



SPECIAL PERMIT	
Petition Received	MAY 11 1983
Maps	
Action Span	5/11/83 - 6/25/83
Action Date	6/27/83
Recordation	8/26/83

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



STATE OF HAWAII
DEPARTMENT OF PLANNING
AND ECONOMIC DEVELOPMENT

LAND USE COMMISSION

Room 104, Old Federal Bldg., 335 Merchant Street
Honolulu, Hawaii 96813 Telephone: 548-4611

GEORGE R. ARIYOSHI
Governor

WILLIAM W. L. YUEN
Chairman

RICHARD B. F. CHOY
Vice Chairman

COMMISSION MEMBERS:

Lawrence F. Chun
Everett L. Cuskaden
Shinsei Miyasato
Winona E. Rubin
Teofilo Phil Tacbian
Robert S. Tamaye
Frederick P. Whittemore

GORDAN Y. FURUTANI
Executive Officer

August 12, 1983

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

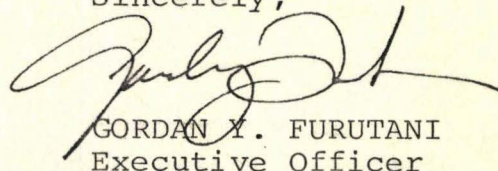
Attention: Mr. Charles A. Prentiss, Exec. Sec. to the Planning Com.

Gentlemen:

SUBJECT: SP82-353 - THE ESTATE OF JAMES CAMPBELL

In reference to our letter to you dated
July 1, 1983, enclosed is a copy of the
Decision and Order on SP82-353 for your information
and records.

Sincerely,



GORDAN Y. FURUTANI
Executive Officer

Enclosure

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

Mr. Michael M. McElroy
Director
Department of Land Utilization

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Court-Ordered)
Rehearing on the Special Permit)
issued to)

THE ESTATE OF JAMES CAMPBELL)

To Stockpile Dredged Coral Spoil)
from the Barbers Point Deep Draft)
Harbor Project on approximately 152)
Acres of lands in the Agricultural)
District at Ewa, Oahu, Tax Map Key)
9-1-14: Portion of 2, 'and 9-1-15:)
Portion of 1)

SP82-353

THE ESTATE OF JAMES CAMPBELL

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

8/11/83
Date

by Jordan Y. Juvantani
Executive Officer (S18)

DECISION AND ORDER ON REMAND FROM THE
FIRST CIRCUIT COURT, STATE OF HAWAII, TO INCORPORATE
CONDITIONS AND CLARIFY FINDINGS OF FACT

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Court-Ordered)	
Rehearing on the Special Permit)	
issued to)	
)	
THE ESTATE OF JAMES CAMPBELL)	
)	
To Stockpile Dredged Coral Spoil	)	SP82-353
from the Barbers Point Deep Draft)	
Harbor Project on approximately 152	)	THE ESTATE OF JAMES CAMPBELL
Acres of Lands in the Agricultural)	
District at Ewa, Oahu, Tax Map Key)	
9-1-14: Portion of 2, and 9-1-15:)	
Portion of 1)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER

This proceeding arises pursuant to the Order of the Honorable James H. Wakatsuki, Judge of the First Circuit Court of the State of Hawaii, in Na Opio Aloha Aina, Eric Enos, Raymond A. V. Catania and Georgette Meyers vs. Land Use Commission of the State of Hawaii, Planning Commission of the City and County of Honolulu, and James Campbell Estate, Civil No. 72140 filed on November 10, 1982, remanding the above-captioned matter to the Planning Commission of the City and County of Honolulu and the Land Use Commission of the State of Hawaii, to add certain conditions to the Decisions and Orders of the Planning Commission dated February 23, 1982, and the Land Use Commission dated May 27, 1982, and to clarify certain factual matters contained in the findings of fact and conclusions of law.

The Land Use Commission, having duly considered the entire record of the rehearing before the City Planning Commission, hereby makes the following findings of fact and conclusions of law, and issues this amended decision and order thereon.

FINDINGS OF FACT

PROCEDURAL

1. On April 21, 1982, the Land Use Commission (hereinafter

"LUC") voted to approve the Special Permit application filed by the Estate of James Campbell to stockpile dredged coral spoil on approximately 152 acres of land situated within the State Land Use Agricultural District at Barbers Point, Ewa, Island of Oahu, City and County of Honolulu, State of Hawaii, per approval by the Planning Commission on January 26, 1982. The subject property is identified as Oahu Tax Map Key 9-1-14: Portion of 2 and 9-1-15: Portion of 1.

2. On November 10, 1982, the First Circuit Court in Na Opio Aloha Aina etal vs. Land Use Commission etal, Civil No. 72140, issued an Order of Remand, instructing the City Planning Commission (hereinafter "CPC") and the LUC to modify its decisions and orders by adding certain conditions and requiring a clarification of three specific issues concerning the Special Permit.

3. Pursuant to the Order of Remand, the CPC held rehearings on December 7, 1982, February 8, 1983, and April 19, 1983.

4. The LUC received the complete record of the rehearing proceedings and the CPC's Amended Decision and Order on May 11, 1983.

5. The LUC duly considered the entire record of the rehearing proceedings at its meeting on June 27, 1983.

SUBSTANTIVE

6. The Decision of the Honorable Judge Wakatsuki in Civil No. 72140 modifies the decisions and orders of the CPC and LUC by adding the following conditions: ~~to~~

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

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

7. The Court in Civil NO. 72140 also requested a clarification of the following three issues:

- "a. If animal husbandry is a permitted use in an

Agricultural District, whether paragraph (5)

("That the land upon which the proposed use is sought is unsuited for the uses permitted within the District") appearing on Page 18 of the Findings of Fact of the Planning Commission is supported by competent and preponderance of evidence.

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

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

8. Testimony received at the rehearing before the CPC indicate the following:

- a. Animal husbandry is a permitted use in the State Agricultural District.
- b. Petitioner's expert witness Jack Larsen submitted by testimony that cattle, chickens and swine could not be raised commercially in the area. The expenses which would be incurred, especially for land costs and fixed plant and equipment, would result in a price for the product which would not be competitive with similar products presently grown locally or imported from the mainland. Existing farmers are

presently able to compete in the marketplace primarily because their physical facilities are fully amortized and nonconforming.

- c. Fresh water of sufficient quality for animal husbandry and to wash coral for use in concrete is not available to the subject property.
- d. At the time of the initial hearing, the Applicant contemplated the use of rock-crushing equipment to crush the dredged coral into different sizes for commercial sale. This equipment would be either fixed or portable. No equipment has been acquired or is on order at the present time.
- e. At the present time, rock crushing is not intended on the stockpiling sites. Petitioner contemplates it as one of the possible alternatives for disposal of the material in the future. Other alternatives include trucking the uncrushed material to other urban sites for crushing and sale, and trucking uncrushed material to the existing cement plant in the Campbell Industrial Park.

CONCLUSIONS OF LAW

1. The Order of the Honorable Judge James S. Wakatsuki in Civil No. 72140 modifies the Decision and Order issued by the Land Use Commission for the subject Special Permit by incorporating the four (4) conditions specified in Paragraph 6 of the above Findings of Fact.

2. With regard to the three issues cited in Paragraph 7 of the above Findings of Fact, the LUC makes the following conclusions of law:

- a. Although the raising of animals is physically possible on the site, animal husbandry is not economically feasible and potable water is not available. The land is, therefore, unsuited to

animal husbandry, and no change in the issued permit is required.

- c. No rock-crushing equipment shall be placed on the site. It is the intent of the Planning Commission to retain the site in the Agricultural District.

DECISION AND ORDER

IT IS HEREBY ORDERED that Special Permit 82-353 which allows the stockpiling of dredged coral spoil on approximately 152 acres of Agricultural District lands at Ewa, Oahu, City and County of Honolulu, State of Hawaii, more particularly identified by Tax Map Key 9-1-14: Portion of 2 and 9-1-15: Portion of 1, be and hereby amended by adding the conditions ordered by the First Circuit Court in Civil No. 72140, and as cited in Paragraph 6 of the above Findings of Fact.

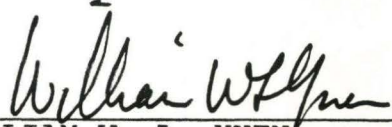
BE IT ALSO ORDERED that Special Permit 82-353 is further amended by adding the following condition imposed by the Land Use Commission:

"No commercial rock crushing activity shall occur on the site."

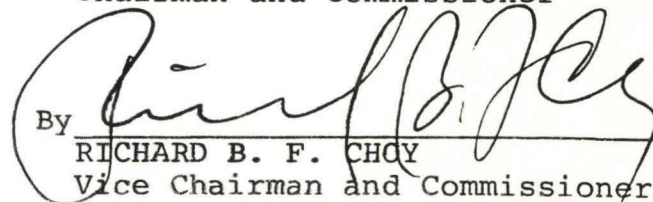
Done at Honolulu, Hawaii, this 10th day of August, 1983, per motion on June 27, 1983.

LAND USE COMMISSION
STATE OF HAWAII

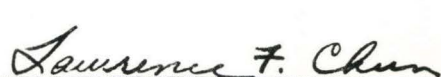
By


WILLIAM W. L. YUEN
Chairman and Commissioner

By


RICHARD B. F. CHOY
Vice Chairman and Commissioner

By


LAWRENCE F. CHUN
Commissioner

By Shinsei Miyasato
SHINSEI MIYASATO
Commissioner

By Winona E. Rubin
WINONA E. RUBIN
Commissioner

By Teofil Phil Tacbian
TEOFILO PHIL TACBIAN
Commissioner

By Robert S. Tamaye
ROBERT S. TAMAYE
Commissioner

By Frederick P. Whittemore
FREDERICK P. WHITTEMORE
Commissioner

P 485 842 023

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to

Alan Murakami

Street and No.

P.O., State and ZIP Code

Postage

\$

54

Certified Fee

.75

Special Delivery Fee

Restricted Delivery Fee

Return Receipt Showing
to whom and Date Delivered

.60

Return Receipt Showing to whom,
Date, and Address of Delivery

TOTAL Postage and Fees

\$

189

Postmark or Date



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

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

PS Form 3811, July 1982

- **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered \$
☐ Show to whom, date, and address of delivery .. \$
 2. ☐ **RESTRICTED DELIVERY** \$
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

3. ARTICLE ADDRESSED TO:

Alan Murakami

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

485 842 023

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☒ Authorized agent

5. **DATE OF DELIVERY**

8-15-83

POSTMARK
(may be on reverse side)

15
1983

6. **ADDRESSEE'S ADDRESS** (Only if requested)

7. **UNABLE TO DELIVER BECAUSE:**

7a. **EMPLOYEE'S INITIALS**

RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete Items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested"
- adjacent to number.

**RETURN
TO**

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



**PENALTY FOR PRIVATE
USE, \$300**

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

P 485 842 022

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Diane Kishimoto	
Street and No.	
P.O., State and ZIP Code	
Postage	\$ 54
Certified Fee	.75
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	.60
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$ 1.89
Postmark or Date	



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

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

PS Form 3811, July 1982

- **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered €
☐ Show to whom, date, and address of delivery .. €
 2. ☐ **RESTRICTED DELIVERY** €
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____**3. ARTICLE ADDRESSED TO:**

Diane Kishimoto

4. TYPE OF SERVICE:

- ☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER

485 842 022

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE☐ Addressee☐ Authorized agent

5:

DATE OF DELIVERY

POSTMARK

(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)**7. UNABLE TO DELIVER BECAUSE:****7a. EMPLOYEE'S INITIALS**

RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



SENDER INSTRUCTIONS

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

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



**PENALTY FOR PRIVATE
USE, \$300**

**RETURN
TO**

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

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

P 485 842 021

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to

Charles Prentiss

Street and No.

P.O., State and ZIP Code

Postage

\$

54

Certified Fee

.75

Special Delivery Fee

Restricted Delivery Fee

Return Receipt Showing
to whom and Date Delivered

.60

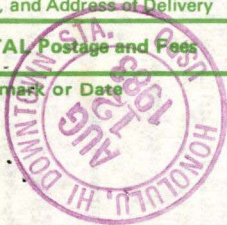
Return Receipt Showing to whom,
Date, and Address of Delivery

TOTAL Postage and Fees

\$

1.69

Postmark or Date



STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE.

CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)

1. If you want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
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6. Save this receipt and present it if you make inquiry

PS Form 3811, July 1982

- **SENDER:** Complete Items 1, 2, 3, and 4. **CAMPBELL**
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

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

☒ Show to whom and date delivered \$

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

- 2.
- ☐
- RESTRICTED DELIVERY**
- \$

(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

- 3.
- ARTICLE ADDRESSED TO:**

Charles Prentiss

- 4.
- TYPE OF SERVICE:**

☐ REGISTERED☐ INSURED☒ CERTIFIED☐ COD☐ EXPRESS MAIL**ARTICLE NUMBER**

485 842 021

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE☐ Addressee☒ Authorized agent

H. Kernum

- 5.

DATE OF DELIVERY

8/15/83

POSTMARK

(may be on reverse side)

- 6.
- ADDRESSEE'S ADDRESS**
- (Only if requested)

- 7.
- UNABLE TO DELIVER BECAUSE:**

7a. **EMPLOYEE'S INITIALS**

RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

- Complete Items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested"
- adjacent to number.



**PENALTY FOR PRIVATE
USE, \$300**

State of Hawaii
LAND USE COMMISSION

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

**RETURN
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(Name of Sender)

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BEFORE THE LAND USE COMMISSION
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District at Ewa, Oahu, Tax Map Key)	
9-1-14: Portion of 2, and 9-1-15:)	
Portion of 1)	

CERTIFICATE OF SERVICE

CHARLES A. PRENTISS, Executive Secretary to Planning Commission
City Planning Commission
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

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

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

DATED: Honolulu, Hawaii this 12th day of August, 1983.



GORDAN Y. FURUTANI
Executive Officer (BH)

SP82-353 - THE ESTATE OF JAMES CAMPBELL

A certified copy of the Land Use Commission's Decision and Order on Remand from the First Circuit Court, State of Hawaii, To Incorporate Conditions and Clarify Findings of Fact was served by regular mail to the following on August 12, 1983.

Willard T. Chow, Chief Planning Officer
Department of General Planning

Michael M. McElroy, Director
Department of Land Utilization

Kent M. Keith, Director, DPED

Real Property Assessment Division
City and County of Honolulu
Administration
Mapping Section
Property Technical Office
Property Assessment Section

Office of Environmental Quality Control

Division of Land Management
Department of Land and Natural Resources

July 1, 1983

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

Attention: Mr. Charles A. Prentiss, Executive Secretary to the Planning Commission

Gentlemen:

This is to advise you, in advance of the service of our Decision and Order, that at its meeting on June 27, 1983, the LUC voted to approve the application of the Estate of James Campbell, SP82-353, for a Special Permit to temporarily stockpile dredged coral on approximately 152 acres of land in the State Agricultural Land Use District located at Barbers Point, Ewa, Oahu, Hawaii, subject to the mitigative and protective conditions in the Decision and Order of the Land Use Commission of the State of Hawaii in Docket No. SP82-353, and the court-ordered conditions contained in the November 10, 1982 Decision in Civil No. 72140, and the conditions contained in the City Planning Commission's Amended Decision and Order dated May 4, 1983. Please note that the following modification was made to the condition contained in Part III of the City Planning Commission's Decision and Order of May 4, 1983:

"No rock crushing activity shall occur on the site."

The precise terminology for the above modification will be articulated in the Land Use Commission's Decision and Order which will be forwarded to you at a later date.

