I would say a very accomplished military historian as a result of the study. They were able to get photographs from former occupants of the Camp.

Q: This report is attached.

A: Yes, to Appendix 3.

Q: How much time did you spend in the field at the site?
A: We spent approximately from three to four months.

Q: Five-day work week?
A: Yes.

Q: How much time did you spend preparing to walk the field to background the research area?
A: A lot of the time was after preparation of the research design. There was quite a long wait for the review and processes of the federal and state bureaucracy. This involved about eight months total time.

Q: How much time did you spend writing up the results of your work?
A: As I recollect, to finish the field work somewhere early Fall of 1980. The report was finished in February 1980.

Q: Now Mr. Sox mentioned peer reviews of the draft and again the final report. Have you had a chance to review these peer reviews?
A: Yes.

Q: How would you characterize their comments. Can you break them down. We don't want to go into all of them. We just need the general categories. Can you tell us how you responded?
A: We received these letters through the Corps of Engineers and as part of the contract requirements. It was the Corps' job to send out the reports, solicit these letters, get the responses back and filter the comments. In other words, tell us what questions we were to address and which we did not bother to address. We got the letters back with the comments from the Corps. Basically we divided the comments into a number of areas and addressed each of those areas.

Q: What are those areas and tell us briefly how you addressed those.
A: There were objections to the lack of dating. Our major response to that was we were just as disappointed as anybody else in not finding more datable, more reliable datable material. The initial draft that they were asked to review, of course, did not contain the dating section.

There were questions also about the sampling and the excavation methods in general. This section was added to, to address the concerns of the letters. Basically we felt that in many cases, the objections were disagreement with the research design. We felt our methods were justified in terms of what we were trying to find out in what was stated in the research design.

The other comment, I think there were some technical and typos. Our company has a word processing machine and it was an easy matter for us to change those typographical errors which we did.

Q: What about comments regarding archaeological perspective and settlement patterns?

A: We obviously have been thinking about this area for a very long time. Through ten years of study in this area, there have been a lot of theories proposed about the settlement. What kind of settlement it was? This was a very unusual area for Oahu in the sense that it's a caustic plain which is basically a limestone area full of solution sinks.

The question arose through these studies partly, why did people bother to live there and what were they after when they moved there? Well, we felt it important to point out - well as a result of one particular period which has it that these people were pushed out there because of over population of other more productive areas - to point out that the ahupuaa of Honouliuli of which Barbers Point is only a very small part, and of which our particular study area is a very small part, was a very rich ahupuaa.

We did a short but what I feel very important study of the place names of Honouliuli and were able to establish the connection with Kamapuaa. We were able to find place names which indicated the importance of fishing. For example, the name of Makakilo means fishing tower. There was also reference to a lohi or a wet taro production which is hard to envision today looking in the area, but indicated that the Hawaiians used this for one of the most productive kinds of agriculture.

Q: So in effect in your final report, you added additional material addressing the archaeological perspective.

A: Yes. Sorry I got carried away but that's what I was trying to say.

Q: How does your work done by ARCH relate to the previous studies?

A: Basically there are a lot of new discoveries in this report. Anybody who goes out and does further study in the particular area is going to find something new. We were able to conclude that contrary to the earlier report, that there was earlier occupation in Kalaeloa and that this area may have been one of the very earliest to have been occupied on the Island of Oahu, and that one of the things that attracted the early Hawaiians to this area was, in fact, the birds.

Q: So in effect, you built on the previous studies which I gather were just surveys.

A: Right. The previous studies of this area were surveys. Basically they describe the location and the physical make up of the sites.

Q: And you did have some disagreements on the basis of your field work as to what were in these previous studies.

A: Right. Well, as I said, we went and examined every one of those sites that had been found previously and reevaluated them on the basis of our own perspective.

Q: So you weren't in total agreement with the previous studies just as you don't accept people you know in your studies will be in total agreement with your conclusions and your findings.

A: If there was total agreement, I would definitely feel as a scientist I would have failed.

Q: Before I ask you to sum up your recommendations and conclusions, I'd like to go back briefly to your credentials as an archaeologist. Are you a member of any archaeological boards or organizations?

A: I am a member of the State of Hawaii Historic Sites Review Board.

Q: How were you chosen for this?

A: I was chosen by the Foundation on History and the Humanities of the State of Hawaii.

Q: How many archaeologists are on this board?

A: There are two.

Q: Out of how many members?

A: I believe there are eight members.

Q: The two of you were chosen out of all the archaeologists in the state to be on this board?

A: Yes.

Q: Are you a member of any archaeological scholar organizations?

A: A number of them, yes.

Q: Can you run down briefly?

A: I'm a member of the Society of American Archaeology, American Anthropologist Association, founding member of the American Quarternary Association, and Secretary of the Pacific Association of Professional Archaeologists which is one of the two professional organizations for archaeologists in the State of Hawaii.

Q: What is the other organization?

A: The other organization is the Society of Hawaiian Archaeologists.

Q: And that's one of those that critiques the ARCH report.

A: That is correct.

Q: Are you a member of the Society of Hawaiian Archaeologists?

A: No.

Q: Before you is Petitioner's Exhibit 11. Does that accurately summarize your educational work and other experience say through 1980?

A: Yes, with the exception of what is done this year.

Q: So it's not current but it pretty much summarizes your credentials through some time in 1980.

A: Right.

KISHIMOTO: I was planning to solicit more testimony from Dr. Hammatt on his credentials but I submit Dr. Hammatt's Resume labeled Petitioner's Exhibit No. 11 into the record.

Reserving the right to question Dr. Hammatt later if need arises in rebuttal, I have no further questions.

I'm sorry. I forgot the million dollar question, recommendations and conclusions. On the basis of your study and material, what are your recommendations and conclusions?

HAMMATT: After consideration of all the work that has been done in this area including the two ... lists in our excavation report, the extensive excavations that were done on 26 of the site areas, the extensive amount of material which was collected from the area, including archaeological material as well as paleontological material - and I would also add extensive amount of paeleotological material that has been extracted from the ground in previous studies - we felt as stated in the recommendation section of our report that although there are many questions, and still some questions unanswered which is what one would expect, the basic information that's been extracted from the ground is that further work to answer specific concerns which include one of the basic ones is development of ... for a station of this very important Hawaiian ... which includes various species of birds, this work should include laboratory work which means further analysis of the bird bones. It means systematic and varied attempts using varied techniques to date material. Basically the material has been extracted from the ground. We don't feel in this area there is need for further field work but we feel if these questions remain unanswered, that the way to answer them is through further laboratory analysis.

Q: So basically you're saying nothing has to be preserved on the site.

A: Right. From the very beginning, I believe most or all of the agencies and certainly our feeling was these sites were not suitable for physical preservation.

Q: Therefore your best professional opinion as an archaeologist, are you satisfied that a reasonable archaeological designation as conducted on Disposal Area 3 on the site and that all reasonable steps have been covered and that all significant archaeological data have been completed?

A: With full consideration of the expense of the taxpayer and the tremendous amount of time and effort which has gone into this study, and even in view of that if I felt that further field work was necessary, I'd certainly say it.

KISHIMOTO: I have no further questions.

CHAIRMAN: Professor, you believe there are no adverse effects after examining the grounds over there? Are there or are there not any adverse effects?

HAMMATT: I would maybe rephrase in a more simple way that the information and the potential information has been extracted from the ground. There would be no adverse effect on the archaeological resources of the proposed activity to stockpile.

CHAIRMAN: I'd like to say at this time we're going to halt the proceedings. We're going to come back November 3rd and we're going to accommodate our colleague at 2:30 p.m. It's a special hearing we're going to have to continue your case. We'll meet here. At that time, Counsel Murakami, you'll take over in your examination.

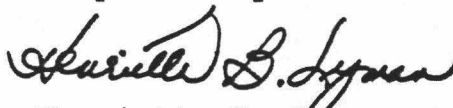
LIM: Also for the record, Dr. Hammatt is admitted as an expert witness.

KISHIMOTO: Thank you Counsel.

CHAIRMAN: We have a lot of reading to catch up. I'd like at this time to thank you all for coming. The hearing stands adjourned until November 3rd at 2:30 p.m. right here at the City Planning Conference Room.

ADJOURNMENT: The meeting adjourned at 10:55 p.m.

Respectfully submitted,



Henrietta B. Lyman
Secretary-Reporter

Meeting of the Planning Commission
Minutes
November 3, 1981

The Planning Commission held a meeting on Tuesday, November 3, 1981 at 1:35 p.m. in the Conference Room, City Hall Annex. Chairman William Pacheco presided.

PRESENT: William Pacheco, Chairman
Martha Cairl
Randall Kamiya
Harriet Kane
Yukio Kitagawa
Shigeyuki Nakatani

ABSENT: Leslie Hirahara, Vice Chairman

DEPARTMENT Gail Baron, Executive Secretary
REPRESENTATIVES: Steve Lim, Deputy Corporation Counsel

MINUTES: The Minutes of September 15 and 29, 1981 were deferred to the next meeting.

UNFINISHED BUSINESS Public hearings held October 20 and 27, 1981 were continued.

PUBLIC HEARING
STATE SPECIAL USE PERMIT
(STOCKPILING)
EWA
JAMES CAMPBELL ESTATE
(FILE 81/SUP-6 EY)

CHAIRMAN: At the last meeting, I believe Counsel Kishimoto concluded her questioning of Dr. Hammatt. Alan, I believe it's your turn.

KISHIMOTO: Excuse me, Mr. Chairman. There have been two developments within the past two weeks. It concerns a peer review that we received since the last hearing and also a discovery that was made on one of the sites.

CHAIRMAN: Let's take that first.

KISHIMOTO: I recall David Sox.

KAMIYA: Mr. Chairman, before we proceed, I'd like to notify this Commission that I did read the record. I was late at the last meeting.

CHAIRMAN: Thank you Randy.

Mr. Sox, would you give us your name for the record.?

SOX: My name is David Sox. I'm a social environmental specialist for the U. S. Army Corps of Engineers, Pacific Coast Division.

KISHIMOTO: I have before a document identified Petitioner's Exhibit 17. What is that?

SOX: It's a letter received from Dr. William Tokuchi who's president of the Pacific Association of Professional Archaeologists. It's the other peer review which we did not receive.

KISHIMOTO: We offer Petitioner's Exhibit 17.

CHAIRMAN: We'll accept it.

KISHIMOTO: Can you restate what is the purpose of the peer reviews and the impact on the Corps' acceptance of the archaeological report?

SOX: The purpose of the peer review comments was to establish for the record, and when we submitted the report for publication to the general public, to identify that there were divergent views on the findings and perhaps the methods of archaeological work at Barbers Point to establish clearly that-- It's a standard procedure in scientific publications to provide opportunity for your peers to review your own work and to establish credibility. If they didn't agree with it, to give opportunity to other archaeologists to put their design plan.

Q: But this doesn't mean the work in the report is any less acceptable to the Corps.

A: No.

KISHIMOTO: Thank you. I have no further questions.

CHAIRMAN: Counsel Murakami?

MURAKAMI: Are there any more peer reviews that are outstanding?

SOX: Yes. We received one additional peer review from Dr. Stanley Emery of the Bishop Museum.

MURAKAMI: Is that going to be included in the record also?

KISHIMOTO: No. We have dissention confirming what's been established there.

QUESTIONING OF DAVID SOX BY COUNSEL ALAN MURAKAMI

MURAKAMI: Well, I'd like to at least see that. I have further questions of Mr. Sox.

Mr. Sox, I show you a copy of this letter dated October 16, 1981 from Dr. William Tokuchi. This is a correct copy?

SOX: Yes.

Q: With reference to page 2, is reference under item number 5 and number 1, paleontological and reference to

A: paleoecological history, the same?
Yes, I believe they're the same.

MURAKAMI: That's all I have.

CHAIRMAN: Counsel Kishimoto?

KISHIMOTO: No further questions.

CHAIRMAN: You're excused, Mr. Sox.

KISHIMOTO: Again I'd like to call Dr. Hammatt.

LIM: Counsel Murakami, have you been furnished a copy of that last peer review mentioned by Counsel Kishimoto?

MURAKAMI: Yes I have.

LIM: Excuse me, Mr. Chairman. I will be leaving at the conclusion of this afternoon's hearing. Replacing me will be Deputy Corporation Counsel Michelle Matsuo. I've discussed the matter with Counsels Kishimoto and Murakami. I'd like to introduce her at this time. Michele, would you please stand up.

I'd like to make a disclosure that she had formerly worked with the law firm of Ashford and Wriston which is presently representing Campbell Estate. I believe she is willing to state that she has had no meetings with the Campbell Estate matters close to a year?

MATSUO: I worked with the law firm of Ashford and Wriston at the end of 1980. I cannot remember when my last dealings with Campbell Estate were but it was probably prior to November of 1980.

LIM: In your capacity with Ashford and Wriston, did you work with the staff in preparing any presentations for Barbers Point or for this present project?

MATSUO: No, I did not.

LIM: You had nothing to do with any of these projects?

MATSUO: No.

LIM: Could we have a statement from counsels as to any objection they may have to Miss Matsuo representing the Commission for the evening hearing?

MURAKAMI: May I have voir dire?

LIM: Right.

MURAKAMI: Miss Matsuo, do you personally know Miss Kishimoto?

MATSUO: Yes I do.

Q: How long have you known her?

A: September of 1979.

Q: Did you go to the same law firm?

A: Yes. I started with the law firm of Ashford and Wriston.

Q: Did you work on any projects with Miss Kishimoto?

A: I believe I have, yes.

Q: How many projects?

A: I could not venture a guess. We were associates in the same law firm and there may have been one or two that we worked closely but generally associates consult with each other.

Q: Were you assigned to specific cases and how many?

A: Probably about two. I couldn't tell you exactly how many.

Q: So you had opportunity to talk with each other, work with each other on two separate cases.

A: I believe. The last one was probably July of 1980 or around there.

Q: Could you review the kind of work that you did?

A: Handling loan closes for clients, reviewing documents to make sure they complied with commitment letters for financing.

MURAKAMI: Based on the representations, I don't think I'm prepared to waive any objections on the presence of Miss Matsuo. Nothing personal but in view of her connection with Ashford and Wriston, and her personal association with opposing counsel, I think it would behoove this Commission to be careful as to the legal counsel it allows itself to be guided by. I would not, at this point, waive objections.

LIM: Very well. We've discussed the matter with Miss Matsuo who explained that she hadn't had any dealings with Campbell Estate matters in this particular area. She had not represented Campbell Estate in any hearings or any court cases, etcetera. Basically her work was confined to research for one of the partners. So, I think we can continue.

Basically, I've made the point to Miss Matsuo that if there's admissibility of the evidence, she should weigh towards allowing in evidence that Mr. Murakami's planning to put in. I don't believe there will be any prejudice on that because she won't be voting on the matter. She'll just be conducting the procedural aspects of the hearing.

MATSUO: I would also like to add that I discussed the matter with disciplinary counsel. Richard Kawano in that office did not think there was any problem.

LIM: So, if we have to go into the evening, Miss Matsuo will be conducting the meeting from then on.

MURAKAMI: Be that as it may, I just want the record to reflect that we're not waiving the objection.

LIM: Okay, thank you.

CHAIRMAN: Counsel Kishimoto, you may continue with Dr. Hammatt.

KISHIMOTO: When I had closed my direct examination last meeting, I'd like to disclose to the Commission that there was a finding of a burial site on disposal area 3. That site was discovered by Mr. Bertel Davis who I understand the opposing counsel will be calling as a witness.

CHAIRMAN: How recent was that?

KISHIMOTO: It's my understanding the past week or since the last hearing. I believe Mr. Davis can clarify that. With the Commission's indulgence, I will introduce the report properly into evidence but I would like to ask Dr. Hammatt questions, from the archaeological point of view, that arise out of this report.

QUESTIONING OF DR. HAMMATT BY COUNSEL DIANE KISHIMOTO

KISHIMOTO: Dr. Hammatt, are you familiar with this report by Mr. Davis.

HAMMATT: Yes I am.

Q: Are bones ancient or otherwise, necessarily of archaeological significance?

A: Not necessarily.

Q: Were any other burials found on the property or adjacent to the property during the course of your excavation?

A: Yes there were.

Q: Were those on the property?

A: They were not in the area under discussion but in the adjacent area.

Q: Were these bones determined to be of archaeological significance?

A: These bones were probably of prehistoric age. They had no ... work. There were no artifacts associated with the burial. The particular circumstances with the burial were similar to those described in Mr. Davis' letter. In this case there's limestone sinks which contained remains of a number of individuals. These are what we call less

disarticulated because they were not complete skeletons with the bones connected in their anatomical positions. They were placed in the sink at various times. When a new interment was made, the bones were moved from the back of the sink to make way for the new ones. It was basically a former disposal area for bones. It wasn't a formal burial despository for human bones.

Q: This particular site was not in disposal area 3.

A: No.

Q: As to the burial site that found on disposal area by Mr. Davis, what are your recommendations as an archaeologist?

A: I would say first of all, the human bones have to be treated with certain respect. They are the remains of individuals that were once alive. From reading the letter, I would say my opinion is that if the area is endangered by modification, that the bones should be disinterred and relocated in an area which is safe from damage. The sinks in that area should be checked for more burials and the same procedure followed if other burials are found in that particular area. This also involves getting a permit from the Department of Health, and at the discretion of the people who are responsible for conducting the appropriate ceremony.

KISHIMOTO: Thank you. I have no further questions.

CHAIRMAN: Did they excavate for these bones or were these just below the soil?

HAMMATT: They were inside a sink which was pretty small, only enough for one individual to get inside the sink. Most were either on the surface of the dirt or immediately below. There really wasn't a lot of excavation.

KISHIMOTO: Are we talking about the site that was found in disposal area 3 or the other site--

CHAIRMAN: Counsel Kishimoto, be sure to address the Chair.

KITAGAWA: Excuse me, I'm somewhat confused. This letter, Exhibit 18, says location of burial site in area 3. Did you say that the bones were not found in area 3?

HAMMATT: I believe the bones in this letter were found in disposal area 3. However, I was referring for purposes of clarity, burials that were found by us outside of disposal area 3.

Q: May I ask also, the purposes of Mr. Davis' inspection. Does he work for you or was he out there on his own?

A: Mr. Davis is not employed by us. He is not connected with ARCH. I don't know why or for what reason he was out there.

KITAGAWA: Oh. Thank you.

KISHIMOTO: I have no further questions.

CHAIRMAN: Counsel Kishimoto, that the last of your witnesses?

KISHIMOTO Yes, Mr. Chairman.

KANE: You made reference to a letter from Dr. Emery. Will that be submitted into evidence?

KISHIMOTO: No. As I stated, it's essentially a very short reaffirmation of what's in Dr. Tokuchi's report.

CHAIRMAN: If there are no further questions, Counsel Murakami, are you ready with your examination?

MURAKAMI: Yes, Mr. Chairman.

CROSS EXAMINATION OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Dr. Hammatt, I take it that being an archaeologist you have appreciation for the value that archaeological research can bring.

HAMMATT: I guess so.

Q: Your work at Barbers Point was specifically directed towards research objectives which were identified in the scope of work?

A: Yes.

Q: And isn't it true that you initially designated a research design pursuant to that scope of work ...?

A: Yes.

Q: And that was revised due to the input of various peer reviews which basically challenged the initial design of your research?

A: No, I don't believe so.

Q: Is it true then that you did not change your research design?

A: As I remember, and this was over a year and a half ago, part of the contract with the Corps, the first aspect of our work was to prepare a research design draft which we submitted to the Corps. That draft was sent to the State Historic Preservation Officer and I think the Advisory Council to send back some comments. I also believe the Corps itself made some comments. We were advised to address their comments but it wasn't a peer review in the sense of the extent ...

Q: You did understand your work was subject to peer review, did you not?

A: Which work?

Q: Your initial survey data at Barbers Point.

A: We didn't do a survey. We did an excavation. The final report was subjected to peer review.

Q: The initial report was not?
A: As I said, the initial reports were sent to the State Historic Preservation Officer and the Advisory Council for further comments. But, it wasn't a peer review in the sense that the final report was.

Q: To your knowledge you do not realize your initial report was subject to peer review? Is that your testimony?
A: Well perhaps you could define peer review. I just explained what, to my knowledge, happened to the report.

Q: All right. There was an initial report wasn't there?
A: There was a draft research design, yes.

Q: Dr. Hammatt, are you familiar with the latest peer review that was submitted by Paul Rosendaul and ...?
A: Yes I am.

Q: Have you read that report?
A: Yes.

Q: On the first page of the report is a letter that refers to his earlier review of the initial draft of the report. Does that not indicate that your early draft report was subjected to peer review?
A: Well, my answer to the question the first time, it was my understanding this was in reference to research and not in reference to the draft in the final report.

Q: Perhaps you can enlighten us as to why you didn't revise your research design in the first place.
A: As I said before, our research design we were asked to write a draft research design and submit it to the Corps of Engineers, and the Corps of Engineers sent it to the State Historic Preservation Officer and the Advisory Council. The Historic Preservation Officer sent back their comments and we revised it. I think that was the extent.

Maybe the thing is it's quite confusing with reference to all these drafts. What he says in his first sentence, enclosed is my review of the third draft of the final report. Dr. Rosendaul also reviewed the first draft as well. To my knowledge, he never reviewed the research design.

Q: But there were reviews on your earlier draft.
A: Right.

Q: So there have been possibly one or two peer reviews by, but three drafts?
A: Yes. There are only two peer reviews. However, there are three drafts.

Q: Would you consider the bulk of all peer reviews that have been submitted up to this point to be pretty negative reports or comments on your work on this area?

A: I would say that most of those are negative and most of them are completely negative.

Q: When you say most, are you referring to drafts ...?

A: No.

Q: Which one are you referring to?

A: There's also one by Dr. Shelley Olson and another one by Tokuchi. There's also one by State Historic Preservation Officer. There's also one written by the Advisory Council.

Q: So at this point given the content of the various peer reviews, are you professionally satisfied with the work you have done will suffice to meet the various research objectives which have been identified in the scope of work?

A: Yes I am.

Q: That is based on your favorable comments made by the Advisory Council, State Historic Preservation Office and Dr. Tokuchi.

A: Well, I don't base what I feel on what other people think. I base what I feel on what I feel.

Q: In other words, you don't know what other--

A: No. It's not that I don't care but the first person I have to satisfy is myself.

Q: But this is a common practice, is it not, to subject a report of this magnitude to peer review as the Advisory Council recommended?

A: In most, in fact now days in all federal projects, I believe it's a routine.

Q: Now, you suggested that the State Historic Preservation Office provide you with a favorable comments on your work. Could you point to the record exactly what comments you're referring to when you made that statement?

A: I believe it's been referred to previously as the letter sent to the Army Corps of Engineers dealing with the third draft of the report.

Q: You happen to have a copy of that letter?

A: I don't have it. I think Diane's got it.

Q: Okay. I believe the letter she's referring you to is dated July 2, 1981 from the Department of Land and Natural Resources, signed by Susumu Ono?

A: That's the letter.

Q: Where in the letter do you rely on as approval for the work that you have on this project?

A: You asked me whether there were favorable and unfavorable letters.

Q: Yes.

A: I see some favorable comments.

Q: What are those favorable comments?

A: The second paragraph. Archaeological research in the Barbers Point area has We recommend the report be published for public distribution.

In the last sentence of the last paragraph, this study will continue to be used as a standard reference for any archaeology in the area We recommend that the final report be published along with the peer review.

Q: So that's what you rely on when you say there was approval by Department of Land and Natural Resources.

A: I didn't say there's been approval I said there were comments favorable.

Q: Now, in reading various comments you made on your work, I understand from the voluminous reports filed, there are several common areas of comment. I would like to ask you about these areas to see whether or not we can make any sense out of them.

Is it not true, Dr. Hammatt, that you've been criticized for either not identifying such property or not fully appreciating the value of particular features within a site?

A: I wouldn't identify that as a-- Perhaps its a little bit too general. I wouldn't identify that as one of the main concerns.

Q: Not a main concern but it's misidentified, correct?

A: No.

Q: Is it true you have been rather criticized for your analysis of data?

A: I think that was fairly general criticism in the peer review.

Q: General criticism? There weren't any specifics?

A: It was a fairly common criticism.

LIM: Excuse me Counsel Murakami. We have the peer reviews for the record already which would probably be speaking for themselves. If you want to bring out specific points as to Dr. Hammatt's deficiency, you could use that in your final argument. It would be best be directed to asking him how he responds to criticism rather than asking him questions about criticism.

MURAKAMI: Well bringing the pardon of Counsel I think that's the job of the attorney for Campbell Estate to ask those questions. My questions are directed toward finding what some of the deficiencies in the report are. Up to now the only evidence we have from Dr. Hammatt as a principal witness on archaeological survey is the report is adequate.

LIM: We've had the peer reviews that you're basing your objections to his report on record. What I'm saying is they speak for themselves. I think the Commission is aware there are certain deficiencies claimed by the peer reviews. We don't see where this is helping the Commission understand the problem any more.

MURAKAMI: Well, I've concluded that these very same comments or criticisms have been directed at Dr. Hammatt in previous work done by ARCH. What shows up on the available material indicates a pattern of deficiencies in the kind of research done by ARCH. So I feel it's important to go over those points.

LIM: Is that on other projects?

MURAKAMI: Yes. I believe that's a proper role for cross examination.

LIM: I'll have to think about that for a second. It's like bringing in other cases into the present case.

MURAKAMI: At the same time if I'm not allowed to examine the credibility and the professional expertise of the witness, I may as well stop right here.

LIM: If you're going to go into his professional reputation then maybe you could ask him certain specifics. You're asking generalities and I don't think it's helping the Commission understand the problem any more or less.

MURAKAMI: My questions are whether he has been criticized in these areas and if he has, whether he has been criticized in the past for the same deficiencies?

LIM: Then maybe you can ask him those questions in that manner.

CHAIRMAN: In other words, don't drag it out on some minute points. It ain't going to help us know what you're trying to get across. This is what Counsel Lim is trying to tell you. Get to the point. If he's been criticized, he says he has been. That's the answer to your question.

LIM: I guess the problem we're having is that you're asking him about the same deficiencies of this report. If you want to prove what he did in other cases maybe you can ask him what those cases were, what those problems were on other cases?

CHAIRMAN: Pinpoint them.

MURAKAMI: I thought I did.

LIM: We're getting to it very slowly. The things you're bringing up was the same deficiencies in his present report which are already in the record, and I think referred to Dr. Hammatt in the last meeting. So maybe we can get to the other studies that you're going to claim he was deficient in.

MURAKAMI: Dr. Hammatt, have you been previously criticized for failure to analyze data which you had recovered or discovered from previous archaeological studies that you've conducted?

KISHIMOTO: Objection of relevancy.

MURAKAMI: This man is being offered as an expert. I think I'm fully in line to cross examine him by his work achieved. Relevant to that is whether or not--

CHAIRMAN: I'll overrule the objection.

MURAKAMI: Have you been previously criticized for failure to properly analyze data that you had recovered from previous archaeological work that you've in Hawaii?

HAMMATT: We've been both criticized and praised.

Q: Have those criticisms been similar to those identified in various peer reviews submitted by the various archaeologists consulted?

A: There are some similar and some different.

Q: What are those similarities?

LIM: Can you zero in on him on some specific projects or reports? I don't think it's fair to Dr. Hammatt to speak and generalize every question.

MURAKAMI: In your work with the ... corporation on Molokai in surveying the sites at ..., was it not true that you were criticized for failure to properly assess the significance of various cultural deposits there in relation to historical value?

HAMMATT: No. In all fairness, I have been criticized but also I was given the opportunity for one week on Molokai to address those criticisms. I have adequately addressed them.

Q: That may be well but I'm asking whether or not you have been criticized?

A: Yes by the same group.

Q: Were you similarly criticized for improperly performing research analysis on deposits and other findings relevant to a field investigation of ARCH connected at Kona Honokai Subdivision in Kona by the Historic Preservation Office?

A: No. I have to clarify that. This criticism as I remember was in a letter written by Patricia Bailey which was not-- Our crew was employed by the State Historic Preservation Office at the time. It was not the opinion of the State Historic Preservation Office. This was a letter submitted separately.

Q: And you were criticized?

A: Yes.

Q: Rather severely?

A: Relative to what?

Q: Is it not true that Miss Bailey criticized your findings there and your report analysis to be inadequate for lack of consideration of the research project resources and its relationship to the Kona hill system?

A: I believe that was one of her criticisms but I don't think there was criticism of the finding.

Q: No criticism of the finding? Are you saying you were not criticized in the project for either having inaccurate maps or inadequate maps which were part of the data recovery?

A: I believe there were some comments about the maps.

Q: Is it not true that you've been criticized by Mrs. Bailey basically for inadequate reporting on your data recovered?

A: Yes, I believe there was.

Q: So there was criticism on your finding.

A: No, not on the findings. There was criticism on the approach.

Q: Oh, you're saying you were not criticized for the conclusions reached?

A: No.

Q: Were you not severely criticized for concluding that certain sites that were discovered on that site, the Kona Honokai Subdivision, were used only for temporary shelters during field labor and harvesting.

A: That's a hard question to answer. From the evidence we gathered, we concluded that some of the sites were used for that purpose.

Q: Weren't you also criticized for reporting that finds of that study contributes significantly to the chronology of human settlement on the Kona coast, and developed a tentative predicted framework for locating sites in this region?

CHAIRMAN: Let me interrupt here momentarily. Counsel Murakami, in what capacity was this woman writing that letter? Are you just getting criticism from a citizen?

MURAKAMI: On the previous testimony, Dr. Hammatt testified that ... working in the Historic Preservation Office, in other words disagreement with the statement of the State Historic Preservation Officer.

LIM: I wanted to see in what capacity she was writing in because all of this wouldn't be relevant if it wasn't an official opinion of the department.

MURAKAMI: Dr. Hammatt, are you aware that Dr. Bailey was the state archaeologist at the time?

HAMMATT: She was not the state archaeologist.

Q: You're saying that Mrs. Bailey was never working in an archaeological capacity with the State Historic Preservation Office?

A: No I did not say that.

Q: Was one of her functions to do research work in the area of archaeology for the State Historic Preservation Office?

A: Her function was not the state archaeologist.... (changed tape)

Q: Was she not one of those employed?

A: Yes she was.

MURAKAMI: On that basis, I believe this letter is relevant. He did testify that she was hired as an archaeologist.

LIM: Was that an official departmental letter? That's all we wanted to know.

MURAKAMI: I do not allege that it's an official letter. I think he testified it was in a letter.

LIM: We don't want to quibble with semantics. We just want to know what weight to place on the letter. If it's a personal opinion, we'll take it as a personal opinion. If it's a departmental letter, we'll take it as a departmental letter.

MURAKAMI: It's a letter that was written by an archaeologist that was hired by the state.

CAIRL: Is it a letter that's in opposition to an official statement of the state archaeological - that's what I want to know.

MURAKAMI: I don't believe it specifies that.

CAIRL: They wrote the report and she disagreed with that report?

MURAKAMI: I don't believe it's written in that capacity, no.

CAIRL: Well what capacity is it written in then? You say she's the state archaeologist. What capacity is she writing that letter in?

HAMMATT: You want me to answer that question?

CHAIRMAN: Go ahead.

HAMMATT: I didn't know the question was directed to me.

CAIRL: It really wasn't but I'm trying to get an answer. If you have it and he doesn't, fine.

HAMMATT: To my knowledge - well, I won't go into the whole thing. But basically, this letter written by Mrs. Bailey was enclosed as an opinion of hers for consideration by us in evaluation of the report. It was not an official position of the state. It was enclosed as a letter from the State Historic Preservation Office. I believe the cover letter of that report states that. That was more than a year ago.

CHAIRMAN: Is that a satisfactory answer to you, Counsel Murakami?

MURAKAMI: The answer is for the benefit of the Commission.

CHAIRMAN: How about you? You got any objections to that?

MURAKAMI: I don't have objection to the answer....

CHAIRMAN: Beautiful.

MURAKAMI: I'd like to proceed with that.

CHAIRMAN: Go ahead.

CONTINUED CROSS EXAMINATION OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Mrs. Bailey provided you this because I believe she felt, she was pretty convinced that there were certain things wrong with the ARCH report, is that not right?

HAMMATT: Mrs. Bailey didn't provide me with that.

Q: Well would you say it was provided to ARCH?

A: No I don't.

Q: How was it made available to you?

A: It was sent, as I recall, to the Department of Housing and Urban Development. It was subsequently sent to the Godfrey Corporation in Kona, and was subsequently sent by them to us.

Q: And she was working in conjunction as being a staff archaeologist with the Department of Housing and Community Development.

A: No. She was an archaeologist employed by the State Historic Preservation Office.

Q: Let me hand you a copy of this report. The first paragraph of introduction states, in response to your request on February 22 from the Department of Housing and Urban Development staff archaeologist, Patricia Bailey, conducted a review and evaluation of two archaeological research reports. In other words, she responds to the request from the Department of Housing and Urban Development, Historic Sites Section, would do a review of your report.

A: (Response inaudible)

KANE: What year?

MURAKAMI: May 2, 1980 is the date of the report. The request was sent February 22, 1980.

Dr. Hammatt, wasn't a similar criticism directed to you on the Kawikiniui study in terms of the analysis that was done?

KISHIMOTO: That question has been asked and answered.

MURAKAMI: I'll withdraw that question.

CHAIRMAN: Dr. Hammatt, I think we've established the criticism against this gentleman. I think in their type of work and in almost every walk of life, there's always professional jealousy. But, I think he has admitted that he did make some errors. Now, what are we pursuing? We've accepted that.

MURAKAMI: Dr. Hammatt, have you admitted there are errors in your current survey?

CHAIRMAN: We're not talking about the current but you're talking about--

MURAKAMI: Are there errors in your current study?

CHAIRMAN: Not errors, criticism. Let me change the word, criticism.

MURAKAMI: Well, I'm asking errors.

HAMMATT: There have been criticism, and I'm sure there are errors as well as there are in--

MURAKAMI: Can you identify them for the benefit of this Commission so they can see where your errors are?

HAMMATT: Well, I'm sure in a 400-page report it's virtually impossible to eliminate all the typographical errors.

Q: Oh, are you referring to typographical errors?

A: No, I'm not finished yet. I'm sure if somebody went through there with a fine tooth comb, they could find--depending on how much time they want to spend--other errors. They might be able to find drafting errors. They might be able to find mislabeling of trenches. There are any number of errors they might discover, in spite of our efforts over a period of many weeks. There have been a couple of different editors. These errors still may occur. But I can say we make every effort to eliminate all, error-free, but that's impossible to do which is the whole point for submitting reports for peer review. Hopefully some of these errors can be caught by another eye which perhaps has a little more distant view of the report than we do, writing it over four or five months.

Pointing out errors is different from criticism. Making criticism of an approach or method is different from saying you made an error. There's more gray matter involved in the first one. In the second one, it's more viewing with an exact time.

For example, if you're an engineer and you build a bridge and the bridge is a foot off, that's an error. In archaeology, and you took a little different approach than somebody else, and somebody else criticizes you for it, that is not an error.

Q: Are there any major errors in your report other than editing?

A: Well I hope I had answered the question.

Q: Well, yes or no? You gave a long answer to a long question.

A: Yes. I think I answered the question.

Q: There are no errors--

A: I will not say that. I will not say that. I will not stand up before anybody and say there are no errors in any report. That would be very dangerous.

CHAIRMAN: You plead the Fifth Amendment?

MURAKAMI: Dr. Hammatt, aren't you going to give the Commission some guide as to the ...

HAMMATT: I've already said that. I said we made absolutely every effort on the part of our staff to eliminate all errors in the report. I will not say there are not any left.

LIM: Mr. Murakami, I think we're getting into a semantical game here.

CHAIRMAN: Yes. We're satisfied with his answer.

MURAKAMI: All right, but I'd like to pursue that area.

CHAIRMAN: But I think you're nitpicking aren't you?

MURAKAMI: No, I'm not.

LIM: Ask him about specifics.

CHAIRMAN: Proceed.

MURAKAMI: Dr. Hammatt, have you missed any sites in that area of the project as far as you know?

HAMMATT: Let me rephrase my other answer. We also make every effort to field, to identify every site in the area. However, I will not stand up in front of anybody and say we didn't get all the sites. I would also remind the people that an archaeological survey on the island of Kahoolawe which has been going on for six years, at the end of the project ...

(Tape not clear, Counsel Murakami and Dr. Hammatt both talking at the same time)

MURAKAMI: Dr. Hammatt, I would like to proceed with the questioning.

LIM: Excuse me. Would you let Dr. Hammatt continue answering the question? You've asked the question. You have to let the witness continue.

MURAKAMI: Well, that wasn't the answer to my question. He's talking about Kahoolawe which you say is irrelevant.

LIM: You asked him whether he missed any sites.

MURAKAMI: On this project, yes.

LIM: He's giving an answer which in his opinion--

MURAKAMI: ...

(Tape unclear, both counsels talking at the same time.)

LIM: You asked him the question, Mr. Murakami.

CHAIRMAN: Stay with the topic. Don't go on Kahoolawe. Forget about that.

HAMMATT: I think one way of answering the question was to give an analogy. That's what I was attempting to do.

This project was an excavation. At the initial phase of the excavation, we relocated and reidentified all the sites that were found in previous surveys of the area. The survey phase in archaeology of the project is the phase which means you hit or miss sites. In other words, that's the point in which there's the major thrust or the effort to find all the sites. In an excavation, the sites we were to concentrate on were previously identified in two survey reports, one by the Bishop Museum and one by Mr. Bert Davis. The sites were listed in the scope of work as the sites we were to excavate and they were listed in the research design. So as far as our contract with the Corps of Engineers was concerned, we addressed ourselves to those sites. If there are other sites in the area, so be it.

I would also say we made an effort to identify other sites that may not have been located in those previous surveys.

MURAKAMI: Did you make an effort to identify all features for copying of the particular site?

HAMMATT Yes.

MURAKAMI: Mr. Chairman, at this point I'm going to ask the witness a series of questions the value that will probably not become apparent until our witnesses testify.

LIM: Perhaps you could give us an offer of proof why you're asking him.

MURAKAMI: Dr. Hammatt testified that he has attempted to find all features associated with the various sites that were identified for him before his excavation. I want to establish as a result of the findings from that excavation what his conclusions were. I want to demonstrate that those conclusions would be very different, given different findings.

CHAIRMAN: Maybe it would be a good idea for you to get your witnesses up there first and bring him back on rebuttal.

MURAKAMI: I want it done the other way but if the Commission wants to do it that way, fine.

LIM: Yes. I think it's quite plain if Dr. Hammatt has different findings, he would have different conclusions. Probably you could bring it out through your witness.

MURAKAMI: At the same time I want to be sure I got certain statements from him concerning his findings.

CHAIRMAN: Even if you miss it you could pick it up on the rebuttal.

LIM: If you want to clarify certain portions of his report specifically, fine.

MURAKAMI: Right.

KISHIMOTO: Excuse me. Counsel Murakami, will you be using the ARCH report?

CONTINUED QUESTIONING OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Dr. Hammatt, did you personally supervise the field work at Barbers Point?

HAMMATT: Yes I did.

Q: Could you give us an idea of the extent to which you were actually out in the field in that area?

A: Well, my involvement with Barbers Point started in 1977-78. I worked on the survey with Mr. Davis. It was the first ARCH report on the area.

Q: How many weeks or months were you actually in the field at Barbers Point?

A: I believe we were in the field between three and four months. I wasn't there all the time.

Q: How long have you personally been out there?

A: That was the survey which involved about six to eight weeks.

Q: And the excavation project?

A: The excavation project about three or four months. That was the Spring, Summer of 1980.

Q: Were you personally responsible for excavation done in the field for that three to four-month period?

A: What do you mean by that?

Q: Did you personally supervise the work or actually did some of that work?

A: I actually did some of the work. I also supervised it. I also had an assistant who supervised the work when I wasn't there.

Q: Who had primary responsibility for putting the report together?

A: Mr. Folk and myself.

Q: So you took the field data and you and Mr. Polk put it in a written report.

A: Mr. Folk and I, right.

Q: Were you responsible for the ultimate product?

A: Let's say I was also responsible for the product.

Q: Would you turn to page 71 of the report. In connection with this particular time dating the site, did you use the data that you collected as a result of this excavation to develop the density contours of figure 11 on page 75?

A: Yes.

Q: And similarly those that are depicted on page 76?

A: Yes.

Q: And is it true that with respect to one of your research objectives, you have attempted to define or identify where the activity centers of these habitation sites were, is that correct?

A: Well, I wouldn't say activity centers. I would call them areas as defined by disposal patterns. In other words, where people threw their stuff.

Q: These are activity areas?

A: Yes. That was the purpose of drawing these contour maps.

Q: All right. And the process by which you did that was to examine the various deposits and try to make some determination based on these density contours where activity was generally centered. Is that correct?

A: Right. In other words, in this particular site which I fairly well defined a rectangular structure, well, we took the entire structure

The purpose of doing these contour maps was first of all to find where the activity was taking place, as well as the manufacturing activity, and the eating activity whether it was taking place inside or outside.

Q: From these copies, can you determine on figure 13 or figure 11 where the activity areas or centers were?

A: Okay.

Q: Would you take this red pen and indicate what are the activity areas for 2712.

A: The first thing you have to do is specify what kind of activity. As I said earlier, we're looking at physical evidence on the ground which indicates a disposal pattern. I can't point at any one particular site and say this was an activity area. I have to know what kind of activity and be able to qualify it in view of other considerations as well. For example, which stratum it is and whether

we're talking about artifacts or whether we're talking about ..

Q: In relationship to your second objective which was to define sites of future functions, particular the specific function of habitation features, what would you be looking for in terms of the particular activity?

A: One of the things we're looking for is disposal of artifacts relating to manufacture of fish hooks. Most of the artifacts would be in that category.

Q: Can you identify the center of manufacturing activity on these contour maps?

A: Again I would say it would have to be qualified....

Q: Can you identify the particular activity area in relationship to manufacturing of ... on these contour maps? Can you do that?

A: On these contour maps I can identify areas of fairly high disposal.

Q: Which would indicate so-called, activity areas?

A: Yes.

Q: Would you do that on the map on figure 12 or 13 using the red pen?

A: Well the obvious one - okay, this is stratum II, figure 13. Now I'm calling this an area of high concentration of artifacts.

Q: Would you circle that area and indicate it by an H. Let the record reflect that he made circle around the number 30 on figure 13, on the bottom left hand of the figure.

Would that be the activity center for manufacturing activity on this particular site?

A: Yes. Well, there's bones there.

Q: What did you just depict?

A: I depicted an area of high artifacts.

Q: High artifact concentration.

A: Right.

Q: Well, the question was whether you could depict an activity area as the result of your findings of various deposits on this site. Is that possible?

A: That's possible. I wouldn't do it on this basis alone because what we're looking at here is an area - you can see the structure. This is on figure 13.

You can see the area where the concentration of artifacts is. It's underneath the southwest wall of the structure. The first thing that came to light with that is you tend to find a lot of artifacts in some cases where people

drop things but they cannot relocate them. So if they happen to drop them in the wall, they don't bother to go take their house apart to find it. This is very common in dry walls on Hawaiian sites. It's just a huge wall and if he drops something very valuable such as a fish hook, it gets bedded down in this wall, he's not going to take the entire wall apart. So, let's give that consideration.

Q: Can you identify activity areas for disposal of manufacturing activities on this site using your density contours??

A: Yes.

Q: Is it your testimony in this particular concentration of deposits indicative of an activity area?

A: With the qualification I just gave you. You understand the qualification?

Q: Basically, yes.

That would be true for site 27?

A: 2712

Q: Would you turn to page 85 and 87 of your report. That depicts site 2730, figure 19. That shows similar depiction of deposits based on density contours?

A: Right.

Q: Would you be able to make a similar indication either of 20 or 21 indicating where the activity area for that site is located based on the density contours?

A: Okay. Here, the major concentration or one of the major concentrations - let's look at stratum II, that's figure 21 at the bottom of page 87. There's a fairly high concentration outside of the entrance of this wall structure which measures approximately four by four meters, the exterior entrance. It appears that the midden work, bones, are outside of the structure rather than inside the structure, predominantly.

Q: Where would the interior meet?

A: It could very well be inside the structure. The people were eating the food inside the structure and ... instead of taking it outside and disposing of it.

Q: So based on your findings and where the hearths are, you located the activity area based on contour drawings?

A: As I said before, I can locate an area of high concentration on the midden.

Q: Okay. That may be indicative of an activity area, correct?

A: Indicative, as I said before, of pattern disposes.

Q: Right. Would you do a semicircle and ... on H2? Let the record reflect that Dr. Hammatt circled an area on the lefthand portion of figure 21, around the number 339.5. That's identified as H2.

Now, I direct your attention to page 97 and 99 which depicts site 2732 on figures 29 and 30. Would you perform the same operation as the two previous examples and indicate where an activity area is indicated based on the density of deposits that you found at this site?

The record should reflect that the circle is drawn and an H3 around 111.8, figure 30, page 99.

Dr. Hammatt, would you turn to page 112 of the report.

CHAIRMAN: Commissioner Harriet?

KANE: Mr. Murakami, on page 112 which you referred everyone to, are more density contour maps. Are you going to ask Dr. Hammatt to once more circle the largest number on these maps? Because, these contour maps are going to show where the largest number with the highest density of artifacts is found. We've done that three times.

MURAKAMI: No, I'm not going to ask him that.

KANE: Oh. Good for you.

CONTINUED CROSS EXAMINATION OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Are you familiar with this site, Dr. Hammatt?

HAMMATT: I could take you out in the field.

Q: This is an accurate depiction of what site activity looks like, right?

A: Well, there's a drawing of it on page 110, figure 36.

Q: When you excavated the site, did you recall finding a thick black cultural layer of deposits nearby?

A: What do you mean nearby?

Q: It's in the near proximity of the site.

A: I may have. I don't recall.

Q: What is the value of doing profiles?

A: Basically, the simple explanation is to give the viewer an idea of what the site looks like on cross section.

Q: Is that relevant to your second objective which you performed?

A: I think it's a routine part of documenting archaeological sites. It doesn't mean you have to do it for all archaeological sites but sites in which there is something to show. Especially when there is a purpose to

show, u show. You can make a cross section of the site. All it shows is a line on a piece of paper with rocks.

Q: Was one of your purposes to perform a chronology of this area?

A: Yes.

Q: And does the profile perform at least part of that function?

A: Well, the profile is only really a mechanical part of it. It's like having a pencil to write. It doesn't perform anything. It's a vehicle for visual expression.

Q: Is it not a fundamental part of establishing a firm stratigraphy chronology for sites?

A: It's a piece of descriptive method of showing the topographic relationship.

Q: Your testimony is that this was not necessary to depict on all sites? Is that right?

A: Sites that have a stratigraphy which will add to the readers' knowledge by showing the cross section there.

Q: It is important.

A: Yes.

Q: It is true then, Dr. Hammatt, that out of the 18 habitation sites you have, there were only 7 profiles depicted?

A: I'd have to go back to the old locations and count them off. I didn't add up that figure.

Q: You wouldn't say that not all the sites have profiles.

A: Again, I would have to go back and count them.

CHAIRMAN: Counsel Murakami, is that deathly important, pertinent to your case?

MURAKAMI: Yes it is.

CHAIRMAN: Little specifics like that?

MURAKAMI: I'm not an archaeologist so I am relying on some expert opinion that profiles are important to establishing archaeological stratigraphy. In fact, that was one of the criticisms which I had asked Dr. Hammatt about.

CHAIRMAN: All right, proceed.

CONTINUED CROSS EXAMINATION OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Dr. Hammatt, is it true then that without a profile, anyone reading the report must rely on the text of your excavation report in order to understand what the

HAMMATT: part of stratigraphy or archaeology of that site is? Yes that's true. Description of the stratigraphy is simple. They vary basic ...

Q: It's not part of ARCH's standard procedure to do this profile for each site that you map?

A: Again, I would add another comment here. This report is 400 pages long. It got probably more illustrations than any other report that our company may have done.

Q: Wait a minute. I just asked you whether ARCH had done one for every site.

A: I didn't think it was necessary to put in a profile of all the sites.

Q: Dr. Hammatt, aren't there only 18 habitation sites in your report?

A: I don't remember the figures.

Q: It's not 130 is it?

A: No.

Q: And there's more than one drawing for every habitation site, right?

A: Right.

Q: And there can only be one cross section or profile for each site, geometric.

A: No. There can be as many profiles as you like. There can be profiles every foot if you like, every 10 centimeters. You can cut a site in cross section any way you like, size, shape, spheres, rectangles. You can make a plan view every two centimeters.

CHAIRMAN: Did you say you had no further questions, Counsel Murakami?

MURAKAMI: No.

CHAIRMAN: Oh, I'm sorry.

CONTINUED CROSS EXAMINATION OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Would you turn to page 87 and 90 of the report. Is that a hearth there?

HAMMATT: I don't know. I don't know whether it's a hearth or an ash ...

Q: All right. You described in particular where it's located based on the quadrants. Is that true?

A: Right.

Q: Would you describe to me or indicate on the exhibit of page 87, figure 21, where that deposit is located using this pen?

A: How do you want this done?

Q: Do that by a circle and an H4.
A: I made an X already and H4.

Q: That depicts the northeast quadrant of S1 W3?
A: Yes.

Q: Let the record reflect that the circle and X has been placed immediately to the ... (changed tape) This was not deposits that was originally placed on that diagram, is that right?
A: I don't know. There might have been some changes. I'd have to look at the original photos.

Q: Well, it's not on figure 21, without your mark. Isn't that true?
A: Yes. It is not.

KITAGAWA: What does that circle depict now, H4?
HAMMATT: I will quote from the report, 3rd paragraph of page 90, a 5-centimeter thick deposit of dark grey charcoal flecked ash in Stratum II was observed in the northeast quadrant of south 1 west 3, situated one and one-half meters outside and to the west of the entrance. Midden and artifact densities were greatest in this area. The ash layer was not a well-defined feature.

CONTINUED QUESTIONING OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Immediately above the mark you just indicated, above 54.9 is designated a dotted shaded area. Is that not true?
HAMMATT: Yes.

Q: Is that area represented in any part of your text for this book?
A: I'd have to go through the text of the report to find out.

Q: Are you sure there is no designation of what that represents? You're not sure?
A: Well, I think it implying the illustration, the shaded area is typically designated a hearth. One of them, a larger one is by the datum labeled a hearth.

Q: Was that a hearth?
A: Yes that was probably a hearth but I'd have to check the text to find out.

MURAKAMI: Let the record reflect that Dr. Hammatt has consulted with Mr. David Sox.

HAMMATT: Mr. Sox pointed to me the bottom of page 86. In the description of Unit II in which there is reference to A3 horizon, there are two hearth deposits exceeding 17 centimeters.

CONTINUED QUESTIONING OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: So there's a hearth.

HAMMATT: There's two hearths. One is in the center right next to datum. The other is in the circled area W2 above 54.9.

Q: But H4 is not a hearth. Is that what you're testifying?

A: No. Well, I didn't say that. Within the text, I don't remember the site specifically. It's an ash desposit which is not well defined. I think the assumption here is that - well, I'm kind of guessing. I think it's an ash desposit. It doesn't necessarily have to be an ash desposit. In other words, it doesn't have to a place where the people actually started a fire and cooked food or whatever. It could be a place where ash was deposited after cleaning up some structures. It wasn't a well defined hearth feature going by the text.

Q: In other words, you cannot say whether or not that's a hearth. There's no way to tell.

A: By the text, no. I think I answered that question.

Q: Would designate where hearths are located on this map?

A: Some occur inside the structures. Some occur outside the structures.

Q: Well, the question was do you designate hearths in this manner, procedural copies, density contours on maps?

A: I'd have to go and check the description.

CHAIRMAN: One moment. Randy?

KAMIYA: Mr. Chairman, may I ask Mr. Murakami a question?

CHAIRMAN: Yes.

KAMIYA: Mr. Murakami, previously you have attempted to criticize Dr. Hammatt as far as the report is concerned. Now we are going through his report and like you said, you are not an archaeologist. So your means of questioning him as far as the point of archaeology and whatever they're doing has no meaning to me now.

What I would like to know is very simply, whether the sites involved in this project have archaeological sites that are important enough to be saved. Is there anyway to get to that point quickly?

MURAKAMI: Well I could ask that. That is relevant to the overall findings. I can ask that question. I will ask that question now if I can get it in with the rest of the questions because that is important to our further testimony of other witnesses.

So for your benefit, Dr. Hammatt, have you recommended that any of these sites be preserved?

CHAIRMAN: Dr. Hammatt, the Commission like yourself are not professionals in archaeology. You say you don't understand it. Do you understand the answer that he's given you?

MURAKAMI: So far.

CHAIRMAN: Exactly like a real professional would?

MURAKAMI: Not as a professional but from what I know.

CHAIRMAN: You're asking a lot of things that you admitted you didn't know anything about archaeology. So we're just wondering if all these questions you're asking Dr. Hammatt are understood by you and your folks you're defending? You're asking a lot of questions. You've got illustrations. You've got diagrams. You've got the whole works there. Do you yourself understand them? Be honest.

MURAKAMI: Yes. I believe it's my function to ask questions which need to be asked of drawings which are quite understandable to the Commission. We hope to show there are various inaccuracies which are in the report. It will be later brought out.

CHAIRMAN: Commissioner Cairl?

CAIRL: I just thought the question is a good question and I'd like him to ask it.

CHAIRMAN: Proceed.

CONTINUED QUESTIONING OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Do you remember the question?

HAMMATT: No.

Q: Does that mean none of these sites are worth salvaging?

A: The sites have been salvaged. The sites have been excavated. In most cases there is very little left to excavate.

Q: You are speaking as an archaeologist when you say that?

A: Well, I think anybody that looks at the site can see that.

Q: Are you also speaking in terms of paleontology professionally, based on what Dr. Olson has written in your report?

A: I cannot testify to paleontology.

Q: Do you know whether any of those sites in there should merit salvaging?

A: I know we took Dr. Stuart out in the field as part of our project, in the beginning of the project. In fact, that was one of the very first things we did before we started the actual excavation of the archaeological site. One of the first things we did was to take Dr. Stuart and his assistant around to all the large sinks in the project area, and select those sinks that he thought - this was his decision; we didn't influence him in anyway; he knew exactly what he was doing; he didn't know about paleontology - choose the sinks that he wanted to work on further.

KAMIYA: Excuse me. Dr. Hammatt, before you proceed let me get one thing real clear. The sites that you're talking about, is it all of the plan or is it just the site that involves the SUP?

HAMMATT: It involves more than disposal area 3.

Q:: Can you in anyway just limit it to the subject area that involves this permit?

A: Yes.

Q: I would like to see just the limitation to those areas because the other areas outside of that, we're not involved in.

A: In concern with disposal area 3 which is part of the central project area, we took Dr. Stuart and his assistant around to all the large sinks in the area. He examined a large number of them and chose the ones that he wanted to continue to work on. He worked on a number of them. He did the most work on two sinks. He recovered from these sinks a large amount of bird bone material.

To my knowledge, the area has been investigated paleontologically by Dr. Stuart. Although we remained interested in recovering those bird bones, being satisfied that this particular area has given the information that's important, paleontologically. Again I would qualify that with the statement that I am not a paleontologist and cannot testify as an expert on paleontology.

CHAIRMAN: One moment. Harriet?

KANE: I have a question about those bird bones. That's the first mention we've had. Are those the bird bones that were apparently of some unique species that no longer exist in the islands?

HAMMATT: That is correct.

Q: They were a very spectacular find. Is that right?
A: Yes. They are an important scientific find.

Q: Those bones were found in disposal area 3. Is that what you're saying? Since you were just asked to confine your remarks to disposal area 3, I assumed you were--
A: That's correct.

Q: Who was the paleontologist who discovered them and is working on those?
A: That was Dr. Stuart Olson and Helen James Olson, his assistant. Both are with the Smithsonian Institution. Their report is appended as part of this report.

Q: In that appendix does it say that they have extracted whatever material they want to extract from this site?
A: I'd have to check--

Q: I thought I just heard you say that. Is that accurate?
A: Well, in my conversations with Dr. Olson, he makes the statement in this report, as I remember, saying that he would like to see-- He takes this find very important. He takes this find very valuable. He would like to see more of those large sinks excavated. That's what stated in the report. However, in this report it's not specified whether he wants to excavate more in this area or not, at which point I asked Dr. Olson--

Q: Is this area disposal 3?
A: That is correct. I asked him whether he wanted to dig more in this area and his answer was no. He had investigated the large sink.

Q: Are there any other archaeologists in the State of Hawaii or paleontologists who are interested in those bones and the immediate surroundings?
A: There are paleontologists; however, from my knowledge and experience, Dr. Olson is the only person who is uniquely qualified to do this kind of research.

Q: Are there any other paleontologists interested in these particular deposits or in this particular area where these deposits are found?
A: I think there's a paleontologist that works at the Bishop Museum by the name of Siegler, but I don't know what his opinion is. I'm not even sure whether he's a paleontologist or-- I believe he's a paleontologist.

Q: To the best of your knowledge, Dr. Stuart and his assistant are the only paleontologists actively interested in this particular deposit in the area?
A: The only paleontologists that have actively done research.

Q: To your knowledge, are these the only ones who remain actively interested in this site?

A: Dr. Siegler at the Bishop Museum was the first.

MURAKAMI: Mr. Chairman, at this point I have to move to strike any of the references to what Dr. Olson said to Dr. Hammatt because of the line of questioning. It is definite hearsay that's unreliable at this point. I believe Dr. Hammatt testified he did indicate a regard for further excavation. Any further qualifications by Dr. Hammatt should be stricken from the record. He has not presented any written document.

LIM: We'll take that into consideration because as the Commission, we are not a judicial body. We receive all evidence, all hearsay, as you well know. A lot of yours has been some hearsay too. We'll just take it for what Dr. Hammatt said. We're not going to take it as true.

MURAKAMI: I haven't furnished any hearsay but I will after this.

KAMIYA: Mr. Murakami, would you be satisfied if a letter of source as to what Dr. Hammatt has said and what you regard as hearsay, is gotten?

MURAKAMI: Fine. I would be if it's addressed to the specific area and the need for research.

KAMIYA: Dr. Hammatt, do you think you can get the letters?

HAMMATT: I think it would be very important for Dr. Olson to submit that for the record.

KAMIYA: Could you ask Dr. Olson to write a letter to the Commission with regard to what she had to say, what her opinion was?

LIM: The Commission can write a letter to Dr. Olson.

CHAIRMAN: The Commission will do that.

Counsel Murakami?

CONTINUED QUESTIONING OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Dr. Hammatt, would you not agree that the difference in location of the hearth on this site or proximity on the site, an important piece of information from an archaeological standpoint, to address for various research objectives that are set out in your excavation report?

HAMMATT: I would say that a hearth is one kind of feature of many which is put in combination with other considerations to

make conclusions about an archaeological site. I wouldn't say it's a crucial thing any more than anything else by itself is crucial, but all the things added together. Not one of them on the side.

Q: Let me ask you this. It is a piece of information that does become important if the site is going to be destroyed, is it not?

A: It can or it cannot.

Q: Right. If you had no access to that information in the field any more in the future, would that not be an important piece of information to address some of the research objectives that are outlined in your report?

A: Again it could be or it could not be. It depends what it's in relation to. If it's just another hearth or if it's a hearth that has some great significance or great importance in illustrating something about the people who lived there, or something about the site and what it was used for, a hearth has to be in a relation to what. If we found another hearth at Barbers Point, I would attempt to say what purpose is in it. If it's just another hearth, it may or it may not add.

Q: Let me ask you this then. Does ARCH make it a practice to identify the locations of hearths within a given archaeological site when addressing research objectives of this report?

A: We make it a practice to try to try to identify all features that are relevant.

Q: And a hearth would be a relevant feature, is that not true?

A: It can be relevant, true.

Q: All right. Would you turn to page 123. Do you have that page in front of you?

A: Yes I do.

Q: Is that a discussion of site 2777?

A: Yes, I believe it is.

Q: Now in that text, you can briefly review that text. Would you indicate how many hearths are referred to now in that discussion?

A: I see reference to one at the top of page 123.

Q: Would you read those first lines of the paragraph.

KISHIMOTO: Objection. Site 2777 is not in the area in discussion.

MURAKAMI: The question still stands. I think this is an area that maybe affected by this project.

KISHIMOTO: We're looking at the stockpile area, not the surrounding area.

LIM: The area you're talking about is outside of stockpile area .

MURAKAMI: I'm not aware of that.

LIM: Where is it?

MURAKAMI: Dr. Hammatt knows that.

HAMMATT: If I could refer to the map.

CHAIRMAN: What page is that?

HAMMATT: The map is on page 4. Disposal area 3 is in the southeastern portion of the study area, including study area 1B. 2777 is fairly far outside to the north.

CAIRL: Optional area is not part of that plan?

HAMMATT: I do not believe it is.

KITAGAWA: I'm not very concerned about necessarily disposal area 3. My concern is whether it's in the area where the stockpiling is going to be. So it could be 2 and it could be 1.

MURAKAMI: Also, there's been no showing here that this area will not be affected. This dredged coral is going to be subject to trucks going out there and being cleared and--

KISHIMOTO: Mr. Stender has testified that the stockpiles will be in the 3 areas shown on the map. The site we're talking about is outside all three areas.

MURAKAMI: Until I was interrupted by Miss Kishimoto, I was trying to say that there's been no showing that this area will not be disturbed. I think that the fact that they studied this area in order to try to preserve whatever information they can recover is indicative of the fact that this may be affected. I'm not confident of the fact that bulldozers or trucks or other activity will not compromise the value of this place. I think the Commission should address this issue as to the surrounding area, some testimony to show that area would not be affected at all by any of this coralling and crushing operation that's going to be envisioned by James Campbell Estate.

KANE: Mr. Chairman, since one of the tests we have to apply is determining whether the special use permit will have any adverse impact upon the surrounding area, I would like at this point to ask Dr. Hammatt to answer that question and get on with the proceeding?

CHAIRMAN: Dr. I matt?

HAMMATT: I forgot the question.

KANE: I wanted Dr. Hammatt to answer the question that Mr. Murakami put to him that created all of this stir because I am interested in what might be happening to some site of archaeological significance outside of the disposal area.

CHAIRMAN: Proceed.

CONTINUED QUESTIONING OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: If you recall, the last question I asked you was how many hearths were discussed on page 123. I refer you to the first line of the last paragraph.

HAMMATT: I assume from that there's three hearths.

Q: Does page 125 depict site 2777 on diagrams similar to the ones we previously looked at?

A: Yes they do.

Q: Isn't it true that neither one of those figures depict any location of hearths which were on the previous site you had just talked about?

A: That is correct on the map of the site.

Q: That is site 2777 is it not?

A: That's on page 127. There appears to be an omission from the drawings in this case. I appreciate your pointing it out to me. I will put this in. However, the features and their location are described in the text.

Q: Dr. Hammatt, you have been criticized before about inaccuracies of your maps and depictions, or the lack thereof? Isn't that true in other work that you've done?

A: Inaccuracies in our depictions or the lack thereof?

Q: Or the lack thereof.

A: Of what?

Q: Of sites, of features or special hearths.

A: No, I don't believe there's been criticism. We have made drafting errors that have been criticized but-- Well, we may have been criticized before.... I don't recall.

Q: Isn't it true that you covered ... before the Maui Planning Commission, testimony was provided by Shaw which demonstrated that the depictions of site 38 in that proceeding, there were questions about the depictions of site 38 on your map. Isn't that true?

A: There were questions. I don't believe I left out any features. As a matter of fact, I revisited that site and

I think the criticisms were the measurement of the site. I went back to the site and remeasured and determined that our drawings are correct.

KANE: Mr. Chairman?

CHAIRMAN: Harriet?

KANE: Mr. Murakami, may I ask you, is it fair to ask what's the purpose of this rather long line of questioning? I don't object to the length as such. I want that clear. But, it can very easily be assumed that your questioning is leading to uncovering statements about the inadequacy of Dr. Hammatt's work. It also could be leading to a thundering statement about the need for more additional archaeological surveys and dates. It could lead to a big surprise statement, perhaps, that you know of some other sites of substantial significance which have not been mentioned and, if so, they're going to be news to us. Or, perhaps you're going to lead to the possibility that Dr. Hammatt withheld information about potential significant sites. That's four of five possibilities. Would it be rude of me to ask you where your question is leading in any one of those five directions? If it's just to put us on guard that there are inadequacies in the report, I think we already know that and stand fairly firmly convinced of this. I'd really like to know where you're headed.

MURAKAMI: I appreciate the question. There's a two-fold purpose for what I'm asking. I think it's clear from my questions that there are inadequacies in this report and I am under the presumption that I had the right to pursue and to make those known to the Commission because they will be considering whether to grant the permit or not.

Secondly, I believe it's unfortunate to know that there have been previous criticism in other projects similar to those that have been propounded by the peer reviewers in this project. I think that's highly relevant to whether or not the reliability of the survey data or the excavation report data in this proceeding can be relied upon in making a decision, particularly the conclusions that follow.

LIM: Okay. I believe we've spent about an hour trying to establish that. I think this Commission has heard the testimony. Do you have any other points?

MURAKAMI: Well, as a matter of judgment, my offer of proof are in those two areas. In proceeding with cross examination, I am hoping to bring out the various specific comments which are questionable, and the various points about the report which have led to previous criticisms on the same

methodology, approach, taken by ARCH in the past. I think that is something not before the Commission that should be brought out.