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

Sincerely,

GORDAN Y. FURUTANI
Executive Officer

GYF:gm

cc: Estate of James Campbell
Mr. Alan Murakami, Legal Aid Society

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

ITEM SP77-265 - GEOTHERMAL EXPLORATION & DEVELOPMENT CORPORATION (Amendment) DATE June 27, 1983

PLACE Conf. Rms. 322-A, B & C TIME 9:00 a.m.
Kalanimoku Building, Honolulu

	NAME	YES	NO	ABSTAIN	ABSENT
	TACBIAN, TEOFILO PHIL	X			
	RUBIN, WINONA E.	X			
	MIYASATO, SHINSEI	X			
	CHUN, LAWRENCE F.	X			
	WHITTEMORE, FREDERICK	X			
	CUSKADEN, EVERETT L.				X
S	TAMAYE, ROBERT S.	X			
M	CHOY, RICHARD B. F.	X			
	YUEN, WILLIAM W. L.	X			

Comments:

I move that we approve SP77-265, Geothermal Exploration & Development Corporation to amend condition #11, and subject also to the conditions that the petitioner shall indemnify and hold harmless the Land Use Commission from any litigation filed regarding this Special Permit, and should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

STATE OF HAWAII
LAND USE COMMISSION

Minutes of Meeting

Conference Rooms A, B & C
Kalanimoku Building
Honolulu, Hawaii

June 27, 1983 - 9:00 a.m.

Approved

9/27/83

COMMISSIONERS PRESENT: William Yuen, Chairman
Richard Choy, Vice Chairman
Lawrence Chun
Shinsei Miyasato
Winona Rubin
Teofilo Tacbian
Robert Tamaye
Frederick Whittemore

COMMISSIONER ABSENT: Everett Cuskaden

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

Barbara Moore, Court Reporter

ACTION

A82-536 - HALEAKALA RANCH COMPANY

In the matter of the petition by Haleakala Ranch Company, A82-536, a hearing was conducted by the Land Use Commission on January 26 and 27, 1983. Action on this petition was conducted by Vice Chairman Choy due to a previously declared conflict of interest by Chairman Yuen.

It was determined that all of the Commissioners present today were eligible to participate in the deliberation and decision of the subject petition.

Mr. Chu, staff Planner, pointed out the area involved in the petition and oriented it with surrounding landmarks.

Appearances

Paul Mancini, Attorney representing the petitioner

Guy Archer, Deputy Corporation Counsel, representing
the Maui Planning Department

Commissioner Rubin moved to approve A83-545 to reclassify approximately 0.579 acre of land currently in the Rural District into the Urban District at Moana Beach Lots Subdivision, Makawao, Maui. It was seconded by Commissioner Tacbian and unanimously passed.

SP77-265 - GEOTHERMAL EXPLORATION AND DEVELOPMENT CORPORATION

Mr. Chu, staff Planner, presented a resume of the subject request and pointed to the property on the USGS and tax maps.

Vice Chairman Choy moved to approve SP77-265, Geothermal Exploration and Development Corporation, to amend condition 11 for the drilling of exploratory geothermal wells within the State Land Use Agricultural District at Opihikao, Puna, Hawaii, subject to the condition that the Petitioner indemnify the Land Use Commission from any suits that may be filed against the Commission. It was seconded by Commissioner Tamaye.

Commissioner Rubin moved to amend the motion by adding the condition that "should any of the foregoing conditions not be met, the permit shall be automatically void". It was seconded by Commissioner Chun and the motion was carried.

The Commissioners were polled as follows on the motion to approve the request and as amended:

Ayes: Commissioners Tamaye, Choy, Tacbian, Rubin, Miyasato, Chun, Whittemore and Chairman Yuen

SP82-353 - THE ESTATE OF JAMES CAMPBELL
First Circuit Court's Remand

Appearances

Diane Kishimoto, Attorney representing the Petitioner

Steven Lim, Deputy Corporation Counsel, representing the City Planning Commission

There was no representative from the Legal Aid Society.

The property was described on the maps by staff Planner, who also presented background information on the remand order from the First Circuit Court.

Closing Arguments

By Miss Kishimoto-----63 to 64

Mr. Lim waived his rights to closing arguments.

Much discussion ensued regarding the definition of commercial activity and what type of uses were allowable on the site.

Vice Chairman Choy moved to approve the recommendation of the City Planning Commission (with respect to the clarification of the three issues remanded by the First Circuit Court) for SP82-353, Estate of James Campbell, Civil No. 72140, First Circuit Court Remand, which allows stockpiling of dredged coral spoil on approximately 152 acres of land within the Agricultural District at Barbers Point, Ewa, Oahu. The County's finding No. 3 was amended to read "No rock-crushing activity shall occur on the site" instead of "No rock-crushing equipment shall be placed on the site". It was seconded by Commissioner Rubin and the motion, with the amendment, unanimously approved.

Vice Chairman Choy moved to approve the amendment to add conditions A through D, as delineated under number 1 in the staff memorandum. It was seconded by Commissioner Whittemore and carried.

The Commission was in recess from 11:56 a.m. to 1:30 p.m.

1:30 p.m.

A83-550 - A. R. NYLEN AND RAYMOND H. NYLEN

Chairman Yuen announced that the Commission will act to determine whether the anticipated effects discussed in A. R. Nylen and Raymond Nylen's environmental assessment to reclassify approximately 19 acres of land currently in the Conservation District into the Urban District at Kahaluu, Koolaupoko, Oahu, for a residential development, constitute a significant effect on the environment.

A description of the property was presented by staff Planner.

Commissioner Rubin moved that in the matter of A83-550, A. R. Nylen and Raymond H. Nylen, an environmental impact statement be required. It was seconded by Commissioner Tacbian and the motion was carried, with Commissioner Chun casting the only dissenting vote.

A83-554 - FARMS OF KAPUA

The Commission held a discussion to determine whether the anticipated effects contained in the Farms of Kapua environmental

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

SP82-353 - THE ESTATE OF JAMES
ITEM CAMPBELL (Civil #72140 - Remand) DATE June 27, 1983
PLACE Conf. Rms. 322-A, B & C TIME 9:00 a.m.
Kalanimoku Bldg, Honolulu

NAME	YES	NO	ABSTAIN	ABSENT
MIYASATO, SHINSEI	X			
CUSKADEN, EVERETT L.				X
CHUN, LAWRENCE F.	X			
RUBIN, WINONA E.	X			
TACBIAN, TEOFILO PHIL	X			
M CHOY, RICHARD B. F.	X			
TAMAYE, ROBERT S.	X			
S WHITTEMORE, FREDERICK	X			
YUEN, WILLIAM W. L.	X			

Comments:

I move to approve the amendment to add conditions A through D,
as delineated under Number 1 in the staff memorandum.

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

SP82-353 - THE ESTATE OF JAMES
ITEM CAMPBELL (Civil #72140 - Remand) DATE June 27, 1983
PLACE Conf. Rms. 322-A, B & C TIME 9:00 a.m.
Kalanimoku Bldg, Honolulu

	NAME	YES	NO	ABSTAIN	ABSENT
	MIYASATO, SHINSEI	X			
	CUSKADEN, EVERETT L.				X
	CHUN, LAWRENCE F.	X			
S	RUBIN, WINONA E.	X			
	TACBIAN, TEOFILO PHIL	X			
M	CHOY, RICHARD B. F.	X			
	TAMAYE, ROBERT S.	X			
	WHITTEMORE, FREDERICK	X			
	YUEN, WILLIAM W. L.	X			

Comments: I move to approve the recommendation of the City Planning Commission (with respect to the clarification of the three issues remanded by the First Circuit Court) for SP82-353, Estate of James Campbell, Civil No. 72140, First Circuit Court REMand, which allows stockpiling of dredged coral spoil on approximately 152 acres of land within the Agricultural District at Barbers Point, Ewa, Oahu. The County's finding No. 3 is amended to read "No rock-crushing activity shall occur on the site" instead of "No rock-crushing equipment shall be placed on the site".

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

June 22, 1983

A D D I T I O N T O A G E N D A

TO WHOM IT MAY CONCERN:

SUBJECT: Land Use Commission Meeting
June 27, 1983 - 9:00 a.m.
Conference Rooms 322-A, B & C
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii

This is to advise you that the following items have been added to the June 27, 1983 Agenda:

I. ACTION

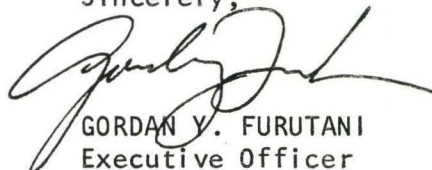
9. A83-554 - Farms of Kapua (Hawaii)

To determine whether the anticipated effects discussed in Farms of Kapua's Environmental Assessment to reclassify approximately 6,102 acres of land currently in the Conservation District into the Agricultural District at Kapua, South Kona, Hawaii, for mixed agricultural uses constitute a "significant effect" pursuant to Chapter 343, HRS.

10. Election of officers

Should you have any questions, please feel free to call us.

Sincerely,


GORDAN Y. FURUTANI
Executive Officer

6/22/83 - A copy of this Addition to Agenda was mailed to all persons and organizations on the attached mailing lists and to all parties:

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

1983 JUN 22 PM 4 02
REC'D. BY
LT. GOVERNOR'S OFFICE

STATE OF HAWAII
LAND USE COMMISSION

NOTIFICATION OF LAND USE COMMISSION MEETING

DATE, TIME AND PLACE

June 27, 1983 - 9:00 a.m.
Conference Rooms A, B & C
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii

REC'D. BY

1983 JUN 17 AM 9 20

LT. GOVERNOR'S OFFICE

A G E N D A

I. ACTION

1. A82-530 - Amfac Property Development Corporation (Kauai)

To reclassify approximately 78 acres of land currently in the Agricultural District into the Urban District at Lihue, Kauai, for a light industrial and resort development.

2. A82-536 - Haleakala Ranch Company (Maui)

To reclassify approximately 189.7 acres of land currently in the Agricultural District into the Urban District at Kihei, Maui, for a planned residential community.

3. A82-543 - The Episcopal Church in Hawaii (Maui)

To reclassify approximately 9.36 acres of land currently in the Agricultural District into the Urban District at Hamakuapoko, Makawao, Maui, for a private coeducational school.

4. A83-545 - Stanley G. Friel (Molokai)

To reclassify approximately 0.579 acres of land currently in the Rural District into the Urban District at Moana Beach Lots Subdivision, Portion of Kaluaaha, Molokai, for a subdivision.

5. SP77-265 - Geothermal Exploration and Development Corporation (Hawaii)
(Amendment of Condition)

To amend Condition No. 11 of Special Permit SP77-265 for the drilling of exploratory geothermal wells within the State Land Use Agricultural District at Opihikao, Puna, Hawaii.

✓ 6. SP82-353 - The Estate of James Campbell (Oahu)
(Civil No. 72140 - Remand of SP82-353)

To act on the First Circuit Court's remand of SP82-353 which allows stockpiling of dredged coral spoil on approximately 152 acres of land within the Agricultural District at Barbers Point, Ewa, Oahu.

7. A83-550 - A. R. Nylen and Raymond H. Nylen (Oahu)

To determine whether the anticipated effects discussed in A. R. Nylen's and Raymond H. Nylen's Environmental Assessment to reclassify approximately 19 acres of land currently in the Conservation District into the Urban District at Kahaluu, Koolaupoko, Oahu, for residential development constitute a "significant effect" pursuant to Chapter 343, HRS.

8. A82-544 - Iolani School (Oahu)

To act on the request for reconsideration of the Land Use Commission's non-acceptance of Iolani School's Environmental Impact Statement to reclassify approximately 201.4 acres of land currently in the Conservation District into the Urban District at Kaneohe, Koolaupoko, Oahu, for residential purposes.

II. MISCELLANEOUS

- | | | | | |
|-------------------------------|-------------|-------------|------------|------------|
| 1. Adoption of Minutes | MAR 21 1983 | MAR 22 1983 | APR 7 1983 | APR 8 1983 |
| 2. Tentative Meeting Schedule | | | | |

6/16/83 - A copy of this agenda was mailed to all persons and organizations on the attached mailing lists:

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

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

June 15, 1983

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

Dear Mr. Chow:

Enclosed is a Land Use Commission meeting agenda.

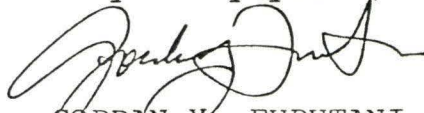
Please note that petitions

1. ✓ SP82-353 - The Estate of James Campbell (Civil No. 72140)
2. A83-550 - A. R. Nylen and Raymond H. Nylen
(Environmental Assessment)
3. A82-544 - Iolani School (Reconsideration of LUC's non-
acceptance of EIS)

will be considered at that time.

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

Very truly yours,


GORDAN Y. FURUTANI
Executive Officer

Enclosure: Agenda

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

June 15, 1983

Mr. Gary M. Slovin
Corporation Counsel
Department of Corporation Counsel
City & County of Honolulu
3rd Floor, City Hall
Honolulu, Hawaii 96813

Dear Mr. Slovin:

Enclosed is a Land Use Commission meeting agenda.

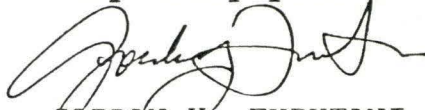
Please note that petitions

1. ✓ SP82-353 - The Estate of James Campbell (Civil No. 72140)
2. A83-550 - A. R. Nylen and Raymond H. Nylen
(Environmental Assessment)
3. A82-544 - Iolani School (Reconsideration of LUC's non-
acceptance of EIS)

will be considered at that time.

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

Very truly yours,


GORDAN Y. FURUTANI
Executive Officer

Enclosure: Agenda

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

June 15, 1983

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

Dear Ms. Kishimoto:

Enclosed is a Land Use Commission meeting agenda.

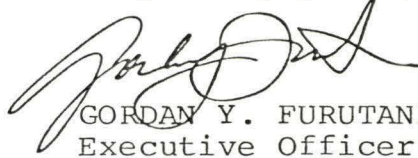
Please note that petition(s)

SP82-353 - The Estate of James Campbell
(Civil No. 72140 - Remand of SP82-353)

will be _____ considered _____ at that time.

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

Very truly yours,



GORDAN Y. FURUTANI
Executive Officer

Enclosure: Agenda

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

June 15, 1983

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

Dear Mr. Murakami:

Enclosed is a Land Use Commission meeting agenda.

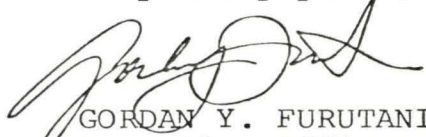
Please note that petition(s)

SP82-353 - The Estate of James Campbell
(Civil No. 72140 - Remand of SP82-353)

will be _____ considered _____ at that time.

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

Very truly yours,



GORDAN Y. FURUTANI
Executive Officer

Enclosure: Agenda

MEMORANDUM

TO: Land Use Commissioners

DATE: June 23¹, 1983

FROM: Staff

SUBJECT: Civil No. 72140: Remand of SP82-353 - The Estate of
James Campbell

On April 21, 1982, the Land Use Commission voted to approve the Special Permit application filed by the Estate of James Campbell to stockpile dredged coral spoil on approximately 152 acres of land situated within the State Land Use Agricultural District at Barbers Point, Ewa, Oahu, Tax Map Keys 9-1-14: portion 2 and 9-1-15: portion 1.

Pursuant to the action taken by the Land Use Commission, Na Opio Aloha Aina, Eric Enos, Raymond A. V. Catania and Georgette Meyers appealed the decision of the Land Use Commission and the City and County Planning Commission. A copy of the Notice of Appeal to Circuit Court and Statement of Case is attached (Civil No. 72140).

After due consideration of the case and based on the records therein, the Court remanded the Special Permit to the Land Use Commission and City and County Planning Commission and ordered the following:

1. The LUC's and the Planning Commission's "Decision and Order" are hereby modified by adding thereto the following, to wit:
 - a. The Applicant shall or shall cause the stockpiling sites (Parcels I, II, and III) in question to be surrounded by berms to prevent water from the stockpiled material from running off into the surrounding area.
 - b. The Applicant shall or shall cause the planting and maintaining of groundcover on the coral stockpiles and on the berms to control dust, glare and to minimize visual impact.
 - c. A complaint stating the facts and supported by sufficient and documented evidence alleging that the stockpiling operation creates an adverse impact or creates an adverse effect on the surrounding properties in regard to traffic, or noise, or dust, or glare, or drainage of water from the stockpiled material, or on public facilities may be submitted to the Planning Director. If the Planning Director finds that the complaint and evidence submitted shows probable cause to re-evaluate the special use permit, he shall transmit the complaint and evidence to the Planning Commission. The Commission shall review the submitted complaint and evidence and upon finding probable cause to re-evaluate the special use permit, the Commission shall hold a public hearing, upon giving proper public notices and notices to the Complainant and the Applicant, to determine the merit of the complaint and at the conclusion of the hearing

the Commission may impose further conditions, and/or sanctions including the revocation of the special use permit as the Commission may deem appropriate.