- LIM: You've done some of that. What we want to try to do is condense the hearing so that we're not doing a total non-expert review of the ARCH report based upon cross examination. We want to relate what's in the 177 acres to the ARCH report. So far we haven't done so. We're confined to a general critique of the ARCH report. I think if the point you want to make were brought out, I may be mistaken, but the Commission may have different feelings.
- MURAKAMI: I have not planned, other than through cross examination to bring up the various points raised by Patricia ... in her report. We do have in evidence the Shaw report on the ... project. Obviously you can rely on fact findings to read all these reports and make your conclusions. But, I think the purpose of cross examination is try to pull all those things together. That has been my attempt all along.
- CHAIRMAN: Counsel Murakami, does it make any difference that coral quarrying operations are now ongoing in this area?
- MURAKAMI: Well, it is illegal.
- CHAIRMAN: Archaeological reports have been made in that area where the quarrying is going on.
- MURAKAMI: I believe the largest area that is being considered is disposal area 3 where the major findings are crucial. I'm only trying to bring out in cross examination what some of the weaknesses in the general approach has been.
- CHAIRMAN: Anyway you can condense all of that?
- LIM: What's happening now, Mr. Murakami, is that we have the ARCH report before us. We have all the peer reviews which is the professional critique of the archaeological study. What you're doing is you're repeating by asking Dr. Hammatt what these critiques were, and what's his explanation for each one.
- MURAKAMI: Well, I think it's more than the peer reviews. I was told by the Chairman I should not go in these areas. I don't think the point has been raised by any of the peer reviews.
- LIM: Okay. As far as tying all these little points together in your cross examination, I think that's something that can be more properly done through cross examination. We're having a problem staying with the issue because you're going way indepth as to methodology of the ARCH report.

KANE: I'm r having trouble staying h the points myself. I find it interesting - and this is the first time I've seen this report. I find things that would serve you much more than the things you're bringing out, as a matter of fact. Nevertheless what disturbs me is that I personally feel, and I'm not speaking for anyone else, but the point you wish to make you've made. I find myself as hot as anything what the next point is going to be and it never comes, Alan. That's what I'm trying to say.

MURAKAMI: The next point is coming from other witnesses. I don't know where that leaves me but--

CHAIRMAN: I think the Commission is satisfied that you have taken him apart and he has answered you to the best of his knowledge. Where can we knock it off? Cut to it. You've got to convince these members of anything that "ou're saying there or everything that you're saying. If you keep getting us going around on a carousel, we're not going to come to an end.

CAIRL: You mentioned the cross section of the site. Do you feel or the people who are advising you feel that the cross section are important that they should be on every one of the sites? Should each map have a cross section?

MURAKAMI: We've taken the view that most of the sites will be totally buried under tons of debris and possibly could be destroyed, if not completely compromised by the activity. The necessity to preserve data at this point is crucial to assessing the future for the research value of this particular site. Without that, every piece that has fossil data from this site, there will not be any data to look at that would have the same quality of many features of the sites today. The profile is one of the tools or one of the ways in which we could look at what was at that site.

CHAIRMAN: We're anxious to get to your witnesses and see what they say.

MURAKAMI: Well, not having anticipated what the particular areas that the Commission would like to look at, I would at this point want to move into additional exhibits that I was going to use in cross examination. If that would satisfy the Commission as to what the standards are for archaeological work under the Society of Professional Archaeology as well as some of the previous criticism leveled against ARCH for various projects in other areas of the state. If we can have a ruling or stipulation that this can be allowed into evidence, I would at this time present all of the exhibits, I am willing to provide

that in lieu of further cross examination, providing there an opportunity for rebuttal.

KISHIMOTO: I would like to know what these other exhibits are.

MURAKAMI: We'll provide that, since everything's going to be admitted anyway, in order to protect the record.

LIM: Okay. We'll have to give Miss Kishimoto time to voir dire on whatever you submit.

MURAKAMI: Okay. One is a report from ... North Kona dated May 2, 1980.

KISHIMOTO: One thing I have to point out is we did have an informal prehearing on Friday at which time we both were to have exchanged exhibits. Opposing counsel is springing on us right now documents which we haven't seen before.

MURAKAMI: I'm just providing her with a little adventure for her work.

KISHIMOTO: Adventure is one thing but honoring one's legal obligations is another.

MURAKAMI: No, I think she was provided the same opportunity today using exhibits that she presented today.

KISHIMOTO: Both, they weren't that long, and you got them not long after we did.

MURAKAMI: I'm sure the resource is available to the James Campbell Estate and the same available to Na Opio Aloha Aina. I think the same argument holds.

LIM: We are getting near the dinner break. Perhaps we can have Miss Kishimoto review your documents during the break and she can voice her objections when we come back.

Before we take a recess, I also have Miss Matsuo. We need to have the Planning Commission decide whether or not she can come in. Could we have a motion?

Before we have the motion, I would also like to note that Miss Matsuo informed me that she worked one year between 1975 and 1976 as a paralegal for the Legal Aid Society of Hawaii.

CHAIRMAN: Miss Matsuo will replace Counsel Lim for the rest of the evening. At this time, the Chair will entertain a motion to accept her as his assistant.

KANE: I so move, Mr. Chairman.

CAIRL: Second.

CHAIRMAN: Moved and second that we accept Michelle. All in favor say aye.

(The motion was unanimously carried. No one opposed.)

RECESSED AT 5:00 P.M.

RESUMED AT 7:00 P.M.

CHAIRMAN: Counsel Murakami, you've submitted this motion to dismiss this special use permit application. You want the Commission to act on this now or you want to continue your--

MURAKAMI: I offer the testimony of Tom Dinell who's the head of the Urban Regional Planning Program at the University of Hawaii. His letter is attached. However, he is here tonight if necessary to appear before the Commission. My intent was to submit his testimony in support of that motion.

CHAIRMAN: We'll defer this. Meantime, go ahead with your witness.

CONTINUED CROSS EXAMINATION OF DR. HAMMATT BY COUNSEL MURAKAMI.

MURAKAMI: Dr. Hammatt, I notice from your lengthy ... that you have done a lot of archaeological work in Hawaii, is that true?

HAMMAT:: Yes.

Q: How many projects were you involved in the last year?

A: I would guess since November 1980 probably 20, somewhere around there.

Q: Were you personally responsible for all 20 projects?

A: In what sense?

Q: Did you take responsibility of record for each of those projects?

A: Probably not. However, my position with the company has been ultimate responsibility.

Q: So you're ultimately responsible for the project report that's put out by ARCH?

A: Yes.

Q: In each of these cases, you were not directly involved in all of the excavation work?

A: You'd have to mention which of the projects if I were to answer that question. In other words, the company involves a number of people and many projects, and each project is a little different depending on who does the field work, the report. I believe my name does not appear on all the reports that come out.

Q: Are you the only Ph.D. connected with ARCH or are there others?

A: I'm t only Ph.D. who is emplo with ARCH. We have a number of other Ph.Ds who are associated with the company.

Q: Is it fair to say you're personally responsible for all of those 20 projects or relied on because of your Ph.D. in archaeology for ARCH?

A: Personally responsible, how do you do that? If something goes wrong, I take the blame? I suppose that's true.

Q: Isn't it true that Dr. Tokuchi has submitted the only favorable comments on your survey? Were there others?

A: As I mentioned before, the comments by the Historic Preservation Officer. There was a comment by Stuart Olson. I believe there was also comment by Dr. Emery.

Q: Dr. Olson wrote one of the appendages?

A: Right.

Q: So it could be inferred he might have been commenting about his own work?

A: No more than Dr. Kirch or Dr. Emery.

Q: No more than they would have been?

A: No more than that.

Q: Are you familiar with the Society of Hawaiian Archaeology membership?

A: No.

Q: Are you familia with the composition of the organizaion of PAPA?

A: Yes I am.

Q: That's an organization you and Dr. Tokuchi belong to, is that correct?

A: That's correct.

Q: Do you know how many Ph.Ds are members of PAPA?

KISHIMOTO: Objection. I don't see the relevancy.

MURAKAMI: There are two archaeological societies in Hawaii that presented peer reviews. One is very critical and the only member of PAPA that submitted comments that are favorab.e This goes to the credibility of comments given by the organization of PAPA.

CHAIRMAN: I'll allow that. Objection's overruled.

MURAKAMI: Dr. Hammatt, you remember the question?

HAMMATT: Yes. I really don't know but I would guess 3 or 4.

Q: You know how many archaeologists have Ph.Ds that do work in Hawaii?

A: No.

Q: Were you aware of the discovery of bones at the Standard Oil site in 1962 near the Barbers Point project?

KISHIMOTO: Objection. Relevancy.

CHAIRMAN: What are you trying to prove, Counsel?

MURAKAMI: The question goes to whether or not Dr. Hammatt was aware of certain archaeological work that was done in this area immediately adjacent to the particular project site at hand. One of the standards for doing an adequate report in archaeology is to try to integrate known studies of archaeological significance in the area of the ... This is one of the pieces of information I'd like to question Dr. Hammatt on.

CHAIRMAN: How did you find that out?

MURAKAMI: I have references.

CHAIRMAN: You're going back to 1963.

MURAKAMI: The direct relevance, you're right. It's not there. I think the relevance of having some mention of whatever work was done in the area is relevant to the adequacy of the survey data that's reported on in the archaeological survey in this particular project.

CHAIRMAN: Objections overruled. Continue.

CONTINUED QUESTIONING OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Were you aware of that study, Dr. Hammatt?

HAMMATT: Bones found in 1962 in the Standard Oil Refinery area, I don't know. What kind of bones? Who did the study? What's the author's name? When was it published?

Q: I think if you need the answers, you're not aware of discovery.

A: I may be. I'm trying to search my mind. Usually when you refer to an archaeological report, there is an archaeological report. It's usually by title, author--

Q: Fine.

A: I need something to connect it with my mind.

Q: Is it fair to say that report is not mentioned in your excavation report?

A: I don't know.

Q: You don't know? Didn't you testify that you're personally responsible for this report?

A: Yes but I also did not testify that-- I testified I could not answer the last question you're asking until I knew the title of the report, author of the report, where it was published or--

Q: Well Dr. Hammatt, isn't it true that the earliest study that you cite in your report is a study done by Earnie Louis in 1969?

A: I'd have to check the bibliography. There are some references in the bibliography that say N.D. which means no date in which case I cannot calculate which is the reference date specified.

Q: But from the title there's no reference to study of the Standard Oil area?

A: Well, they could have called it anything. They could have called it Bones Found At Barber's Point. I don't know until I found out--

CHAIRMAN: Your answer of I don't know is accepted by the Commission.

MURAKAMI: Couple questions on standards, Dr. Hammatt.

Did you incorporate the various standards that are identified by the society of professional archaeologists in producing the report on excavation of Barbers Point?

HAMMATT: What is that?

Q: I assume from your answer that you're not aware of the Society of Professional Archaeologists to get the guidelines for archaeological reports?

A: Yes I am.

Q: Were any of those standards incorporated in your report?

A: No they weren't.

Q: Are you familiar with a handbook produced by the Advisory Council on Historic Preservation dated November 1980?

KISHIMOTO: Objection.

CHAIRMAN: What's your objection?

KISHIMOTO: That handbook came out after the contract. This research was in 1979.

CHAIRMAN: Objection sustained.

MURAKAMI: Dr. Hammatt, have you redone your initial draft of the Barbers Point excavation report subsequent to November 1980?

KISHIMOTO: I renew my objection on the grounds of relevancy.

MURAKAMI: Mr. Chairman, there have been numerous peer reviews of this report. Various reviews have challenged and made basic assertions in the excavation report. Now the key criticism has been the lack of certain standards in using that report. I'm trying to get through cross examination basically whether Dr. Hammatt followed some of those more

acceptable guidelines outlined by the various agencies or institutions that deal with this particular subject matter.

CHAIRMAN: Sometime down the line he had stated that.

MURAKAMI: Mr. Chairman, the witness can say no he did not incorporate these standards.

HAMMATT: I don't know whether I can answer that with a yes or no. I can answer the question but it's going to take more than a yes or no.

MATSUO: I'm trying to understand what the dispute is about. Miss Kishimoto is arguing that the guidelines are relevant because the scope of the contract did not include the work covered by these guidelines?

KISHIMOTO: Right. The contract setting forth the scope of work followed by ARCH had been awarded prior to November 1980 when the guidelines came out.

MURAKAMI: These guidelines refer to production of the reports and the standards being used in the report. At least from what I've seen, there's been revision of the initial draft.

KITAGAWA: But the acceptance of this report and the report you talk about is not with Dr. Hammatt but in fact it is with the Corps of Engineers. If the report is acceptable, and I would assume that it has been somewhat accepted, then I don't understand the line of questioning that Dr. Hammatt should follow the report because in fact, it should be the Corps of Engineers that should follow the guidelines.

MURAKAMI: That's true too. We're trying to bring out in this proceeding whether, in fact, there's been definite compliance with the guidelines set up by the Advisory Council.

KITAGAWA: My point is I don't think he's the right witness to ask.

KISHIMOTO: We'd like to point out that the report has been accepted by the Advisory Council.

MURAKAMI: Whether or not the report was accepted by the Advisory Council does not necessarily relate to whether or not the standards have been applied., I'm merely asking the author of the report whether or not he did or did not follow the standards set up by the Advisory Council?

KITAGAWA: What I'm hearing is that there maybe more than one set of criteria which are acceptable.

CHAIRMAN: Dr. Hammatt, can you answer that?

HAMMATT: The past two documents as I remember, came back last year in November 1980. The previous one came back in 1978. There are many documents written by the federal government in the various branches relating to how to do archaeological work and what kinds of standards to follow. For that reason, the Corps of Engineers in their scope of work provided us with a list of documents to follow in the preparation of research design and in preparation of the final report. That list is in the scope of work which we have received and I believe those two documents are not mentioned in that report. However, there is mention of a document prepared by the Department of the Interior which we did follow.

KAMIYA: Do you still feel the final report should have included standards even if it came after the contract was signed? I think I can understand but in this situation where the contract is signed when the standards were nonexistent?

MURAKAMI: Well, I don't know if they were nonexistent. I only have a vivid version of the Advisory Council's standards.

KAMIYA: And those standards became standards when?

MURAKAMI: It's dated November 1980.

KAMIYA: And your contract was made when?

KISHIMOTO: 1971.

MURAKAMI: Well, I'm not certain of the exact way it works. The standards are not that different in terms of what is professionally expected of an archaeologist doing the contract. I think the Advisory Council is sort of a handbook basically ... in ethics what they feel is necessary for an adequate report to be produced. This is merely evidence of what they are looking at in making a determination of whether the report is adequate or not.

KAMIYA: I get the feeling that as far as the archaeological report, they must have had many, many differences about how the people make a report. Because of this, they probably came up with a set of standards and guidelines to follow. So if this report doesn't follow the standards, it could be that they had a contract that existed before the standards.

MURAKAMI: I think testimony will show there is some difference why the standards don't jive.

KITAGAWA: Mr. Murakami, are you implying then that the plans may not be acceptable because the standards were not followed?

MURAKAMI: Yes. My position is that this report should never have passed because it does not mitigate adequately adverse impact.

CHAIRMAN: Counsel Murakami, how far down the list are you in your examination?

MURAKAMI: I'm at the end.

Mr. Chairman, based on the desires of the Commission to expedite the cross examination of this witness, I would like to move into evidence the various documents and exhibits referred to in the last half of this cross examination. These include the end of the Advisory Council and Historic Preservation, Peer Review of the Society of Professional Archaeologists dated October 9, 1978, two reports by Patricia ... on the field investigations. One, a field investigation of ARCH conducted at Komohanakai Subdivision, North Kona, dated May 2, 1980, and the evaluation review, comments and recommendations regarding archaeological research conducted at Keauhou Agricultural Park, Kona, Hawaii by ARCH dated August 20, 1980.

KISHIMOTO: I object on the grounds of relevancy.

CHAIRMAN: Your objections will be noted in the record.

REDIRECT EXAMINATION OF DR. HAMMATT BY COUNSEL KISHIMOTO

KISHIMOTO: I have some redirect.

Dr. Hammatt, in conducting your archaeological work, you followed the guidelines established by the Corps of Engineers.

HAMMATT: That is correct. I also believe if you went through that handbook and the other guidelines although we did not specifically refer to those documents, we did not - what's the word - we followed them in the sense that we implied with what they said.

Q: Reference was made earlier to the fact that profiles were not done for all the sites. Is this information available either in written form or otherwise to somebody who would like that information?

A: The whole part of an archaeological report is really to synthesize and to abstract information. Perhaps we could be criticized for not having done it as well as we could have synthesized the report but the amount of information that's collected from each site from the day the field work starts to the day the report is presented is probably ten times the amount of information which appears in this report. It includes field notes, drawings, photographs in black and white in slide and color, it also includes lab notes and working drawings. The rough drafts of the report and all the various catalogs which go along with the preparation and the artifacts which results in a massive amount of

informatio which cannot be included the report. But, this is the property of the Corps of Engineers and once it's submitted to the Corps is available to the public.

Q: So it's your position that should another archaeologist wish to take issue with some of the conclusions that were drawn, the data upon which you base your conclusions is available to that archaeologist for his or her evaluation.

A: That's is correct. If they're not happy with the information in the report, they can also rely on the field report.

Q: I notice in this critique of the work done for the Komohanakai Subidivision many of the comments seemed derived from Dr. Rosendaul. Who is Dr. Rosendaul?

A: Dr. Rosendaul is an archaeologist working on the Big Island.

Q: Was he involved in this Komohanakai project?

A: Yes he was involved. He was asked to work by the developer. The developer changed his mind and asked us to do the work.

Q: Is there some bad blood between ARCH and Dr. Rosendaul?

A: Yes.

KISHIMOTO: No further questions.

CHAIRMAN: Counsel Murakami?

MURAKAMI: One last question. Was there reason after the developer left Dr. Rosendaul that he was unsatisfied with what he had to say in his report on the Komohanakai Subdivision?

HAMMATT: No.

Q: But they still went to you.

A: Yes.

MURAKAMI: That's all I have.

CHAIRMAN: Thank you, Dr. Hammatt for appearing today. Counsel Kishimoto, you have any more witnesses?

KISHIMOTO: No. Those are all the witnesses I have on direct. I may be calling some others on rebuttal.

MURAKAMI: I'd like to call Earl Neller to the stand.

NELLER: My name is Earl Neller and I'm a state archaeologist with Department of Land and Natural Resources.

MATSUO: Are you testifying in your official capacity or individual?

NELLER: We had a letter from this Commission asking me to be here. I think you can say in my official capacity.

MATSUO: Thank you.

QUESTIONING OF EARL NELLER BY COUNSEL MURAKAMI

MURAKAMI: Mr. Neller, you've been sworn by the Chairman at the last meeting. Can you give some background on your education?

NELLER: I have a masters degree in archaeology.

Q: With respect to the project, what was your function with the State Historic Preservation office?

A: Well, I'm a late comer in this project because the archaeologist who was handling it, Dr. ... left the island. My function, I am the staff person in DLNR Historic Preservation Office who provides archaeological expertise on this project.

Q: Have you reviewed the archaeological report?

A: Yes I have.

Q: Were you here when Mr. Sox was testifying?

A: Yes.

Q: Did you listen to the testimony where he stated that the ARCH report had been accepted and approved by the State Historic Preservation Office?

A: Yes.

Q: Had that report been approved by the State Historic Preservation Office?

A: I don't think so. It's a little misleading. We accepted the report. We didn't give it at the time. If you look at the letter - you folks have all got it - it's basically thank you for the report. We recommend it be published.

KITAGAWA: Excuse me, can I ask?

CHAIRMAN: Yes.

KITAGAWA: When you say you recommend it be published, what does that mean?

NELLER: Well, as a basic policy I like to recommend that all projects of this size be published. It's not that common that federal agencies publish their salvage reports. To really be of any use to archaeological community, it needs to be published.

KITAGAWA: Well, I'm confused as to the word published. Do you set it in print?

NELLER: Yes.

KITAGAWA: So this has been published.

NELLER: No. I would say more along the order of positions of using it in anthropological records.

KITAGAWA: Oh, so it would be more of a scientific kind of journal.

MURAKAMI: Is it true that the Advisory Council has accepted and approved this report?

NELLER: Well, you folks have got the letter there. It looks to me like an acceptance letter. It doesn't look like they reviewed it though. Again I think it was the same basis as our staff. There's only so much time and since there was considerable improvement in the report, I think they decided to just go with that as the final report. Basically that's the acceptance of the letter.

CHAIRMAN: You say you don't think they reviewed it. You think they would send it out anyway?

NELLER: Technically yes, ...(changed tape) require consultation on the part of federal agencies. So once the Corps consults the Advisory Council on the original scope of work, that completes the process in terms of reviewing the final report. I believe that's in the handbook. Is that part of what's come out of the handbook? Somewhere in there they try to address the question of how much archaeology is sufficient. It says what the process is and how far he has to go.

CONTINUED QUESTIONING OF MR. NELLER BY COUNSEL MURAKAMI

MURAKAMI: Mr. Neller, is it your function to review these kinds of archaeological reports for approval by the State Historic Preservation office?

NELLER: I have done that. We don't normally do that kind of thing. I'm just trying to say normally we don't review final reports.

Q: Did you go out in the field to verify any parts of this excavation report?

A: Yes, I did make a trip between today and last year. That was my first trip to the area, to that particular site.

Q: But it's not normally your function to go out there to verify the report and thereby approve it?

A: Not normally.

Q: Are there resource limitations to that function?

A: You mean staff resources?

Q: Yes.

A: Yes.

Q: So I take it it's not your normal processing to approve this kind of project.

A: No. Normally we go with the archaeologist with whatever they recommend, whatever they say unless there's some reason to do otherwise.

MATSUO: Excuse me. You referred to a letter earlier.

NELLER: It's a letter from the Corps of Engineers signed by Louis ... who is the executive in charge of the Advisory Council in Denver. There's two offices. This is the western office in Denver. Basically the letter says the report shows considerable improvement and recommend that a peer review be done. This is another way an agency can get a review critically without spending your own staff time on it. That's one of the reasons they did it that way.

MATSUO: For the record, this letter we're referring to is dated June 30, 1981, Petitioner's Exhibit 9.

MURAKAMI: Mr. Neller, it's your understanding the Advisory Council has recommended peer reviews in order to substantiate what the substance of the report was?

NELLER: Well, I don't know. I'm not sure it's to substantiate the substances of the report. The motivation there was I think to get a critical review without spending our staff time on it, and also because as has already been mentioned, this is quite common in an ARCH project of this size to assign other archaeologist to review the final report.

Q: Mr. Neller, is there a possibility of significant archaeological sites being destroyed as a result of the storage of dredged coral on the subject parcel?

A: Yes, I think there is.

Q: Would you explain what you mean by that?

A: Well, we went out there to visit the area with Mr. Yoshimitsu from Campbell Estate and Bert Davis from the UH. We went to specifically the stockpiling area and took a look at many of the sites covered in the report. The sites are interesting. I think the recommendations that have been made in the past concerning the significance of the sites are legitimate. I think the recommendations for archaeological salvage are justified. After reviewing the report, my feeling is that the research questions that we have about the area and about Hawaiian archaeology in general remain to be answered. I think they can be answered.

Can I give you one graphic illustration. I brought some things. (Mr. Neller did a brief demonstration of

the features of an archaeological site in the area were the Commission to visit the area, using bits of rocks to represent a coral plain, gravel distributed in a C shape to represent a typical low wall structure that might be found on site, other pieces of gravel to represent residue or middan used by people who lived in the area.)

The point I'm trying to make is the point concerning significance of all the features that are out in this area that were tested in this project and were determined to not require salvage excavation. The tests consisted of small holes 10 inches square. Based on this test, the determination was the sites did not contain excavation contents. I think you can see that the purpose of archaeology is to understand the function of a structure like this, the activities that were going on at the place, the age of the structure.

There is one other interesting feature that hasn't been mentioned in the report so far. This has to do with the Hawaiian way of life involved imus as a cooking technique, an underground oven. These particular features were overlooked. While I was out there, I saw two of them in one of the main sites that was excavated. I think it's called 2712 in the report. There were two others adjacent to another site.

The significance of these to me is these probably contain the charcoal, that what you need is to get a good reliable system for dating some of these features that weren't discovered during the salvage excavation. One of the main things an archaeologist wants to know about this area is just how old are these sites? The report attempted to do this. The basic conclusion I saw in the report was the sites don't contain data. It looks to me if they were to do additional excavation, would provide additional material for dating more of the sites. Some of the sites were dated in the report.

I should say something else too. I'm a paleontologist. These impress me. Distinct bird bone is not a common find in Hawaii. In fact, the excavation report shows that a lot of the middan deposit excavated here contain bird bone. This is unusual. You don't usually find this in Hawaiian excavations. The fact that the sites at Barbers Point have a significant amount of bird bone in the middan deposits makes them a little bit different. The bird bone that are in these sinks are extremely important to archaeologists because they provide comparative reflections that allow people to identify them. Of course, the Bishop Museum and the Smithsonian have some. Presumably there's enough of them in these sinks to provide a lot of people with collections but there won't be if some of the sites are destroyed.

Q: Are you saying you're not satisfied with the conclusions that sufficient salvage operations have been conducted to preserve the value of whatever data is out there?

A: Yes.

Q: In your mind, is preservation needed of certain sites in the disposal area identified in the stocking?

A: I didn't see anything in the disposal area that I thought merited any visual preservation. However, in the area as a whole, I would hope some area in this coral plain area is going to be set aside. There's a lot of development planned here such as the West Beach project. We could end up with a situation six years down the road where there isn't a little area.

Now the stockpiling area itself, doesn't seem to contain anything particularly unusual. But I hope an area of this type is preserved somewhere.

MURAKAMI: Is there any reason why we should be concerned with any of the off sites that may exist in the area immediately adjacent to the disposal area?

KISHIMOTO: Objection on the grounds of relevancy.

CHAIRMAN: Counsel Murakami, would you repeat that?

MURAKAMI: I'm asking Mr. Neller whether there's any reason to be concerned about other preservation protection of sites which are not immediately in the disposal area but are adjacent to it.

KISHIMOTO: Objection because the question also calls for speculation.

CHAIRMAN: Sustain the objection.

MURAKAMI: Mr. Neller, are you satisfied after reading the report that archaeological excavation has been completed to deserve the data discovered in the subject area?

NELLER: No, I'm not satisfied.

CHAIRMAN: Harriet?

KANE: My question has to do with do you feel competent to give us some estimate of how long it would take to do archaeological excavations ample to give the information you feel needs to be obtained?

NELLER: Well, just based on what I saw, I don't think it'll be that long. It's hard to say in terms of just the surface sites there. It looks like another month might be adequate.

There's two things I'm worried about. One, you want to get dating material at the site. Generally you would concentrate on the imu remains. The other thing is there's probably larger artifact sample available out there than what we've gotten so far.

In terms of the sinks, it's a little hard to say. I notice in the report that the paleontologist did not get the data they need to really answer questions about evolution of birds in Hawaii and various ecological and evolutionary questions that come into play. They didn't demonstrate whether or not the sinks actually have good deposits. I don't think they did excavations very carefully with this in mind. This is only a small part of the whole area. This is only a small part of the whole area. The stockpile area may not contain the best sinks.

KANE: I just want the people here to understand that if somewhere on the site the judgment is made that more archaeological work is needed, we're not talking about two years of work or anything like that.

NELLER: No.

KANE: Okay. Thank you.

CHAIRMAN: Your critique over Dr. Hammatt's report, is that a severe critique or things could go either way or is that a good report?

NELLER: The report has good points and bad points. The main problem is in Hawaiian archaeology we are interested in certain things. The report doesn't answer that. Basically what it amounts to is we haven't learned all that much more than we knew before the report was written. That's the main problem.

If we just had the survey report, the one that was done, we've learned a lot. The survey report has good maps. It shows the settlement pattern, what's out there on the surface. What we need to know is how old these things are, what was going on at these sites, and what their function was. When you look at the report, it's hard to tell exactly what the function of some of these structures were and exactly how old they are. That's what we want to know. I'm saying I would hope and I think additional excavation will answer this.

CAIRL: If you continued for a month, could you gather enough data and material so that the archaeological world could be satisfied, and then Campbell could go ahead and dump on that site or would you want to preserve that site intact even after you've done further work?

NELLER: I can't envision preservation just based on these particular sites.

CAIRL: There's no reason to do that once you've taken the artifacts and the bones and what not out?

NELLER: Even less. I could be wrong but what I'm saying here is another month's field work would answer questions. I doubt it though because the same features that have not been identified in the survey mainly these areas, and also the fact that just by investigating the sites we see that they're far more extensive than was indicated in the report.

MATSUO: For the record are these areas that you're talking about, the extensive sites - the imus and all of that - are they located in Site 3?

NELLER: The area I'm talking about is stock area 3. That's the only site I went to.

MATSUO: Does anybody have the map?

MURAKAMI: Let the record reflect that Mr. Neller looked at a map provided by the applicant depicting various disposal areas.

NELLER: Yes, we went to area 3.

QUESTIONING OF MR. NELLER BY COMMISSIONER KITAGAWA

KITAGAWA: Mr. Neller, did you have occasion to talk to Dr. Hammatt about the study?

NELLER: I don't think we ever have, no.

Q: So your conclusions are based on what you read and your field observation.

A: Yes.

Q: Are you saying that all the sites that were pinpointed in the survey were not properly excavated?

A: I don't think that exactly. What I was implying was not that they weren't properly excavated, it's that a number of sites were tested and determined to have no excavation potential, which in fact do have excavation potential.

If I could also add and which I did comment before, even the sites that were excavated, there are additional features which could have been excavated which the sampling material could have gotten dating.

Q: So you have a problem with the number of sites that were excavated?

A: Well, yes.

Q: And for example if you were looking at imu sites, I would presume some of the other sites also had imu sites.
A: I would presume. You won't find them in the report.

Q: Okay, I'm not sure how they're identified but say that they did find some carbon remains. Are you saying not enough studies were done with carbon remains to indicate or to make you satisfied that in fact, there was sufficient testing done?

A: Yes. I don't know the total number of sites. We want to know how old these sites are. We don't have to know 100%. We want to get some idea. We have 4 carbon 14 dates for over 100 sites.

Q: So those 4 cited in the report, conceivably there were more? Were there more? That was my rationale for asking whether you had consulted with Dr. Hammatt?

A: You mean had they collected more sampling and dated?

Q: More than the 4 cited in the report?

A: I don't know. I only know what's in the report.

CHAIRMAN: Randy?

QUESTIONING OF MR. NELLER BY COMMISSIONER KAMIYA

KAMIYA: Mr. Neller, you mentioned something about funding for more work. Up to now nobody has mentioned anything about funding of anything which includes Dr. Hammatt's report. We have been criticizing Dr. Hammatt's report. Is it possible that funding limited the scope of his studies to what it is?

NELLER: Well, I presume if he had gotten twice the money he would have done twice the work. I don't really know how that process works.

I probably should add to so that you're all aware. I have not been involved in contract archaeology, particularly on the management end. So my recommendation on this would not be as good as a contract archaeologist

Q: How long have you been involved in archaeological work?

A: I started in 1962. I started in Hawaii in 1972. I worked for ARCH in 1973 and this office for two years.

BARON: Since you have not spoken to Dr. Hammatt, then I suppose you have not seen the other materials that he developed on the site? Earlier you mentioned he had material ten times the size of the report. I wondered if you had some of the information they gathered in their office or files that might answer some of these questions.

NELLER: It's a possibility.

Q: You haven't communicated with them by letter either?
A: No.

QUESTIONING OF MR. NELLER BY COUNSEL DIANE KISHIMOTO

KISHIMOTO: Mr. Ono the State Historic Preservation Officer, is he your boss or supervisor?

NELLER: He's not my direct supervisor. He's way up in the chain of command.

Q: He did recommend that this report be published.
A: Yes.

Q: So that he wouldn't make that recommendation if the report wasn't of some value.
A: Looking at it, that's correct.

Q: Are you a paleontologist?
A: Not by profession. I have engaged in the activity as a hobby. I have done field work.

Q: How much time did you spend in the field?
A: One day.

Q: You stated that you thought more excavation was needed but you don't really know for sure do you? You can go out and dig and dig and come up with the same results.
A: That's true. That is possible.

Q: So at some point somebody's got to make a judgment call that we've dug enough and that's it.
A: Right.

Q: You indicated that you would recommend that some place in this Barbers Point plain area be left in its natural state. Does it necessarily have to be stockpile area 3?
A: No it doesn't. Probably if we looked at the whole area, that isn't the area we would pick.

Q: I direct your attention to the map that's posted. It should be labeled Petitioner's Exhibit 1. There's an area right adjacent to stockpile area 3 labeled restricted access area. Would that be a good site to preserve in its natural state?

A: I know the area you're talking about. I believe the Corps is planning on fencing it because of plants in there?

Q: Yes.
A: As far as I know that area does not have much in the line of archaeological sites but as I remember looking at the map, there is a bare area. For some reason it doesn't have much on archaeological sites. I'm thinking of an area from an archaeological point of view, the large platform located in the Ewa end, the limestone kiln over by the West Beach project.

Q: But not necessarily stockpile area 3.
A: No.

Q: And the sites that you say are on stockpile area 3 aren't terribly unusual?
A: In terms of what's in the Ewa coral plain, no.

Q: Some similar sites would be found elsewhere around the area?
A: Right.

Q: Has the State Historic Preservation officer or the appropriate division taken any stand other than their letter of intent?
A: No.

KISHIMOTO: I have no further questions.

CAIRL: If an area were found further inland than some of the areas that we're discussing now, would the archaeological findings and paleontological findings be considerably different than they are as close to the ocean such as the site we're talking about?
NELLER: Well yes, as inland sites are different.

CAIRL: So then it wouldn't necessarily serve you to just have another site unless it were a similar site.
NELLER: Yes.

QUESTIONING OF MR. NELLER BY COUNSEL MURAKAMI

MURAKAMI: Mr. Neller as you've testified, you've done some archaeological work for ARCH. Is it possible to always separate the research considerations when doing both archaeological and paleontological work?
NELLER: It depends on the situation at Barbers Point. Today you can't do your archaeological resources without having these comparative collections on which to base your identifications and the whole question of the effect a commendation has on an island plant/animal community related to these paleontological resources.

Q: You said your field exposure to this area is limited, is that right?
A: Right.

Q: Can you tell on the basis of this report alone whether or not you would be able to make a recommendation about either additional salvage or preservation would be advisable for disposal area 3?
A: If you based on the report alone, I think it might be difficult. You have to go out in the field and see what is there. Based on the report alone it does have some merit beside the inconsistencies.

Q: I guess I'm asking whether an archaeologist, based on the report alone, can satisfactorily make a recommendation on the preservation of sites or the additional salvage, excavation on site?

A: Well, he could make a recommendation based on the report. Somebody could make a report and say well, I agree with the recommendation. Somebody else could read the report and say I don't.

Q: Are you familiar with any of the peer reviews?

A: I haven't seen any of the ones with the plans there but we will get those in. To me the question is, if the site is going to be destroyed, have we learned from the archaeological report what we can learn from it?

Q: In your mind, what is the risk of not proceeding with exploring whether additional excavation is necessary?

A: The risk is if you're deciding to accept this report as the final say on the resources in the area and archaeologists hereafter are going to use whatever's in this report as the gospel truth on what's there. We know there's a lot more in the area than has been indicated in the report.

Q: So you mean then you're not satisfied completely with what the findings have been in this report.

A: I'm satisfied with the lack of dating. I'm not satisfied with the lack of resolution of the major problems in the report.

MATSUO: Excuse me. Mr. Neller, are you speaking on behalf of DLNR at this point?

NELLER: As the staff consultant, as the person in the State of Hawaii who has the expertise depending on how you look at it. Technically it's Susumu Ono who always speaks for DLNR. So, I don't know. I am the staff expertise for the State of Hawaii.

CHAIRMAN: Mr. Neller, you're not contradicting your boss, are you?

NELLER: I don't think so. Basically he signs the letters we write.

CHAIRMAN: Counsel Murakami?

MURAKAMI: I call Bertel Davis.

QUESTIONING OF BERTEL DAVIS BY COUNSEL MURAKAMI

MURAKAMI: State your name for the record.

DAVIS: My name is Bertel Davis.

Q: Where do you work?

A: I'm a doctoral candidate at the UH, Department of Anthropology.

Q: Have you previously been sworn in?

A: Yes at the last hearing.

Q: Why don't you start with your educational background.

A: I started my education on the mainland at the University of Southern Illinois after which I went into military service. I got out of the Army in 1969, entered the UH, earned a BA in Anthropology in 1971, earned an MA in Anthropology in 1973. I took a leave of absence from UH to work in Thailand for seven months, returned to the UH and since then have been working in archaeology outside the UH and on my degree at the UH in Anthropology in the doctoral program.

Q: Have you engaged in contract work in archaeology?

A: Yes I have. I have worked for the Hawaiian Marine Research Incorporated, ARCH, and the Bishop Museum.

Q: Have you produced excavation and survey reports in this capacity?

A: Yes I have. I've produced a number of excavation and survey reports and also reconnaissance reports for all of these organizations.

MATSUO: Are you appearing tonight representing any of these agencies or in your individual capacity?

DAVIS: I am here as an individual.

CONTINUED QUESTIONING OF MR. DAVIS BY COUNSEL MURAKAMI

MURAKAMI: Could you give us some of your work experience?

DAVIS: In 1973 and 1974 I was field archaeologist on the Western Thailand prehistoric project. This was a joint project between the UH and the National Museum in Thailand.

I worked with the Bishop Museum in 1975 excavating large sand dune deposits at the Kaneohe Marine Base.

I conducted surveys and some surface testing at Waimanalo Sherwood Forest which is now the Waiamanalo state recreation area.

I have done surveys in ... Valley on Maui. I have done instrument mapping survey. In that job I was

strictly a transit surveyor at Mahinahina on Maui. I did an archaeological survey at Keahole for the then proposed agricultural park above Keahole Airport. Much of that work was through ARCH.

I was also author and field assistant on a Hawaii Marine Research Project which did the archaeological reconnaissance and survey at the proposed Ewa Beach Marina.

I did the Kahuku survey for Bishop Museum on the wind farm project.

While at the UH I was field director on the archaeological survey at Barbers Point which have led to these excavations. Since 1979 off and on for a period of three years I have been conducting independent archaeological excavations in the Barbers Point area.

Last summer I was field instructor for an archaeology field school in Moanalua for the UH.

Q: What do you mean by independent archaeologist?

A: It's called a shoestring operation. What I'm doing is primary field work for my doctoral degree. I arranged this through the UH as a member of the Department of Anthropology who supports me with office and hardcore facilities, and through the James Campbell Estate on a right of entry granted through the trustees of the estate. I am currently on my third right of entry.

Q: How much time have you spent on the Barbers Point project here?

A: At the time of the survey I spent 7-1/2 weeks in 1977, in 1978. Prior to that I did an initial reconnaissance of one week. In terms of excavation, I've been there for about 200 days out of the last three years.

Q: To your knowledge, is there anybody in the field of archaeology who has done more field work in the Barbers Point area than you?

A: Not to my knowledge.

Q: You say you authored the survey report on this original project?

A: The larger volume of the survey report was a joint effort-ship of myself corroborating with Dr. Brian Griffin of the UH who was then also with ARCH. I believe his position at the time was vice president.

Q: Was Dr. Hammatt involved at that point?

A: Yes he was. He was a member of my survey team for 6 out of the 7-1/2 weeks.

Q: Did you also produce a peer review of the excavation report produced by Dr. Hammatt

A: Yes I did. I produced a peer review of the initial draft which I believe I submitted in March this year, and I also submitted a short letter review on the current draft.

Q: Have you utilized the Society of Professional Archaeologists guidelines for peer review in providing that peer review?

A: In general address yes. Not in specific form.

Q: Focusing your attention on the report alone, what are the major shortcomings on that report?

KISHIMOTO: Is Mr. Davis going to be repeating his written submission?

CHAIRMAN: Counsel Murakami?

MURAKAMI: Mr. Davis, is there any particular reason why your peer review can be distinguished from the other peer reviews?

DAVIS: With the exception of the peer review submitted by Dr. Pat Hirsch at the Bishop Museum and the Society of Archaeology review submitted by Pat McCoy as Chairman of the ad hoc committee of the final draft report, all of the members in the reviewing process have not worked or in many circumstances have not been in the subject area. They do not have the direct on the ground knowledge of what area is like and what the area sites are like.

Pat McCoy had some exposure to the sites. He's worked in a large dry sink hole. He has limited direct experience with the project area.

So, the difference is I'm the only one that's been there.

Q: In your opinion Mr. Davis, has the report conformed to the scope of work initially outlined by the Corps of Engineers?

A: In my opinion, no, not entirely.

Q: Is that covered in your peer review of this project?

A: In my review of the initial draft, I focus on a number of areas which I consider areas what I consider areas of deficiency. These largely involve two major areas.

KISHIMOTO: In the interest of time, the report does speak for itself.

MURAKAMI: Mr. Chairman, I believe Mr. Davis should at least be allowed to summarize what the basis of his peer review

is, in order to proceed on the subsequent points of the testimony.

CHAIRMAN: Objection's overruled.

DAVIS: One area of deficiency as required by the revised scope of work 3 April 1979, that the research design shall provide among other things an explicit statement of data requirements. That is, in advance, what data, how the principle investigator determined essential and necessary for arriving at a successful conclusion, positive or negative, in testing the questions that have been outlined, the research goals. This was not done.

The other area of deficiency I found and again in the research design, among others required, an explicit statement of the sampling strategy to be utilized. How are these data to be recovered? In what plan of attack? This has not been done.

From these two major issues I feel that weaknesses have been inherent in the conduct of the work. They have been reflected in the report itself. This is based one, on an evaluation of the report as a document in and of itself. Secondly, by comparing the results of the report in specific instances with the remnants of the excavated sites.

MURAKAMI: Is there any particular danger from an archaeological standpoint allowing this report to be the standard by which data recovery will be judged in the future?

DAVIS: The problem that's involved with a report of this nature is the circumstances under which the original work is undertaken. In most research-oriented projects, the archaeologist goes out in the field with a number of research projects in mind. He collects a number of sites. He'll excavate. Generally he'll not excavate all of the site. Something's left.

In a contract situation, however, once it has been determined that the adverse impact on a cultural resource has been adequately mitigated, that site no longer exists. That means that the document which was derived from the work that achieved this mitigation remains the sole document available on that archaeological resource. Its completeness, its consistency, its quality, its internal coherence is necessary. This is not a journal article. This is it.

Q: Turning your attention to the field work conducted, were there problems with the various findings enumerated in that report? In your review of the work reported, did you find some inconsistencies on the basis of your own experience in the field?

A: Yes.

Q: I'm referring specifically to an exhibit I'd like marked N-21, I believe. This is the compilation of the various diagrams and maps done by Dr. Hammatt in the excavation report which he marked various areas of the most dense deposits that he found in the various sites.

Directing you to the number 76 which depicts figure 13, density contours of site 2712 in which Dr. Hammatt has identified an area around number 30 which has the densest amounts of deposits, were there any additional features around the site which would have some relevance to conclusions made by an archaeologist?

A: Yes there was. Can we refer to another figure in text for a minute?

CHAIRMAN: Go right ahead.

DAVIS: I am referring to figure 3 on page 4.

MURAKAMI: The specific page in the report is page 76 and page 4.

DAVIS: Enlargement 1 in the upper lefthand corner, you will notice a small stair structure marked 2712. To the immediate right of that structure is a superficially, as you look at it on the surface for the first time, is a rather amorphous mound of what is proven to be fire crack or heat altered coral. At the time I didn't take measurements but I would estimate is something in the neighborhood of 3 to 4 feet in diameter.

By the way, I should point out one thing. This area around 2712 when we did the survey in 1977-78, was the area in which our survey commenced. In other words, whatever we started learning about the Barbers Point site and how they actually physically appeared on the ground, this is where we first started learning. In all fairness, these features were not originally identified in the first part of the survey. They are very difficult to see under all but the driest conditions in the summer. Our survey was conducted in the winter. However, as we move up the survey line, there was a series of approximately 7 very similar features that were somewhat larger that were a bit more difficult. That is when we first defined this as a specific archaeological feature.

So, the location and identification of the features that I'm now talking about were not available in your original report. I just want to make that clear. We do make mistakes.

Now, there is a second mound of approximately twice that size, approximately 6 to 8 meters in diameter. You'll notice the bulldozer track where it intersects with the

wire fence. Those are the only two features of this type that I have identified in site 2712. Now the existence of a feature-type like this was known as early as the survey report because we had identified it in other areas. The results of excavating these kinds of features were not available at the time Dr. Hammatt did his excavations. I have only just recently excavated features like this. However, the potential significance of these types of features under characteristics and the data they are likely to hold was fully elaborate in the survey report in 1978. Specifically what these appeared to be are rake-out mounds of the imu or cooking ovens. Some imus can be subsurface at Barbers Point because some of my excavations have revealed how sink holes have been used as this kind of feature. But in many areas these are surface features or the rock would have been mounded up over whatever was being cooked, then raked aside.

The significance of these types of features in this site and in the interest of time, in sites 2731 and 2732 which we will reference later, the significance of these sites in terms of the report, they are potential for yielding quantities of charcoal in which perhaps greater selection would have been used in obtaining material for carbon analysis to obtain carbon dates.

I make that specific because in the section of the report on chronology, in fact the table on 200 at the bottom of the page, in the case said only one of the four charcoal samples was obtained from a hearth feature. In other words, something in a reliably secure archaeological context, according to the discussion in the text and by implication in this table, the other charcoal samples were taken from an area which we generally refer to as a homogenized sample. That suggests the possibility as Dr. Hammatt has pointed out, contamination from recent keawe fires. There is a real limitation in the date. That is why fissures such as these amorphous ..., the amorphous rock mounds are important because it increases your likelihood of having secure uncontaminated samples.

Q: What impact would the location of that particular mound have on the activity area of this particular habitation site?

A: This is another major problem that I find which again stems from sampling. In other words, how he selects what, where and how much. I refer to density diagram on figure 13. You will notice the outline of the structure. The area of highest concentration is under a structural wall.

Dr. Hammatt has suggested and to an extent, he's correct. We do have a problem with dry masonry wall.

Sometimes midden falls down through the cracks in the wall. Also if you sleep on the floor you get the same problems. However, you do not expect to find your area of highest density under the wall, findings of this filtration phenomenon. More importantly you will notice the hearth is under the wall. A hearth would not have filtered down through the wall. The implication of this--

By the way, I should indicate as Dr. Hammatt pointed out what the density distribution is showing is refuse disposal, not necessarily the activity area. But, refuse disposal is an activity. You would not expect the hearth to be under the wall like that.

The implication of this is that this site was occupied before that structure was built. By virtue of the fact that that structure was built, the site continued to be occupied at a later period of time. Whether it's separated in two different periods of time, or one right after the other, that's indeterminant. But either way we are looking at two chronological events.

Now, the fire crack rock mound. Are they associated to your earlier deposit or are they associated with the house site? I cannot answer that question. But perhaps control over the excavation of the rock mound could relate to those two features together and you might find that the activity areas being looked for here are the fire crack rock mounds themselves.

The main thing to keep in mind here as you review all of these excavations, they are structure oriented. They focus on the structure, on the interior, on the door and on the immediate front of the structure. As Earl's little demonstration here indicated, structure and subsurface deposits are not necessarily equal.

My own experience at Barbers Point has indicated that certain circumstances, indeed, deposits are contained within the structure. Usually these are the C shapes. What we mean by the C shapes is looking down on it, it looks like a letter C. The deposits would be right on the front. But in other structures, for instance one I excavated in 1979, the structure was 30 square meters. The deposit was 160 square meters.

- Q: One other question on 2730. What is the significance of not accounting for that amorphous mound with respect to the identified objectives of this report? In other words, it is important to know this mound was there?
- A: Yes, that's objective 2, condition of site feature functions, particularly specific functions of habitation features in order to formulate compositions regarding the nature of residential units and the relationships

with architectural variables. And objective 3, definition of

By omitting this entire class of features, he has weakened his interpretation of the sites involved. I refer to the density diagram indicated on page 99 and to an illustration of the structure itself on page 97. The density diagram indicates that the midden is concentrated in the square bounded by W1N1 which is adjacent to the southwest of this C shaped wall. The midden was found only within what has been identified as 3N1 in the report, and in illustration 2 which has been the usual cultural deposit you find in other sites.

Now the interpretation of this site on page 100 carrying over from the previous part of the text, ...(read from text of report). Without going into other specific pages, it is elsewhere suggested that such intensity of occupation is consistent with temporarily occupied sites. However on our field inspection of last week, there was again another one of these amorphous rock mounds in which a root disturbance had exposed rich quantities of charcoal from below the surface. That would be in figure 29 on page 97 just about off the end of the C shape wall. This may very well be another one of these fissures. If so, the low midden density in the structure itself maybe a product of the fact that the major portion of concentration is outside of this cooking area. If that is the case, then I would compare with-- May I use an example from outside the immediate stockpile area?

CHAIRMAN: I'd like to stay with the 3 sites.

DAVIS: Well the weaknesses are in the site but where something is correlative is outside. Otherwise I have to talk strictly hypothetical.

CHAIRMAN: All right let's hear it.

DAVIS: All right. I excavated a site again on the mauka side of the quarry which was somewhat a similar configuration. I found inside the structure the same pattern. But the midden plus at least 5 multiply overlapping hearth pits were just outside the part of the structure. That was all the deposit there was except for a few scatters of shell inside. Basically I interpret this, this would be a good temporary shelter and the reason that the interior is clean is that it's an activity area. It's where they slept. See, you have a sleeping area, cooking area and a refuse disposal area. But you do not pick that out in this report.

MURAKAMI: Is that a significant omission from the data in the report?
 DAVIS: Potentially yes. If this is a consistent pattern, yes it can very seriously weaken conclusions that are derived on data presented this way.

CHAIRMAN: You are not saying this is a fallacious report made by Dr. Hammatt.

DAVIS: No. I'm not implying that at all. I believe it stems from my original critique and that was just a lack of coherently designed research and sampling.

MURAKAMI: Mr. Davis, you've been referring to these various mounds. Is it possible to designate where on the same diagram Dr. Hammatt made, where these mounds are located in relation to density contours are relevant?

DAVIS: Yes.

MURAKAMI: Would you mark those exhibits ...

MATSUO: Mr. Murakami, would you submit copies of those marked exhibits. Thank you.

MURAKAMI: You were present during Dr. Hammatt's testimony, were you not?

DAVIS: Yes I was.

Q: Do you recall testimony that profiles may or may not have any particular value in a report?

A: Yes I do.

Q: Do you agree with that statement?

A: Yes and no in the sense that there is a minimal level of data reporting. I think it's fairly acceptable procedure among archaeologists working in excavations in Hawaii that you provide at least one major cross section of each site. Not necessarily 5, 10 or 15 but at least one major cross section that typifies and illustrates the relationship of the various subsurface stratigraphical components, and the surface material.

Q: Did you review the report to determine how the profiles were drawn in relation to the total number of sites mapped?

A: Yes I did.

Q: What did you find?

A: I found that half were missing profiles to enable the reviewer of the report to visually correlate the site with the written text.

Q: Is the visual correlation important?

A: Yes it is in the sense if you refer to the SOPA guidelines, a suggested peer review is a report organized so that pertinent information is easily found. This is one of the

m o d s of making data easily and readily available, particularly on major points such as stratigraphic succession of occupation.

Q: In view of the research objectives on establishing such stratigraphy, is the existence of profiles important?

A: The development of a stratigraphy particularly whether a given site is contemporaneous with the deposit associated with it, that is of the same time or ... (changed tape) water impact or maybe multiple deposits. This is the value ... of using stratigraphic sessions. It helps resolve these kinds of problems.

Q: Do you recall testimony of Dr. Hammatt concerning the value of the location and identification of hearths around plantation sites?

A: Yes I do.

Q: Do you disagree with any of his assessment about the value of hearths in such a report as this one?

A: Yes I do.

Q: What's the nature of your disagreement?

A: My disagreement is, if I maybe permitted to paraphrase--correct me if I'm wrong in the implication, that one hearth more or less does not necessarily add that much more information to the site. I very definitely disagree with that. One hearth more or less, one structure more or less, one artifact more or less, one type of feature more or less, if you're going to excavate it, record it. It may not appear to be of significance at the time you're excavating it. But once you start putting all the little pieces together, some of that nonsense begins to make sense. To make that judgment of one more, more or less, begs the question.

Q: You've had opportunity to examine various sections of the Hammatt report, have you not?

A: Yes I have.

Q: Have you had the opportunity to identify statements which appear to be internally inconsistent?

A: Yes.

Q: Would you give us an idea of what major conflicts you have found in the report please?

A: Returning to the discussion of hearths. I would like to refer to page 87, Density Diagram No. 21. That is site 2730. In the figure is implied--first of all, it is conclusively stated that the circled area bounded by N-1, E-1, represents a hearth

extending down to bedrock as described in the text. This I agree with and it really is a fairly nice hearth. It's very clear. It's very well defined. It is described as a formal stone slab lined hearth which is of significance. It implies a certain degree of permanence in its use. It wasn't an ad hoc affair.

The circled area bounded by extending W-3 and N-1 by implication is a hearth. This is not discussed in the text. In the text, a gray, charcoal stockhold area is referred to as being in the northeast quadrant, in the squares bounded by W-3, W-2 and S-1. It is referred to in the text as S-1, W-3 northeast quadrant. It is not illustrated in the drawing. The point is, I don't know. I have to take his word for it that it was there. Now we all have to take everybody's word for whatever anybody writes, but we try to make our data presentation consistent. When they are inconsistent, we begin to doubt.

MATSUO: Excuse me, Mr. Davis. Is all of this contained in your original testimony.

DAVIS: No because much of the specific examples are based on just field observations last week. The written testimony covers the general concerns, and uses specific examples that were available at the time the initial draft was reviewed in which many of these figures were not available.

CHAIRMAN: I think again, Mr. Davis, you're tearing down everything that he's written down, quite a lot of it anyway. You could take this very severely, isn't that true?

DAVIS: Yes it is.

KITAGAWA: Mr. Chairman, it seems to me that the implication is clear as you say that there is these inconsistencies that were acknowledged to some extent by Dr. Hammatt and now by Mr. Davis. I think that we get the gist of it. I don't know that we want to--

CHAIRMAN: Hear that kind of critique?

KITAGAWA: Yes. Are you just about at the end? Because if you are, I'd like to ask some questions.

MURAKAMI: I would like to ask a few more questions. The request of the Commission is that we bypass this line of questioning.

CHAIRMAN: Yes, I think we should cease that type of questioning because it's nothing but criticism right

d . It seems almost parag. h for paragraph. I don't think we want to hear that because we have to read the book ourselves. We're hearing what you have to say. It's on tape. We'll get an opportunity to look that over.

CONTINUED QUESTIONING OF MR. DAVIS BY COUNSEL MURAKAMI

MURAKAMI: If I may just ask a question. Are there other examples of contradiction and insufficient identifications of various features within the report that you have not mentioned here?

DAVIS: Yes there are.

Q: In your mind, Mr. Davis, can there be a complete separation of archaeology and paleontology?

A: In some circumstances yes, in the circumstances of Barbers Point, no.

Q: From your knowledge of this report and what it recommends as to the preservation and salvage, can you tell whether or not sites immediately adjacent to the disposal area could suffer any damage as the result of the coral crushing and related operations that will be taking place on this property?

KISHIMOTO: Objection, relevancy.

MURAKAMI: I think it's fully relevant. It's one of the identified factors in the rules and regulations of this Commission.

CHAIRMAN: Repeat that again, please.

MURAKAMI: I'm seeking an answer to a question about whether this witness can tell whether there could be any affect on sites which are immediately adjacent to the disposal areas, although not necessarily in the disposal area.

CHAIRMAN: Objection's overruled.

DAVIS: Based on the report and why no one can tell for instance the plan map on my own work at Barbers Point, yes, there is a possibility but I suspect and especially given the map, it can be avoided. I think it will require effort but I think it could be avoided.

KITAGAWA: I don't understand the answer. When you say it can be avoided, what do you mean?

DAVIS: If I understand the question correctly, will the adjacent sites be adversely impacted? Am I correct?

MURAKAMI: Yes. Can you tell whether it will be?
DAVIS: The best that I can tell is no, the adjacent sites should not be adversely impacted as I can tell by the present configurations out there.

Q: Mr. Davis, do you agree with the recommendation of Dr. Hammatt that sufficient salvage operations have been conducted to preserve the data that has been found or could be found in the Barbers Point area to this proceeding?
A: In my opinion, no.

Q: Are you aware of any earlier survey than the ... of 1969 which has some relevance to this project?
A: In 1930, ... did a general survey of Oahu in which he located a number of sites in the Barbers Point region, one of which he identified but apparently never actually saw as a heiau. In 1963, there is an unpublished field report. Right now it's recorded on site field cards at the Bishop Museum, the salvage, excavation of 13 human burials that were identified during construction of the Standard Oil Refinery. In 1967, I believe Lloyd Thorne then working for the Bishop Museum did salvage excavation of a fishing shrine, and what is now the present barge harbor.

Q: Were any of these reports mentioned in the excavation report?
A: McCallister was the only one that I can recall.

Q: Do you agree with Dr. Hammatt's statement that discovery of some bones may or may not be significant from an archaeological standpoint?
A: By discovery I presume that we are talking about a non-cemetery situation or non-known cemetery situation in which a yes, are they historic? Are they prehistoric? Whether the method is internment? These should be determined. Are they interrelated to the overall utilization of the area by the people that interred the bones?

Q: Are you saying you agree?
A: No, I do not agree with his statement.

Q: By the way, how soon will you be getting your PHD?
A: I hope to defend in about a year.

Q: You are a member of SHA, are you not?
A: Yes I am.

Q: How many ... does SHA have in its membership?

KISHIMOTO: Object, relevancy.

CHAIRMAN: I don't think that's relevant.

MURAKAMI: I remind the Chairman, you did allow a question as to PAPA.

CHAIRMAN: Did I misunderstand your question? Let's hear it again.

MURAKAMI: My offer of proof is that SHA has provided a peer review and this is being matched against a peer review by a member of PAPA which is another professional organization. It merely goes to the relevancy of the credibility.

CHAIRMAN: All right. Objection's overruled.

MURAKAMI: What can you say about the membership of SHA with respect to the archaeologists who are currently operating in the State of Hawaii?

DAVIS: Currently the Society for Hawaiian Archaeology has about 72 members, 60 of which are voting regular members. Among those 60 voting members there is approximately, at the last count, 13-14 PHDs who come from various organizations such as the University of Hawaii in Hilo, University of Hawaii Manoa Campus, the various private organizations such as Hawaii Marine Research, State Historic Preservation Office, private archaeologists on the Big Island, plus various agency members such as the Department of Urban Planning at the University of Hawaii and the Advisory Council in the State Historic Preservation Office.

Q: Does this membership represent a fair cross section of the archaeological profession?

A: To a fair degree, yes.

MURAKAMI: That's all the questions I have. I would like to move N21 into evidence.

CHAIRMAN: Commission will accept it.

CHAIRMAN: Counsel Kishimoto, would you like to cross examine?

KISHIMOTO: Yes, Mr. Chairman.

CROSS EXAMINATION OF MR. DAVIS BY COUNSEL KISHIMOTO

KISHIMOTO: Mr. Davis, your excavation in the general area of the disposal areas was with the permission of the Campbell Estate. They did give you the right to entry.

DAVIS: Yes indeed they did.

Q: You made reference to looking at the remnants of the sites that were excavated, so the sites that were excavated are mostly gone through.

A: No, not quite. In some instances yes, in other instances no.

Q: What I should mean is the areas around ... but the parts that actually have been excavated, what was there was something new.

A: Oh, in other words like in reference to squares in the drawing, what those squares represent are holes in the vents, yes.

Q: Okay. Those amorphous mounds that you referred to in site 2712 and 2732 I believe, those were not identified in your survey of parcel ...83?

A: No they weren't in the initial part of the survey.

Q: Are archaeologists always in complete agreement as to what should be excavated, how much they have on site, whether the site should be excavated, or is this an area where expertise is discreet?

A: There is room for discretion.

Q: Have you examined the field notes and the action data collected by ARCH?

A: No I have not.

Q: On the basis of your personal knowledge on site as well as from the report, are you recommending that any of these sites be preserved in total?

A: There I think I must agree with Buddy Howell. In place preservation, I do not think it's really appropriate. It is the scientific data that these sites contain.

Q: So you also agree with Mr. Neller that the sites that are found in disposal area 3 are fairly typical of what might be found in a comparable site elsewhere in the Barbers Point area.

A: Not entirely. Shall I elaborate on that?

Q: Sure.

A: Okay. There's a number of major reasons in the Ewa plain which are characterized one, on their elevation above sea level; two, their topography; three, the associated sediments or lack of sediments which may or may not vary sink holes. And, the relative force and/or grassland structure that might have existed during this period of Hawaiian occupation, given that there is a broad general theme to Hawaiian adaptation--to Polynesian adaption in the Hawaiian islands, the mechanics and details as to how this is operated, how man operates across this biological national environmental interface,

will vary dependent on local circumstances. Many of the patterns will be very similar.

The problem or the goal is to identify the similarities and the differences. What are the unique adaptations? The birds are the rather unique one right now because we have no similar sites to this, at least not in this magnitude.

Now, on my work on the mauka side of the quarry in 1979, I worked mostly in sites that have a relatively well developed clay soil mantel covering over the limestone. Except for the very large sink holes that the Bishop Museum has worked in on the mauka side of the quarry, there are very few features of this type available to be investigated in these inland portions.

Another problem is the ... portion where you have low wet ground. These do not necessarily have habitation sites associated with them. But, we do suspect that many of the deeper sink holes in the region of the plain, because they have the water table and therefore have the fresh water lens floating on tidal salt water, that this would have represented a rather unique water source for the people living out there. Their relationship to the birds also may have been very different but certainly the depositional mode, how the birds end up on the ground, would be very interesting.

The major point of this report, if I may read--this is on page 5, it's the opening paragraph, the last part of the paragraph paraphrases section 3-a of the revised scope of work 3 April 1979. It states in the report, the contractor has recovered and preserved a sample of paleontological, scientific, prehistorical and historical archaeological data for the analysis and interpretation of the cultural and environmental conditions prevailing during the period of human occupation. By not addressing the ecological variables, this goal has not been achieved.

- Q: You made reference to the amorphous mounds that you found in other similar areas around disposal area 2. Did you date the charcoal that you found?
- A: I have not yet submitted the samples.
- Q: So you really have not interpreted whether that charcoal that you found is in fact a good sample or is in fact prehistoric or non-modern origin.
- A: I haven't determined anything at all except that they are charcoal samples. I have no other data.

Q: You say you are a member of SHA. Are you a member of PAPA?

A: No I am not a member.

Q: In stating your dissatisfaction with Dr. Hammatt's report, what would your specific recommendations be? How much more work do you think needs to be done and how long would it take?

A: Okay. That is a question of proportion which I would be very pressed to answered. A number of tasks that need to be accomplished, I could make reasonable estimates, basically are field time. But there are other aspects of the field work which I am not a paleontologist. I know how I would excavate sites which I have already excavated. These could probably be improved upon.

In terms of estimating though, we get back to the same problem. That is the samples. I could not venture a guess right now how much or what, specifically. But, Mr. Neller's estimate of a month, let me hedge that with another two weeks, does not seem too far out of line. I would like though to have it recorded that this is strictly a seat of the pants estimate. It may be revised upward or downward depending on the specific sampling frame quality.

MATSUO: Excuse me, Mr. Davis. What is your background to make that kind of determination? Are you an archaeologist or are you an anthropologist? What is your background again?

DAVIS: All degrees issued by American universities are for anthropology. There is no degree in an American university that is in archaeology. It is treated as one of the three disciplines within the rubric anthropology. I am an anthropologist but by function an archaeologist.

KISHIMOTO: Going back to the ... find, I have before you picture exhibits 18. Is that the report that you ...?

DAVIS: Yes it is.

KISHIMOTO: I offer Petitioner's Exhibit 18 for the record.

CHAIRMAN: Accepted.

CONTINUED CROSS EXAMINATION OF MR. DAVIS BY COUNSEL KISHIMOTO

KISHIMOTO: What are your recommendations to--I feel that you've made recommendations in your report and that's the reason I'm asking it now. What are your recommendations to Campbell Estate regarding that burial site?

DAVIS:

The recommendation for--the information that I would supply whether it be a telephone conversation with Valerie Mendez, to whom the letter is addressed, that when on my next trip to the area, I would make a more specific detailed work of the site and then make recommendations as to how to deal with that site, initially I would recommend that whatever details are, that the human remains be disinterred, recorded, and that either deposited with the proper authorities or reinterred on another portion of the Ewa plain.

Q: In terms of finding bones--I think you said you had recorded them--beyond that, in all cases, is it necessary to do the same kind of study that is carbon dating, that you wanted to say on the other sites? What I'm trying to get at is in all cases you have to do an extensive study of bones, that they were found where and in what condition.

A: In the interest of preserving data, yes. I should clarify two things regarding many of these areas at Barbers Point.

These are secretive burials. They are unlikely to be found in excavation because they are down ... either in deeper sink holes and cached in under ledges or they're in shallow sink holes. These sink holes maybe capped over with so much rock and that have later vegetation that you don't see it.

Not locating these burials is by no means an implication of Dr. Hammatt's field methods regarding burials. It is very much of an accidental thing unless you deliberately go out and crawl down in every one of these sink holes to find burials. But there is this problem of identifying burials.