- d. The Planning Commission and the LUC shall retain jurisdiction in this matter in the enforcement of this Decision and Order.
2. A clarification shall be made of the following, to wit:
 - a. If animal husbandry is a permitted use in an Agricultural District, whether paragraph (5) ("That the land upon which the proposed use is sought is unsuited for the uses permitted with the District") appearing on Page 18 of the Findings of Fact of the Planning Commission is supported by competent and preponderance of evidence.
 - b. Whether the two million dollars worth of rock crushing equipment and other improvements to be used are to crush the excavated coral into different sizes for commercial sale from the stockpiling sites (Parcels I, II, and III), or are the said equipment and other improvements to be used solely for the purpose of facilitating the stockpiling of excavated coral from the harbor onto the sites.
 - c. If it is found that commercial activity is intended on the stockpiling sites, then Applicant shall be ordered to petition for a land use boundary amendment; if not, then the "Decision and Order" shall specifically prohibit any commercial activity to be conducted on or from the stockpiling sites.
 3. The Planning Commission and LUC shall conduct further hearings if it is deemed necessary and appropriate to conform to the Order herein.

The City and County Planning Commission held hearings on the Court Order on December 7, 1982, February 8, 1983 and April 19, 1983. Based on the evidence presented, the Planning Commission concluded that:

- "1. Although the raising of animals is physically possible on the site, animal husbandry is not economically feasible and potable water is not available. The land is, therefore, unsuited to animal husbandry, and no change in the issued permit is required.
- "2. No rock crushing equipment has been acquired and none is being acquired. Therefore, no change in the issued permit is required.
- "3. No rock crushing equipment shall be placed on the site. It is the intent of the Planning Commission to retain the site in the Agricultural District."

The Planning Commission also issued the following Decision and Order:

IT IS HEREBY ORDERED by the Planning Commission of the City and County of Honolulu that after consideration of the evidence presented in the court-ordered rehearing on this matter, the guidelines set forth in Rule 4.1(d) of the Rules Relating to Administrative procedure of the Planning Commission of the City and County of Honolulu, and Part V, Apecial Permits, Section 5-2 Test to be Applied, of the State of Hawaii Land Use Commission State Land Use District Regulations have been satisfied and that for the reasons as stated herein, the Application of THE ESTATE OF JAMES CAMPBELL for a Special Use Permit to temporarily stockpile dredged coral on approximately 152 acres of land in the State Agricultural Land Use District located at Barbers Point, Ewa, Oahu, Hawaii, Tax Map Key Nos. 9-1-14: por. 2, and 9-1-15: por. 1, is hereby deemed an "unusual and reasonable" use in the Agricultural District, and approved subject to the mitigative and protective conditions contained in the Decision and Order of the Land Use Commission of the State of Hawaii in Docket No. SP82-353, and the Court-ordered conditions contained in the November 10, 1982 Decision in Civil No. 72140, and the conditions contained in Part III herein.

A copy of the entire record on this matter including the City and County Planning Commission's Amended Findings of Fact and Decision and Order is attached for your information.

DEPARTMENT OF GENERAL PLANNING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET
HONOLULU, HAWAII 96813



EILEEN R. ANDERSON
MAYOR

WILLARD T. CHOW
CHIEF PLANNING OFFICER

RALPH PORTMORE
DEPUTY CHIEF PLANNING OFFICER

May 9, 1983

LAND USE COMMISSION
STATE OF HAWAII
MAY 11 3 00 PM '83

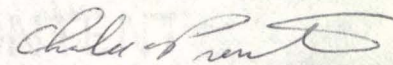
MEMORANDUM

TO: Mr. William W. L. Yuen, Chairman
Land Use Commission, State of Hawaii


FROM Planning Commission, City and County of Honolulu

SUBJECT: Transmittal of Record of Proceedings for Special
Use Permit 81/SUP-6 - Rehearing

Please find attached the Record and Proceedings before the
Planning Commission in the above matter.


CHARLES A. PRENTISS
Executive Secretary

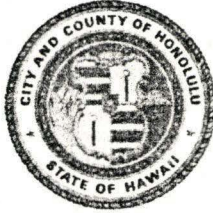
APPROVED:


WILLARD T. CHOW

Attachments

PARTMENT OF GENERAL PLANNII
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET
HONOLULU, HAWAII 96813



EILEEN R. ANDERSON
MAYOR

WILLARD T. CHOW
CHIEF PLANNING OFFICER

RALPH PORTMORE
DEPUTY CHIEF PLANNING OFFICER

MAY 9, 1983

RECEIVED FROM CHARLES A. PRENTISS, THE FOLLOWING RECORD OF
PROCEEDINGS FOR 81/SUP-6(EY):

- A -- FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION AND ORDER
- B -- PLANNING COMMISSION PUBLIC HEARING NOTICE
- C -- LEGAL DOCUMENTS (JUDGE WAKATSUKI'S DECISION)
- D -- TRANSCRIPTS AND MINUTES
- E -- PETITIONER'S EXHIBITS
- F -- NA OPIO EXHIBITS
- G -- PROPOSED FINDINGS AND RESPONSES
- H -- MISCELLANEOUS

MAY 11 3 00 PM '83
LAND USE COMMISSION
STATE OF HAWAII

DATE May 11, 1983

Don G. Hornbaker, Clerk

A -- FINDINGS OF FACT,
CONCLUSIONS OF LAW &
DECISION AND ORDER

Oxford Pendarflex



Revised

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

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

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION AND ORDER

THE APPLICATION

MAY 11 3 07 PM '83
LAND USE COMMISSION
STATE OF HAWAII

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

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

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

FINDINGS OF FACT

PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

DESCRIPTION OF THE SUBJECT PROPERTY AND VICINITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPLICABLE STATUTES AND REGULATIONS

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

HRS Section 205-6 provides:

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

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

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

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

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

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

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

"PART IX. SPECIAL USE PERMIT PROCEDURES

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

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

"PART V. SPECIAL PERMITS

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

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

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

RULE 4. PROCEDURES FOR STATE SPECIAL USE PERMITS

"4.1 (a) Any person who desires to use his land within an Agricultural or Rural District for other than an agricultural use may petition the Planning Commission for permission to use his land in the manner desired. The Special Use Permit petition shall be submitted to the Department of Land Utilization. A copy of the Special Use Permit petition shall also be submitted to the Department of General Planning by the applicant. If approved, the Planning Commission shall forward the petition to the State Land Use Commission for its action as hereinafter provided."

"4.1 (d) Test to be Applied. Certain 'unusual and reasonable' uses within Agricultural and Rural Districts other than those for which the District is classified may be permitted. The following guidelines are established in determining an 'unusual and reasonable use.'

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

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

PROPOSED USE OF THE PROPERTY

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

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

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

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

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

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

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

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

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

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

CONFORMANCE TO GUIDELINES FOR DETERMINING "UNUSUAL AND REASONABLE USE"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

DECISION AND ORDER

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

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

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

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

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

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

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

PLANNING COMMISSION
CITY AND COUNTY OF HONOLULU

APPROVED:

BY Leslie S. Haraoka-Chaimon

BY Zukio Hatakeyama

BY Randall Kaniyama

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

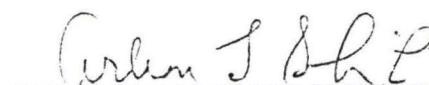
I, CHARLES A. PRENTISS, Acting Executive Secretary to the Planning Commission of the City and County of Honolulu, certify that the attached is a true and correct copy of the Findings of Fact, Conclusions of Law and Decision and Order in the matter of the application of The Estate of James Campbell for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

DATED: March 4, 1982.



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

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


Notary Public of the First
Judicial Circuit

My commission expires: 9-16-85

BY Amey Leche

BY Elizabeth Barton

DISAPPROVED:

BY Harriet J. Kane

BY Martha S. Caryl

BY _____

PLANNING COMMISSION OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE)
COURT-ORDERED REHEARING)
ON THE SPECIAL USE PERMIT)
FOR THE STOCKPILING OF DREDGED)
CORAL IN THE AREA OF THE)
BARBERS POINT DEEP DRAFT HARBOR)
REQUESTED BY)
THE ESTATE OF JAMES CAMPBELL)

REF. NO. 81/SUP-6
REHEARING

MAY 11 3 07 PM '83
LAND USE COMMISSION
STATE OF HAWAII

AMENDED FINDINGS OF FACT, DECISION AND ORDER

I. PROCEDURAL BACKGROUND

The Planning Commission, at its meeting of April 19, 1983, considered the Decision of the Honorable J. H. WAKATSUKI in Civil No. 72140, Circuit Court, First Circuit, State of Hawaii. The above decision modified the previous Planning Commission Decision and Order dated February 23, 1982, by ordering the addition of the following:

1. The Applicant shall or shall cause the stockpiling sites (Parcels I, II and III) in question to be surrounded by berms to prevent water from the stockpiled material from running off into the surrounding area.
2. The Applicant shall or shall cause the planting and maintaining of groundcover on the coral stockpiles and on the berms to control dust, glare and to minimize visual impact.

3. The City and County of Honolulu shall utilize a procedure by which complaints of alleged noncompliance with the conditions of the Special Use Permit may be processed through the Department of Land Utilization, and set for hearing before the Planning Commission.

The Court Decision also required a clarification of three specific issues (discussed in Part II, below) concerning the requested permit, and stated that the Planning Commission shall conduct further hearings if it is deemed necessary. A hearing was held on this matter by the Planning Commission on December 7, 1982, February 8, 1983 and April 19, 1983 in accordance with Section 5-413(1) of the City Charter and Chapters 91, 92 and 205 HRS.

II. FINDINGS OF FACT

On the basis of the evidence presented, the Commission hereby finds:

1. The requirements of the November 10, 1982 Decision in Civil No. 72140 included a clarification of the following:
 - a. If animal husbandry is a permitted use in an Agricultural District, whether paragraph (5) ("That the land upon which the proposed use is sought is unsuited for the uses permitted within the District") appearing on Page 18 of the Findings of Fact of the Planning Commission is supported by competent and preponderance of evidence.
 - b. Whether the two million dollars worth of rock crushing equipment and other improvements to be used are to crush the excavated coral into

different sizes for commercial sale from the stockpiling sites (Parcels, I, II and III), or are the said equipment and other improvements to be used solely for the purpose of facilitating the stockpiling of excavated coral from the harbor onto the sites.

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

2. Testimony was received at the rehearing which indicated the following:

- a. Animal husbandry is a permitted use in the State Agricultural District.
- b. According to expert testimony presented by the Estate of James Campbell, cattle, chickens and swine could not be raised commercially in the area. The expenses which would be incurred, especially for land costs and fixed plant and equipment, would result in a price for the product which would not be competitive with similar products presently grown locally or imported from the mainland. Existing farmers are presently able to compete in the marketplace primarily because their physical facilities are fully amortized and nonconforming.
- c. Water of sufficient quality for animal husbandry and to wash coral for use in concrete is not available.

- d. At the time of the initial hearing, the Applicant contemplated the use of rock crushing equipment to crush the dredged coral into different sizes for commercial sale. This would be either fixed or portable equipment. No equipment has been acquired or ordered at the present time.
- e. At the present time, rock crushing is not intended on the stockpiling sites. It is contemplated as one of the possible alternatives for disposal of the material in the future. Other alternatives include trucking the uncrushed material to other urban sites for crushing and sale, and trucking uncrushed material to the existing cement plant in the Campbell Industrial Park.

III. CONCLUSIONS OF LAW

The Planning Commission hereby concludes that:

- 1. Although the raising of animals is physically possible on the site, animal husbandry is not economically feasible and potable water is not available. The land is, therefore, unsuited to animal husbandry, and no change in the issued permit is required.
- 2. No rock crushing equipment has been acquired and none is being acquired. Therefore, no change in the issued permit is required.
- 3. No rock crushing equipment shall be placed on the site. It is the intent of the Planning Commission to retain the site in the Agricultural District. The Planning Commission's Decision and Order in this matter is hereby amended by adding the above findings and conclusions thereto.

IV. DECISION AND ORDER

IT IS HEREBY ORDERED by the Planning commission of the City and County of Honolulu that after consideration of the evidence presented in the Court-ordered rehearing on this matter, the guidelines set forth in Rule 4.1(d) of the Rules Relating to Administrative Procedure of the Planning Commission of the City and County of Honolulu, and Part V, Special Permits, Section 5-2 Test to Be Applied, of the State of Hawaii Land Use Commission State Land Use District Regulations have been satisfied and that for the reasons as stated herein, the Application of THE ESTATE OF JAMES CAMPBELL for a Special Use Permit to temporarily stockpile dredged coral on approximately 152 acres of land in the State Agricultural Land Use District located at Barbers Point, Ewa, Oahu, Hawaii, Tax Map Key Nos. 9-1-14: por. 2, and 9-1-15: por. 1, is hereby deemed an "unusual and reasonable" use in the Agricultural District, and approved subject to the mitigative and protective conditions contained in the Decision and Order of the Land Use Commission of the State of Hawaii in Docket No. SP82-353, and the Court-ordered conditions contained in the November 10, 1982 Decision in Civil No. 72140, and the conditions contained in Part III herein.

Dated at Honolulu, Hawaii this 4th day of May 1983.

PLANNING COMMISSION

CITY AND COUNTY OF HONOLULU

By Leslie S. Hirahara

LESLIE S. HIRAHARA

Chairman



Oxford University Press

NOTICE OF REHEARING
PLANNING COMMISSION

NOTICE IS HEREBY GIVEN of a rehearing to be held by the Planning Commission of the City and County of Honolulu:

PLACE: Planning Conference Room, City Hall Annex, Honolulu
DATE: December 7, 1982
TIME: 1:30 p.m.

or as soon thereafter so that all parties to this proceeding shall be afforded a reasonable opportunity to be heard to consider, under the provisions of Sections 5-406 and 5-413 of the Charter of the City and County of Honolulu, the following request:

1. EWA--STATE SPECIAL USE PERMIT--81/SUP-6(EY)

TAX MAP KEYS: 9-1-14: Por. 2 and 9-1-15: Por. 1

Applicant/Landowner: James Campbell Estate
Agent: Walter P. Thompson, Inc.
Location: End of Malakole Road
Area: 177+ acres
REQUEST: The applicant requests a State Special Use Permit to allow stockpiling of dredged coral from the Barbers Point Deep Draft Harbor in Ewa.

Determination of the following issues:

1. If the land is unsuitable for animal husbandry.
2. The specific use of the rock-crushing equipment.
3. If commercial activity is intended to be carried out on the SUP sites.

All parties to this proceeding may present testimony relative to the above three issues.

Maps showing the general locations and boundaries of the area under consideration are on file in the office of the Department of Land Utilization, 7th floor, Honolulu Municipal Building, 650 So. King St., Honolulu, and are available to the public for inspection during office hours.

Arguments on the subject proposal should be filed before the date of the rehearing or at the time of the rehearing.

PLANNING COMMISSION

LESLIE S. HIRAHARA, Chairman

BY

CHARLES A. PRENTISS
Executive Secretary

For advertisement on Friday, November 19, 1982
in The Honolulu Advertiser and Star Bulletin

2-column, M-6 border

C -- LEGAL DOCUMENTS
(JUDGE MAKATSUKI'S
DECISION)

Oxford Pendaflex



DGP 7/82-2326

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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

1982 JUL 2 PM 4 20

ALAN T. MURAKAMI 2285-0
Attorney for Appellants

H. SETO

CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

NA OPIO ALOHA AINA, ERIC ENOS,)
RAYMOND A.V. CATANIA, and)
GEORGETTE MEYERS,)
Appellants,)
vs.)
LAND USE COMMISSION OF THE)
STATE OF HAWAII; PLANNING)
COMMISSION OF THE CITY AND)
COUNTY OF HONOLULU, JAMES)
CAMPBELL ESTATE,)
Appellees.)