There is another problem with the burials at Barbers Point in terms of how much data can be recorded from the bones in the position they are found. So far, with the exception of the 13 burials from the 1963 work of which I have no specific information, the remaining burials have all been what we call secondary burials. In other words, a corpse was exposed to the elements and the flesh allowed to rot, or it was buried shallow and began to flush along the rocks. Then the bones which were of value, the long bone, the skull, the pelvis, were bundled up and carried away and secreted someplace where they wouldn't be found. In other circumstances, they were primary burials. Just had sand. But, most of the bones at Barbers Point appear to be secondary burials.

It is interesting to know in all the burials at Barbers Point, are there certain bones consistently missing? How many individuals do we have? These number of individuals are represented by how many bones? Are they consistently the same bones? This might tell us something about how the people who lived out there treated their dead. If we can identify patterns, then we might understand what the people's cultural ideas were about death and the treatment of death. We can only do that by collecting data on the seemingly random materials. In the collectives is where their importance is most realized.

Q: But aside from reporting their bone size, certain types of bones, etcetera, what kinds of bones they are, what type of condition they're found in, existence of the burial doesn't necessarily mean that you have to make further excavation at the burial site.

A: It's generally prudent to stick a trowel down in the ground and make sure that there isn't anything under there.

Q: But other than that checking.

A: Well, if nothing turned up, no. I think most archaeologists would abandon that.

MATSUO: Excuse me. Mr. Davis, just now when you were talking about burial sites, were you discussing disposal site 3 or were you talking about Barbers Point in general?

DAVIS: Her question covers the burial in site 3 which is comparable to burials found elsewhere.

KISHIMOTO: I have no further questions.

CHAIRMAN: Counsel Murakami?

MURAKAMI: Mr. Davis, in your opinion as an archaeologist, is the extent of the disagreement between the various peer reviews that negatively reviewed this report and Dr. Hammatt, in the area of discretion as you previously indicated?

DAVIS: Let me put it this way. There was a reference that was made in the handbook which while the handbook itself may not be admissible, the reference I think is pertinent. I don't need to quote it specifically but it states that whatever is done and whatever is chosen not to do or whatever cannot be done, that there is clear and defensible justification.

There are many areas in this report where for instance, regarding the age analysis of many of the volcanic glass pieces because they were opaque. Dating volcanic glass requires that you be able to transmit the light through the depth section. If you can't transmit the light, you can't date it. It's a clear and defensible justification. That's the impression.

But, there are other areas. Archaeologists, as you get into these areas, we could diverge further. But there are areas which discretion still is held within the bounds of customary professional practice on even in a national science foundation report or a ... report, the Time National Museum report--what I do or don't do, they want clear and defensible justification. If you do that, then you kind of beat your objectives to the punch. And that's what I find lacking.

MURAKAMI: No further questions.

KANE: Before they call another witness because I may forget it if I don't do it now, may I request Counsel for the applicant to enter into evidence Dr. Emery's letter which she represented as being approving of the report. I would really like to get it into the record, please.

KISHIMOTO: Certainly it could be if the Commission desires. I just gave my only copy to Mr. Murakami.

KANE: You mentioned it already. It doesn't have to be tonight. The next few days will be fine.

KAMIYA: Mr. Davis, you can answer or you don't have to answer. You seem pretty knowledgeable about areas that are involved, 1, 2, and 3. You mentioned also that there might not be any affect on the surrounding areas which was used for stockpiling. In your opinion with your expertise, with your experience, out of the 3 areas that are involved, do you think there needs to be time set aside for further work than designed? Say for example, Area 1, in your opinion, can you do the stockpiling?

DAVIS: As best as I can tell with what I have seen on the ground and how it correlates with the aerial photographs, I would say that stockpile areas 1 and 2 can both be used tomorrow. The time is there if it can be arranged with the contractors, engineers, etcetera.

KAMIYA: So sites 1 and 2, there's no doubt it can be used for stockpiling.

DAVIS: In my opinion, it is perfectly clear.

KAMIYA: Area 3 being a major area, how much time do you think you'll need?

DAVIS: Well as I said, that requires careful consideration and if you don't hold me to do it severely, a month. I might go for a slight bit longer, another two weeks.

KAMIYA: Now, if I say to the contractor okay, we find that there's significant findings of importance in area 3, you've got to work with somebody. Who would you recommend for the contractor to work with? The reason why I'm asking--because I know I'm going to be putting you in a spot. You don't have to answer. The reason why I ask you this is that we hear all kinds of associations and all kinds of names and we really don't know what the qualifications are.

DAVIS: First of all, let me state my own personal position. During the survey, I was an employee of ARCH. I received remunerations for the work I did. Although over the last 3 years I've been basically operating an independent project, I have received nominal support. Primarily I've received the good offices of the Trustees of the James Campbell Estate for letting me be there in the first place. That provided me a research area. The University has provided me field equipment and physical facilities, a place to be. Through volunteer students, people in the community, I have received labor. So I personally have come off rather well for \$1.50.

Regarding my own dissertation work, I am basically done with field work. In other words, I do not need to be in the field again. And that in some senses I might be wiser to stay out of the field so I can finish writing my dissertation. I would like to be involved. However, to recommend who to go to, I think the research value of the Ewa Plain in general as demonstrated by the results we have available at Barbers Point, that it shouldn't be any one organization.

In February of 1979, ... (changed tape) Hawaiian Marine Research, another small main company but it's not now here, the UH, independence of myself on other small independent contracts, and from James Campbell Estate. In four committee meetings including members of all of these groups, we developed recommended guidelines for developing archaeological research design.

CHAIRMAN: Mr. Davis, who would you recommend?

DAVIS: That is who I would recommend.

KAMIYA: Mr. Davis, you mentioned there were two organizations that archaeologists make up. Is it common for members to hold or maintain numerous memberships?

DAVIS: Companion memberships. I'm a member of four organizations myself. It's not uncommon.

KITAGAWA: I'm following on what Randy said, who to recommend. It seems there's inconsistencies in the report. You're saying one thing. Dr. Hammatt is saying something and I guess there's other people saying the same thing.

Why do you think the report was accepted by the Corps?

DAVIS: I think they probably thought that the mitigation was adequate.

Q: So that's another opinion, yes?

A: However, the reviewer for the Corps was not an archaeologist. That is one of the reasons the peer review is called for.

CHAIRMAN: Thank you, Mr. Davis for your appearance. Counsel Murakami?

MURAKAMI: We have two more witnesses we'd like to get in. I believe it'll be short.

CHAIRMAN: Proceed.

QUESTIONING OF TOM DINELL BY COUNSEL MURAKAMI

(Mr. Dinell was sworn in by the Chairman.)

MURAKAMI: Would you state your name for the record?

DINELL: Tom Dinell.

MATSUO: I have a question, Mr. Murakami. You stated earlier that Mr. Dinell would be testifying in connection with your motion to dismiss. I believe the Commission has deferred your motion.

MURAKAMI: I believe the Commission deferred until Mr. Dinell appeared. He's here.

KITAGAWA: If we hear Mr. Dinell, does that mean we have to act on this?

CHAIRMAN: We could hold it over.

KISHIMOTO: Also, I'd like a chance to respond writing. Mr. Murakami submitted a nice long written motion.

CHAIRMAN: In all fairness to you, yes. We'll put that over.

CONTINUED QUESTIONING OF MR. DINELL BY COUNSEL MURAKAMI

MURAKAMI: Mr. Dinell, what's your occupation?

DINELL: I'm Director of the Regional and Planning Program at UH. That's my job full time.

Q: Is that your professorship with zoning?

A: Yes.

Q: Would you give us an idea of your educational background?

A: I have a bachelors degree in political science, masters degree in public administration, and attended Harvard in public administration.

Q: In your capacity as Director, you basically give the urban and regional studies program?

A: Urban and Regional Planning.

MATSUO: Are you appearing here in your official capacity as Director or are you appearing as an individual?

DINELL: I'm appearing as an individual.

MURAKAMI: Are you a member of any planning organization?

DINELL: I'm with the American Planning Association.

Q: What's your working experience in the area of planning?

A: I've been teaching in the planning program for 10 years and have participated in a number of planning endeavors in Hawaii.

Q: In that capacity, have you become familiar with the operation of the Hawaii Land Use Planning Law?

A: Yes.

Q: Will the issue of whether a special use permit be in the area that would concern planners as opposed to lawyers?

A: It would be of concern to both in terms of land and the manner in which it is designated and the procedure used would certainly concern the planners.

Q: Have you in the past been given the opportunity to examine the operations of SUPs under Hawaii land use planning laws?

A: It's not an area of special research but it's used from time to time.

Q: Are you aware of the basic project being proposed for this stockpiling area?

A: In terms of the storage of dredged coral, yes.

Q: Are you aware of the amount of dredged material that will be placed on this site of 177 acres.

A: Yes.

Q: Is there any doubt in your mind that this particular use will not fit in with an agricultural use?

KISHIMOTO: Objection. I anticipated the questions that Mr. Murakami asked. It appears the line of questioning is following that he will be asking Mr. Dinell for a conclusion as to whether or not this permit is appropriate for the parcels that are before the Commission. That is a decision the Commission has to make.

MATSUO: Mr. Murakami, is that where you're headed?

MURAKAMI: I think Mr. Dinell has testified that this permit procedure has both legal and planning ramifications. I need his statement as a planner.

MATSUO: Are you going to confine your questioning to the planning aspects rather than asking your witness to make legal conclusions because as you are aware, the issue is presently on appeal before the Supreme Court.

MURAKAMI: I will stipulate that this witness does not qualify to enter a legal opinion on that issue. He is, however, qualified to render an opinion relative to planning concept.

CHAIRMAN: I'll overrule the objection.

CONTINUED QUESTIONING OF MR. DINELL BY COUNSEL MURAKAMI

MURAKAMI: Stockpiling of coral is not an agricultural use, is it?

DINELL: No it is not.

Q: In your opinion as a planner, is the SUP procedure an appropriate procedure to go through in order to get permission from governmental bodies to utilize the 177 acres of land to stockpile on that land?

A: In my opinion, a planning point of view, the SUP procedure is not the appropriate way to proceed. First of all it involves storage for a long period of time.

Q: What's your understanding how long this would be?

A: 15 to 20 years.

Secondly, the use is ancillary to an urban use , mainly the construction of the harbor. Thirdly, the

am it of acreage is substant . . . Fourthly the storage is not related to an agricultural use. Fifthly it's highly unlikely the land will never be used again for agricultural pursuits once it is used as a storage site for dredged spoil.

If there's a major change in the use of the land which is going to be a permanent change, then it seems from a planning point of view more desirable to reclassify the land from ag. to urban. The alternative is that you end up with SUPs which amounts to spotzoning which is very poor planning procedures. Because what you have done is undermining the integrity of the basic land use plan. So from the planning point of view, when there is a major change of land use such as this major change would affect substantially, it is more advisable to redistrict than use the exception procedure you indicate.

Q: If it was true that the use contemplated would last upwards of 30 years, would your answer change?

A: I would reinforce.

Q: I show you a copy of a letter that's addressed to me, signed by Tom Dinell. Is this your signature?

A: Yes it is.

Q: Is this a letter in response concerning this issue?

A: Yes it is.

MURAKAMI: I'd like to mark this N-2 and submit this into evidence.

CHAIRMAN: Accepted.

Mr. Dinell, are you aware the land is not agricultural land. They cannot use it for agriculture.

DINELL: I have heard that but I have not inspected the site.

CROSS EXAMINATION OF MR. DINELL BY COUNSEL KISHIMOTO

KISHIMOTO: Professor Dinell, you have rendered an opinion as a planner that the more appropriate route to follow would be a permanent boundary redesignation rather than a temporary SUP without considering the need for this land to be urban once the stockpiling is gone.

MURAKAMI: I object. Is that a question?

CHAIRMAN: Rephrase that please.

KISHIMOTO: Are you taking into consideration the need for this land to be urban once the stockpiling is removed?

DINELL: Yes, to the extent that the land will then be extremely unlikely to return to ag. use and will be in an area that will be increasingly urbanized.

Q: So you really can't make a determination now as to the need when the stockpile is gone for this land to be urban, suitability for use of the site.

A: No I won't make a prediction 30 years down.

Q: So you are, in fact, ignoring the need for this to continue in urban once the stockpile is gone.

A: There are limited alternatives that we're faced with at that point in terms of classification, assuming our law is the same, agriculture, urban or conservation.

Q: But you're still not addressing need which is one of the criteria for interpreting whether or not the boundary should be changed to urban.

A: I'm addressing need at the present time. Since land is going to be in urban use for a period of 20 years plus or minus, that's a relatively current use.

Q: But not permanent.

A: Permanent not.

Q: When you raised your concern using an SUP as a spot zoning, aren't the lands that the stockpiling is in or adjacent aren't those in the urban district and aren't those zoned, in fact, industrial? So that it's not scattered zoning. The scattered or spot zoning is not, in fact, present here.

A: I don't follow your question.

Q: Isn't the land to which the stockpile area is adjacent, aren't they in the urban district and aren't they zoned industrial?

A: I'll accept that.

Q: Are they?

A: I haven't examined the map at all.

Q: Okay. Given that, spot zoning is not a problem in this particular case.

A: It is to the extent that the land remains basically in the agricultural classification. It's still a spot zoning. What you're saying is it's not a spot use. Is that right?

Q: Okay.

A: And then if it is a spot use, then it is again from a planning point of view, this is what would make it consistent with the use.

Q: Okay so we don't have the problem here of smack-dab in a residential area plunking down a factory under an SUP. That's not what you mean by spot zoning. That's not a problem here.

A: Spot zoning is sanctioning another purpose than what is the normal classification.

Q: But we are not facing here the danger of a radically different use that is being plunked down in an area that has for example, a factory and residential in it.

A: Right.

KISHIMOTO: I have no further questions.

REDIRECT EXAMINATION OF MR. DINELL BY COUNSEL MURAKAMI

MURAKAMI: If you knew that there are no contemplated ag. uses for this property, would your answer change?

DINELL: No. That would make a stronger case for going in for boundary amendment for uses that weren't going into the area.

MURAKAMI: That's all I have.

KANE: As a planner, Mr. Dinell, how significant would you see the size of this SUP application in relationship to the use of the land for the SUP rather than redesignating it?

DINELL: I think 177 acres seems to me a substantial size of land for this area. One measure of that is a provision in the law that designates 15 acres as a SUP that doesn't have to go to Land Use Commission. This is more than ten ...

MATSUO: Mr. Murakami, I'm really not sure that the testimony being offered by Mr. Dinell is relevant in this matter since he appears to be substituting his judgment for that of the court in determining when a special use permit is proper. The circuit court, I believe, has upheld the Land Use Commission's approval of an SUP in a similar situation to this.

MURAKAMI: Once again I offer it as proof that this is not strictly a legal question. The law is based on the planning process.

CHAIRMAN: I'll leave that in.

KAMIYA: Mr. Dinell, if the applicant does not go through this SUP process and instead goes for a boundary change, would you recommend that the boundary change be for urban, industrial?

DINELL: If it were an application for a boundary change before the State Land Use Commission, it would be for agriculture, urban. The sub-classification in the urban district would be in the City and County Comprehensive Zoning Code.

QUESTIONING OF TOM DINELL BY COMMISSIONER KITAGAWA

KITAGAWA: Do you consider this land zoned properly, that it should be in agriculture?

DINELL: I have not examined the lands and all of the adjacent uses so I can't answer that question carefully. I could only say with the perspective use we've discussed, that it seems more reasonable to be in urban than agriculture.

Q: You mentioned earlier there was no use for agriculture.

A: Well, once the dredged coral is gone, it's likely that it won't be used for agriculture.

Q: Yes but that to me implies that it is being used for agriculture and therefore there is a need for it.

A: I follow you.

Q: Coming back to what Harriet said, what would you consider to be reasonable in terms of the acreage for SUP because the law is not specific that says it has to be a certain acreage.

A: I wish I did have a neat figure but that depends on what area you're in. One area of 50 acres would be very large. Yet 100 acres in another area might seem smaller. It seems to me in the Barbers Point area, 177 acres is relative substantial. But, I couldn't give a cut off figure.

Q: I agree with you that it would depend on the area. For example, if this was an area right next to a large urban zoned area, that there might be concern about 50 or 100 acres. But if it's out where it is, would it be reasonable to say that over 100 acres is okay?

CHAIRMAN: If I might interject, would the project itself be a determinant factor of the land area?

DINELL: I think that's a factor because this use is certainly ancillary to the harbor and integral to the construction of the harbor. That still doesn't give a neat cut off figure. In other words, if this were to be 50 acres, would that be a substantial use? Obviously not as substantial an amount as 177 acres.

CHAIRMAN: You're speculating.

DINELL: Right. I don't think I can give an answer. In this area, I think 177 acres is substantial.

KITAGAWA: I only ask that because I'm not that clear in my mind whether this should be for SUP or zone change.

CHAIRMAN: Counsel Murakami?

MURAKAMI: I have no further questions.

CHAIRMAN: Thank you for coming, Mr. Dinell. Counsel?

MURAKAMI: I have one more witness, Alan Ziegler.

QUESTIONING OF ALAN ZIEGLER BY COUNSEL MURAKAMI

(Mr. Ziegler was sworn in by the Chairman.)

MURAKAMI: State your name.

ZIEGLER: Alan Ziegler. I'm a bird zoologist at the Bishop Museum.

Q: Would you give us a quick background of your education?

A: I have a Bachelors and a PHD in zoology emuritus, California in Berkeley.

Q: When did you obtain the PHD emeritus?

A: '67

Q: Would you describe your work since 1967?

A: I've been in excavation for the Bishop Museum since January 1st 1967. I've been working with birds, mammals, reptiles and amphibians, all the animals with backbones except fish. I'm in the research angle of it, something at Bishop Museum you don't see much. I'm not into display. So I identify bones from archaeological sites. I write papers on bones from archaeological sites. I identify mammals from data we collect, that type of work.

Q: So you're charged with identifying certain species within the bird class?

A: Yes, bones from archaeological sites, bones which people bring in to the museum to be identified, including a lot from Barbers Point. Many of these things I give tentative identification to, like these are big birds, a prehistorically extinct species, which should be developed by somebody who's a real expert, a paleontologist. This will be Stuart Olson at the Smithsonian.

Q: Have you worked with Dr. Olson?

A: I don't do exactly the same type of work as Dr. Olson just as he don't do the same type of work as me. But we talk a lot. I review his papers, that type of thing. I know what he wants. He knows what I want.

If we get 7,000 bones, it takes a long time to catalog those, number them, prepare them to be stored.

Q: So you have done work in the field on alien paleontology?

A: Mostly method type of paper work. I don't go and dig the bones. Somebody brings the bones to me and says here, what can you do with them. I identify them and sack them.

Q: Can you position the area of paleontology or identification of birds?

A: Well, we call the general thing about identifying bones in a place like Barbers Point, faunal analysis or animal remains and study these things from the archaeological site and from paleontological site. I publish several papers on pure identification of these things. Also, I have been invited to write papers on faunal analysis. How do you handle these bones? What sort of things do you need to be put into text books that are used to teach the archaeologist to go out and dig.

Q: Have you brought examples of that publication?

A: These are called field methods in archaeology. I'm not sure it's used at the UH. There's a chapter on science, on photography, chapter on mapping, on recovery. We have another series. Rather than putting out a whole book, someone has an idea of putting out chapters and then the professor teaching the course would put together his own book.

Q: When were those publications published?

A: The book in 1973 and - I'm sorry, 1975.

Q: This is the module entitled Incomes from Prehistoric Fauna?

A: Right.

Q: Is there any other individual in the State of Hawaii who is doing a similar kind of work to find bird remains as you are?

A: I think not. In fact, I'm desperately trying to teach some people about bird bones, fish bones, other bones. Is this bird bone being worked by humans or is it in natural form? These bunch of little bones that come from Barbers Point, is that from a human fire pit or from an owl? That kind of thing. There's no one to do that kind of thing here. We certainly need others to take some of the work off of me.

Q: Did you say you had worked with Dr. Olson on some of the remains that were taken out of the Barbers Point area?

A: Work to the extent of picking out ones that he wanted when he wasn't here. I don't name the thing. That's his field. So, I don't want to say I worked with him. Maybe that's not a good answer.

Q: Would you be able to appreciate the value of paleontological remains?

A: Oh yes. There's no question. The bone remains at Barbers point are highly significant on two levels, both for Hawaii and to the world.

In Hawaii 10 years ago, we started finding these remains of prehistoric birds. Stuart Olson has his PHD in amphibians. Miss ... from Molokai brought us bones from there and they were big bones looking at them. It's from the outer islands that we're also getting wonderfully, fantastic, prehistorically extinct, the flightless geese, the Hawaiian eagle. None of those places, Hawaii, Maui, Molokai, those bones have no relation as far as human relations to the early Hawaiians. Even Barbers Point till three or four years ago had any connection. We said the bird bones come up to a certain level and then the human bones start. But there didn't seem to be any connection. But in the last couple of years, we found there is a connection. Those birds lived with the early Hawaiians. The earliest Hawaiians that came here found the flightless geese, two kinds of crows, the long legged owl.

CHAIRMAN: Where at?

ZIEGLER: Barbers Point. That's the first place we knew it. The other islands we had radio carbon dates from the actual bones. Molokai dated 25,000 years ago and 5,000 years ago long before the humans got here. In Kauai, Poipu beach, we found nice bird fossil deposits. The radio carbon dates were 7,000 years ago with nothing to do with humans. Then boom, Barbers Point hit. In that same layer are Polynesian-introduced snails, the Polynesian rat that the Polynesians brought in, and also geckos which were brought in by the Hawaiians. That put Barbers Point on the map. We're just beginning to get an idea of a whole different thing. The Hawaiians didn't just come here and bring their pigs, fish and grow taro. They had a whole bird thing here to live with.

Incidentally, referring to the names, where did ... Point at Lanikai get it's name? There's been no crows on this island. Now we know there were crows on this island and the early Hawaiians were here with those crows. Where did Puunene get it's name on Molokai? There's no nene on Molokai. We know from the deposits though there were nene, and also at Barbers Point.

Internationally, I'm searching for sites in other parts of the world. They've got fauna sites in other parts of the world but none that really tie in a prehistoric bird fauna with humans. I only know one other place like this and this is in New Zealand with the Maori culture. They use to take the moe there which is a big bird. There have been some sites there which have been dug and moe and human remains found together.

CHAIRMAN: Excuse me. Did they tell you where they found it, the A lot, B lot or C lot?

ZIEGLER: No Sir. The only part we know of here is the significance of Barbers Point as a whole. I haven't read the legend. I don't know where this coral is going to be stockpiled. I've been out to Barbers Point one time. I've worked with thousands of bones for hundreds of hours.

CHAIRMAN: Counsel Murakami, did he get the point across to you?

MURAKAMI: That was the point.

QUESTIONS OF DR. ZIEGLER BY COUNSEL DIANE KISHIMOTO

KISHIMOTO: You said you're familiar with Barbers Point generally but not particularly stockpile area 2.

ZIEGLER: Right. I couldn't draw on the map. I was hoping someone would point out on the map so I'd know what you're talking about.

Q: Well, is the entire Barbers Point area that is of possible--

MURAKAMI: I object to the form of that question. The witness has testified he doesn't know where sites are.

KISHIMOTO: That's why I'm just asking where--

MURAKAMI: This calls for speculation by the witness and I object to the question.

CHAIRMAN: Sustain the objection. He said he didn't know where they came from. He said Barbers Point in general.

ZIEGLER: I don't know if I ought to say something. Maybe I misanswered. What bones are stored? I don't know where the coral is stockpiled. Are you approving something?

CHAIRMAN: Diane, would you rephrase that?

KISHIMOTO: Okay. What is your basis for saying Barbers Point area is of such importance?

ZIEGLER: Again at the level of Hawaii, it's the first time that we've had land positively known to have existed with the prehistorically extinct birds. That shows at Barbers Point at various sites in it.

Q: So you're saying various sites in Barbers Point.

A: There was one covering, there was a big mound of dirt out there that the bulldozer knocked the edge off. He got down and found there was fresh water in that site. People got in there with snorkels. Stuart Olson heard about this, got scuba gear, lights and went down. There were complete skeletons of these crows we were talking about, the long legged owls lying on the floor of the site, underwater. There were no Hawaiian remains whatsoever in that site.

MATSUO: Excuse me. Dr. Ziegler, I don't mean to cut you off but could you just briefly clarify something for me. You don't know whether the bird bones you referred to Dr. Olson came from the sites in question tonite. Is that correct?

ZIEGLER: Quite correct.

CHAIRMAN: Counsel Kishimoto, any more questions?

KISHIMOTO: That's what I was trying to find out. I have no further questions.

CHAIRMAN: Counsel Murakami?

MURAKAMI: No further questions.

CHAIRMAN: Thank you, Dr. Ziegler.

MURAKAMI: I have another witness but I don't think it would be feasible to continue.

KITAGAWA: Mr. Chairman, I think we made a decision that would be the last witness for tonite.

CHAIRMAN: All right. At this time, the Commission will continue this hearing to November 10th, next Tuesday.

ADJOURNMENT:

The meeting adjourned at 11:41 p.m.

Respectfully submitted,



Henrietta B. Lyman
Secretary-Reporter

Meeting of the Planning Commission
Minutes
November 10, 1981

The Planning Commission held a meeting on Tuesday, November 10, 1981 at 1:36 p.m. in the Conference Room, City Hall Annex. Chairman William Pacheco presided.

PRESENT:

William Pacheco, Chairman
Leslie Hirahara, Vice Chairman
Martha Cairl
Randall Kamiya
Harriet Kane
Yukio Kitagawa
Shigeyuki Nakatani

DEPARTMENT
REPRESENTATIVES:

Gail Baron, Executive Secretary
Steve Lim, Deputy Corporation Counsel
Jack Gilliam, Staff Planner

MINUTES:

The Minutes of September 15 and 29, 1981 were approved, on motion by Commissioner Kane, seconded by Commissioner Cairl and carried.

PUBLIC HEARING
ZONE CHANGE REQUEST
R-6 RESIDENTIAL &
B-2 COMMUNITY BUSINESS TO
B-1 NEIGHBORHOOD BUSINESS &
B-2 COMMUNITY BUSINESS TO
R-6 RESIDENTIAL
HALEIWA
LEE MARTIN, MASATO &
CURTIS MATSUURA
AGENT: LINCOLN J. ISHIDA
(FILE 81/Z-12 EY)

A public hearing was held to consider a request for a change in zoning from R-6 Residential and B-2 Community Business District to B-1 Neighborhood Business District, and Initiation by the Department of Land Utilization from B-2 Community Business District to R-6 Residential District for approximately 42,224+ sq. ft. located at 66-457 Kamehameha Highway (existing Haleiwa Theatre site), Tax Map Key: 6-6-17: 29 and 30.

The Department of Land Utilization has expanded the request to change 312+ sq. ft. of B-2 Community Business District zoned property to R-6 Residential.

Publication was made in The Honolulu Advertiser and Star Bulletin on Saturday, October 31, 1981.

No staff presentation was made. Staff reported that the applicant had requested a deferment to November 24, 1981.

PUBLIC TESTIMONY

No one was present to speak either for or against the proposal.

The public hearing was continued to November 24, 1981 in accordance with the applicant's request.

UNFINISHED BUSINESS
PUBLIC HEARING
STATE SPECIAL USE PERMIT
(STOCKPILING)

EWA
JAMES CAMPBELL ESTATE
(FILE 81/SUP-6 EY)

Public hearings held September 15 and
29, 1981, October 20, 1981, November 3,
1981 were continued.

CHAIRMAN: This is the matter of
the application of James Campbell
Estate for a special use permit. This
is a continuation.

We have a motion to dismiss the special
use permit. Counsel Lim?

LIM: The order of the proceeding is that Mr. Murakami is
putting on his last witness. Since his witness isn't
here, we'll hear arguments on this motion to dismiss
from both parties. The applicant for the special use
permit has provided us with a memorandum in opposition
to the motion to dismiss.

CHAIRMAN: Proceed.

MURAKAMI: I hope everybody has had a chance to review my motion.
I would like to discuss some of the major points in
review of the responding memo that was filed by Miss
Kishimoto.

Rather than concentrating on the differences between
variances and special use permits as the applicant has
attempted to do, what this Commission should more
importantly look at is whether or not this particular
permit will subvert the purposes of the boundary design-
ation process under chapter 205. I believe my motion
basically covers that.

There was some discussion in that memo about the size
of this parcel, 177 acres, trying to minimize what size
this parcel has in relation to the total surrounding
area. I think the Land Use Commission and the legislature
gave the warning light to this Planning Commission.
Whenever the parcel is more than 15 acres, it
specifically intended to look very closely at acreages
that are more than 15 acres in any kind of special
use permit process. It's like in some cars where you
have a red light when your gas tank is empty. It gives
you a warning so that you know what to do next.

In this case, the 15-acre designation was meant to
take, tell the Planning Commission to be careful about
proceeding on any designation that's over 15 acres, and
therefore let the Land Use Commission have the last say.

As Tom Dinell testified and is obvious, this acreage is
more than 10 times the amount than specified in 205(a)(6).

In addition, there was some discussion in the memo about whether 30 years was temporary or not. There was some discussion that coral's going to be removed and the land be placed pretty much into the use that it presently is, that is bare land with some coral diggings and keawe trees. That there would be really no impact on this land as a result of the use of the stockpiling of coral. Well, if any one can predict exactly what will happen in 30 years then more power to him or her. But 30 years is a long time and let's face it. This stockpiling is part and parcel of the deep draft harbor project. I bet my bottom dollar that the changes that will come as a result of the various activities related to the harbor will not make any agricultural use feasible for this particular parcel of land.

So, I don't think those arguments really have much merit in terms of whether 30 years is temporary or not. I think it's obvious that 30 years really is not temporary and that in view of the projected use of this entire area, the comprehensive view of the use that this land would be put, that we will not be dealing with a state of suspended animation during the period of the stockpiling. There's going to be a whole host of activities with this particular project. Thirty years is a vastly long time for a lot of things to happen.

Finally I think in terms of hardship, how does an applicant go after urban use designation? There have been no allegation on hardship aside from the fact that it may be a slightly longer process. Now I'm not trying to minimize the value of going through that process. I think that is the proper process to go through because it needs a comprehensive look at the need for urban lands and how it fits into the whole scheme of urban uses of lands on Oahu and in this particular area. We are limited if we go through this proceeding in answering those kinds of questions. I think as land use planners the Commission should take that long view and recognize a spade for a spade. That this is the other side of the dredging of the harbor and that we should take a look at the effect of what this kind of stockpiling has on future uses of this land.

The stockpiling is going to make a lot of people dependent upon source for gravel, limestone, sand and materials for the production of cement. If that does not pull related activities into the area over a 30-year period, I don't know what will. I think this Commission would be turning its head away from some of the more obvious effects of what this kind of industrial use will have on this particular area of Oahu.

In view of all of these considerations and in view of the rather vague standards set out by 206(a) and the related regulations on whether this permit should be granted, I think this Commission should recognize this is not the proper procedure to allow this kind of use to go through for the Barbers Point project, and that it should recognize in view of its full impact and let the course be run on the true and proper procedure to be followed in allowing this kind of use to go forth.

CHAIRMAN: Thank you Counsel Murakami. Counsel Kishimoto?

KISHIMOTO: Mr. Chairman, members of the Commission, most of my arguments are also laid out in my memorandum. I'd like to answer some of the points raised by Mr. Murakami as well as hit on some of the highlights of my arguments.

The legislature created an exception to the strict compliance with the district boundaries. It wouldn't have created this exception if it didn't intend the exception to be used. We believe the case before the Commission is precisely the type of case for which special use permits are intended.