CIVIL NO. 72140

NOTICE OF APPEAL TO CIRCUIT
COURT; STATEMENT OF CASE;
DESIGNATION OF RECORD ON
APPEAL; ORDER FOR CERTIFICATE
AND TRANSMISSION OF RECORDS

NOTICE OF APPEAL TO CIRCUIT COURT

The Appellants hereby give notice and appeal to the
Circuit Court of the State of Hawaii from the Decision and Order
entered and filed on May 27, 1982 by the State Land Use Commission,
in Docket No. SP82-353, granting James Campbell Estate a special
use permit to stockpile dredged coral spoil on agricultural land.
This action approved the February 23, 1982 decision and order of
the Planning Commission of the City and County of Honolulu in
Docket No. 81/SUP-6(EY).

The Land Use Commission served its final decision and
order on Appellants on June 4, 1982.

DATED: Waianae, Hawaii, July 2, 1982

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

[Signature]
Clerk, Circuit Court, First Circuit
State of Hawaii

Alan T. Murakami
ALAN T. MURAKAMI
Attorney for Appellants

RECEIVED

82 JUL 8 PM 1:33

C. C. Honolulu

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NA OPIO ALOHA AINA, ERIC ENOS,	)	CIVIL NO.
RAYMOND A.V. CATANIA, and)	
GEORGETTE MEYERS,	)	STATEMENT OF THE CASE
)	
Appellants,)	
)	
vs.)	
)	
LAND USE COMMISSION OF THE)	
STATE OF HAWAII; PLANNING)	
COMMISSION OF THE CITY AND)	
COUNTY OF HONOLULU, JAMES)	
CAMPBELL ESTATE,)	
)	
Appellees.)	
)	
)	

STATEMENT OF THE CASE

Introduction:

James Campbell Estate received approval for a Special Use Permit (SUP) to allow the stockpiling of 10.6 million cubic yards of dredged coral on 152 acres of land currently designated agricultural. In doing so, Appellees have ignored the protections incorporated in the process by which the legislature intended such land use changes to be made - the district boundary amendment. Accordingly, NA OPIO ALOHA AINA, and its member representatives, petition this court to review the decision and to declare the permit invalid and violative of HRS §206-6.

In addition, assuming, arguendo, that the SUP process is valid, Appellees improperly granted the permit. Primarily, Appellees failed to properly apply the tests for a permit they identify in their regulations. For example, Appellees have no basis for assessing the impact of water demands of the project on existing water sources in this groundwater control area. Furthermore, they did not establish that the proposed use met the other tests for a special use permit, as mandated by their own regulations.

Appellees also abused their discretion by following rules not promulgated under the Hawaii Administrative Procedures Act (HAPA), improperly restricting the introduction of material evidence, and failing to adequately substantiate their conclusions in light of the evidence.

Therefore, Appellants seek a reversal of the permit decision and a stay precluding future construction until the proper land designation for the proposed use is granted.

JURISDICTION

1. This court has jurisdiction to review the agencies' decisions pursuant to HRS §91-14.

PARTIES

2. Appellant NA OPIO ALOHA AINA (NA OPIO) is an organization of Waianae Coast residents of low-income who seek to preserve the agricultural, cultural and marine resources of the Waianae Coast for the benefit of future generations. NA OPIO is concerned about proposed projects which would restrict the ability of low-income Waianae Coast residents to manage and develop these resources. NA OPIO is exploring alternatives to traditional economic development plans in order to promote greater self-sufficiency among low-income Waianae residents and to develop economic activities which are stable and culturally responsive to Waianae residents.

3. Appellant ERIC ENOS is a member of NA OPIO and is active in formulating community-based economic development projects responsive to the employment needs of untrained and unemployed youth.

4. Appellant RAYMOND A.V. CATANIA is a member of NA OPIO and resident of the Waianae Coast.

5. Appellant GEORGETTE MEYERS is a member of NA OPIO and resident of the Waianae Coast.

6. Appellee STATE LAND USE COMMISSION (LUC) issued the final decision and order authorizing the special use permit which will allow JCE to stockpile dredged coral spoil on 177 acres of land, 152 acres of which is agricultural land. It reviewed the decision of the City Planning Commission to issue the permit, pursuant to HRS §205-6.

7. Appellee PLANNING COMMISSION OF THE CITY AND COUNTY OF HONOLULU conducted contested case hearings on JCE's application for a special use permit and issued a preliminary decision to grant the permit.

8. Appellee JAMES CAMPBELL ESTATE (JCE) applied for the subject special use permit and currently owns the fee title to the property to be used for the disposal site.

FACTUAL ALLEGATIONS

9. On or about July 31, 1981, (JCE) applied to the Planning Commission for a Special Use Permit to stockpile 10.6 million cubic yards of dredged coral spoil in 35 foot mounds on 177 acres of land, 152 of which is designated for agricultural use, at Kalaeloa, Oahu, in connection with the planned construction of the Barber's Point Deep Draft Harbor. JCE plans to operate rock crushing operations over the next 30 years or more to eventually dispose of this material by supplying it to construction-related activities.

10. After a public hearing on the application on September 15, 1981, NA OPIO successfully petitioned for a contested case hearing on the application and a designation as an intervenor in those proceedings.

11. The Planning Commission held hearings, in which NA OPIO was allowed to participate, on October 20, 1981, November 3, 10, 24 and December 17, 1981.

12. On or about January 12, 1982, the Planning Commission voted to approve the application and transmitted its decision to the LUC, as required by HRS §205-6, on March 11, 1982, subject to certain conditions.

13. On or about May 27, 1982, the LUC issued its final decision on the permit and served it on the parties on June 4, 1982.

FIRST ERROR: VIOLATION OF HRS §205-6

14. The Hawaii Land Use Law contemplates a scheme of regulations which promotes development of urban lands in a rational and coherent manner. In light of this goal HRS Chapter 205 implements a comprehensive regulatory scheme to create four broad categories of land use urban, agriculture, rural, and conservation, within which only certain activities are permitted.

15. The proposed stockpiling and rock-crushing operations do not conform to any of the allowed activities in land classified for agricultural, use under HRS §205-2 and 205-4.5.

16. The proper vehicle to allow for the proposed use is a district boundary amendment pursuant to HRS §205-4 and LUC District Regulations Part VI.

17. While special use permits allow certain non-conforming uses in agricultural or rural areas, it is appropriate only for "unusual and reasonable" uses which are not contrary to the objectives sought to be accomplished by the Hawaii Land Use Law and regulations.

18. A special use permit for stockpiling and rock-crushing activities of the magnitude contemplated by JCE is neither reasonable nor in harmony with the objectives of the Hawaii Land Use Law and regulations.

19. Moreover, the LUC clearly erred by ruling that it followed a practice of granting SUP's for land uses like the proposed use in

agricultural areas without promulgating appropriate rules pursuant to HRS §91-3.

SECOND ERROR: FAILURE TO CONSIDER BURDEN
ON WATER RESOURCES

20. Pursuant to DR 5-2(3), the LUC is required to consider the burden a proposed use will have on public agencies to provide water. Similarly, the Planning Commission has its own identical version of the test pursuant to Rule 4.1(d)(3) of its Rules Relating to Administrative Procedure.

21. The Planning Commission failed to apply those rules and specifically found that it could not make any finding on the availability of water to spray and irrigate the stockpile, as called for in JCE plans.

22. The LUC, without any substantiating evidence, found that the proposed use would not unreasonably burden public agencies to provide water. On the other hand, applicant JCE intends to spray this arid area to control dust and to irrigate groundcover vegetation over more than a 30-year period.

23. Therefore, the LUC and Planning Commission have violated their own rules and regulations governing the issuance of special use permits by failing to consider the burden on water resources.

24. In addition, these agencies have abused their discretion by approving the permit without providing specific findings of facts on this critical factor, rendering their decisions arbitrary and capricious, and subject to judicial reversal pursuant to HRS § 91-14(g)(6). Furthermore, the LUC decision was clearly erroneous, not based on the whole record and subject to judicial reversal under HRS §91-14(g)(5).

THIRD ERROR: FAILURE TO ADMIT
ADDITIONAL EVIDENCE

25. The Hawaii Administrative Procedures Act (HAPA) requires an agency to promulgate those rules it intends to follow in accordance with HRS §91-3 and §91-4.

26. HRS §91-9(c) requires an agency to afford all parties the opportunity to present evidence on all issues.

27. Upon transmittal of the decision and record of the Planning Commission, the LUC permitted only oral arguments to be presented by the parties. It denied Appellant's request to admit the order to the Board of Land and Natural Resources declaring the Pearl Harbor Water District, a groundwater control area. This declaration effectively restricts any future pumping in the district, due to serious concerns about water availability.

28. This evidence was material and critical to the issue of water availability.

29. The LUC promulgated no rule, nor did it rely on any statutory authority, to deny this request, contrary to HRS §91-3.

30. Hence, the LUC either abused its discretion in not admitting this crucial evidence and/or relied on rules to limit its consideration to the record of the Planning Commission, contrary to the HRS §§91-14(g)(1), (3) and (6).

FOURTH ERROR: DECISION UNSUBSTANTIATED
BY THE RECORD

31. HRS §91-14(g)(5) requires Appellees LUC and Planning Commission to substantiate its decision with findings based on the reliable, probative and substantial evidence on the whole record.

32. During hearings, it was established that the contract archaeologist hired by Appellee JCE had failed to adequately study, and sample data collected in, Disposal Area III, contrary to federal regulations requiring mitigation of adverse impacts on cultural resources. Nevertheless, the Planning Commission relied

on the Army Corps of Engineers to conclude that all applicable federal reporting requirements, including those related mitigation, had been met.

33. Hence, the Planning Commission clearly erred by relying on the Corps interpretation in deciding to approve the permit application.

34. Secondly, the LUC ignored the fact that neither the State Department of Agriculture nor JCE had established that the property was unsuited for agricultural use.

35. Hence, the LUC and Planning Commission clearly erred by ignoring the possibility of animal husbandry as a use for the property.

36. Finally, the LUC and Planning Commission also clearly erred by not substantiating their conclusion that the permit would meet all other tests under District Regulation 5-2 and Planning Commission Rule 4.1(d).

37. Therefore, the decisions of these agencies are clearly erroneous in view of the record, contrary to HRS §§91-14(g)(5) and 91-9(g).

FIFTH ERROR: FAILURE TO PROPERLY
RULE ON PROPOSED FINDINGS

38. HRS §91-12 requires an agency to accept or reject proposed findings of facts submitted by parties to a contested case hearing.

39. NA OPIO submitted proposed finding of fact to the Planning Commission on material factual points contained in the record.

40. The Planning Commission neglected, ignored or otherwise failed to rule on many of those material proposed findings, in violation of HRS §91-12.

SIXTH ERROR: IMPROPER LIMITATION OF
THE CROSS EXAMINATION

41. LUC District Regulation and Planning Commission Rule 4.1(d)(2), 5-2(2) requires the LUC to ascertain that the desired used will not adversely affect surrounding property.

42. Rather than examine the long-term impact of the stock-piling and rock-crushing operations, in conjunction with harbor activities, on surrounding agricultural land, the Planning Commission limited examination by NA OPIO to the immediate, direct effects on property adjacent to the disposal area. This restriction denied NA OPIO the opportunity to develop the facts material to the tests for a special use permit.

43. In addition, the Planning Commission did not consider JCE's conscious policies to discourage agricultural activities and limited questioning on those aspects of the impact on neighboring farming operations.

44. Hence, the Commission violated its own rules and improperly limited NA OPIO's cross-examination contrary to HRS §§91-10(3) and 91-14(g)(1).

SEVENTH ERROR: FAILURE TO
PROPOSE A DECISION

45. HRS §91-11 requires that when agency officials who are to render a final decision have not heard and examined all the evidence, they must render a proposed written decision to the party for whom the decision is adverse, in order to afford the party an opportunity to object and present arguments in support of the party's position.

46. All members of the LUC did not hear the live testimony of the witnesses produced by the parties. Some members of the Planning Commission were absent during a portion of the hearings.

47. However, neither the Planning Commission nor the LUC

proposed an adverse decision to NA OPIO prior to its final decisions on the permit application, contrary to HRS §91-11.

WHEREFORE, Appellants pray that this court:

1. Declare the subject special use permit granted by the Appellee agencies void.
2. Rescind the subject special use permit previously issued by the State Land Use Commission.
3. Compel the Land Use Commission to exercise its enforcement procedures to halt any future construction activity related to the stockpiling of dredged coral on the subject property.
4. Order Appellee JAMES CAMPBELL ESTATE to deny any and all access to construction personnel involved in the dredging and stockpiling coral from the Barber's Point Deep Draft Harbor Project on land it owns until the Land Use Commission properly amends the boundaries to be consistent with the proposed use.
5. Grant such other relief as is just and equitable.

DATED: Waianae, Hawaii, July 2, 1982



ALAN T. MURAKAMI
Attorney for Appellants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NA OPIO ALOHA AINA, ERIC ENOS	)	CIVIL NO.
RAYMOND A.V. CATANIA, and)	
GEORGETTE MEYERS,	)	DESIGNATION OF RECORD ON APPEAL
)	
Appellants,)	
)	
vs.)	
)	
LAND USE COMMISSION OF THE)	
STATE OF HAWAII; PLANNING)	
COMMISSION OF THE CITY AND)	
COUNTY OF HONOLULU, JAMES)	
CAMPBELL ESTATE,)	
)	
Appellees.)	
)	
)	

DESIGNATION OF RECORD ON APPEAL

The Appellants hereby designate as the record on appeal, all of the record of the case as filed with the State Land Use Commission in Docket No. SP 82-353 and the Planning Commission of the City and County of Honolulu in Docket No. 81/SUP-6(EY), as defined in HRS §91-9(e).

DATED: Waianae, Hawaii, July 2, 1982



ALAN T. MURAKAMI
Attorney for Appellants.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

NA OPIO ALOHA AINA, ERIC ENOS,)	CIVIL NO.
RAYMOND A.V. CATANIA, and)	
GEORGETTE MEYERS,)	ORDER FOR CERTIFICATE AND
Appellants,)	TRANSMISSION OF RECORD
vs.)	
LAND USE COMMISSION OF THE)	
STATE OF HAWAII; PLANNING)	
COMMISSION OF THE CITY AND)	
COUNTY OF HONOLULU, JAMES)	
CAMPBELL ESTATE,)	
Appellees.)	
_____)	

ORDER FOR CERTIFICATE AND
TRANSMISSION OF RECORD

TO: Chairperson
STATE LAND USE COMMISSION
Old Federal Building
Room 104
335 Merchant Street
Honolulu, Hawaii 96813

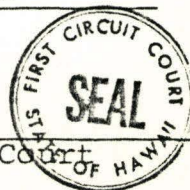
Chairperson
PLANNING COMMISSION
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

YOU ARE HEREBY ORDERED to certify and transmit the entire record in this proceeding as defined in §91-9(e) of Hawaii Revised Statutes, in the matter of your decisions and orders in State Land Use Commission Docket No. SP 82-353 dated May 27, 1982 and City and County of Honolulu Planning Commission Docket No. 81/SUP-6(EY) dated February 23, 1982, granting JAMES CAMPBELL ESTATE a special use permit to stockpile dredged coral spoil, in the above-entitled Court within fifteen (15) days from the date hereof, or within such further time as may be allowed by said Court.

DATED: Honolulu, Hawaii, _____, IIII 2 1982

H. SETO

Clerk, First Circuit Court
State of Hawaii



Planning Commission
DGP 7/82-2487

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1982 JUL 19 AM 10:53

M. KAWAMOTO
CLERK

GARY M. SLOVIN, 1414
Corporation Counsel
STEVEN S. C. LIM, 2505
Deputy Corporation Counsel
City and County of Honolulu
Honolulu, Hawaii 96813
Telephone: 523-4929

Attorneys for Appellee Planning
Commission, City and County of
Honolulu

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

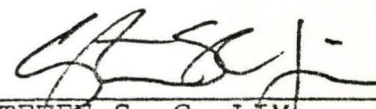
NA OPIO ALOHA AINA, ERIC	)	CIVIL NO. 72140
ENOS, RAYMOND A. V. CATANIA,)	
and GEORGETTE MEYERS,	)	RECORD ON APPEAL
)	
Appellants,)	
)	
vs.)	
)	
LAND USE COMMISSION OF THE)	
STATE OF HAWAII, PLANNING)	
COMMISSION OF THE CITY AND)	
COUNTY OF HONOLULU, and)	
JAMES CAMPBELL ESTATE,)	
)	
Appellees.)	