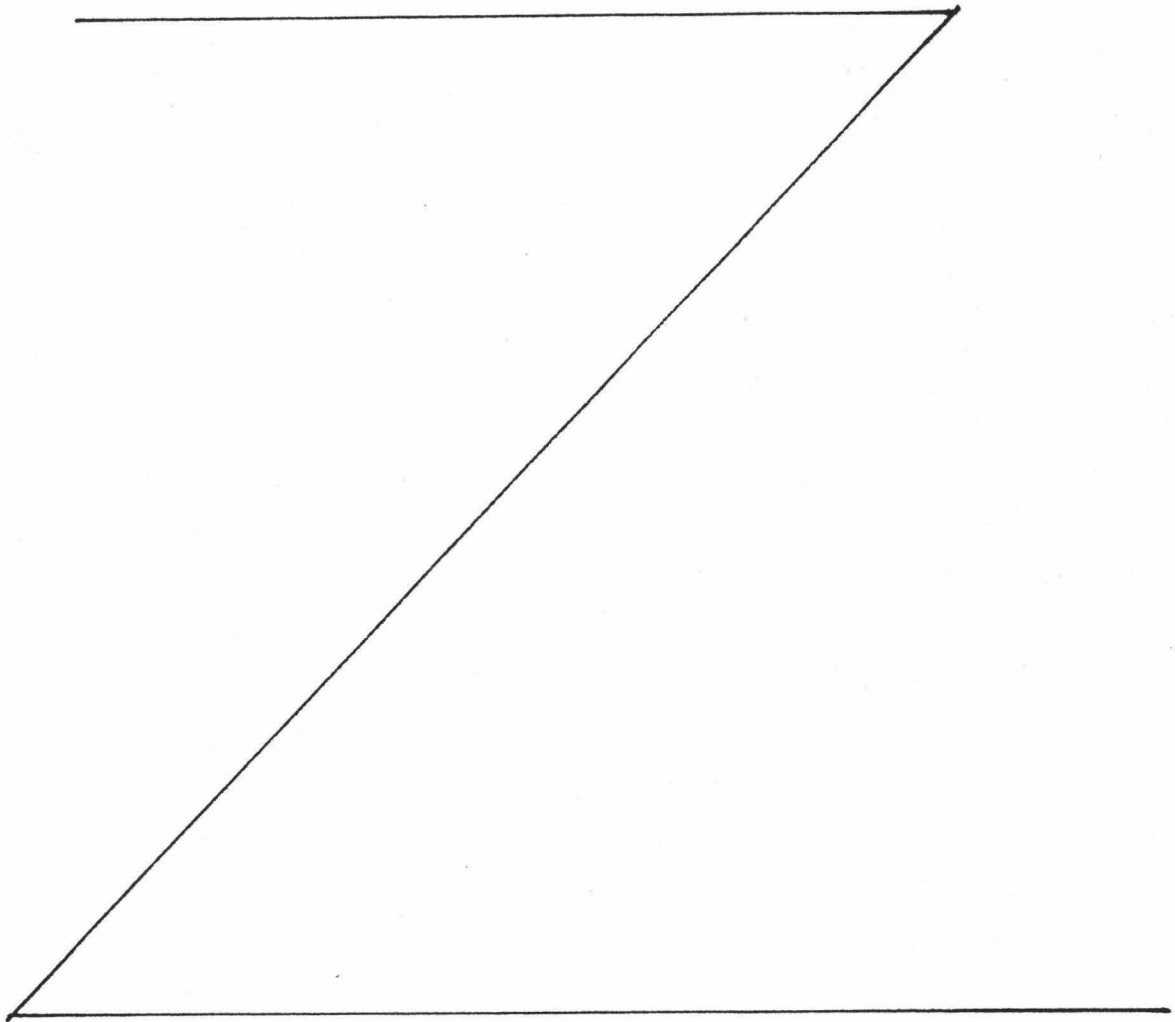
Now Counsel Murakami raised the question of hardship as a standard. We reiterate hardship as a standard is a standard imposed in determining whether or not a variance should be granted. It's an expressed statutory ordinance or charter standard. In this case hardship is not one of the standards for determining whether or not the special use permit should be granted or whether or not the use is unusual and reasonable. We submit that these standards are satisfied in the case before the Commission.

Insofar as size is concerned, the legislature has recognized the impact on size in land use considerations. For that reason, they gave exclusive jurisdiction over acres of land less than 15 acres to the Planning Commission, reserving for the Land Use Commission the right to take a second look at parcels in excess of 15 acres. They could just as easily have put a lid on it saying okay, parcels bigger than 30 acres just will not be considered for special use permits. But, they did not do this. So it's evidence that they did, in fact, leave it to the discretion of the Planning Commission to determine whether or not a parcel, regardless of the size, satisfies statutory and regulatory requirements as to whether or not the special use permit is appropriate.

The use for which Campbell Estate intends to use the parcel is very limited. It's the stockpiling of dredged coral and subsequent removal. The applicant

cannot use the property for any more intensive urban uses while the coral is there. This is in contrast to the extensive urban uses that you find, for example, in the Waipio development discussed in the Attorney General's opinion that Mr. Murakami cites. The intended use although long term admittedly is temporary, the applicant intends to remove the coral in approximately 30 years although admittedly it may take longer. And, even if all of the coral is not removed in 30 years, most of it will be.

Coral is something that realistically is removable. Again in contrast to the extensive urban type of improvements that you find in many of the other cases - roads, utility systems, buildings which are costly and hence economically as well as physically difficult to remove once in place. It's not a situation where you're going to have once the permit expires, somebody's going to go dig up asphalt from an airport runway as in the Lahaina case. So you're not having to tear down buildings or remove public utility lines.



When the stockpiling is terminated, the property will not be left with an infrastructure that can be used for other potentially less desirable purposes as was feared for example in the ... case cited by Mr. Murakami. When the stockpiling is terminated, the property will be no less suited for agricultural use than it is now. We're looking at essentially barren coral plains or keawe thicket.

If when the stockpiling is terminated or anytime prior to that when the landowner desires to use the land for more intensive and more permanent urban type use, we will have to come in and apply for an appropriate boundary amendment. At that time, persons who are concerned about the use of the property will in effect have a second chance to get in their views as to what the appropriate use of the property should be.

You've got this evidence that the petitioner really is not trying to use the special use permit as a substitute for boundary amendment. He's applying for it because it is the appropriate route to allow the intended use in light of the facts before the Commission. Thank you.

MURAKAMI: May I respond to a portion?

CHAIRMAN: Yes.

MURAKAMI: I think it was interesting that it was pointed out that once again this land will be no less useful for agriculture once the coral is removed. I think that really ignores what potential related services and industries can go around this particular coral disposal site.

There's been no mention as was mentioned in the testimony about the presence of a rock crusher to be used in relation to the stockpiling. Where does it stop? Will there be other facilities after a 30-year period, long after this proceeding has been forgotten? Probably.

I think the lines have to be drawn clearly in the beginning. With any kind of urban sprawl, developments can creep in with any given foot in the door. This is a foot in the door along with the project which would bring the intensive and vast urban uses to which this land would be put eventually.

They made mention that they can come in and request an ag. redesignation at a later date when a more intensive use is required. That already presupposes this is some sort of urban use if there is some more intensive urban use to be contemplated to be implemented on this particular parcel. I think the proper procedure would be to go for some greater or higher zoning use through the regular zoning process.

What we have here is a more general designation by the State Land Use Commission within which the City and County should be making the more specific determinations of what the specific urban uses should be. And if those more intensive uses will be later implemented in this area, then let those discussions be conducted before - I'm sorry if I'm not familiar with zoning procedures - but before the body responsible for zoning this particular parcel of land. But let this body and the Land Use Commission recognize what is urban land.

As long as there is no contemplated agricultural use for this property as has been the testimony of Mr. Stender, the state should recognize that this is going to be an urban designated parcel and go through the procedures that were set up by the legislature in 1961 to take care of these questions. If 30 years go by and we don't ask them, it's too late to ask them.

CHAIRMAN: Counsel Kishimoto, you have anything further?

KISHIMOTO: I've laid out my arguments in the memo unless the Commission has any questions.

CHAIRMAN: Thank you. I'll turn over to our legal counsel.

LIM: I feel it necessary to add the Corporation Counsel's view on the matter because we're presently in litigation with the Kahe Point Theme Park. The same issue, in fact the same cases raised by both parties have been mentioned in those briefs. It has been argued in brief. We have no decision on that yet. I don't know whether they're going to reach this issue or not. It may go off on a procedural issue and not touch the subsequent issue. For the record, because we have taken a position in court, we should tell the Commission our position.

The motion to dismiss is based on a number of points, mostly on the points mentioned by Mr. Murakami. He mentioned the Attorney General's

Opinion that the special use permit should be confined to a smaller area. They have in the Kahe Point case in an Attorney General Opinion of August 1977 that dealt specifically with the Kahe Point Theme Park that was approximately 103 acres. They said based upon the soil, type of activity, etcetera, it was all right to go the special use permit route. In court we've taken the position that the legislative body in enacting HRS 205.6 which deals with special use permits gave the counties a test. That test would be that the use would have to be unusual and reasonable within an ag. district. They didn't mention size. They could have. They didn't. They amended that to read that the Land Use Commission has to approve all SUPs over 15 acres in size. I think the legislative history states that the reason for that was because the legislature felt many redesignations over 15 acres could possibly have planning considerations for the entire state rather than just the county involved.

I believe based upon our prior position in court that we would feel that we are basically stuck with the unusual and reasonable test laid out in HRS 205.6. Now whether it says parcel, if felt by the Commission that parcel in this case of 177 acres is too large and that it would be unreasonable, then you could decide such.

It would be my advice in the case that the motion to dismiss will be decided upon the final analysis by the Commission. Because, if they feel it is too large and such that it is unreasonable, they will deny the permit.

MURAKAMI: I'm just trying to save you time. You should be happy.

CHAIRMAN: It would also make us decide the case before we've heard it all.

LIM: We could also defer the decision to the end of the testimony.

... (More discussion followed mainly with Counsel Murakami restating his reasons for the motion to dismiss.)

* * * * *

A C T I O N:

KANE: I'd like to make a motion on this motion and get it over with because what I hear is Mr. Murakami asking us to decide something which we will indeed be deciding very shortly. If he was interested in saving our time, I think we've prevented that from happening by holding on to this motion all this time. The very issues he brings up are the very

issues I'm sure we will be discussing. How the chips will fall, I don't know. I would like to make a motion to deny the motion to dismiss.

HIRAHARA: Second.

CHAIRMAN: It's been moved and second that this motion to dismiss submitted by Na Opio Aloha Aina be denied. Is there any discussion on it?

NO RESPONSE

CHAIRMAN: All in favor, raise your right hand.

THE MOTION TO DENY THE MOTION TO DISMISS WAS UNANIMOUSLY CARRIED.

AYES: CAIRL, HIRAHARA, KAMIYA, KANE, KITAGAWA, NAKATANI, PACHECO
NOES: NONE
ABSENT: NONE

* * * * *

LIM: Mr. Chairman, I'd like to clarify something new for the record because I've been hearing from Mr. Murakami that he's been foreclosed from asking questions on certain points. I feel it's unfair for him to characterize our rulings on the objections made by other counsels based upon that generalization because my rulings on the objections were based upon the fact that he had not tied the general effects of the Barbers Point Harbor into what this 177 acres was going to do to agricultural land. I'd just like to make that clear for the record.

MURAKAMI: I don't know if you got my point but I'm saying that the questions that are proper in urban redesignation process we're not allowed in this proceeding. That's clear.

LIM: Well it's a matter of opinion again. What we're looking at is 177 acres. They already had a Land Use Commission boundary amendment process for the harbor. In that hearing, they mentioned these three parcels as being the area for stockpiling. I think it's Campbell Estate's position that we're going to use it for stockpiling and once it's being used for stockpiling, if we want to convert to industrial use or whatever, they'll go in for boundary amendment of those parcels.

MURAKAMI: What I'm saying is that the use to which this parcel is going to be proposed have ramifications beyond the parcel itself. I do believe I was

prevented from asking those questions which went beyond the effects on the parcel and the immediately surrounding area. That's the only point I raised when I said the questions are more properly asked in urban redesignation proceeding could not be asked in this proceeding.

One of those questions by the way is whether there is sufficient urban lands to accommodate this extra growth? Further questions relate to whether lands will have substantial effects on surrounding agricultural land. When we tried to ask questions about various agricultural uses surrounding this property, I believe the Commission felt that was relevant because it went beyond the immediate area of the disposal sites.

LIM: I believe that we went extensively into the agricultural uses that were surrounding the area. It's when you got into the whole general agricultural acreage of the whole island that we had reservations as to how that tied in to this 177 acres which presently has no agricultural lands.

MURAKAMI: You can ask for urban redesignation you see. That was my one point.

LIM: Okay. Mr. Chairman, at this point we can continue with testimony or after a dinner break.

CHAIRMAN: We'll break for dinner and come back at 7:00 p.m.

RECESSED AT 5:30 P.M.
RESUMED AT 7:00 P.M.

Mr. Carl Young made a slide presentation to the Commission of the community's concerns regarding the deep draft harbor.

After several objections by Counsel Diane Kishimoto mainly concerning relevancy of the slide presentation to the subject matter, the Commission allowed the entire slide presentation with Counsel Kishimoto entering a blanket objection to those parts of the presentation not directly relevant to the stockpile issue.

FOLLOWING THE SLIDE PRESENTATION, COUNSEL MURAKAMI PROCEEDED WITH DIRECT EXAMINATION OF MR. YOUNG.

MURAKAMI: You were born and raised in Hawaii?
YOUNG: Yes.

Q: Would you give the Commission a little background of your education?

A: Roosevelt grad 1960, UH two years, Carleton College, Minnesota, bachelors 1964. That's my formal education. I think I learned more when I

was in the Peace Corps in India, and military in Vietnam as a medic. Got my masters degree in political science from Berkeley in 1970.

Q: What's your work experience in Waianae?

A: Been substitute teaching for almost a year. Had a one semester full-time job in psychology and history. Presently I'm employed as a research assistant at Hale Ola, a brandnew program under the native American project and Alulike. It's a program to try to increase the potentials of the Hawaiian community, to increase the awareness of what mental health is.

Q: When did you become interested in the Kalailoa area?

A: I was in the pre-med program at UH. I was planning to go back to Micronesia hoping to do some medical work. That didn't work out. After living in Micronesia for eight years, I couldn't relate to the city any more so I've been living out in Waianae where it's just like the South Pacific.

Q: How long have you looked at this Kalailoa area?

A: I've been out there about a dozen times over a year ago.

Q: How long have you studied this harbor project?

A: I did a big research project, Nawaiwai O Kekai conference in Waianae which was sponsored by sea grants with the UH and Aina Koi Foundation. Because the ocean is so important to Waianae, they had things like limu preparation, fishing, everything concerned with the ocean. The harbor was one of the forum topics. There were suppose to have been Campbell Estate and Department of Transportation at this forum but they pulled out at the last minute. So, there were just a couple of us from the community on this particular forum.

Q: Well how much reading and research have you done about the area?

A: I could write a book, I guess. Quite a bit, months and months and months.

Q: What kinds of reading did you do?

A: Anything I could get my hands on, the EIS, the ARCH studies, good old studies tucked away in the back of the closets of the Corps of Engineers and no one knows about like water studies and the like.

Q: What individuals have you talked to concerning the Kalailoa area?

A: It's a long list. I talked to--

LIM: Excuse me, Mr. Murakami. Are you trying to qualify Carl Young as an expert witness in the Kalailoa area?

MURAKAMI: I don't believe I will offer him as an expert. He's studied the area and contacted different farmers in the area.

LIM: Then could he just testify to his contacts, what he knows, and why he knows it rather than going into his background?

MURAKAMI: That's why I'm specifically asking about the Kalailoa area.

YOUNG: Well, we talked to people in all levels, the DOT, the Board of Water Supply, the Campbell Estate people. One of our concerns is agriculture. We went out to find out what farms were affected in the area. We talked to quite a few farmers throughout the Ewa plains area.

CONTINUED DIRECT EXAMINATION OF CARL YOUNG BY COUNSEL MURAKAMI

MURAKAMI: And is the product of all that research and time spent reflected in what was presented here tonite?

YOUNG: Well as I mentioned earlier, this is what appears after what revisions. We left out a lot of stuff trying to accommodate the wishes of the Planning Commission. But, we pretty much touched on the areas I wanted to touch on.

Q: Would you summarize who you talked to of the people that live in Waianae concerning the Kalailoa area?

A: Well, when I was teaching, my philosophy in teaching is teach the students everything. As adults, we're suppose to be mature enough to know what's wrong and right. At high school level I try to teach them as adults, everything from A to Z and let them decide from there. So extensively at the high school we showed the slide show, talked with people from the Waianae Land Use Concerns Committee, people from the Neighborhood Board, from HCAP Billie Hauge and Eric Enos. We're in close touch with the kupuna. A lot of the older people in the

community are very interested in what's happening in different projects. As you saw from the slides, the one reason why Waianae is still Waianae, it's still country, is because at all levels from the young people up to the old people, they're all of one mind. They want to keep Waianae the way it is.

Q: In your opinion based on all that knowledge of how people are thinking about this particular area, do you believe there has been sufficient input from the community concerning the proposed project?

A: Definitely the community is divided. There's no one person that speaks for the entire community. The farmers are very divided. I think they were party to a suit against the Kahe theme park and have been active against other developments.

That's one of our biggest disappointments especially for me. I've studied political science. To study it and participate in it is something else. I've been very disappointed because impact is on the Waianae Coast and the community has never been consulted.

When we went to the DLU hearing, the Ewa Neighborhood Board had been sent the letter of the hearing on the stockpiling. The Waianae Neighborhood Board was not consulted on the matter. Everything is held in Ewa Beach but not in Waianae.

Q: Is it your opinion that if a hearing was held in Waianae, numerous people would attend?

A: When the City Council went down, the newspapers reported 300 or 400 people. But, according to the maintenance people, it was filled up to capacity of about 800 people. This was the City Council meeting on the Development Plans. When Planning Commission went down, there were several hundred also, a year ago. There is tremendous interest. If the group did ever decide to go down and discuss stockpiling, you would get their feeling.

LIM: Excuse me. I'd like to make it clear from Carl Young's testimony. If they keep complaining that they don't have adequate hearings on this matter, if they are, then we can always set meetings for some of these people to come in and testify.

YOUNG: What was that again, please?

LIM: I'm trying to get at the point of your testimony because you keep saying that if we had it in Waianae, a lot of people would attend, etcetera. So therefore you're saying we're basically denying their chance for a hearing.

I want to make it clear if they want, they can come and testify here.

MURAKAMI: Well, based on what you know Carl, is it practical for people to come here and testify?

YOUNG: Well, I would like to at this point, point out that it's kind of, in all honesty, a humbling experience to see the Commission members come out. I understand that you're not paid and so I understand the commission members themselves spend a lot of time on their own. However, although some of you might feel stockpiling is a small issue, let me assure you that the Waianae community sees quite the opposite. It's a very, very important issue.

Waianae is such a special community. I know it's kind of wierd to talk about a dream but we do have a dream out there.

CHAIRMAN: Carl, you say this is a very important issue for the people of Waianae. Why aren't they here?

YOUNG: There was a large crowd here about two, three weeks ago.

LIM: We didn't proceed with that hearing because you guys requested a deferral.

MURAKAMI: Carl, do you believe the Waianae community knows about this particular hearing tonite?

LIM: Excuse me. I just want to clarify a point. I know you're trying to make your record, Alan, but I want to know right now whether you feel that you're being denied a fair hearing? If you are trying to make the point, we might as well continue this hearing so you can get your people in.

MURAKAMI: Well, I'll just follow this up by a motion to have the Commission schedule a meeting in Waianae.

LIM: Why don't you make your motion now?

MURAKAMI: I so move.

CHAIRMAN: He's making a request, not a motion.

MURAKAMI: Right.

CHAIRMAN: We'll have to get the feeling of the Commission.

NAKATANI: On the request of holding the hearing out in Waianae, I for one believe in giving a fair shake to the community, listen to them. But look, the community has to be reasonable people too. We as commission members are laymen.

people too. We as commission members are laymen.

Look, we believe in certain things like what you believe in, like agriculture and so forth, but why? Why? You have to be reasonable too and meet us half way. What's wrong with holding the hearing in town here? We've giving you a fair shake. You want to bring 100 people, 500 people? We'll listen to them. We're not denying you. But, why do you want that always we go out there? Meet us half way sometimes.

I believe strongly to give the public a fair chance. I come from a country area too. I know the living of country. I recognize that. But please, meet us half way. Don't expect every subject that comes up, we have to go to the community. Meet us half way. What's wrong? We gave you time. If you want to bring 100, 500 people, bring them. We'll listen. But we're not denying you and don't accuse the Commission of being unfair. I for one believe strongly in giving you folks a fair shake and we're giving you guys a fair shake.

MURAKAMI: Mr. Nakatani, first of all I don't believe the witness ever said that you denied them a right to the hearing. I think that was a characterization made by somebody else.

NAKATANI: Okay but my point is why do we have to go to Waianae? What's wrong with here?

MURAKAMI: My request to have the hearing in Waiane is based on the fact that transportation is really a problem. When you schedule a hearing in town, you effectively, for whatever financial or practical reasons, foreclose a large number of people from attending. That's true whether we like it or not.

As Carl Young has testified, he appreciates your concern as lay people and volunteer public servants, basically to sit and listen to hours and hours of testimony. But at the same time, let's just face it. The reality is that you do foreclose people from showing up at hearings if they're not located in the same community.

CHAIRMAN: Counsel, the Commission was out there recently on another SUP hearing. They do go out there. That one was over there. This one is over here. I think what Commissioner Nakatani is saying is, why all at Waianae? Why not in Honolulu? One for one or something like that.

LIM: Mr. Chairman, the thing we have to get clear first of all is if you're making the objection, I would like a formal objection so that we can rule on it. You can't have your cake and eat it too. You can't have the hearing and then still object that you're not having your hearing.

MURAKAMI: Well in my mind, and you might disagree, a contested hearing is different from a public hearing. The hearings scheduled the last three times have been contested case proceedings.

There has been no published notice about those hearings other than notice given to Na Opio Aloha Aina. It would have been very difficult from a practical standpoint to pull 500 people out the three times because that's the number that was going to show up to come to Honolulu.

LIM: Okay. We've published notice twice in two consecutive weeks, the last one being 15 days prior to the first hearing. That's why we continued the first hearing because we didn't publish properly. We've done that. At each continued hearing we've mentioned the date time and place of the next meeting so therefore we don't have to republish the hearing.

As we understood the proceedings, you were representing Na Opio and that included all of the people that came to the initial hearing.

MURAKAMI: No wait a minute. I never represented that I represented anybody but Na Opio Aloha Aina. I cannot make that representation.

LIM: Well at the original hearing, they all were coming under Carl Young.

MURAKAMI: Well, that's not to my knowledge. My only understanding is to Na Opio Aloha Aina. Whether the individuals want to be within that group too, is another matter.

HIRAHARA: On this point of going to Waianae and there's problem of hardship, transportation, Carl is here. He made an extra effort. He's been here four times and he lugged his things. If there were more people like you, I would give more credit. But, I see about half a dozen people here.

YOUNG: Everytimewe come, we either get a flat tire or the engine conks out.

HIRAHARA: The point is you made it here. Where's the other people? They can get a car pool. The last time we went to Waianae, we went in a car pool. We didn't go in three different cars.

YOUNG: The last time we came, we had three truckloads.

HIRAHARA: Do that again. We're not denying anybody. We'll listen to you. You went through your whole slide presentation. I thought it was well presented. It was a very emotional belief but it was very well presented. But, I for one am against going to Waianae. I don't want to go that far. I live at Hawaii Kai. I come here, that's 20 miles. Waianae's another 20 miles. Why can't they come here half way?

NAKATANI: Can I say something? Somewhere along the way the Commission has to draw the line. The community has to understand too that if we have to cater to every request, if every community for every subject that comes up and we have to cater to them,

that's endless. You have to give us a break too. We have to draw a line some place. We say this subject should be held in Honolulu. But, we're not denying the people. But, they have to meet us half way. That's what I'm saying. That's all I'm saying. It depends on the subject. I think the Commission felt there's nothing wrong holding this hearing in Honolulu.

LIM: We're at the stance now where Mr. Murakami has requested to move the hearing out to Waianae. The Commission should act on that. If you decide not to go out to Waianae, I think Mr. Murakami has to make it plain to me anyway whether he's objecting to the hearing being held here as being violative of their due process rights. If he's making that objection, we'd just be willing to continue the hearing so you can get your people here.

MURAKAMI: Is that the position of the Commission?

LIM: Well, I think it's unfair for us to be sitting here and you're complaining that we're holding the hearing in Honolulu and foreclosing some of your people from attending and testifying. They can submit written testimony.

My major bone of contention is that you cannot complain that you're receiving no hearing and yet continue with the hearing.

MURAKAMI: Well, like I said before. My position is that the contested case proceedings, that is my interest. However, I do have an additional interest that the public have as much of an opportunity to present testimony as possible.

LIM: Okay, I just want to get one thing clear. Are you saying to us you're being denied the chance for a fair hearing?

MURAKAMI: Well, like I said the fair hearing in terms of the contested case proceeding--

KANE: Can you just answer him yes or no, please?

MURAKAMI: Yes. It has taken place.

LIM: Are you then requesting a continuance of the public hearing to have your witness attend?

MURAKAMI: Yes. The request was that it be held in Waianae.

LIM: That was the request to hold the hearing in Waianae first.

KANE: Mr. Chairman, may I make a comment on his request to meet in Waianae?

CHAIRMAN: Yes.

KANE: I'd like to comment that I think I'm well known amongst these

commissioners and, perhaps to Carl Young if not to Mr. Murakami, for being some kind of a nut about accommodating the community. I'm going to vote against this request for two reasons that I'm going to talk about.

One is that twice people from Waianae did come here. They first came before us the same day of the DLU hearing. There was an announcement on your part at that time that you wished a contested hearing which if you didn't know, you should have known, automatically precluded any more testimony that day because everything else had to change. So they came one time and you turned it off.

The next time they all came, I forget what technical point you didn't want to move on, and so we didn't vote and they all went home.

So to my mind, it's your responsibility that your people did not get a chance to talk. And, I don't want you to interrupt me yet.

The other reason I'm going to vote against the request was the words that you used, Carl - and I know that there's been that element in getting a commission of any kind to go out into the community, but I don't like it. Your expression was, well let's face it. It's a humbling experience if we can get the commission to come out there. That's the kind of power business that I don't want to get involved in. I feel offended by it.

So, I'm going to vote against the request.

YOUNG: Can I just say something?

KANE: That's up to the Chairman.

CHAIRMAN: Yes.

YOUNG: Maybe I don't speak good English.

KANE: You speak good English.

YOUNG: If I insulted anybody, I felt very humble by being in the presence of people who are sacrificing so much. That's what my intent was. So, I apologize for my poor English. That was my intent.

LIM: Can we act on the request to move the meeting out to Waianae? Have a motion.

* * * * *

ACTION

CHAIRMAN: The Chairman will entertain a motion to deny the request to go meet out in Waianae.

NAKATANI: I so move, Mr. Chairman.

HIRAHARA: Mr. Chairman, how about going the other way, entertain a motion to have the hearing there. I think it'd be negative to--

CHAIRMAN: All right you make the motion then.

HIRAHARA: No, I'm not making the motion.

CHAIRMAN: Moved and seconded that we go to Waianae and continue the meeting?

COMMISSIONERS' RESPONSE: No.

NAKATANI: Mr. Chairman, I made the motion to deny the request.

KITAGAWA: And I'm seconding the motion.

CHAIRMAN: Right. Leslie, this is what we had in mind. Any discussion on that motion?

HIRAHARA: Here's discussion, Mr. Chairman. The representative against this SUP, requested to have the hearing there, and you, on the floor decided to make--entertain a motion to deny that request. I think it should have been dealt the other way.

CHAIRMAN: I don't think that should be too argumentative my dear friend. If we're all set, all in favor of the motion to hold the meeting at Waianae, is that it?

NAKATANI: Oh no.

COMMISSIONERS' RESPONSE: No. Let's start over.

CHAIRMAN: All those in favor to deny the request to go to Waianae for the meeting to continue this proceeding? All in favor raise your right hand.

It's a unanimous vote.

COMMISSIONERS' RESPONSE: No.

CHAIRMAN: All opposed?

(The motion passed by a vote of 6 to 1. Commissioner Cairl dissented.)

AYES: HIRAHARA, KAMIYA, KANE, KITAGAWA, NAKATANI, PACHECO
NOES: CAIRL
ABSENT: NONE

* * * * *

- LIM: Mr. Chairman, because we came out that way on the motion, now I have to ask Alan a question, whether you want to continue on the basis that you're being denied a chance to present testimony?
- MURAKAMI: The public testimony is not a part of my case. I am making the motion and request of Na Opio Aloha Aina so that the public will have an opportunity. But, I am not a representative for the public. My reason for making the motion is that this is a necessary step to incorporate as much input from the Waianae community.
- LIM: Therefore you have no standing to make any objection.
- MURAKAMI: I can't speak for the public. However, my recommendation is there is some opportunity for public input particularly if testimony was foreclosed at the very first hearing on this matter.
- LIM: In the absence of any testimony that they are being denied that fair hearing then I don't think the Commission can make any assumption about that.
- MURAKAMI: Point of clarification. I believe Commissioner Kane said something about the fact that further testimony was foreclosed at that point from the public until we had a contested case hearing?
- KANE: Who was it that came in?
- LIM: Carl Young came in. Therefore we could not take any testimony because we hadn't published proper notice at that time. When we came in for the next meeting then you came in and made the point that we didn't publish proper notice.
- MURAKAMI: That was the contested case hearing.
- LIM: Right. That's why we did it all over again and we came in and we started on the third time. At the two initial meetings, I believe Carl was present and some other members of the community were present.
- MURAKAMI: Well I guess my question is, is the Commission giving any further opportunity for the public to give any testimony?
- LIM: They can come at the conclusion of your case.
- MURAKAMI: You mean tonight?

LIM: If that's when the meeting ends.

Can we have a clarification? I want to know from you and Carl whether you're complaining about the adequacy of the hearing?

YOUNG: I just have something very short to say and I might have said it before. The impact of the project of which stock-piling is only a small part is in Waianae. So, my feeling is that the hearing logically would be in Waianae. Whether that might necessitate changes in the Planning Commission where members are remunerated or given money somehow.

LIM: All I wanted to know was whether any of the parties, whether it be Campbell Estate or Na Opio Aloha Aina, felt they were being denied a chance to present evidence. Because if you do, we're willing right now to stop the hearing and continue it to another date. I don't think we can continue the hearing and you're still reserving your objections about the hearing.

KITAGAWA: Steve, I don't understand why we have to continue the hearing even though they're saying that there maybe some deficiency.

LIM: They're making the record is what they're doing. If we continue with the hearing in the face of their objections, they will take us to court and they will say they were denied a fair hearing. That's what I want to clear up right now.

MURAKAMI: Steve, I don't think you understand me. A contested case proceeding is something distinct and separate from a public hearing. I am not objecting to any phase in terms of whether or not we're allowed to testify in a contested case hearing.

Now the public hearing, we've made a simple request that that opportunity be expanded so that it can be moved out to Waianae and given some other forum.

LIM: Okay. The contested hearing is the public hearing in this case.

MURAKAMI: Maybe that's the source of our misunderstanding.

LIM: That's why I want to clear it up. I want to know whether in this contested case public hearing, whether you have any objections to the inability to present witnesses, etcetera.

MURAKAMI: Like I said before, I can only speak for our case. Now the members of the public were making a request that they be given expanded opportunity to testify about the project. But I'm not going to speak for members of the public.

LIM: Where are the members of the public?

MURAKAMI: In Waianae.

LIM: They are not parties to the case?

MURAKAMI: They are not. That's why I'm saying. We have made our case as best as we can. Clearly whatever public input comes in is relevant to our case particularly with reference to this project. However, we are not in position to say that the public has had sufficient opportunity to give their testimony. We want to call attention to the Commission our concern that there should be expanded input.

LIM: So as far as you know there is nobody else that wants to testify at this hearing if they don't appear tonite.

MURAKAMI: No, that's not what we're saying.

CHAIRMAN: Well are there then?

MURAKAMI: I think Mr. Young has testified there probably are.

LIM: I think our position has to be if they are not here at the hearing tonite, then they've waived their right to appear.

We can continue with Mr. Young's testimony.

KANE: I think maybe in a procedural sense, Mr. Murakami thinks the public is not allowed to testify in these proceedings.

LIM: No. That's why I said it was a contested hearing and public hearing all in one. Any body can come to testify. Any written testimony can be submitted, etcetera.

KANE: I know that. My question is, have you known that all along?

MURAKAMI: That definitely's not true. They could not interrupt our case to testify.

LIM: They can come in to testify either before your case or after your case. If anybody wanted to testify, we wouldn't sit here and stop them from testifying.

KANE: That's something we've never done. That's why I got so upset about the way Carl was being treated. That's something this Commission has never done is close off anybody. It's one of the reasons I don't like the highly technical SUP hearings because people can come around and object and not let us hear things. I want to hear everything, even the garbage, even the irrelevancies. This is not a trial. Our job is to try to find out what's going on out there. We'll sift out the irrelevancies. I figure I'm smart enough to do that. As far as I'm concerned, sift out the kooks too.

I think what maybe you don't understand is that the public is always invited to these things. You can ask anybody

you want or they can just come up and ask themselves. I assumed you knew differently. That's why I was feeling very offended that you were acting as if you thought we were not allowing sufficient opportunity.

MURAKAMI: Begging the Commissioner's pardon, the only reason I felt that there's been a misunderstanding of either one of us saying that we've been denied a right was because of Mr. Lim's characterization that we've said that we've been a right.

KANE: You know that's not the reason. You just didn't understand what the process was. You understand why Steve has to do that is because he's got to protect our tail just like you're trying to protect yours.

MURAKAMI: Well, we are getting farther and farther apart from the subject.

KANE: The subject is I just wondered if you understood that the public is always invited.