RECORD ON APPEAL

Appellee PLANNING COMMISSION OF THE CITY AND COUNTY OF
HONOLULU's record of proceedings in Docket No. 81/SUP-6 is
contained in the submittal of its proceedings to the Land
Use Commission in Docket No. SP 82-353.

DATED: Honolulu, Hawaii, July 19, 1982.

GARY M. SLOVIN
Corporation Counsel

By 
STEVEN S. C. LIM
Deputy Corporation Counsel
Attorneys for Appellee
Planning Commission, City
and County of Honolulu

(CERTIFICATE OF SERVICE ATTACHED)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies hereof were served upon
the following by mailing the same, postage prepaid, on
July 19, 1982:

ALAN T. MURAKAMI, ESQ.
Legal Aid Society of Hawaii
85-555 Farrington Highway
Waianae, Hawaii 96792


Attorney for Appellants

TANY S. HONG, ESQ.
Attorney General
State of Hawaii
Hawaii State Capitol
Honolulu, Hawaii 96813

Attorney for Appellee
Land Use Commission
State of Hawaii

DIANE S. KISHIMOTO, ESQ.
235 Queen Street
P.O. Box 131
Honolulu, Hawaii 96810

Attorney for Appellee
James Campbell Estate



STEVEN S. C. LIM
Deputy Corporation Counsel

RECEIVED
CORPORATION COUNSEL
CITY & COUNTY OF HONOLULU

Nov 12 4 57 PM '82

REFERRED TO:

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1982 NOV 10 PM 3:13

B. NAKAMAEJO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

NA OPIO ALOHA AINA, ERIC)	
ENOS, RAYMOND A. V. CATANIA,	)	CIVIL NO. 72140
and GEORGETTE MEYERS,)	
)	
Appellants,	)	DECISION
)	
vs.)	
)	
LAND USE COMMISSION OF THE)	
STATE OF HAWAII, PLANNING)	
COMMISSION OF THE CITY AND)	
COUNTY OF HONOLULU, and)	
JAMES CAMPBELL ESTATE,)	
)	
Appellees.)	

DECISION

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

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

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

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

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

B. Nakamaejo
Clerk, Circuit Court, First Circuit
State of Hawaii

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

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

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

the enforcement of this Decision and Order.

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

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

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

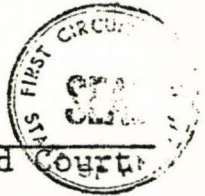
c. If it is found that commercial activity is intended on the stockpiling sites, then Applicant shall be ordered to petition for a land use boundary amendment; if not, then the "Decision and Order" shall specifically prohibit any commercial activity to be conducted on or from the stockpiling sites.

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

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

J. H. WAKATSUKI

Judge of the above entitled Court



D -- TRANSCRIPTS AND
MINUTES

Oxford Pendaflex



TRANSCRIPT *December 7, 1982*

REHEARING
STATE SPECIAL USE PERMIT
(STOCKPILING OF DREDGED
CORAL)
EWA
JAMES CAMPBELL ESTATE
(FILE 81/SUP-6(EY))

A rehearing was held on the State Special Use Permit to allow stockpiling of dredged coral from the Barbers Point Deep Draft Harbor in Ewa, Tax Map Keys: 9-1-14: Portion 2 and 9-1-15: Portion 1, to determine the following issues:

1. If the land is unsuitable for animal husbandry.
2. The specific use of the rock-crushing equipment.
3. If commercial activity is intended to be carried out on the SUP sites.

Publication was made in The Honolulu Advertiser and Star Bulletin on Friday, November 19, 1982.

The following transpired.

CHAIRMAN: We'll go on to the Special Use Permit. Mr. Prentiss, would you elaborate?

PRENTISS: This is item number 1 on the agenda. It's a rehearing on the request for State Special Use Permit for the Barber's Point Deep Draft Harbor in Ewa. There were three specific items that were referred back to the Planning Commission by the Court. The request is that a rehearing be held on these items. These are:

That the land is unsuitable for animal husbandry;

Number two, the specific use of the rock-crushing equipment;

Number three, if commercial activity is intended to be carried out on the SUP sites.

Mr. Lim has more advice to give us on this.

CHAIRMAN: Mr. Lim?

COUNSEL LIM: We will basically be leaving the conduct of the hearing up to the applicant as far as what they intend to point out in the record as far as evidence already submitted and what additional evidence they may need to submit today.

Will the parties please come up to the table and identify yourselves for the record.

DIANE KISHIMOTO: Mr. Chairman and members of the Commission, I am Diane Kishimoto, attorney for the Estate of James Campbell.

ALAN MURAKAMI: I'm Alan T. Murakami representing Na Opio Aloha Aina.

CHAIRMAN: Miss Kishimoto?

KISHIMOTO: Mr. Chairman, we are planning to submit exhibits and I understand that the opposition is also planning to submit exhibits. I am wondering if a brief recess might be useful.

CHAIRMAN: Okay. We'll take a 10-minute recess.

* * * * *

CHAIRMAN: Miss Kishimoto?

KISHIMOTO: Mr. Chairman, the three issues raised are--

One, if the land is suitable for husbandry;

Two, what specific activities would be conducted on the property; and

Thirdly, whether these activities that will be conducted on the property constitute commercial activities.

We are prepared to call two witnesses. First is Jack Larsen, agricultural economist. The second is Robert Johnson who is the operations manager for Campbell Estate.

CHAIRMAN: Proceed.

KISHIMOTO: Mr. Larsen?

CHAIRMAN: State your name for the record and who you represent.

JACK LARSEN: I'm Jack Larsen, independent agro-industrial consultant retained by Campbell Estate.

INTERROGATION OF JACK LARSEN BY COUNSEL KISHIMOTO

KISHIMOTO: Mr. Larsen, would you please state your name for the record.

LARSEN: My name is Jack Larsen.

Q: What is your occupation?

A: I work as an agro-industrial consultant. I work independently and I'm hired by various firms both locally and internationally.

Q: What does an agro-industrial consultant do?

A: In my case, I work on developing agricultural processing projects in various categories both for fruit and pineapple and sugar and animal feeds and various other tropical crop.

- Q: This is also known as agricultural economics?
- A: Well, in every project that I put out a proposal, I develop a project to tie together the economics of growing, processing and selling products. There's where the economics comes in as far as establishing profit or potential for profit in an enterprise that somebody wants to put together. That's the background of the production and the processing and then the selling of the products from this enterprise, and this constitutes the project.
- Q: What is your educational background?
- A: I graduated--I spent three years at the University of Hawaii and then went and graduated from Colgate University as a B. A. in Natural Science. Then I went from there to work two years in HSPA training program in sugar, and then I became employed in the sugar industry.
- Q: Could you please describe your work experience?
- A: When I was in sugar, I worked primarily as you might say a consultant in research and development of crop logging and various crop analytical procedures for two plantations--Hawaiian Agriculture and Hutchinson out in the Kau desert. From there I went to pineapple and worked first on Lanai as an agro-researcher, and also a field supervisory role in Wahiawa to work in field supervision. At that time I started a feed project now known as the heptachlor problem. I spent a good many years developing that and then got into making pelatize feed. From there I worked at the cannery and became a corporate engineer. Then I migrated and worked for Dole on the mainland both in San Jose and at Salem, both in the processing and developing additional project expansion for Dole. Following that I became a director of pineapple planting and looked worldwide for alternative pineapple sites. Then I worked on my own as an independent agro-industrial consultant for the last ten years.
- Q: Mr. Larsen, I have in front of you--I'm not sure what exhibit number this would be next in sequence. Can you please tell me what it is?
- A: That's my resume curriculum vide which I use. When I am asked to make a proposal, I include my curriculum vide and it has a resume of my experience, background and a short paragraph summary of all the projects I have worked on.
- KISHIMOTO: We offer into evidence, Mr. Larsen's resume as petitioner's exhibit next in order.
- COUNSEL
LIM: So accepted. Unless Mr. Murakami has any voir dire, we'll also be qualifying Mr. Larsen as an expert.
- MURAKAMI: (No response.)
- KISHIMOTO: Okay, thank you.

CONTINUED INTERROGATION OF JACK LARSEN BY COUNSEL KISHIMOTO

KISHIMOTO: Mr. Larsen, were you retained by Campbell Estate to evaluate the potential of the three stockpile areas in question, that's the topic of this application, for its potential for animal husbandry specifically dairy, poultry and swine raising?

LARSEN: That's correct.

Q: Now, what would the cost of putting this land in animal husbandry be?

A: Well, the land itself is flat and it's practically solid coral from the surface down. There are pockets of soil here and there. There are large gaping holes in the coral. As far as just converting the land into a site, it would have to be filled in and probably assured that there would be no pockets to collapse at some later point. So, the land itself as far as terrain goes, is quite flat. But, the coral base would have to be prepared and broken up and rerolled before you could turn it into any kind of a base for construction of a livestock facility.

Q: Can you give us an estimate in dollars of initial up-front capital costs for the three or four types of animal husbandry operations that you investigated?

A: Well, the poultry I broke down into two different types, both egg and broiler production; the other two would be swine for pork, and dairies.

Now, rather than use my figures, I went to the study prepared by the Board of Ag. for a Waianae park proposal in which they included three livestock regimes for that Waianae park. Subsequently, they have gotten out of that because they found it was too expensive. Now, using their cost structure--you know, anybody can put one of these things together and use anything you want. But, I'm using theirs to more or less get an objective view what it would cost to put in an economic size unit.

Now, that's another problem here. You have to establish what is an economic size unit. They're using, you might say, averages of what the state now is running here, there and yonder, all over the state. They used as dairy, swine and poultry. I'll talk about those three.

The dairy unit they say you need 50 acres to put in 400 to 500 cows. Swine you need 15 acres to use 450 sow operations. You'd need 20 acres for 100,000 laying hens. My analysis of it is that's more area than you'd really need. But this is anyway, what the state has used. If you say an economic size unit is what they're talking about putting in their

ag. park which is a logical assumption, for dairies they estimate a minimum 745,000, swine 840,000, poultry 1.1 million.

Q: What types of cost are we talking about that go into it?
A: These are strictly facilities. It's not the total package either but it doesn't include the livestock. It doesn't include any operating working capital to buy feed to grow animals for awhile. It's strictly facilities that would be set up in these minimum size economic units. So, you have a substantial investment to put up an operation that would have some chance of producing a profit. These are the state figures. It's not my figures. I think I would have mine a little higher than that but that's all right for an estimate.

Q: Then this would be a good basis for estimating how much it would cost to put these specific parcels.
A: That's correct. For the dairy, the minimum size economic unit would be 745,000; for the swine operation 840,000; for poultry 1.1 million, in round numbers. I rounded them all off.

Q: What are we talking about in terms of ongoing operating costs?
A: Well, the problem with these three industries in the state is they're all caught in the same dilemma, toward mainland imports of their product--milk, pork and eggs. Broilers face the same thing. So when you're talking about their operating costs, they're main cost is feed in every case. In the case of dairies, they're having to buy feed. Most of it, mainland imports, goes from 65% on up. For swine it's up to 75%, 80% of the operating cost or feed costs. In every case, these operators are getting a premium for their locally grown product versus the same product brought in from the mainland and sold here.

So, it's a protected market in a sense. Dairies obviously are protected. Swine has a marketing advantage in that they sell hot pork which is paid for at a high price, higher than the imported chilled and frozen pork. Eggs, you pay a premium for local eggs because it's a fresh island egg. Put that in quotes. But, you could pay a lot less for imported eggs if you wanted to get a refrigerated egg. Anyway, the local industries are protected in the sense by the market demand for the specific local products. So in that way, they are able to buy mainland feed, pay the \$65 a ton to bring it in here and produce these products.

Q: Can you give us an estimate in dollar amount as to how much per year it would cost to operate one of these basic, economic size units?
A: I have it broken down, a rough estimate summary of operating costs.

MURAKAMI: Mr. Chairman?

CHAIRMAN: Yes, Mr. Murakami?

MURAKAMI: At this point I would like to lodge an objection to any further testimony by Mr. Larsen.

CHAIRMAN: What's your point of objection?

MURAKAMI: My objection's based on the fact that Mr. Larsen has not been qualified as an expert up to now. He's testified as to contents of the document and other studies. However, based on his experience and his testimony on what his background is, I do not believe he qualifies as an expert in any of these three areas.

LIM: We had previously--

MURAKAMI: Also, Mr. Chairman, he is offering an opinion which will be rendered on the basis of his apparent expertise which he alleges, and I am challenging the basis of that presumption in lodging this objection.

LIM: We previously qualified him as an expert.

MURAKAMI: On what basis?

LIM: Agricultural economist.

MURAKAMI: I didn't hear the ruling.

LIM: I asked you if you wanted to voir dire him in terms of his qualifications as an expert.

MURAKAMI: I didn't understand that. I understood that to mean I would have an opportunity to cross-examine him at that point, after he is done with his testimony. However, at this point he is entering into the area of opinion evidence and I don't believe that's suitable for this hearing.

LIM: If you want to voir dire him to his qualifications, you can do that.

VOIR DIRE OF JACK LARSEN BY COUNSEL MURAKAMI

MURAKAMI: Okay. Mr. Larsen, your highest degree is a Bachelor in Natural Science at Colgate University?

LARSEN: I attended Colgate in 1950 and graduated and got a Bachelor of Arts Degree in Natural Science, correct.

Q: So your answer's yes.

A: Yes.

- A: Not for Mokuleia Ranch, but during the period I was working as an agro-industrial consultant, I worked in Guinea on a poultry operation which had to do with setting up a poultry operation in the country of Guinea and then to produce an economic analysis of that operation for that country.
- Q: Is that listed in your resume?
- A: Yes it is.
- Q: And how long did that project take?
- A: Total of about 2-1/2 months.
- Q: When were you retained by Campbell Estate to do this study?
- A: I believe it was about the 17th or 18th of November.
- Q: All right. That was approximately three weeks ago.
- A: Right.
- Q: Did you conduct any independent analysis of the actual cost feasibility of these various operations on the particular parcel near Barber's Point?
- A: Well, I looked at the parcel. I went over the whole area. My analysis of it was based on the terrain I found there and then a broad comparison of, you might say, typical swine, poultry and dairy operations on the island. I had interviews with people in each industry and with people at the University of Hawaii and others.
- Q: Okay. You're basing your opinions and analysis on the opinions of others. Is that true?
- A: On opinions and also book and literature research.
- Q: Mr. Larsen, did you talk to any of the neighboring either swine or poultry farmers in the area?
- A: Neighboring to this location?
- Q: Yes.
- A: No I didn't.
- Q: Over how many days did you spend surveying the particular area in question?
- A: You mean walking the site?
- Q: Yes.
- A: I spent several hours looking at the site.
- Q: How many?
- A: I'd say about 2-1/2 to 3 hours.
- Q: You know how many poultry or swine or dairy farmers are in that area?
- A: Well, I think there's two swine and one poultry.
- Q: Would you be able to point them out on the map?
- A: Rough approximation of their location, yes.

- Q: And the only post graduate education is in the pre-medical field. Is that right?
- A: No, that's incorrect. It was pre-graduate level.
- Q: I'm sorry. All right. In other words, you have had no post graduate experience beyond your B.A. Degree.
- A: I worked two years as HSPA trainee.
- Q: Is that University?
- A: We had courses at the University, more sugar technology.
- Q: In fact, isn't it a fact that most of your projects you've listed in your resume and vida are related to the sugar-pineapple industry?
- A: That's the bulk of my experience. That's correct.
- Q: Isn't it almost exclusively your experience?
- A: No. I have a working experience in Dole Company when I was working for several years processing pineapple into dairy feed. At that time I also worked for the university people working out the feeding quality and what was needed to produce milk and beef cattle.
- Q: Are those the only two experiences you've had with animal-type operations?
- A: No. I also worked for 20 years as operating manager of Mokuleia Ranch which was related to the activities I was doing at Dole but it was aside from my involvement at Dole. I worked there on both beef cattle over the period, and on pasturing dairy cattle. At the same time, we grew about 300 acres of alfalfa and supplied that to Kaleloa Dairy on a basis of green-chop over about a three-year period.
- Q: But isn't it true that your experience even in those areas relate to operations which relate to the cultivation of crops which may have been fed to animals themselves but not as to the operation of ranching operations or other kinds of operations which directly relate to swine, dairy or chicken-type operations?
- A: That would apply to swine and chicken but as far as dairy cows, we use to grow them out and watch very carefully what they were fed.
- Q: Okay fine. So in that area you were concentrating in the type of feed that cows ate. Is that right?
- A: And their growth rate, right.
- Q: And their growth rate. In any of those areas, did you do any independent feasibility studies to determine the economic viability of either a dairy operation, chicken-type production operation or swine operation?

- Q: Would you do so?
- A: Sure. I believe this here (referring to map displayed) is Field 004 of the Oahu Sugar Company. There is one old poultry site and swine site which is no longer functional. And, coming down on the mauka side of that railroad track, there are either one or two chicken operations and old hog farms here (indicating). This chap here (indicating) grows sweet potatoes and other vegetables.
- Q: Who are the individuals that are farming or ranching in those areas?
- A: Who are they?
- Q: Yes.
- A: I don't know.
- Q: And I take it then you didn't consider any of their experiences in that area as part of your feasibility study. Isn't that right?
- A: No, I considered their experience but they're operating, as I summed up in my report, on old amortized facilities. We were talking about putting up new facilities on this piece of ground, 177 acres.
- Q: So you did not talk to them about their experiences.
- A: I did not talk to the individuals, no.
- Q: Did you examine the methodology that was used in the Waianae agricultural park study done by the State of Hawaii?
- A: I looked at the study, yes.
- Q: Did you analyze their methodology?
- A: I don't quite understand your question.
- Q: Are you familiar with the methodology that was utilized to reach the results in the Waianae ag. park study?
- A: You mean the total methodology and background, reasons for putting this study together? Is that what you're referring to?
- Q: I'm referring to the way in which they reached their results as you've demonstrated in table 3.
- A: I've taken three of their tables and put them into one document. So, I'm using their numbers. The format is mine. It's three separate tables they've used and I've just condensed them and put them into one table and it's their numbers.
- Q: Are you aware of any of the assumptions that were utilized in preparation of this information by the Department of Agriculture?
- A: Well, their assumption was that it was quite a steep area. And, I'm using where they say 5% slope. Actually the area

that we're talking about here is zero to 5% slope. So, I left out their hilly terrain. Now, they were talking about putting these operations on very steep areas. They had another cost category for that which I left out of my summary. I did not use the steep comparison. They used 5% and I said zero to 5%. So, I'm not using verbatim their information. I'm taking their least steep areas and using their costs as a comparison.

Q: Now isn't it true, Mr. Larsen, that the factors you would consider in a feasibility study for swine, dairy and chicken operations would be quite different, in fact, vastly different from the factors you would consider in alfalfa-type, sugar or Dole pineapple-type operations?

A: Well, in a sense they're different because every crop is different. But when you come down to analyzing production cost, operating cost and the final product price, you have a biological system which has all these factors coming into it. And, the biological system is quite different from one in the factory where you can either run more hours or run either higher speed and you get your product. So, you can control it that way. That is different in all these agricultural enterprises where you're related to time-span requirements of nature. So in that sense, they're all the same. In the same vain, they're all different. They have the same potential you might say but they're all factually different. They're separate entities operating in a similar manner, I guess would be the way to say it.

MURAKAMI: Mr. Chairman, based on the voir dire of the witness and the amount of experience that he's testified he has in these particular areas, I don't believe that he is qualified to render the opinions that are being asked of him at this time. I object to any of the statements he makes which are basically hearsay information and opinions of others who are more qualified to testify and to whom I can better pose cross examination questions concerning the methodology and assumptions. Mr. Larsen is not even--has spent a total of 2-1/2 hours at the area. He hasn't talked to nearby farmers who encounter analogous or if not, identical problems and considerations in running hog or poultry-type operations and therefore has not demonstrated a specific knowledge of this particular area nor the particular expertise in the type of feasibility studies about which he is testifying today. On those bases, I would object and ask this Commission to not allow him to testify and to strike any testimony he may have rendered up to this point.

Mr. Chairman, I would further object on the basis that he has spent only three weeks on this study and has demonstrated that this is not a kind of study on which this Commission should base its decision.

CHAIRMAN: Your objection is on the time, in addition to his background?

MURAKAMI: I object to the fact that he has spent only a total of three weeks part of which was probably spent on preparation for this study, and has prepared this report--as I understand it, the last draft was completed an hour before we started. I was handed just one page of the final draft at the beginning of this hearing.

CHAIRMAN: So you're objecting on the basis of his whole testimony and all of his background, Mr. Murakami?

MURAKAMI: Yes I am doing that and I'm also objecting on the basis that because of the late preparation of this report, we had no opportunity to look at it or prepare any kind of rebuttal. I believe that also indicates the lack of time and preparation that went into this report by someone who is not qualified in the areas specifically being addressed today.

KISHIMOTO: Mr. Chairman, I think Mr. Larsen's voir dire, if anything, demonstrates even further how eminently he is qualified to testify for those specific matters we brought in here to testify on, and that specifically is the cost analysis of putting these lands, in estimate granted, to agricultural use and the expected returns that a landowner might be expected to derive from putting the lands into the type of uses that he has analyzed.

I think in terms of the amount of time spent and so forth, that goes to weight, and not in his ability.

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

* * * * *

CHAIRMAN: Okay. The hearing will continue.

KITAGAWA: Mr. Chairman?

CHAIRMAN: Mr. Kitagawa?

KITAGAWA: I would like to say something and this is relative to some of the comments Mr. Murakami made. I have some problems with his version of an quote expert or competent witness. For instance, if he is using a degree as a basis for competency, I have problems with that. I have problems with not considering the extensive background of the witness. I think if we're looking at it from one prospective which is probably the prospective that the witness has been concentrating on, which is the economic feasibility of the project which is a very important aspect,

I think the witness does have the competency of making that, even though he may not have had the extensive background of experience in that particular area.

You can have a Ph.D. in economics, for example, and that individual may be considered a competent witness. But, he may not be competent in terms of how to produce the egg. He could be competent in terms of getting the program operation started which is what I see Mr. Larsen doing. Again, based on his background and experience, I think that he can do it. If you're looking for competency in terms of production, then the witness has said he doesn't have that experience and we may have to go elsewhere. So, basically I'm supportive of the witness.

CHAIRMAN: Okay. I'm going to overrule the objection. I find that Mr. Larsen has adequate educational background and has extensive experience that can be related to agricultural economics. I feel that the time that he spent, whether it's three hours or three days walking that area, he did point out the field, and he is familiar with the area. So right now, I will overrule the objection.

KISHIMOTO: Mr. Chairman, I have additional questions to ask the witness. I'm not finished with my direct yet.

CONTINUED DIRECT EXAMINATION OF JACK LARSEN BY COUNSEL KISHIMOTO

KISHIMOTO: Mr. Larsen, going back to your direct examination, could you give us an estimate as to the operating costs of the three livestock industries that you investigated?

LARSEN: Well, the three livestock industries is a broad statement in which individuals within each one, some are successful, many are making it or are unsuccessful. So rather than talk about industries, I think we should talk specifically about economically feasible size operations. And in that case, I agree with the Board of Agriculture in setting up approximately 500-cow dairy, 450-sow hog farm, 60,000-100,000 laying hens as minimum economic size units.

Starting from that base then, again using their figures on how much it would cost using state averages, because you have good operators and bad operators, which they come out with every year in a statistics of Hawaiian agriculture known as the 1980-81 and so forth. The last one out is 1981. So I used that statistics of Hawaiian agriculture in setting up the base of what these people can produce on their operations. Admittedly there might be some outstanding individuals who can beat the average. Obviously there are some who can't. But, I'm sticking to the average.

On that basis, a poultry operation with 50,000 hens, 50,000 layers; each hen laying for about 12 to 18 months depending on who's doing the operation, they would produce about 18.3 dozen eggs per year. This then, if you use the state average what these people are paid, 80¢ a dozen, you come up with a gross operation, revenues of \$733,000 a year for a 50,000 layer operation.

Now, in the testimony I prepared, there are three operations in the state larger than 50,000. There's a clutch of about three or four others that are at about 50,000 and the balance are smaller. Now the reason the smaller ones are still in operation is in every case, they're old operations; they have completely amortized their equipment; they probably bought their land sometime in the past; or they have old lease rents which are not major factors of their operating costs. In every case, these people have to buy feed from the mainland. It applies to dairies and to swine also. But operators in the business agree and the members of the University staff, Dr. Ernest Ross for example, agrees that 70% to 75% of the operating cost of a poultry operation is feed. On that basis, 50,000 layers would require about \$522,000 a year in feed costs which is about 71%.

All right, the other big cost a layer has is bird replacement. Now there's only one person who is growing replacement layers and that's Albers Milling. They have an operation in which they produce birds for the layer replacement program. They sell these birds for \$3.35 a piece. By the time you have them on the operation and they're producing eggs, it's \$4 a bird. So a 50,000 layer operation needs to replace about 60% of those birds every year. That's 33,000 birds at \$4 is \$133,000 for a layer operation. A total operating cost then for just feed and for replacing birds is about \$655,000 with a gross income of \$733,000. These numbers are in my writeup. So they end up with a gross margin on this operation of about \$77,000 a year. By the time you talk about building a new facility, spending half-a-million dollars, investing, borrowing the money at 12%, you already have exceeded your cost, your gross, operating margin you might say, and you have to pay for management, labor, employee overhead and the rest of it, so you end up by moving to a new facility and you end up with a net loss.

By running an old operation, not paying your family members very much, you can end up with a marginal profit. This is how these fellows have continued to operate. The same thing applies to dairies and to swine.

KANE: Before you go on, Mr. Larsen, I'd like to ask you a question.

The question as I understand it is what are the operating costs for the three major kinds of animal husbandry, chicken, swine and dairy. You finished with the chickens but I have two problems. One is you have just put together that whole new set and took from 60,000 to 100,000 layers to have an economic size.

LARSEN: A minimum of 50,000. The state uses from 60,000 to 100,000.

KANE: But then the figures are 50 now.

LARSEN: Right.

KANE: So I get confused.

LARSEN: I'm sorry. Okay, the state was using 60 to 100,000 in their projections for their Waianae operation. I'm saying 50,000 would be a minimum economic size and I'm basing the whole projection on 50,000 layers.

KANE: Okay. So we're going to just be concerned that 50,000 is an economically sized unit.

LARSEN: All right.

KANE: Fine. The other problem I have is, we went over this earlier so quickly-the figures, the numbers of animals in relationship to the acreage it takes, got all mixed up. As you do the next two, can you tell us how many acres it takes for 50,000 chickens; how many acres it takes for how many swine you're going to use? We need to know this in relationship to the size of the application we're talking about.

LARSEN: Your question is a good one. It has several ramifications to it. The state proposal for the Waianae ag. park which is what the numbers I'm using. I'm using their capital estimates for putting these facilities together. They are using, you might say, older ways of operating in the state--the older poultry system, an old dairy system, and have established the way the swine operators operate.

Okay, so for the dairies, the state figures claim 50 acres for 400 to 500 cows. Swine, 15 acres for 450 sows. For poultry, 20 acres for 60,000 to 100,000 birds.

KANE: So we're going to put 50,000 birds on 20 acres.

LARSEN: Well, I'm not personally. I'm saying we can put all these operations on the smaller pieces of property. This is what

the state uses as their dimensions at the ag. parks in Waianae.

KANE: You think they're unrealistically large.

LARSEN: I think they're larger than they have to be, correct.

KANE: So now we're going to have to have all these figures adjusted to the facts that the state uses?

LARSEN: Well, you see, the question was the economics of the operation. The basic point here is that the land is not a major economic factor if it's a leased land proposition. That's the thrust of the argument here is the land cost, how much it will lease for and so forth. The state of course put their package together with the idea that they were going to subsidize these operations. I'm saying if you don't subsidize them, and Campbell Estate is not obligated to subsidize them, you have to then pay some kind of lease rent. If you're going into an industrial area, going into an area where you're talking about competing with industry, there's no way any of these operations will survive. They can't meet the tests of competition.

KANE: But they're in the ag. district. Why would they be in competition?

LARSEN: The ag. district is a nomenclature on it but long range, it's going to be part of the industry. It's part of an industrial area. It's a word game. Okay, it's now zoned for ag. therefore it should be for ag. But if you're talking 20 years down the road, it's located in you might say a harbor area, close to an industrial base. So, are we talking about today or are we talking about within the amortization of the facility?

KANE: Well, the SUP is today and I think we have to talk about today. It just depends.

LARSEN: So the question then comes up, what is an economic size unit? That's your question to me as I take it. I'm saying that the state has actually used larger floor area requirements than would be feasible, if you really compressed these operations down to what is now current on the mainland. Economic size units you can, you might say, increase the density of animals per acre, increase the number of houses, increase the number of birds in a house in a unit. So my whole thrust on this thing is that the state is using more area than you really need.

KANE: Thank you very much.

CHAIRMAN: You're trying to prove that animal husbandry continues to run.

KISHIMOTO: Yes.

CHAIRMAN: Why didn't you log the areas to reemphasize the point, to show more clearly that your work is more suited?

KITAGAWA: Let me interject something that might develop. I think Jack is correct in the sense that some of the acreage are larger than normal. But, the thing is that when you look at the ag. park, when the Department of Ag. goes to the ag. parks, they looked at the ag. park with a certain amount of subsidy, a certain amount of luxury is to be provided. So, we see the operations as they are today which are successful. If the state is able to provide more lands, why not take on more? So what I'm saying is Jack is putting it more realistically.

CONTINUED QUESTIONING OF JACK LARSEN BY COUNSEL KISHIMOTO

KISHIMOTO: Will you continue on to the pigs and the cattle?
LARSEN: Well, in every case, the problem with these ag. industries in the state is the high cost of feed. This is an underlying problem with all these industries. I know that Mr. Kitagawa here working in the Board of Ag. was faced with a constant idea that these poor little guys are in economic straits, the same thing that Mr. Mirikitani is concerned about. My point here is I'm talking about operations that have to be reestablished on a new area and you have to buy new facilities. Okay, it's an economic package that's going to cost upwards of \$500,000, \$600,000 to a million dollars to establish one of these units.

Q: Mr. Larsen, could you just give us rough estimates as to what the operating cost would be for the dairy industry and the swine industry based on a economic size unit.

A: Based on these economic size units, I'm saying a 500-cow dairy would produce about a million dollars a year in milk. That's the basic revenue base. 65% in there is feed. \$675,000 is feed cost. Now they have to replace a third of their animals. They're good for a three-year period and then they have to replace them. Now it depends on the dairymen. Is he going to buy those animals from the mainland? Is he going to raise his own? Is he going to buy them from local people? If he's going to buy them from the mainland, they're going to cost them \$1500 a piece plus shipping. If he buys them locally, he can pay maybe \$750 to \$1000. If he raises them himself, he probably

would get them for \$700 or \$800 a piece. I'm saying on the average it would cost him \$1000 per head to replace dairy animals. So, \$500 times .3 is \$150,000 a year for replacement of animals. By the time he's paid for his feed and purchased replacement of animals, he's up to \$823,000. Now out of his total gross revenue, he has \$212,000 to take care of the rest of the cost of the operation. That sounds like a lot of money. But a dairyman with 500 head, he would have to have 7 employees, management. Now is he working free or is he paying himself a legitimate fee of \$30,000 a year? These are all the costs. Each operation has an individuated calculated.

I'm saying if he had to hire a manager, you have to pay him \$30,000. There's overhead so he'd be down to a margin of \$131,000. By the time he buys new equipment--again we're talking about a dairy operation moving to a site, setting up a new operation--he would have to spend upwards of \$895,000. Charging that out on 20 years at 4% interest, it would be \$152,000 a year on just paying for his investment, amortizing it, and charging 12% interest.