MURAKAMI: I've always understood that these are open meetings. However, I don't think I would concur with Mr. Lim's interpretation that the contested case hearing is a so-called public hearing. It's public only in the sense that it's open to the public. In terms of testimony, the proceedings have been confined to whatever witness is called by the applicant and called by Na Opio Aloha Aina.

CHAIRMAN: I don't believe that's correct.

LIM: That's not the case Mr. Murakami. If you look at any Land Use Commission hearing, they have public witnesses too.

CAIRL: Did you consider ... a part of contested case?

MURAKAMI: There were no contested case proceedings.

LIM: In terms of what?

CAIRL: I don't know. I'm new but it started long before me.

LIM: The original SUP hearing is all SUP hearings because we have the permit issuance thing that affects people's rights, is a contested hearing.

CAIRL: There were people here?

LIM: This is the 1977 Kahe Point thing. That's what's under litigation right now whether there was actually--

CAIRL: That's what I'm saying. There were people here to testify?

LIM: Right. The only reason why we separate people from parties, public witnesses from parties is for procedural reasons. Only parties can cross-examine. Only parties can present rebuttal evidence, etcetera.

CHAIRMAN: Mr. Murakami, I'm sure you know the Commission will not preclude anybody from wanting to be a witness and testify on their own behalf.

MURAKAMI: I never made such a statement.

CHAIRMAN: It's an open door to anybody that wants to come up and speak.

MURAKAMI: I hope so.

CHAIRMAN: Are you ready to continue with Mr. Young?

MURAKAMI: That's all the questions I have.

CHAIRMAN: Diane, you ready to examine?

KISHIMOTO: I have no cross examination.

LIM: Does that conclude your case, Alan?

MURAKAMI: Yes it does.

LIM: Okay, now Diane can present some rebuttal. Before you start Diane, Alan, you had a subpoena previously issued submitted to the Commission. At this time, I'm going to ask you again whether all of your requirements, things that you think the Commission should have seen or heard have been covered in the testimony?

MURAKAMI: I don't think I can speak to that right now.

LIM: Why not?

MURAKAMI: Because I had a pretty long subpoena. I don't have that with me right now.

LIM: I'll give you a copy. Maybe you can discuss it before you close tonite.

KANE: May I ask what it is you're suppose to do now?

LIM: Because Campbell Estate is a party, they have the chance to present rebuttal evidence that was brought up by Na Opio.

KANE: May I ask when it would be a good time to bring up the point that I want on the record about Dr. Emery's letter?

LIM: You can ask Miss Kishimoto. I think they're going to discuss something to do with Dr. Emery.

KISHIMOTO: The letter that was referred to by Dr. Emery was withdrawn,

I understand. We didn't get copies of his letter withdrawing it but I understand it has been withdrawn.

KANE: Well, the point if it's the appropriate time for me to make is that the letter was, as I understood it when you represented to the Commission as being a favorable review, it turns out it was much less than that. In the interest of Dr. Emery, some 55, 60 year reputation as the grandfather of Polynesian archaeology, I would like his reputation cleared up for the record, and to be very clear that the original letter would be very difficult to construe it is a favorable reviewing.

KISHIMOTO: I'm not sure what you're talking about. In any event regardless how that letter was characterized, it has been withdrawn. We will not introduce it.

At the last meeting of the Commission, request was made for deferment for a letter from Dr. Stuart Olson as to a statement that Dr. Hammatt made regarding Dr. Olson's intent after going back to stockpile area 3. We've submitted and labeled Petitioner's Exhibit 19, an affidavit of when the staff member of Campbell Estate transcribed a letter dictated by Dr. Olson over the telephone. When the original of the letter arrives, we will submit that to the Commission.

CHAIRMAN: You ready for the rebuttal, Diane?

KISHIMOTO: Yes, Mr. Chairman. I call David Sox.

CHAIRMAN: I remind you Mr. Sox, you're still on record. Repeat your name again for the record.

SOX: I'm David Sox with the U. S. Army Corps of Engineers.

QUESTIONING OF DAVID SOX BY COUNSEL KISHIMOTO

KISHIMOTO: Mr. Sox, earlier you testified that it's your staff responsibility for overseeing some clients with federal regulations regarding mitigation of impact of archaeological resources. Mr. Davis in his testimony made reference to a number of criteria being Petitioner's Exhibit 17 and 18 relating to the Society of Professional Archaeologists and another document entitled Treatment of Archaeological Properties, a handbook. Why weren't these criteria set forth in these documents included as part of ARCH's scope of work when they were contracted to do the archaeological study?

SOX: The scope of work prepared to recover archaeological and paleontological data from the stockpile area 3 or the federal area, was prepared in the Spring of 1979. Before these documents were either prepared for, I was aware of them. Petitioner's Exhibit 17--

KISHIMOTO: Excuse me, they're labeled Na Opio.

SOX: Na Opio's Exhibit 17 was not known to me at that time. I did not receive it until May or April, March of 1981 from the Advisory Council of Historic Preservation as an enclosure to their reviews, initial draft report. So I was not aware of these guidelines to guide me in preparation and scope of work or in the project monitoring. However, the sections in that document on report review were included as enclosures sent to the peer review so they would be able to have some formal guidelines with which to review final report.

The other documents from the Advisory Council for Historic Preservation was not available at that time when they prepared the scope of work. We did include as the sensible guidance document in terms of the report having to comply with this, was in the scope of work and was a guidance at that time which was a Department of Interior National Park Service guidelines were not federal regulations so they're not required compliance. They were included as guidelines and to my knowledge ARCH author of the final report did comply with these federal guidelines.

Q: Did the Advisory Council of Historic Preservation review the final copy of ARCH's archaeological report?

A: Yes by their letter as well as by my conversations with the staff members of the Advisory Council of Historic Preservation. To my knowledge, they did review the final report. Two staff archaeologists did review the final report.

KISHIMOTO: I have no further questions.

FURTHER QUESTIONING OF MR. SOX BY COUNSEL MURAKAMI

MURAKAMI: Mr. Sox, when you refer to the final report, what date of the report are you talking about?

SOX: July 1981.

Q: The Advisory Council did look at that July 1981?

A: Yes.

Q: Did the State Historic Preservation Office look at that final draft?

A: I don't know how detailed they did it but they did provide comments on it. I think the summary is one of the documents before the Commission.

Q: That was the July 1981 draft.

A: Yes. I think the Advisory Council's comments were 30 June 1981 and the State Historic Preservation Officer's comments were 1 July 1981, letters of that date.

Q: Are all peer reviews in at this point?

A: Yes.

Q: Is it still the recommendation of the Corps of Engineers that the Hammatt report be accepted and approved?

A: Yes. It has been accepted already.

Q: The Corps is satisfied at this point in view of the peer reviews that you have an adequate report to mitigate adverse effect?

A: The Corps of Engineers has accepted the final report and feels it is in full compliance with federal regulations regarding historic preservation.

Q: Does that mean that it adequately mitigates adverse effect?

A: Yes.

Q: Are the standards of the Corps of Engineers different from those of the peer reviewers?

A: They should not have been because we provided in our letter to the peer reviewers provided within certain guidance documents for them to review the report including the SOPA guidelines.

Q: Wasn't it very clear from the peer reviewers that, at least I can think of one clear statement in a number of reviews that reject any notion that adverse effects are mitigated adequately.

A: That's true but many of the comments of the peer reviewers of course were based on their professional confidence whether the report was adequate or not.

Q: On the basis of their archaeological training.

A: Yes.

Q: And what are you basing your opinion on?

A: I'm not an archaeologists as I stated before the Commission but the Corps of Engineers Pacific Coast Division relies upon the opinion of the State Historic Preservation Officer and the Advisory Council of Historic Preservation.

Q: Were you here when Mr. Neller testified?

A: Yes.

Q: Did you hear that they did not approve that report?

A: Yes.

Q: So you're relying merely on the approval of the Advisory Council are you not?

A: We rely on the recommendations and of the Advisory Council but as commented by Mr. Neller, his office does not have the authority to approve the report, nor does the Advisory Council in a sense.

Q: So really the only thing you're relying on is the Advisory Council.

A: Yes.

Q: And in your opinion you're not taking the recommendations of the peer reviews.

A: We've taken them into consideration. We have prepared a document which is before the district engineer right now, unofficial document which lays out various options in response to the public concerns regarding the archaeological work.

Q: What are those concerns?

A: The concerns laid out in the peer review.

Q: What are those options?

A: I can't reveal them at this time because they're not formally reviewed or approved by the district engineer.

Q: At this point then the only basis for your conclusion is the Advisory Council and nothing else.

A: The Advisory Council opinion. The Advisory Council has written letters to us as well as to other people noting that the Corps of Engineers has complied with all the procedural requirements of the law.

Q: You said procedural. Does that not include substance and requirements?

A: The Advisory Council regulations are procedural regulations.

Q: So you can't speak to the substantive requirements because you're not an archaeologist.

A: No.

Q: Is that right?

A: That's right.

MURAKAMI: That's all I have.

MR. SOX WAS QUESTIONED BY COMMISSIONER KANE.

KANE: Mr. Sox, I'm beginning to understand that procedurally you're satisfied that for substance you asked for a peer review, the Corps did, and ignored it. Then why is the peer review called for? It appears that only a part of the procedure is solved.

SOX: The peer review was recommended by both the State Historic Preservation Officer and the Advisory Council on Historic Preservation to accompany the final report when it was published, on their recommendation. The purpose of the peer review was to provide what we anticipated to be alternative viewpoints on the report, what should have been done, what could have been done, different interpretive points on what was significant out at Barbers Point. This is a standard procedure in scientific reports, particularly within the anthropological community. Whenever major reports or articles are written, that peer reviews be provided as part of the publishing of the scientific document.

Q: All those are not going to be included but on the basis of the report itself and the peer reviews which are published along with ..., the Corps has decided that there will be no adverse effect.

A: That's right. But we are reviewing the peer reviews and we will be developing a policy position. But, it has not been fully review by the district engineer.

Q: Are those the options you mentioned earlier?

A: Yes.

Q: You know when those will be ready?

A:: By next Commission meeting in a couple of weeks.

KANE: Thank you.

CHAIRMAN: Any other questions by the Commission? If not, thank you Mr. Sox for appearing.

KISHIMOTO: Dr. Hammatt?

CHAIRMAN: Dr. Hammatt, repeat your name for the record.

FURTHER QUESTIONING OF DR. HAMMATT BY COUNSEL KISHIMOTO

KISHIMOTO: Dr. Hammatt, when the site was selected for excavation, were these sites approved by any governmental agency?

HAMMATT: Yes.

Q: By whom?

A: Okay. There was a two-phase process involved. The sites were first of all, all the sites were tested. After that was accomplished a report was submitted to the Corps of Engineers and was sent also to the State Historic Preservation Officer for their comments. This was done both for their two separate reports, for the state area and the federal area both of which are included in disposal area 3. In addition to this, the sites that were proposed for excavation were also included in the research design as well as in these testing reports. So, the selection of the sites for extensive excavation actually went to two agencies through the Corps of Engineers.

Q: Did you include all the data you gathered from the site into this report to be published?

A: Well, it was a status report or an interim report.

Q: I'm talking about the final report.

A: Yes, all that information is included. In fact, there was a specific section on the testing of the site and there is justification in each case for the final decision adopting the site, and the information on which that decision was based.

Q: But did all of the data, the sketches, the profiles, all of your records of the data you actually collected when you

excavated or studied the site, is all of that included in this written report here?

A: No it is not. All that was feasible was or all that was deemed to be significant.

Q: So in other words, you've edited what went into the report.

A: Yes we did.

Q: You have the site profiles of the sites?

A: Yes we do.

Q: In these profiles, what about records regarding hearth locations?

A: Yes, we have extensive records of all the work that was done in the field as well as of all the lab work.

Q: So then the record of data information, for editorial purposes, you did not include in your report is kept and is available.

A: That is correct. In fact, I believe ultimately the proper agency of the U. S. Government is the Corps of Engineers.

Q: One of the major concerns that has been expressed by your peers is that more dating had not been done. Why was more dating not done?

A: I think looking through the peer reviews and looking through the report, it's explained in our report very carefully in fact in a number of sections, that the reason for not doing more charcoal dating, charcoal dating is one of the two generally accepted or let's say standard ways of dating in Hawaii, radio carbon dating of charcoal.

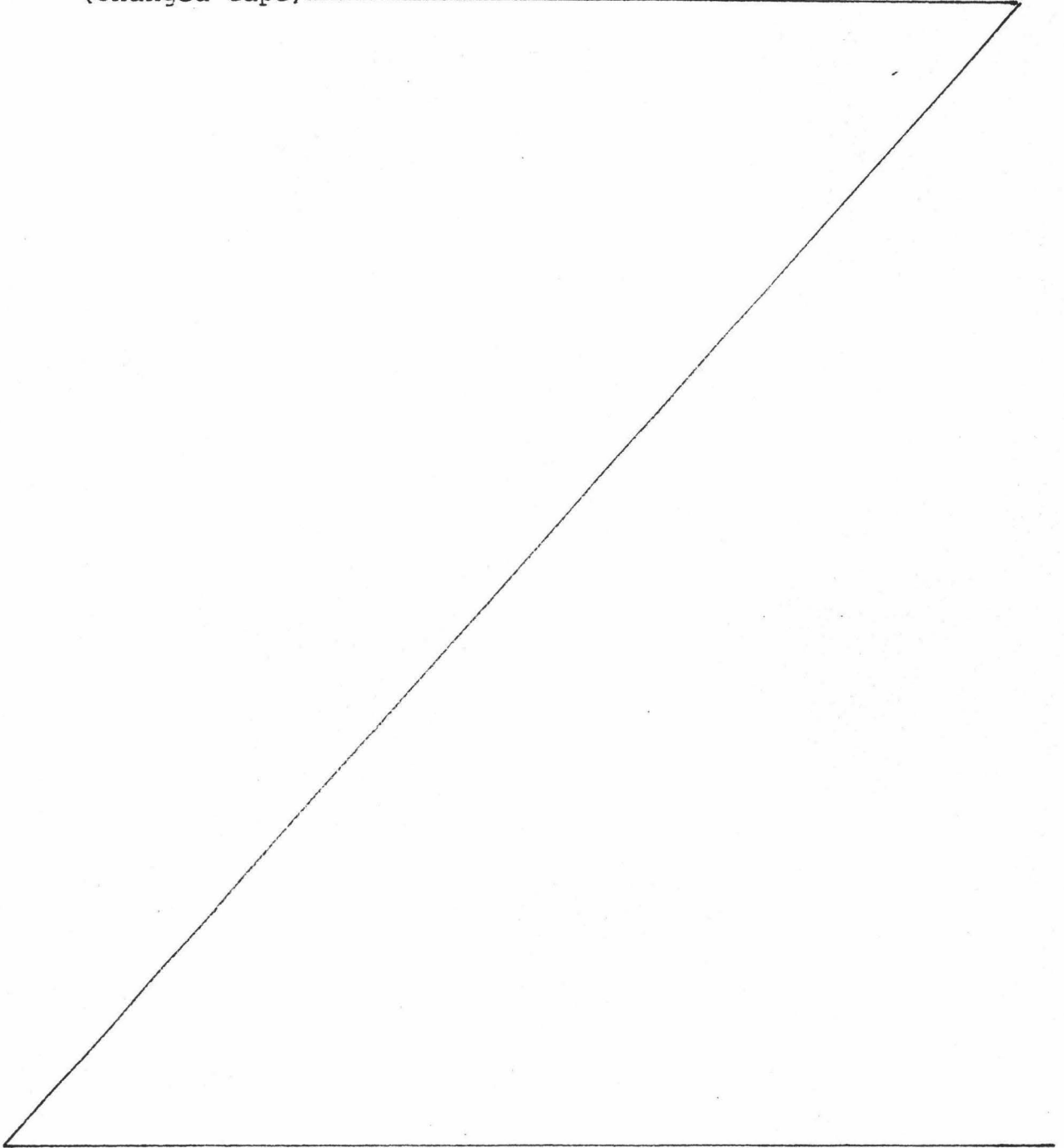
We submitted four dates, four charcoal samples for dating. They were the best samples we had meaning they were collected from the bottom of the site, what we call strata 2, in which there was the least probability of contamination and mixing from modern charcoal at the top of the site, for example modern kiawe burning. Also it was the best preserved samples in the sense of the integrity of the charcoal, and the largest samples, one of which was collected intact on the hearth. In all four cases the results of the dating were modern which led us to believe that there was a general contamination of charcoal in that area. In fact, this was the conclusion that was arrived at by the Bishop Museum in their salvage report of 1979 prepared by ... Sonodo in which he felt that charcoal dating at Barbers Point would be unreliable.

Q: Why weren't other dating techniques used?

A: There are other kinds of materials that can be dated by the radio carbon method. These include, as Dr. Kirch mentioned in his peer review, shell, bone, sea urchin. In each case all these materials have been infrequently used for dating. There is very comparative information on the reliability of dates gotten from this kind of material.

Sea urchin for example is one of the few organisms in the natural environment which isolates carbon isotopes. There was a study done very early in the history of radio carbon dating, back in the late '50s. If you date the sea urchin spines, you get a date 50,000 years in the past. If you date the sea urchins body parts, you get a date 4,000 years in the future. So that is generally a dead end as far as radio carbon dating.

Shell material, we had discussions with Dr. Olson ...
(changed tape)



HAMMATT: ...if you're going to submit shell samples, you submit samples that are specie specific. In other words, samples of one specie and modern samples of shell from that area be submitted. In other words, a fairly long term project involving close cooperation with a radio carbon laboratory in developing essentially what is an untried technique. So, it's a technical difficulty which I felt at the time, and I still feel, is a problem universal in Hawaiian archaeology, universal in archaeology in the Pacific, and outside the scope of this study in the sense of time, particularly.

KISHIMOTO: But were samples of these materials collected for testing perhaps when either the technical expertise, time or money were available?

HAMMATT: Yes. We collected the samples specifically for future dating, including specie specific shell samples, bird bone samples and other kinds of bones as well.

Now in my live discussion with Dr. Olson, he mentioned the attempt to date the rat and lizard bones to find out whether they are, of course, rats. I'm not sure about the lizard but I know the rat was introduced by the Polynesian. So the point is, if we can date the rat bone and the bird bone, we can establish whether or not they're contemporaneous and in turn we can tell whether the birds were living at the time of the Polynesian or after the time of Polynesian arrival. He's been working on it now for a year with his lab assistant. He's trying his best to isolate enough rat bone to be able to date. Apparently there's not really enough. He's going to have to lump all the rat bones from all the layers of the sinks in order to get--

CHAIRMAN: Dr. Hammatt, are you speaking for Olson or are you just saying--

HAMMATT: I'm just repeating the conversation I had with him.

CHAIRMAN: Try to pin it down.

HAMMATT: Okay. Well, there's a lot of work and a lot of difficulty involved in this dating. It's not as simple as some of the peer reviewers would make it sound.

CONTINUED QUESTIONING OF DR. HAMMATT BY COUNSEL KISHIMOTO

KISHIMOTO: Now, when you're digging at a particular site, how do you make a determination as to where you start digging?

HAMMATT: Well, horizontally, spreading out from a site. If the site is buried, I can tell how far out it goes. In most cases at Barbers Point, I won't say all, it was fairly simple because the site is defined on the basis of dirt. When you run out of dirt, basically, you run out of site. You cannot dig on bedrock and expect to find anything when there's no dirt sitting on the bedrock.

Q: Dr. Hammatt, we have on the record, a number of peer reviews and other critique for some of your work done. One of them I refer to Na Opio, Exhibit 11, refers to the work you did on Molokai. I have before you a document labeled for identification purposes, Petitioner's Exhibit 20 which was prepared in response--

MURAKAMI: I object to that question. The witness can testify as to what the purpose of this particular exhibit is. In addition, I believe that exhibit is irrelevant.

KISHIMOTO: Two responses. I'm willing to rephrase my question for one. Secondly, if the critical report is relevant then I believe other opinions on the same project are also relevant.

MURAKAMI: Mr. Chairman, let me address that. The different between these two reports is the first one was accepted by the Maui Planning Commission Hearing Officer as relevant to the proceeding. The second one now being introduced was rejected. This occurred on my last trip to Molokai because it was not rebuttal evidence and could not be properly addressed. On that very basis I am objecting. The first report was--can be judicial notice. Administrative notice is on file to the Maui Planning Commission. It is something that is relevant and material. The second is not.

LIM: In answer, the reason why we're letting the first critical review of the Molokai project, which has absolutely nothing to do with this project, was because you were attacking the credibility of Dr. Hammatt. If Dr. Hammatt has other reports that deal with the sufficiency of his work on that project, I think those should be able to come in also.

MURAKAMI: At this point, I would like the opportunity to be able to cross examine Dr. Tokuchi. That's the only way I can test his credibility as well.

KISHIMOTO: Mr. Chairman, I suggest the Commission take this exhibit for what it's worth. I'll stand by that. For the same reason, we were not permitted the opportunity to cross examine the writers of the earlier report.

MURAKAMI: Mr. Chairman, if this is going to be allowed, then I would request the opportunity to file some kind of rebuttal position to this exhibit because there was a lot of discussion about the validity of the exhibit at the hearing. I believe that's relevant to get to the purpose it's being offered today.

LIM: I don't know what the Maui Planning Commission proceeding was about but we received the original exhibit from you on the basis that it was to rebut Dr. Hammatt's credibility or his expertise as an archaeologist. I believe that's what the second paper is being introduced as now.

MURAKAMI: This is in a slightly different posture. We are in rebuttal evidence. That particular exhibit was offered as rebuttal evidence in the Maui Planning Commission hearing.

LIM: You presented it under direct case, right?

MURAKAMI: That's right.

LIM: She's presenting it on rebuttal.

MURAKAMI: That's right and it was rejected as rebuttal evidence by the Maui Planning Commission.

LIM: We're not the Maui Planning Commission.

MURAKAMI: But I believe the same lines would hold. I'm just using it as it's precedented.

LIM: I think we'll have to accept the exhibit for what it has been put in for, which is to rebut any allegations of impropriety on Dr. Hammatt's part.

MURAKAMI: Well, I still stand on my request to be able to respond to that exhibit when necessary.

LIM: You can do that on cross examination of Dr. Hammatt.

MURAKAMI: I cannot do that because he did not prepare that report.

LIM: You can make your case.

KISHIMOTO: Mr. Chairman, I offer Petitioner's Exhibit No. 20 into evidence.

CHAIRMAN: The Commission accepts it.

CONTINUED QUESTIONING OF DR. HAMMATT BY COUNSEL KISHIMOTO

KISHIMOTO: Dr. Hammatt, what is your overall response very briefly, to the critiques given by your peers to the July 1981 report?

HAMMATT: I probably read through those letters six or seven times and had an ample opportunity to think about them during the one month duration of this proceeding. I have two basic comments.

One of them is I feel in some cases there's been a misunderstanding of the whole project, the scope of the project in general. I feel the reviewers are expecting something that is unrealistic. They're expecting to basically solve the problems of Hawaiian archaeology, the technical problems, the technical limitations, the dating limitations, on the basis of one project involving archaeological sites in Waianae, a small area of leeward Oahu.

My other comment is that in some cases I feel that the reviewers did not read the report. They looked at it but I don't think they read it well enough to understand its content. I feel there are a number of instances in which this is demonstrable.

Maybe I can add one third comment. I heard testimony to the effect that after the end of this project and our submitting a report, we knew no more about that site and about the archaeology out there than we did before it started, in which case there are two possibilities. The first one as I said, they never read the report or we totally wasted a year of our lives working on the report. I prefer to believe the former.

Maybe I can at this point offer some specific comments. I refer to Petitioner's Exhibit N3, page 3, third paragraph labeled number 2, basically talks about the lack of statistical analysis. I can address that fairly easily by simply saying that the sample of artifacts and the weight of the fauna remains were far too small to provide statistical analyses. I think the most of one specific category of artifacts that we found at a site was less than 20. There may have been more than 20 of some fairly common kinds of artifacts. Still generally it was 2 or 3. It wasn't amenable to statistical analysis. The sample was simply too small.

The first paragraph of page 4 mentioned the screening practices, use of the one-quarter and

one- inch mesh, and the fact that we did not conduct the appropriate test to demonstrate the insignificant skewing factor. In fact, Dr. Kirch conducted a very similar test, demonstrating that use of a one-eighth inch screen was not necessary to recover material. This was done on a site on the Big Island. His report is quoted. However, in spite of that, we did use the one-eighth inch mesh.

Also, Dr. Rosendaul's letter, page 9, Exhibit N2, in which he refers to the lack of our descriptive data. Well, if you compare this report to probably all the other reports that were done on a contract basis on Hawaiian archaeology, I would say this is one that includes more hearths than any of the others. In fact, if I were to make a personal criticism of my own report, I would say maybe it has too much descriptive data.

KISHIMOTO: I have no further questions.

CAIRL: I have a question. Dr. Hammatt, last time you testified, you testified that one of the reasons you didn't put in so many of the cross sections, you said that was to make the report more concise. Yet I saw in the back a great big history of the camp out there and I wondered how significant that was in relationship to Stockpile Area 3.

HAMMATT: Actually it doesn't relate directly to Stockpile Area 3 in the sense that it's across Malekole Road on the makai side. The reason it's in there is because it's part of the contract. The Corps had wanted a military history of Camp Malekole.

HIRAHARA: Dr. Hammatt, if this had been reviewed by your peers, would you have written this report the same way?

HAMMATT: I think I said when you write a report, the most important person to please is yourself. If you're happy with it, that's the most important thing. The second was your client. If I felt there was something wrong with it, I'll just say it. I think I have made some criticisms.

To answer your question more directly, reading these things and some of the others I've gotten, there's a tremendous variety from the peers about what should have been done at the very beginning to the very end. I feel it's a valuable process to go through. It's certainly been very valuable for me as an archaeologist. I've learned a great deal from it. But, I also believe that it's virtually impossible to please everybody.

HIRAHARA: I understand that. If you were writing this work for your PHD, would you have gotten your PHD with this report, considering I guess there's a lack of fundamentals?

HAMMATT: I would have written it the same.

HIRAHARA: I don't want you to compromise yourself. Did they give you a reason why they're doing this? In other words, if they told you we want to make a harbor here and we want to have this report favorable for the harbor, is this impartial?

HAMMATT: All our reports are impartial that way. In our profession, we cannot take that kind of pressure.

HIRAHARA: Was it made known to you what type of outcome they expected?

HAMMATT: Yes. It was fairly clear they wanted to build a harbor. We were also told if there were any sites we felt ought to be preserved, we should say so. If there were any sites there should be further work, we should say so.

FURTHER QUESTIONING OF DR. HAMMATT BY COUNSEL MURAKAMI

MURAKAMI: Dr. Hammatt, it was clear in your mind then that the Corps wanted to build this harbor. Was the objective of your report to minimize whatever effects were going to occur as a result of the harbor construction?

HAMMATT: Well, I think mitigate is the word.

Q: You said you had profiles in your files.

A: Yes.

Q: Are the remainder of the 18 or so diagrams in the report?

A: Yes it is.

Q: Or was it your judgment not to include it?

A: Right.

Q: But they could have been included.

A: Oh, we could have included everything.

Q: They could have been included along with those diagrams, could they not?

A: Yes. I think there would have been a sacrifice in the clarity of the plan views.

Q: So it could have been included either with no additional pages or perhaps a few extra pages.

A: Yes.

MURAKAMI: That s all I have.

There is one person we'd like to call back on one point, Earl Neller.

KISHIMOTO: I'm a little confused. I thought the usual procedure is that we present our direct and then they present their case.

MURAKAMI: I'm offering this witness strictly for impeachment for a previous statement.

LIM: Well, we have never cut anybody off. Could you give us an offer of proof?

MURAKAMI: I think the first question will be my offer of proof. You can allow it or disallow it. Can I question?

LIM: Go ahead.

MURAKAMI: You heard the testimony of Mr. Sox tonite concerning the participation of the State Historic Preservation Office in the review of the final draft of the archaeological excavation report?

NELLER: Yes.

Q: Did the State Historic Preservation Office review and comment on the final July 1981 draft of the excavation report? That's my offer of proof.

A: I was confused by that because I think you just said before that, that the letter from both Advisory Council and the SHPO predates July 1981.

Q: So is your answer you did not comment on that review?

A: That's right.

Q: The final draft?

A: Exactly right.

MURAKAMI: That's all I have.

KITAGAWA: Can I ask Mr. Sox a question?

CHAIRMAN: Mr. Sox?

KITAGAWA: Mr. Sox, the report which has been accepted by the Corps of Engineers, will have attached to it the peer reviews?

SOX: Right.

Q: It will also have attached to it some of your recommendations or the Corps of Engineers recommendations?

A: I don't know really.

Q: You said there's going to be some attachments that's going to be prepared in two weeks. Who prepares this?

A: It would be prepared formally by the District Engineer. I would think the archaeological report itself would only published with the peer review comments. Then, whatever the Corps of Engineers plan to do about the report would be published in another form made public in various public documents, perhaps before this Commission. It would be available to the public but I don't think it would serve any purpose to be published along with the archaeological report which is a scientific document. Whatever the Corps decides to do, if anything, would be a decisional type of document which would not be appropriate to be with the scientific report itself.

Q: I'm trying to establish a procedure. From here then, the report is to be filed?

A: It will be distributed to the public, to specific agencies which we're required to distribute to in conformance with our own regulations, including SHPO, Na Opio Aloha Aina and other community groups. It will be distributed to libraries. I also would like it to be submitted to the National Technical Information Service in Washington which will make it available on microfilm to whomever wants it for a cost.

Q: It will be distributed to DLNR?

A: DLNR, DOT, state libraries, concerned groups, organizations.

Q: After that's done, does that legitimize breaking ground?

A: Only from the standpoint of compliance with the federal regulations regarding historic preservation. Whatever other requirements maybe necessary is another matter.

Q: Just from the standpoint--

A: Just from the standpoint of the National Historic Preservation Act in 1966. The environmental regulations is a different matter. We believe in regard to the environmental statement, those procedural requirements have been completed too. But, that's a different matter.

Q: The environmental statements and the national--

A: They are separate regulations and they don't necessarily overlap. In other words, you can have a project where you have to go through these procedures with the Advisory Council and data

recovery which have nothing to do with completing an environmental impact statement.

CAIRL: I have a very simple question. This report was prepared by the Corps of Engineers. They accepted the report.

SOX: That's right.

CAIRL: Did they approve the report? I'm having a difficult time keeping those two things separate.

SOX: The Corps of Engineers approved the report, in terms of the report completing the requirements of the contract. The report was accepted by the contracting officer.

KITAGAWA: If DLNR looks at the final report and says I don't think this was done properly--

SOX: We will take their concern into consideration in our decision-making process. We are doing that now.

KITAGAWA: What decision are you talking about?

SOX: We realize there are public concerns about the archaeological report so we're laying these concerns before the district engineer to layout options how he wants to respond to the public concerns.

KITAGAWA: But I thought you said the report was accepted?

SOX: That's right. It is. In terms of the completion of the contract, we have approved the final report.

KAMIYA: There's one more step which is made by the district engineer.

CAIRL: But even if everybody says no, the report is no good, they just take it into consideration. I don't understand why we need to go through all this procedure if in the end, with 95% of what I have read that says the report is inadequate and if DLU says that too, you can still go ahead and do what you will, regardless. It seems like a tremendous waste of time, energy, money, everything else if in the end you really don't heed these people.

SOX: That's why we prepare these documents for the district engineer for his consideration.

HIRAHARA: When is groundbreaking commencing?

SOX: No contract has been let yet. For these technical details, you should probably call on the chief of the hydraulic section who's the project manager for the report, Mr. Nakashima.

CHAIRMAN: Steve?

LIM: Based upon the last round of questioning, there maybe a desire by the Commission to wait until the final report of the district engineer.

MURAKAMI: Na Opio Aloha Aina would also like to see that report.

NAKATANI: I have one question. I saw in the newspaper the contract has been submitted to bid but they had a problem with the lowest bidder because of the violation of the antitrust. They were fined in the past. They're saying they shouldn't be awarded the contract because they violated the federal law. So if the bid was submitted, then the report must be completed. So why should we wait for another report?

KISHIMOTO: If the Commission would like, Mr. Nakashima is here.

CHAIRMAN: Is Mr. Nakashima here?

NAKASHIMA: Yes. I'd be more than happy to answer any questions about the contract.

CHAIRMAN: State your name for the record.

NAKASHIMA: Henry Nakashima. I have been sworn in, initially, and would have been called in by the attorney for the applicant as necessary. I'm Chief of the Hydraulic Section of the Planning Branch of the Corps of Engineers, Pacific Coast Division.

NAKATANI: Can you give me an answer? Was the bid submitted?

NAKASHIMA: The bids were open on the 27th of August. We have up to the 25th of November to accept the low bid or possibly go to a second low bid. There are certain legal complications that are associated with the low bidder, and we've asked our chief of engineers to render a decision as to whether we could award that contractor.