A major factor there of whether he operates where he is or moves to a new location, each one of these livestock questions turns on whether it's an old operation or he has to move into an area and set up a new base. The thrust of my whole testimony is that these fellows on these size operations can't afford a new place and set up a brandnew operation. In every case it's the same.

Q: Can you briefly give figures on swine?
A: On swine again--500 sows, assuming they produce 12 piglets a year, he sells them at about 180 lbs. The average price in 1981 was \$739,000 for pork. That's the local price, average. Again, 75% in feed costs; again replacement costs--I have no feeling for that so I'm saying it cost him about \$50,000 a year for replacement costs; ending up with a gross margin of \$136,000. You think this guy is making \$136,000, that's terrific. Then you start talking about if you move to a new location, you would have to spend \$840,000 for facilities. You would have to borrow the money at 12%. You'd be spending \$142,000 for his amortizing and his 12% interest. Again, it's a noneconomic operation. He loses money on it.

CAIRL: I have a question. The replacement of all these animals, what happens to the animals that are replaced? Does he realize any kind of profit from those?

LARSEN: Well, in the case of chickens when you replace your layers, they go to a chicken processor and they're sold as stew hens. They get a minimum price on stew hens of about 25¢ to 50¢ a piece. Many times they don't get paid for months so it's hardly a recovery value.

Dairy cows get fairly good money to butcher. Swine I imagine you get good--same price for a regular hog, 68-1/2¢ a piece.

CAIRL: Do you have to bring in as much feed for the hogs from the mainland? In our school they have the slop.

LARSEN: There are many of the major hog operations that have, do supply some of the feed but they still have to buy significant quantities of mainland grain import. The hog versus the chicken needs 4 to 5 times the amount of grain in feed. A chicken is the most efficient converter of grain to protein, to meat, about 2 to 1. Hogs need about 4-1/2 or 5 to 1 so you need a great deal more volume of food.

I don't know whether people in the state are aware of this or not but right now, live hogs are being brought in from the mainland and they're being slaughtered here. So the hogs are being brought in and they're entering the market and being slaughtered. The numbers in the industry nomenclature show up as slaughtered hogs. At first blush you think well, they're grown here and they're slaughtered here. That's not true. They're brought in. The Island Pork Producers Association is organizing right now to bring more hogs. It looks like there's going to be about 6,000 hogs brought in every year. Right now I'm not sure of the number and it's hard to get the figures. Of the 40,000 slaughtered here every year, how many are brought in from the mainland as live hogs and taken right out to slaughter is a significant number. It will be somewhere's between 4,000 or 6,000 of those 40,000. So 10% to 15% could be brought in.

Now as a comparison, those hogs that are brought in are bought cheaper than they grow hogs here. There's a serious threat to the local hog industry. If somebody really wants to organize that, they can bring all their hogs in cheaper than they can grow them here. That is a thrust to the hog industry that many people aren't aware of. Mr. Kitagawa's aware of it but it's an underlying threat to the industry.

CHAIRMAN: Continue.

CONTINUED DIRECT EXAMINATION OF JACK LARSEN BY COUNSEL KISHIMOTO

KISHIMOTO: Mr. Larsen, what impact does all these capital costs and operating costs have on the cost of the product? I think you've implied that these would be the existing local producers and new operations would end up having to charge a higher cost price if they're going to make any sort of money.

LARSEN: Well, they would have to charge more but whether they could sell it is the question. My whole thrust here is to say that if you have to go out and invest half-a-million to a million dollars in a new facility, on the present margins that exist in the business, you cannot pay that money off, pay the interest and make any money on your operation. So it's not economically feasible to move one of these so-called minimum size feasible operations into a new area and make money out of it.

Q: Now how does the cost of the product that would be produced on this new site compare to pork or poultry or beef or dairy products or eggs that would be imported from the mainland?

A: You're saying if they were to charge more, enough to pay for the new investment?

Q: How would that compare to products that are imported from the mainland?

A: Well, one of the factors is the dark cloud over the local livestock industry is the fact that the supermarkets are now charging more than they need to charge for their imported eggs, pork and poultry. They can buy the stuff cheaper on the mainland and bring it in. They're actually charging up to the local demand other than pulling the local demand down to what the product could sell for. In every case, supermarkets are making that profit wedge there on the fact that they can buy these things cheaper on the mainland, bring them here and sell them, so that they're protecting the local livestock industry. In every case, the dairy business is protected because you need a triple A and all that kind of business. But the other two, swine and poultry are definitely being protected by the market price they're charging for the imported.

For example, you can buy Safeway eggs in California from 65¢ to 70¢ a dozen. You pay 6-1/2¢ to bring it in here, refrigerated eggs so they could sell for under 80¢ a dozen. Safeway's selling their eggs for \$1.19 versus local eggs for \$1.25 to \$1.35.

Q: So would we be decreasing cost to the consumer by producing more eggs, chickens and so forth?

A: No, we would be increasing our cost.

Q: Would we decrease cost either to the farmers or again to the consumers by making more land available for pig, chicken and cattle raising?

A: I don't believe land is a question. It's the expense of setting up an operation that really causes a thrust of the economic package that you end up with. Land is a very small part of the whole cost of operation.

- Q: What is the availability of land for this type of use?
A: I know, for example, in Waianae right now there's a 60-acre parcel looking for dairies to buy that land that E.E. Black couldn't get his zoned. I know David Wong is operating on it. He wants to buy a piece of it. He can't handle the whole 60 acres. He's looking for other dairymen to join him in purchasing that land from E.E. Black. That's a good dairy site. I know that the present major operators in swine, David Oshiro and I think it's Glen Hokama, both have area that they can expand operations on. The two major poultry operations have area they can expand operations on. They would obviously expand their operations incrementally rather than move to a new site instead of a whole new facility. It makes economic sense to add just incrementally to where you're operating now rather than move the whole operation to a new site. So my feeling is the major operators is more economic to stay where they are and expand their present operations.
- Q: How much water is needed for these types of animal husbandry for say an economic unit?
A: Well, let's take the major water user which would be a dairy operation of 500 cows. You would probably have to figure that some of the water to be potable water. Now the cows have to drink potable water and you have to use potable water to clean the milking facilities. To wash the cows you could use less than potable water, not pure water. An estimate that Dr. Koshi uses, who's president of 50th State Cooperative, says 50 gallons per head per day. The cow itself will drink maybe only 10 or 15 gallons. So half of it would be potable and half of it would be less than potable. 25,000 gallons per head per day for potable water for dairy operation.
- Q: For other types of animal husbandry?
A: Well for hogs it would be considerably less than that. I don't know of any precise number but somewhere's I would guess between 10 to 15 gallons per sow per day. Drinking water is incidental.
- Chickens, same, incidental. You don't need water to wash chickens.
- Q: Mr. Larsen, I show you a document. Can you identify that please?
A: This is my report I prepared for Robert Johnson of James Campbell Estate. It's a summary of my economic analysis--three, actually four. I used two on poultry, eggs and broiler, and swine and dairies.
- KISHIMOTO: Mr. Chairman, we offer this as Petitioner's exhibit next in order.

MURAKAMI: For the record I object on the basis that I've stated earlier.

CHAIRMAN: The Chairman would appreciate it if the commissioners would withhold their questioning until Ms. Kishimoto and Mr. Murakami have finished with their questioning.

KISHIMOTO: Mr. Chairman, I have no further questions on direct.

CHAIRMAN: Mr. Murakami?

CROSS EXAMINATION OF JACK LARSEN BY COUNSEL MURAKAMI

MURAKAMI: Now I'm not sure, Mr. Larsen, if you answered the question about the size of the farm as it relates to the economically feasible unit. Could you go over those figures for the three areas, please?

LARSEN: Are you referring to my summary on Table 3 here which is using the state figure or are you talking about what I would consider?

Q: All right, let's have both sets of figures.

A: All right. On Table 3 on page 20 in the testimony uses state numbers. They show the dairy at 50 acres, 400 to 500 cows; swine 15 acres, 450 sows; and 20 acres for 60,000 to 100,000 birds.

Q: And your estimates would be somewhat less?

A: My estimates are less in area. As a rounding I've used 500 cows. For sows I've used 500 sows rather than 450. For birds I've used 50,000 as a minimum size economic unit. In each case, my area is considerably less than the areas they've used for the state proposal.

Q: What were those areas?

A: Well, I'm saying in the testimony that the dairy would be able to fit under maximum free-stall housing method, 500-cow dairy could be placed on 2-1/2 acres.

Now we're comparing apples and oranges in a sense here because 50 acres includes settling lagoons for the effluent, it includes replacement heifer pasture, I'm sure. For dry cow pasture, you need 50 acres. So I'm saying on a concentrated area like we're talking about here at Campbell Estate Harbor site, we would also have to have adjacent or nearby pastures for taking care of the dry cows and for the replacement heifer program, and also a centralized sewer waste disposal system which would be on 4 or 5 acres. See I'm not saying you could do the same thing on 50 acres and do the same thing on 2-1/2 acres but this core of the dairy could be crammed into 2-1/2 acres.

- Q: What would be the figures for the sow and poultry operations?
A: The sow would be more like 5 acres and poultry 5 acres.
- Q: Would there be similar problems with need for pastures?
A: The sows no but the poultries would not have any need for a waste disposal facility. That would be strictly a dry gathering operation and then trucking the dried material to an alternative site. It would not go into the sewer disposal system.
- Q: I notice that your sewerage and disposal system need is related to a Kahuku study.
A: That is correct.
- Q: And on page 16, you've stated that there is a need for a sewerage treatment plant because of the Board of Water Supply requirement of tertiary treated water. Is that true at the Barber's Point area?
A: The Barbers Point area has an advantage over Kahuku in that injection wells are allowed in Barbers Point whereas you have to have a leech field at Kahuku and a wider area of lagoons and stabilization ponds, etcetera. So my thrust here is that if you go into an injection program, you could reduce the size of your settling basins, leech field and wells and inject your effluent. Once the particles had been removed and partially cleaned up, it wouldn't be a tertiary thing. You could then inject that into the, you might say, edge of the island and it would be tolerated by the Board of Water Supply and the Health Department.
- Q: In that sense, cost would be reduced.
A: Yes.
- Q: How about space?
A: Space would be considerably reduced.
- Q: As I understand it then, with these particular operations you're envisioning which are smaller than the state estimates, if you increase the potential size of these sites, does that also increase the economic feasibility of that particular project?
A: You would certainly need more than one or two economic units to support a \$2 million waste disposal system. I'm not sure where that breakpoint is. Maybe 3 or 4 dairies would be the most logical configuration, because if you go into swine, there is a problem with disease contagion between swine operators. They don't appreciate having other operators live next to them because they can't guarantee their cleanliness and a septic condition. So you're actually forcing guys to operate near each other. The same applies to poultry. Poultry doesn't impinge on the waste disposal but they impinge on each other. They really resent having to move into an area. I don't think

the state has quite assessed this resentment of having somebody next to them that they guarantee their operation. I think probably the state has assessed it. It hasn't come out that way because they've backed away from all livestock operations in ag. parks.

Q: Mr. Larsen, it is possible for one operator to maintain a production unit which has 4 to 5 times the size of your economic size unit, then there would be no problem with neighboring operators.

A: That's right.

Q: That would change your answer would it not as to this resentment that would be caused?

A: If one operator could say take over the growing of eggs for the island of Oahu--is it that type of thing?

Q: Right.

A: So it would be a 500,000 or 600,000 birds, he could probably afford a significant disposal system. His would be different. His wouldn't be the waste disposal we're talking about.

Say a major dairy like Bob Toledo moved in the area, he's got about 1500 milking cows. He would need some help to start it but once he got going, he could probably pretty well use this type facility, \$2 million investment. He possibly could afford to do it but I'm not sure about that.

Q: All right. What I'm asking you is if in a hypothetical situation, an operator could come in to an area like Barbers Point and set up 4 to 5 times the size of economic units--and let's disregard the dairy operation since you have the problem with pastures--would that affect the feasibility figures for the operation of that magnitude?

A: This would be 4 to 5 swine operators then?

Q: And 4 to 5 times the poultry operations deemed minimally operable.

A: Well, back to the same question whether they'd be able to locate next to each other, I'm not sure. If you scatter them across the whole landscape--you know, one on one side and one on the other, that kind of thing--it might be far enough apart so they wouldn't have that contagious problem.

Q: You spoke of 5 acres each in the poultry and swine uses. There are 177 acres on the site. You scatter 25 poultry and swine operators in that area, do you think that you could disburse them sufficiently to eliminate that problem?

A: No, I think that would be a little too close.

Q: Okay. What if we talk strictly about poultry and add 5 different operations or combinations of operators, or potentially just one operator with 5 different locations,

eliminating the disease problem? Could they be spread in that 177-acre site to eliminate that problem?

A: Well, one poultry operator would want to operate at one area in one location. So you might say one poultry operation in that whole 177 acres would be feasible because they don't use waste disposal in the way we're using it here. A poultry man would have a dry waste problem. He could truck it out of the area. He could dispose of it in many ways. He wouldn't be into a waste water system. So it would be an insignificant cost for waste disposal for poultry. It's not even in the estimate for capital as far as I recall.

Q: So for the three different industries, the poultry industry would have the most viable status in terms of potential for any kind of operation in an area like this, is that right?

A: Because of no need for waste water disposal, that's correct.

Q: Even as to the swine operators? There is an existing swine operation there, is there not?

A: Yes but they're using grandfathered waste disposal systems which are not tolerable under new regulations. You couldn't go out and just build an operation and throw the material out on the ground like they're doing now, or just drop it into a hole and hope it doesn't come up again.

Q: But based on your testimony on 5-acre minimal feasible site, could the larger expanded operation either in terms of one operator or a combination of operators scattered throughout that area, produce a situation where production would be economically feasible?

A: Well, I'm talking about a swine operation of at least 500 sows. That means those sows are practically on a production line, line in a factory system boxed in little cages. This is no business for the tender heart and the humanitarian. These things are organized like cogs on a wheel. They are shoulder to shoulder through a whole building, and they're in racks you might say. Some of them don't even have space to lie down. They just stand there and feed and then they go into a place to have their keikis. So, if you cram them in like that, you're talking about a housed facility. People have to go into an operating room atmosphere to get in there and out of there. You walk through a septic-foot bath and change your garments, all that kind of thing. It's very different than hog operations are operating here. This is what I'm referring to. If you're packing on your maximum number of animals on to a given area, you go into a factory situation.

Q: But it is possible.

A: It is possible.

- Q: And it's not particular to the Barbers Point area.
 A: No, operating in Hawaii is a cost and a concern for all these operators.
- Q: So unless we're willing to band in any future investments in any swine or poultry production because of feed operations, we're not faced with the analysis where feed becomes the more important criteria in determination of whether it's feasible in this area as opposed to any other area.
 A: That's correct, yes.
- Q: So the bottom line then is while you question the potential viability of a minimum size economic unit in each of these three industries, the situation at Barbers Point given the size of this parcel presents a potential for an economically feasible operation does it not, under certain conditions?
 A: The thrust of my testimony is that it is not economically feasible to move a new operation, building the facilities that are required, organizing the waste disposal that is required. It is not an economically feasible project to get into at the present time. Now that's the thrust of the whole thing. Now I'm not just picking on Barbers Point. I'm picking on the idea that some guy's got to go out and borrow half-a-million dollars to get started. Then, to face the competition of the market, it would be economically a disaster for anybody to try it right now. The only reason the people are in it is because they're grandfathered in, because they have amortized facilities, and in many cases have their own families working for them at low minimum wages. Now I don't think there's any major operator in any of these industries who would conceivably move into a new area and have to build a present facility. You can hear about a lot of people who want to move into a state ag. park but in their own mind, they have the idea that somebody's going to subsidize their operation.

CHAIRMAN: Mr. Murakami, I'm going to ask for your indulgence in a 10-minute recess.

MURAKAMI: Okay, fine.

* * * * *

CHAIRMAN: Okay. We'll get underway with Mr. Murakami continuing cross examination of Mr. Larsen.

CONTINUED CROSS EXAMINATION OF JACK LARSEN BY COUNSEL MURAKAMI

MURAKAMI: Just a few more questions, Mr. Larsen. I think you've already stated that your economic feasibility for this would be altered if you looked at a larger size operation. Is that not true?