NAKATANI: The deep harbor and the stockpiling, is the contract together in one or is it separate contracts?

NAKASHIMA: It is a single contract including dredging and disposal of all the dredging material within Stockpile area 1, 2 and 3.

NAKATANI: In other words, all of the reports submitted was accepted, I presume.

NAKASHIMA: The archaeological report has been accepted as meeting the scope of work and the research design.... (changed tape)

NAKATANI: ... talking about, waiting for the report from the district engineer whether it was accepted or not. To me, why should we wait for that report because if the contract is let out and the bid is submitted, I'm assuming everything is in order already. So why are we waiting for the report from the district engineer?

CHAIRMAN: It appears the contract will not be officially closed until the 25th, right?

NAKASHIMA: Yes that's correct. We have an additional 60 days to issue a notice to proceed to any contractor.

CHAIRMAN: Beyond the 25th?

NAKASHIMA: Yes that's correct. For him to initiate any work. In other words, prior to that 60 days, the contractor will not be starting any work within that area.

HIRAHARA: After the 25th, the contractor may not accept the government contract.

NAKASHIMA: He's bound by it, legally, after having submitted it, unless he can prove he has made an error in his bid. The contract has to be awarded prior to the 25th.

HIRAHARA: Will be or won't be?

NAKASHIMA: As we see it right now, it will be.

CHAIRMAN: You know how soon?

NAKASHIMA: Before the 25th is the only word we've received as to a decision by a higher authority.

CHAIRMAN: Mr. Nakashima, are you conceding also that all these things have been cleared by engineers, the reports were in order, and that's why the bids went out?

NAKASHIMA: This is correct. We've taken the position that the report is legally sufficient as meeting the intent.

CAIRL: Everytime anybody uses that phrase, I feel like we're seeing some fancy footwork. It really bothers me, legally sufficient as meeting the intent.

HIRAHARA: At the present time, the Corps is still for this harbor.

NAKASHIMA: That's correct.

HIRAHARA: To your knowledge, given the report as adverse to it, you will continue with the deep draft harbor and try to mitigate any effects on whatever is salvageable or important to the land.

NAKASHIMA: The law requires certain archaeological salvage work be done. Through the process of selecting a competent professional, and we're required to hire a competent professional, the selection process was adhered to. A report was the result. I hate to make any personal comments regarding the competency or incompetency of any archaeologist. I'm not an archaeologist.

HIRAHARA: To your knowledge, is any place going to be saved for either--

NAKASHIMA: To my knowledge, there is, and I believe it's a matter of record, that there is a strip that has not been salvaged as such between the white coral area and Stockpile Area 3 which contains theoretically, significant archaeological items of interest. So there will be a strip that will not be touched.

KITAGAWA: Mr. Nakashima, one of the reasons why the Corps proceeded on design was because you already can use areas 1 and 2 for stockpiling?

NAKASHIMA: We proceeded and opened our bid based on the archaeological report having been completed.

CHAIRMAN: Diane, you have something further?

KISHIMOTO: No.

MURAKAMI: Mr. Chairman, I do have something. I had anticipated Mr. Nakashima was going to be called since he was on the witness list. I have some technical questions to ask him about the project itself.

CHAIRMAN: You willing to answer those questions he may pose to you, Mr. Nakashima? Diane?

KISHIMOTO: Well, I had Mr. Nakashima on the witness list precisely for this sort of situation where the Commission had questions that the other witnesses were not able to answer.

CHAIRMAN: I see. You can proceed with your questioning.

QUESTIONING OF MR. NAKASHIMA BY COUNSEL MURAKAMI

MURAKAMI: Mr. Nakashima, you're familiar with the contract, invitation to bid, are you not?

NAKASHIMA: Yes I am.

Q: That's contained in P-2, like this document I have in my hand entitled Invitation for Bids and Construction Contract?

A: That looks like the cover of it.

Q: Part of the contract requires the contractor to plant vines or other vegetation to prevent fugitive dust and other problems. Is that not right?

A: Correct.

Q: And one of the provisions there is that the contractor is required to number 1, water and irrigate those vines?

A: Yes he is required.

Q: Are there any provisions made as to where this water is going to come from?

A: No we have not made provisions for that.

Q: Is there any calculations in the contract, any other studies you've done, concerning the amount of water which would be necessary to irrigate these vines?

A: No, we have not.

Q: Is there any provision in the contract or other studies which would indicate the amount of water that would be necessary to keep--as I believe the contract document states--the dredged coral damp or moist, throughout this dredging period?

A: We have not made any provisions for water.

Q: How long is the construction period anticipated to last?

A: The contract period is for 42 months.

Q: So the water would have to come in to irrigate and to control fugitive dust for 42 months.

A: For 42 months or sooner if the contract is completed.

Q: It's anticipated the period is for 42 months.

A: 42 months is the contract period.

Q: Now, isn't it true also that there is a requirement that the contractor provide fertilizer to help with the planting of vines and other vegetation?

A: Yes, the contract is explicit.

Q: Is it not true that those fertilizers contain phosphates and other permeable material?

A: I am not certain what the requirements are. They are specified in the contract documents.

Q: Would you like to check and see whether you can tell and answer the question?

A: Page 2, D 2, fertilizer.

Q: Does it indicate to you whether or not that fertilizer will contain phosphates or nitrates typically found in fertilizer?

A: No, the specs refer you to two federal specs so I'm not sure exactly what the fertilizer components would be.

Q: You are a hydrologist, I believe?

A: I'm a hydraulic engineer.

Q: Would your expertise include knowledge of potential leeching problems for fertilizers into the groundwater, for instance under different soil conditions?

A: No, I'm not an expert in that area.

Q: You wouldn't have knowledge about that.

A: One of the things, of course, we look into various facets as far as potential impacts when we do our design work. One of the items, of course, when you look at an area of this type, the groundwater source is separate from the water len available in this area. We have brackish water layer sitting on your salt water in this location. Most of this water, brackish water, comes from the cane field. So, the brackish water already has a high fertilizer content. What little we do add by this mechanism of fertilizing the plantage will be very minimal.

Q: So in other words, you looked at the possibility of potential pollution of groundwater sources. But as a result of this project, you're not sure.

A: That's correct.

Q: Has any controls or studies which you've conducted in which you indicate any methods of controlling or monitoring these potential pollution in this contract or other study?

A: Yes. The contract is quite explicit in the controls as far as air quality, water quality and various aspects of controls required by federal, state and local laws.

Q: Aside from those standards, there are possibilities are there not, of fertilizer contaminating groundwater sources and potentially even the coastal waters if leeching occurs through this porous material?

A: I think if you go back into some of the studies that were done, and it's a matter of record as to the leeching of fresh water into the harbor under existing conditions, there is a considerable amount of high nutrient waters already entering the ocean.

Q: That's the result of the cane field ..., right?

A: That's the result of a long term accumulation.

Q: So this particular project could add to that problem, could it not?

A: Like I mentioned, what we consider minimal addition to what is already in there.

Q: But that was not made clear in this contract document where controls concerning fertilizer, leeching, usurping water resources.

A: By virtue of you having a very high nutrient fertilizer content already in the water entering the basin, I mentioned very little impact as we were able to determine.

Q: Do you have some of those studies? Were they made available to the Commission?

A: I am not certain.

CHAIRMAN: The answer is the report was not made?

KISHIMOTO: No, those were not made available to the Commission.

MURAKAMI: Now, there are various other environmental protection measures including ... controls or bidding controls ..., isn't that right?

NAKASHIMA: Yes.

Q: And isn't it true that these measures within the contract, you leave it up to the contractor to provide measures to control these various changes to the environment?

A: A contractor has controls. We have inspectors on the job.

Q: But do you have a specified control plan for each of these particular areas?

A: In regards to?

Q: ... discharge, spillage, etcetera?

A: The controls are specified as provided in the contract. I think if you go through the contract, you'll probably find all aspects addressed.

Q: Well, the aspects that are addressed, there are no specific requirements as to the extent of control required under this contract.

NAKATANI: Mr. Chairman, the line of questioning of Mr. Murakami of the contract. Why is he touching the contract if we don't know what is in it? I want to know what's the point you're hitting in the contract, the fertilizer, why?

MURAKAMI: I believe if there's any relevance at all, I'm directing my questions to this very contract that will result in this parcel of land being used. If there's going to be some determination of the reasonableness of this use, I think we ought to explore some of these areas to enable the Commission to make a decision.

KISHIMOTO: Mr. Chairman, the contract is in evidence and does speak for itself.

MURAKAMI: At the same time though, Mr. Chairman, I believe that since Mr. Nakashima is the best able to testify about the document itself which is very voluminous, I think he can offer some viable testimony as to just how far this contract document requires certain measures to be controlled, certain changes to be controlled as to these various points.

CHAIRMAN: Would you say that the report that went out to the contractors for bid would have all that information that you are asking him, that the professional expertise that went into this contract that was let out?

MURAKAMI: I don't think that's true. For example and the initial questions about the water sources, there's no mention in the contract document of water sources. I wondered whether the Corps of Engineers has some plan for this? That's what I'm trying to explore, just how far the plans have gone.

NAKATANI: Mr. Chairman, but the point I'm trying to say is us as commission members, what we got to do with the contract, spell out if there's no water there, they're saying the contractor cannot water the plants and all that? We can't control that. We got nothing to do with the contract.

The only thing that brought Mr. Nakashima up was my question was because to postpone making any decision for another two weeks or so until the district engineer completed the report. This is why I asked Mr. Nakashima to come forward. And, he answered my question. But now to go into the detail of the contract that don't have nothing to do with the commission members, I don't think Mr. Murakami should continue with the questioning.

LIM: I can see where he's trying to tie in. He's trying to make the point that there has been no provision in the contract where they're going to get the water to water all these plants. Also, there might be leeching of the fertilizer into the groundwater source. Also, there's been no specific mention in the contract dealing with the air quality, water quality, etcetera. However, on the other side of the coin, I think testimony came out that they have made the contractor responsible for all of these things. There are federal, state and county laws dealing with water pollution, air pollution, etcetera. So, that's what I've gotten out of it so far.

Now, if Mr. Murakami wants to state further, I think he ought to give us an offer of proof what he wants to get out of the witness.

MURAKAMI: Well, for one thing, I'd like to explore whether or not it's possible to control or monitor these things.

LIM: I don't think maybe that's not in his province. Like I said, he goes by federal, state and county regulations.

MURAKAMI: On the other hand, this is the only witness that can testify to what extent they will be monitoring control, as their technician in this area.

NAKATANI: Mr. Chairman?

CHAIRMAN: Yes Mr. Nakatani?

NAKATANI: I think, Mr. Murakami, maybe you should go to court and contest the contract, and not continue this questioning in front the Commission. If you want to contest the contract that was let out by the Army Corps of Engineers, take them into court. Not here.

MURAKAMI: Mr. Chairman, I believe-- You know, I'm feeling like the questions have become narrowed and narrowed as we go on. These questions are much more closely relevant to the particular use being proposed. Some of the other questions that I believe are still relevant but if this Commission feels it is not in this proceeding, this is another matter. At this point, I am entitled to explore the reasonableness of this use being proposed, and see whether the Corps has taken any steps to monitor, litigate and account for some of these changes to the land and the adjacent surrounding property. Two of the criteria specified under the regulations and statutes are in this area.

LIM: Perhaps you could ask the witness if he knows, what if any measures are being taken to insure that there won't be water or air pollution. He may not know at all.

CHAIRMAN: You can answer no if you don't know or yes if you do.

KISHIMOTO: Mr. Chairman, may I ask a question of the witness which I think may clarify something.

CHAIRMAN: All right. Is that okay with you Counsel Murakami? She's going to get clarification from Mr. Nakashima.

MURAKAMI: All right.

KISHIMOTO: Mr. Nakashima, you testified that the various provisions in the contract cover water quality, air pollution, that sort of thing. You also made some reference to inspections during the construction period. Will there be inspections during the construction period to insure compliance with these provisions of the contract?

NAKASHIMA: Yes there will be.

MURAKAMI: And Mr. Nakashima, what steps is the Corps prepared to take in the event there are any violations of the various items you mentioned?

NAKASHIMA: The contracting officer represented it has the option to stop the contract at any time during the contract, if there is any nonadherence to the contract provisions.

Q: And how much monitoring will occur at this project?
A: In regards to what aspect?

Q: The number of people that will be on the site, the frequency of those monitoring visits, etcetera.
A: The contracting officer representative and field inspectors will be on tap throughout the contract period, whenever the contractors are out there. In other words, if the contractor is dredging for an 18-hour period, they will have a representative out there for that specific period.

Q: And that person will be bonafide technically, to render some kind of monitoring report?
A: Yes, that's correct.

Q: What kind of qualifications? Are they engineers?

CHAIRMAN: Now I think that's irrelevant. You're really running away from that one. They are qualified people working for the government as inspectors on the job.

MURAKAMI: Well, my experience with government employees is that they are not necessarily qualified.

CHAIRMAN: Well, that's a matter of opinion again. I think the Commission understands they are qualified people. We'll accept it that they are qualified.

LIM: Mr. Murakami, I think your objections are going to whether or not who might be watching what's happening. I think Mr. Nakashima has stated that as far as he knows, somebody's going to be there to watch what's happening. If you've got problems with the enforcement aspect which is going to be later on down the road, that's another problem not to be dealt with by us. We cannot foresee all possible problems.

MURAKAMI: At the same time, I think we can foresee whether it's possible to monitor these things.

LIM: Mr. Nakashima said there are going to be inspectors there. If he said there's not going to be inspectors there, then we would be concerned.

CHAIRMAN: And we're the guys that's got to make the decision. You should be concerned that we do know that. We're happy they're going to be there.

MURAKAMI: I wasn't allowed to ask that question.

KISHIMOTO: That question was asked and answered.

MURAKAMI: I think I asked what was the qualifications of the monitors and I didn't get an answer.

CHAIRMAN: That question is overruled.

LIM: We will be assuming they will be qualified federal inspectors on the job.

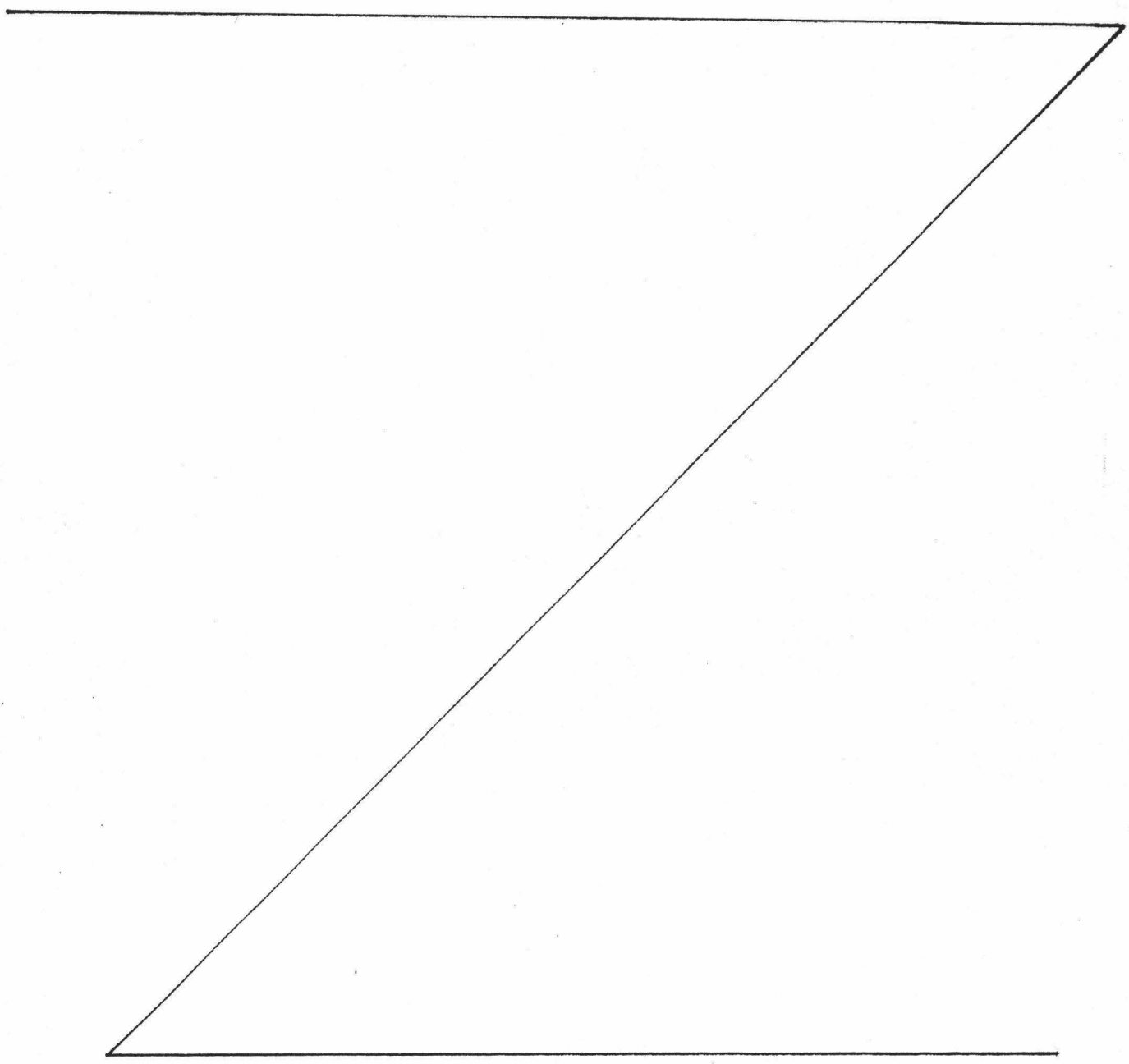
MURAKAMI: So I'm precluded from asking that question?

CHAIRMAN: Your question's overruled.

MURAKAMI: That's all the questions I have.

CHAIRMAN: Counsel Kishimoto?

KISHIMOTO: I have no further questions.



CHAIRMAN: Steve?

LIM: I believe the stance of the proceedings is that we're still on rebuttal by the petitioner.

KISHIMOTO: I have no further witnesses.

LIM: Alan, any further witnesses?

MURAKAMI: I only had-- I don't know if this is the time to raise it but in terms of the subpoena, I only had the questions about any additional infrastructural needs.

LIM: Okay. Insofar as the subpoena, the request by Na Opio for issuance of a subpoena for documents, we felt was improper because we feel the subpoena power is vested in the Commission to request things that we want to hear about. Therefore that the procedural reason why we denied your request for subpoena.

We'd also like to be fair so that's why we've gone through the subpoena piece by piece, and ask you to review that to see if you need any further evidence.

MURAKAMI: I'm not waiving any of the--

LIM: I'm not asking you to waive it. I'm just trying to verify for our record whether we're going to foreclose you from any important piece of evidence that you feel are not in the record.

MURAKAMI: Some of the material that you have not ruled irrelevant, that is the relevant ones which I believe are items 4, 5, 9 and 10. I still have some questions about 4-B which refers to additional roadways, equipment storage facilities and other support facilities necessary or incident to this project.

KISHIMOTO: And Mr. Stender testified to those points on direct. It was available for questioning on those points in cross examination.

MURAKAMI: I just didn't see any ... and that's what I was asking for.

LIM: Does the Commission have any need to hear anything on those aspects?

KANE: I've been curious all along where the roadway is going to be, for instance. I had assumed that if

then is going to be any machinery, it's going to be on the SUP site. If that's not the case, then I think the Commission needs to know where it will be.

MURAKAMI: I think the access ways ... because I assume there's going to be need for access to different parts of the disposal sites for hauling off the dredged coral.

My concern is 4-B and 5 with respect to any additional roadways, equipment storage facilities and other support facilities. In addition, the site development plans propose activities with specifications for locations of access ways to the stockpile area as they haul dredged material out, and drainage plans to accommodate any increased runoff and methods for handling increased traffic to the subject area, those I don't think the Commission has heard anything about.

KISHIMOTO: Again, Mr. Stender testified to those points. If the Commission has any further questions, I believe Mr. Nakashima can testify or answer any questions the Commission may have on those points.

MURAKAMI: Well, the testimony is that there are no plans. That's fine. I'm just trying to determine what is available.

KISHIMOTO: The construction contract is submitted as evidence. As I said, Mr. Stender also testified on that.

MURAKAMI: I don't know if what she said clarified what my concerns were about.

CHAIRMAN: Mr. Stender was available to have anything clarified if the questions were asked.

MURAKAMI: Well, it's fine that there's no additional written or drawn plans then I will be satisfied if there are none.

KISHIMOTO: To my knowledge, the evidence has been submitted.

KITAGAWA: Mr. Chairman, all of this does somewhat come back, and I think it probably is in the minutes.

LIM: The next issue to resolve before you close is, I think one of the request was whether we should wait for the final report from the chief engineer on this project. I think some of you had asked questions. I want to know what the Commission's wish is on that point.

CHAIRMAN: Any observations by the Commission? Should we wait?

NAKATANI: I do t think that's necessary because if the contract was let out, all that was necessary, I believe, was accepted and the bids submitted. From what I read in the newspaper, the contractor has submitted the bid. So why wait for the district engineer's report?

KANE: Would it be correct to say we shouldn't wait for the engineer's report because it may contain conditions that the contractor will have to abide by. He will have to abide by those conditions on those areas covered by this SUP. We may want to look at those conditions and protections, whatever's recommended by the district engineer and add some of our own. If we don't know what they are, I don't know if we're going to know what conditions we might want to recommend to the Land Use Commission.

NAKATANI: Continuing on that question. Then, Mr. Nakashima testified, before the contractor submitted the bid, they accepted all the reports. Now, which story is the true story? Mr. Sox said the report is in the hands of the district engineer and yet the contract is let out. Can I ask him, Mr. Sox, a question?

CHAIRMAN: All right, Mr. Sox, can you come up here again?

NAKATANI: Mr. Sox, you made the statement that report was in the hands of the district engineer, for what purpose?

SOX: As I previously stated, the Corps of Engineers has accepted the report, as legally complying with the scope of work, approved the report and believe we are legally in terms of the archaeological federal laws to proceed with the project.

LIM: Mr. Sox, I believe the Commission is wondering, is whether upon review of the peer reviews, etcetera, whether the district engineer changed his mind about the acceptance of the report.

SOX: No, we believe the report is adequate.

LIM: So what he is reviewing for is to attach conditions probably?

SOX: But the conditions would have nothing to do with the archaeological contractor.

LIM: Okay. That's all I have.

KISHIMOTO: Mr. Chairman, if I may make an observation at this point. It is our position that the applicant is entitled to the special use permit without conditions. If, heaven forbid, the Commission

should feel conditions are appropriate, I think that really is a separate matter from what would be the recommendations, if any of the district engineer.

Secondly, one possibility again, heaven forbid, is that it would be possible if the Commission sees fit to grant the special use permit, to make their conditions upon compliance on what the district engineer has as to any further archaeological work.

CHAIRMAN: Harriet, was Mr. Sox' answer satisfactory?

KANE: Yes, I understood him but I didn't hear him say that the district engineer would not recommend some kinds of considerations that the contractor would have to observe.

SOX: Which contract are you talking about?

KANE: Whoever's going to be dumping coral on that site.

SOX: In the contract specifications, we do have a requirement to let a contract to an archaeological firm to provide monitoring services.

KANE: When I say contractor, I don't mean archaeological contractor. Maybe that's why we're not communicating. I mean the kind of guy that digs the hole and ... comes over and dumps it.

SOX: That's what I'm talking about. As part of the contract specifications for the construction contract, we have to let a separate contract to have an archaeologist on-call in case the construction contractor uncovers any new undiscovered find. The construction contractor is required to stop work until our archaeologist can come on there and identify the significance of that find, and if necessary, consult with the State Historic Preservation Officer to determine what further action is required.

KANE: I understand that. I still did not hear you say that the district engineer is very definitely not going to come up with recommendations that your physical coral-carrying contractor must observe. Are you willing to say that?

SOX: To my knowledge, I don't know of any further controls over the coral-carrying construction contractor that the district engineer might come up with, or might not.

CHAIRMAN: Any other questions by the Commission? If not, thank you again, Mr. Sox.

MURAKAMI: Mr. Chairman, I have a procedural matter to raise. I'd like to the record to somehow reflect that I don't believe all the commission members were here during all parts of the testimony. I believe that is so.

LIM: Right. That's why we're going to go through the proposed decision and order rules. That will be in the minutes.

CHAIRMAN: Mr. Murakami, they have to read the report and the minutes so that they do cover their absence and are brought up to date, and are allowed to vote. It'll be covered.

LIM: I'll cover it right now. Because some of the commissioners did not attend all of the meetings, they will have to read the minutes and listen to the testimony on the dates of the meetings that they did miss. In order to comply with the APA requirements, they also have to listen to proposed findings of fact by the parties and arguments thereupon before they make their vote.

So what we've discussed off the record and what's on the record now is that we would be proposing that the schedule for filing of the proposed decision and order and findings of facts by parties upon each other by personal service, be done by November 19th which is next week Thursday. Thereafter, any written exceptions to be filed by the parties in response to the proposed findings, be filed with the Planning Commission by Monday, November 23rd. Thereafter on our next meeting, November 24th, we will hear the arguments on the proposed Findings. That will satisfy the APA requirements for the people that missed the hearings so that they can qualify to vote on the matter.

MURAKAMI: Well, cognizant of the research that might have been done earlier, but my understanding of the requirements of the APA is not that the parties submit proposed findings but that the board submit a proposed decision. The parties against whom the decision is going has an opportunity then to propose additional arguments in response to the proposed decision.

LIM: We're talking about HRS 91-11, a decision shall not be made until a proposal for decision containing a statement for reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party

adversely affected to file exceptions and present arguments to the officials who are to render the decision.

Basically we're following the Land Use Commission procedures whereby the parties filed proposed findings of fact and decision to the Land Use Commission. Thereafter they file exceptions to the other parties findings, and thereafter they come in and argue before the Land Use Commission. The Land Use Commission does not provide its own findings of fact. We may adopt either one of the parties findings of fact or we may adopt a combinations of both parties findings.

MURAKAMI: I understand that, Steve, but I believe our interpretations are different about what's suppose to happen. That is, if for some reason and I can't foresee, the decision goes against Na Opio Aloha Aina, I should have an opportunity to file exceptions before that decision becomes final. It's not a matter of filing exceptions to her proposed findings. I know what or at least gather what she's going to say. But, it's this Commission, body or board that's under definitions contained in 91 which has to render proposed decision, if in fact, all members have not been present during all parts of the testimony. I think that's what it says under 11.

LIM: ... (changed tape) which if we grant the permit, I imagine we will be adopting almost in total, probably with some exceptions, by additions from yours, then I think that would fulfill the requirements. It would be the Planning Commission adopting their findings. I don't think it's required that we file our own findings. The Land Use Commission hasn't required it and I don't believe will be requiring.

MURAKAMI: Then I don't understand how we can file exceptions to a proposed decision when there is no proposed decision by the body.

LIM: The proposed decision will be filed by Campbell Estate. If we grant the permit and we agree with their findings of fact, basically you are filing your exceptions to what we will be filing as our decision.

MURAKAMI: I don't agree with that interpretation but that's a legal point.

LIM: If we did it any other way, it wouldn't be required for you folks to file any findings at all.

MURAKAMI: That's true. But if we do find, I think the Commission is required to rule on the material, proposed findings.

LIM: That's what we've been doing.

MURAKAMI: Right but that's independent of whether or not I can file exceptions to a proposed decision by the Planning Commission on this particular issue.

LIM: If we adopt the Campbell Estate findings, those are going to be our findings. That's we're giving you an opportunity to supply your exceptions on Monday before the hearing. I don't suspect that either which way that we go would be materially different on either one of your findings. In any event, we are required to rule on each proposed finding by the parties.

MURAKAMI: Well, I'll just reserve my objections and we'll proceed with it that way.

CHAIRMAN: You want to repeat that.

MURAKAMI: For the record, I'm going to reserve my objections and interpretation by Mr. Lim concerning the exceptions of the proposed decision but proceed in the matter by submitting the proposed findings of fact.

LIM: Right. I believe your objections would be well founded if we adopted findings of fact that were not even apparent on either one of your findings of fact. I don't think that's going to be the case, however.

Now one thing I'm not clear on is whether the Commission wants to extend the public hearing to include that final report. Because if they do, then we'll have to postpone closing the hearing.

CHAIRMAN: What's the feeling of the Commission?

KITAGAWA: If we close the hearing, Steve, does that mean we cannot at least see the report?

LIM: That means you cannot receive any additional evidence, you cannot talk to any of the witnesses, you cannot go and visit the site. You take no evidence outside of the public hearing.

CHAIRMAN: Somebody want to make a motion?

MOTION:

NAKATANI: Yes. I move that we close the public hearing.

HIRAHARA: Second.

CHAIRMAN: It's been moved and seconded. Any discussion?

KITAGAWA: I would oppose the motion based on my original concern that I would like to see what the report from the chief engineer is going to be. I think waiting for a couple of weeks will not affect any decision we might reach or jeopardize the project.

KAMIYA: Mr. Chairman, I think it would also be favorable to wait for the district engineer's report. Also, it would give some of us who were absent some time to make sure that we listen to the tapes and qualify to vote.

HIRAHARA: But listening to tapes, we can still close the public hearing. And, if the district engineer makes any recommendation, it does not affect us. The condition imposed on the contractor that not's in the contract, any sort of condition will be an extra for the contractor.

KAMIYA: Getting back to my reason to get everybody to qualify, then we don't have to go through the hearing all over again. I think if there were any questions that came out of those meetings, listen to those tapes and those questions can be brought up.

CAIRL: I want to speak against the motion too. We've gone this long, what's two weeks more? I'd like to see what the district engineer has to say about it.

NAKATANI: By closing the public hearing doesn't mean we make a decision tomorrow, next week or whatever. My motion is just to close the public hearing. We don't have to make a decision immediately. My motion doesn't mean that. In other words, I'm not trying to railroad this thing. It's closing the public hearing and that's all. But making the decision is up to the Commission.

CAIRL: But Mr. Lim said if we close the public hearing, we may not read that report, not see it. We may not run out to Barbers Point if we chose to do that.

HIRAHARA: Mr. Chairman, the report may not come in a week to a month.

KANE: I call the question.

CHAIRMAN: All right. All in favor to close the public hearing, raise your right hand.

(The motion to close the public hearing did not carry.)

AYES: HIRAHARA, NAKATANI
NOES: CAIRL, KAMIYA, KANE, KITAGAWA
ABSENT: NONE
ABSTAINED: PACHECO

CHAIRMAN: The motion dies. We will meet again on the 24th of November.

LIM: Excuse me. I'd like it understood that we're specifically extending the public hearing for the letter from the Corps of Engineers. I'd like also representatives to be here present on the 24th for questioning. We're going to specifically limit testimony to that issue because I believe everybody has rested.

HIRAHARA: Excuse me. I'd like to ask Mr. Nakashima, is the recommendation from the district engineer required?

CHAIRMAN: Mr. Nakashima, will you come up here?

NAKASHIMA: The recommendation as to what the district engineer does is part of the archaeological report?

HIRAHARA: Yes.

NAKASHIMA: It may not end up as a report, the decision on his part. He may say yes, we do no more. He may say yes, we need to spend a million dollars more. That's a decision that he has to make. It does not have to follow as a report.

HIRAHARA: Is this due on the 25th of November?

NAKASHIMA: No, it can be anytime.

HIRAHARA: So awarding of this contract is not contingent upon this. That's what I'm trying to get at. It maybe nothing.

KANE: Mr. Sox testified right here that it's expected in two weeks.

CHAIRMAN: You got an answer, Mr. Sox?

SOX: I expect it to be earlier than that. It could be anytime.

NAKASHIMA: The district engineer's decision may not come out as a report. He may issue a verbal position on his part.

CAIRL: Whatever happens, could we be apprised of it?

NAKASHIMA: Yes. I believe the position could be put on paper as a memorandum of record. Would that be sufficient?

CHAIRMAN: Yes, that would be sufficient.

LIM: I'd like it understood by the parties that the hearing will be confined to that issue.

NAKATANI: Mr. Chairman, if we're going to leave the public hearing open, we should just leave it open with no restrictions.

LIM: It's whatever the Commission desires. In view of that, I will have to revise the dates for the decision and order. I'll get with the parties on that.

MURAKAMI: Why is that?

LIM: Because we won't be finished with the public hearing.

MURAKAMI: Is that saying there will be no decision on the 24th?

LIM: If the Commission makes a decision, they will specifically have to by majority vote, waive their rule.

MURAKAMI: They will have to notice the decision-making session?

LIM: No, because any public hearing notice is a potential decision-making session. But, the Commission normally waits two weeks after the close of the public hearing to act. We may act on the 24th, however, I doubt it. That's just a possibility that I'm bringing up.

(There was no further discussion.)

ADJOURNMENT: The meeting adjourned at 10:15 p.m.

Respectfully submitted,



Henrietta B. Lyman
Secretary-Reporter