LARSEN: I stated that a larger size operation would make it more feasible to pay for the waste disposal. The question in my mind is whether a larger size operation, whatever size could still afford to make the capital investment required to go into a new site. There is the thrust of the whole summary of information I put together here. It's not an economic proposition to go to a new site, buy the required equipment and get into production. That becomes a question then as to how big you want to go and whether the market is here in the state to absorb the production from a large unit.

Q: But if we ignore the market conditions and that aspect of the analysis, as I understand it, what you've given us here is an analysis of what the picture might look like for a minimum size unit.

A: Minimum economic size unit, right.

Q: That to me implies does it not, or can I infer from that then a larger size unit would change the economic feasibility picture favorably for that particular unit if it enlarges beyond the sizes you've indicated for swine and poultry production units?

A: In theory you could say that a larger unit would have lower operating costs. That's correct.

Q: Finally, is it fair to characterize your testimony as I believe you have alluded, that these problems that confront swine, poultry and dairy farmers are of a more general applicability to all such operations throughout the island?

A: The operating cost problems?

Q: Yes.

A: Yes they are.

Q: Now was any part of your analysis with respect to the specific Barbers Point site kept somehow affected by what you term to be the long range characteristic of the area as being one of industrial production in competition with those activities?

A: Well, I offered the consideration in the text that if you could increase the density of both dairies and swine on a piece of ground and to get up to the density that I've been talking about as the hypothetical maximum, you could then pay lease rents per acre based on 2% to 3% of the gross cost of the production, which would be much higher than lease rents now paid in the present type of operations that are going on around the state. You could approach industrial lease rents. You couldn't quite reach them. I think dairy maximum was about 12,000. I think hogs are up to about \$8500 per acre per year. But, it would still not meet--let's call it the industrial lease rent base that you're getting in the industrial park.

- Q: So competition with industries or activities related to industrial production is a factor to consider in your economic feasibility of these kinds of animal husbandry activities.
- A: Well, I didn't put it into my consideration because I didn't have enough money to pay for any kind of lease rent base. By the time I got through amortizing for borrowed capital, there was no economic return on the operation so I didn't even put it into the calculation.
- Q: But it's a relevant factor.
- A: It's a real factor unless you're saying Campbell Estate is going to subsidize these guys moving in here.
- Q: Would you then be concerned with location of a particular animal husbandry production activity with respect to neighboring industrial or other commercial-type activity?
- A: You mean as far as the least rent?
- Q: Yes.
- A: I'm not saying that I used that in the economic analysis. I think it would be a legitimate concern for the landlord to just have an isolated pocket paying ag. lease rate, and all surrounding them would be industrial lease rate. To me it doesn't make sense. He would actually be subsidizing the ag. operation.
- Q: So there is some interdependence between the different activities with respect to the level of lease rents that could be charged? Is that right?
- A: I'm not sure the type of question you're asking me. Am I being asked whether the ag. lease rent is being subsidized by Campbell?
- Q: No, I'm not asking you that question. I'm merely asking you whether or not the presence of other than ag. activities such as industrial and other commercial activities could be a factor in determining the level of lease rent, and therefore the outcome of your economic feasibility study, with the kind of analysis that you've done here today?
- A: The kind of analysis I've done here is not a consideration. The industrial lease rent is not a consideration because I didn't have enough income to pay any lease rent. I didn't even put it into the calculation.
- Q: But it could be.
- A: It should be, yes.
- Q: It should be.
- A: Right.
- Q: Mr. Larsen, you have not in any of your analysis factored in any of the economic benefits of small farm operations, have you?
- A: What economic benefits?

- Q: Have you considered any economic benefits operating small farms or small animal husbandry activities like the one we've been talking about today?
- A: I'm not sure what economic benefits you mean. What are they? General employment in the state, that kind of thing?
- Q: Yes.
- A: No, I didn't put in anything on that.
- Q: There's no consideration of some of the non-accounting cost or benefit figures that could be included in that small farm operation?
- A: May I assume you're referring to additional employment as a benefit.
- Q: As one of the things that could be included.
- A: Yes. No, I didn't consider that.
- MURAKAMI: That's all I have.
- CHAIRMAN: Ms. Kishimoto?
- KISHIMOTO: No further questions.
- CHAIRMAN: Commissioners?
- CAIRL: Mr. Larsen, maybe you mentioned it or I didn't get it, but the cost to prepare the land so that you could even go in there, because you did mention there was coral, it had holes that, it needed to be filled in, rolled. Could you give us an estimate of that initial cost?
- LARSEN: There's been some previous testimony on the cost to preparing a site for an industrial park. I'm not sure what those were, 200,000 or 150,000 per acre. It would be less than that. Just going in and sweeping off the underbrush and the kiawe trees would probably be \$500 an acre. Bringing in soil and rolling it, probably \$2500 an acre. Putting in basic coral roads, nothing other than that, no water, no sewerage, roads probably another \$10,000 to \$15,000 an acre. So you might go up as high as \$12,000 to \$15,000 an acre as site preparation, I would guess. That's just ball park.
- CHAIRMAN: Further questions of Mr. Larsen? If not, thank you, Mr. Larsen.
- Mr. Murakami, do you have any witnesses?
- MURAKAMI: I have no witnesses, just documents to introduce into evidence.
- CHAIRMAN: Ms. Kishimoto, do you have any more witnesses?
- KISHIMOTO: Yes, I have one more witness. This is Mr. Johnson and I estimate that roughly that I would need about half-an-hour.

LIM: Why don't we consider the exhibits by the parties.

CHAIRMAN: Ms. Kishimoto, you want to submit evidence?

KISHIMOTO: Mr. Chairman, I've submitted all of my exhibits.

CHAIRMAN: Mr. Murakami?

MURAKAMI: After reconsidering what I had submitted to you, what I propose to do is to move for this Commission to take judicial notice of the fact that the Board of Land and Natural Resources designated the Pearl Harbor Water District as a groundwater control area. Now, I have to apologize. I meant to bring a letter with me that would substantiate that fact but I did not. I neglected to bring it but I do have copies that I can make available to the Commission. All it does is it officially reports the decision of the Board to designate the area as a groundwater control area. It subjects it to special permit requirements for water use.

LIM: You could just bring that down. What are the others?

MURAKAMI: Oh, should I make an offer of proof now?

LIM: Yes.

MURAKAMI: Okay.

KISHIMOTO: Mr. Chairman, as to one of them--actually there's two of them that I'm willing to stipulate to admitting with some modification, which for the record maybe we could discuss.

MURAKAMI: Okay. My first proposal is to admit into evidence, portions of what are known as the general design memoranda that was prepared for the U. S. Corps of Engineers in the Barbers Point Deep Draft Harbor Project which describes what I believe to be the commercial nature of the stockpiling and rock crushing operation that is the subject matter of this Commission's deliberation. There are actually two documents in that. One is the basic memoranda. The second one is an update, a year-and-a-half later, that updated some of the cost information. If you want to label them separately, that's fine with me. But, they were submitted in July of '76 as well as March of 1977.

KISHIMOTO: Mr. Chairman, I had originally planned to object to part of it on the grounds of relevance but I found the relevant section, so I've got no objections.

MURAKAMI: Secondly, I have submitted--since we're talking about that--an update of some of the cost figures that are reported in those two documents in the most recent submission by the

Corps to the House Appropriations Committee for the last congressional session. What it basically documents is the cost of the harbor has now gone up to 6.6 million dollars which I believe has some bearing on the nature of the economics of the dredged coral resale because part of the benefit calculation included, as you can see from the memoranda, the benefits from the sale of that coral. It has a direct bearing on to the economics of the entire project. It goes to the commercial nature of this operation.

KISHIMOTO: I object to the admission of that. The reason I withdrew or changed my original intent to object to the introduction of a portion of the design memo was that there is reference to the expected value of the dredged material return which it leases tangentially relevant.

The second exhibit that Mr. Murakami proposes to introduce has figures that go entirely to cost of the harbor itself which I don't believe is relevant to the issue before the Commission.

CHAIRMAN: I'll take the objection under advisement.

MURAKAMI: If I can just add a point on that. The Corps is under requirement to justify this project on the basis of a favorable benefit cost ratio. If the cost of the harbor goes up, they must justify that by some measure of the benefits. One of the four major proponents of the benefits calculated is the commercial sale of the dredged coral spoil.

CHAIRMAN: Mr. Murakami, are you going to elaborate on these exhibits?

MURAKAMI: Yes but that's basically my offer of proof on that point. The last item I wish to submit is what is known as the December 3, 1976 Memorandum of Intent Concerning the Barbers Point Deep-Draft Harbor and the accompanying Contract to Sell Coral in Place between Aina Nui Corporation and James Campbell Estate. Now what I believe these documents show is once again, the nature of the coral sale is strictly commercial and whether or not parts can be separated so that they will be noncommercial is another matter; but that these documents go to show that the coral sale is strictly a commercial venture which is being utilized to payoff for certain land interests that are necessary for the harbor.

KISHIMOTO: Mr. Chairman, I of course object to Counsel's characterization of the document. That we can address later. The documents that I believe Mr. Murakami had is not complete. I have no objection to submitting it if the complete document were submitted. I've provided him with the missing exhibit B.

CHAIRMAN: You're receptive to that?

MURAKAMI: Yes. I will submit the letter later on. I apologize for not bringing it here.

KISHIMOTO: I object on the grounds of relevancy. It's solely into the issue of the cost of the harbor itself.

LIM: This is a benefit cost ratio paper for the whole harbor. We're checking it out for any reference to commercial sale. I don't think that we question there is commercial sale of coral. So I don't see whether the updated benefit cost ratio balance sheet is relevant to our determination. It's probably more relevant to your federal court case. There is no reference to coral sales on the balance sheet.

MURAKAMI: That's true, but what I'm submitting it for is for the Commission to consider--what the cost angle of the whole project is because the sale of coral has distinct relationship how they're going to justify that fixed cost of the harbor. As cost goes up--

LIM: All right, that's not our problem. That's a feasibility study that's been done on the whole harbor. We're not talking about the whole harbor.

CHAIRMAN: So you're advising not to admit that.

LIM: Right.

CHAIRMAN: Do the figures show that there is more of a need to put this thing into immediate commercial operation, the cost involved?

LIM: No, that's why. I think the document doesn't make reference to the coral or basalt sale. The reason I make my recitation is because I think the state moved on other items submitted by Na Opio. They felt the cost estimate was not, and so forth. So, I was just making that in the same light.

CHAIRMAN: Okay. I'll hold this for consideration. We're going to reschedule this.

MURAKAMI: When is this being rescheduled for?

CHAIRMAN: We'll determine that right now.

PRENTISS: What about next week, the 14th?

CHAIRMAN: I can't make it next week. What about the next meeting, the 21st?

KANE: Excuse me. Do the commissioners here today have to be here for the next meeting on this?

CHAIRMAN: That's right.

KANE: I can't be at the next meeting.

MURAKAMI: So can we have it on the 21st?

CHAIRMAN: No, she can't make it. What about next year?

KISHIMOTO: I have no objection. Next year is actually better for me.

CHAIRMAN: When is our first meeting?

PRENTISS: January 11th.

KISHIMOTO: January 11th is fine with me.

CHAIRMAN: Mr. Murakami, January 11th?

MURAKAMI: I guess so.

CHAIRMAN: That seems to be the time we can get a quorum. Okay, the matter is continued to January 11th. Thank you very much for coming.

SP82-353 - Campbell Estate
(REHEARING)

Transcript - February 8, 1983

1 PLANNING COMMISSION

2 CITY AND COUNTY OF HONOLULU

3 Continuation of) FILE 81/SUP-6(EY)
4 REHEARING)
5 STATE SPECIAL USE PERMIT)
6 (STOCKPILING OF DREDGED)
7 CORAL))
8 EWA)
9 JAMES CAMPBELL ESTATE)
10)
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8 REHEARING

9 A hearing was held in the above-entitled matter on Tuesday,
10 February 8, 1983, at the Department of General Planning,
11 City Hall Annex, 650 South King Street, Honolulu, Hawaii,
12 96813, commencing at 2:30 p.m.

13 BEFORE:

14 Planning Commission Members:

15 HARRIET KANE, Chairperson
16 MARY ALICE EVANS
17 SHIGEYUKI NAKATANI
18 MARTHA CAIRL
19 GERMAINE KELIIKO
20 CHARLES PRENTISS, Executive Secretary
21 STEVEN LIM, Deputy Corporation Counsel

19 APPEARANCES:

20 For the Petitioner: DIANE S. KISHIMOTO, ESQ.
21 Ashford & Wriston
22 235 Queen Street
23 Honolulu, Hawaii 96813

23 For the Intervenors: ALAN MURAKAMI, ESQ.
24 85-555 Farrington Highway
25 Waianae, Hawaii 96792

1 Reported by:

MARJANN SHAWLER, RPR
1136 Union Mall, Suite 709
Honolulu, Hawaii 96813

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I N D E XPETITIONER WITNESSESDIRECTCROSS

Robert Johnsen

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Thomas Nance

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Alan Clarke

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INTERVENOR WITNESSESDIRECTCROSS

Gwenn Young

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Jane Ross

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1 February 8, 1983

2:30 p.m.

2 P R O C E E D I N G S

3 THE CHAIRPERSON: The last item on the agenda is
4 a determination of three issues related to the State Special
5 Use Permit for stockpiling of coral in Ewa.

6 Do you have anything you want to say?

7 MR. PRENTISS: Nothing.

8 THE CHAIRPERSON: Steve Lim, counsel for
9 Corporation Counsel.

10 MR. LIM: Good afternoon. I'm Steven Lim,
11 Deputy Corporation Counsel.

12 Today's hearing is basically a clarification that
13 was ordered by the Circuit Court and in the court's order,
14 I will read the clarification needed for the record.
15 Clarification shall be made of the following:

16 A, if animal husbandry is in permitted use in an
17 agricultural district, whether paragraph 5, which states
18 that the land upon which the proposed use is sought is
19 unsuited for the uses permitted within the district,
20 appearing on page 18 of the findings of fact of the
21 Planning Commission, is supported by competent and
22 preponderance of evidence.

23 B, whether the \$2 million work of rock crushing
24 equipment and other improvements to be used to crush the
25 excavated coral into different sizes for commercial sale

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1 from the stockpiling sites, (parcels 1, 2, and 3), or
2 said equipment and other improvements to be used solely
3 for the purpose of facilitating the stockpiling of
4 excavated coral from the harbor or onto the sites.

5 C, if it is found that commercial activity is
6 intended on the stockpiling sites, then applicant shall be
7 ordered to petition for a Land Use boundary amendment.
8 If not, then the decision and order shall specifically
9 prohibit any commercial activity to be conducted on or
10 from the stockpiling sites.

11 So basically, we're here to listen to and clarify
12 those three issues.

13 The Chair will be making the rulings on the relevancy
14 of the testimony and the witnesses presented today. We ask
15 that the parties try to keep their testimony to the three
16 issues.

17 THE CHAIRPERSON: Does the Commissioner have any
18 questions of Steve before we proceed?

19 Steve.

20 MR. LIM: One other point. We don't have all
21 the commissioners here today, but we can continue with the
22 hearing and listen to the evidence presented by both parties.
23 The Commission will issue a proposal for a decision order
24 which relates to those three issues which will be served
25 upon the parties. We will then give the parties a chance to

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1 respond in writing and with all oral argument at a hearing
2 which will be held on the date the actual vote is taken.

3 Do you have any questions from the parties as to the
4 procedure?

5 THE CHAIRPERSON: I have a question of counsel before
6 we begin, if that's all right.

7 I'm having a little trouble with some of the language.
8 Like, I want to know what it means before we start this
9 hearing.

10 You labled what we are about to start, a clarification
11 process. Our agenda says determination process. What does
12 the judge say?

13 MR. LIM: That's what I was quoting, the
14 judge's decision.

15 He says he needs a clarification to be made of those
16 following points. What he has done is he has remanded this
17 matter to the Planning Commission and the Land Use
18 Commission to conduct hearings -- he has asked us to
19 clariy those three issues if need be, with hearings and we
20 felt that we needed to hold a hearing to clarify them.
21 That's what we're doing today.

22 It's not clear from the judge's order what his
23 determination on the final issue on the permit itself is.
24 I assume that what he wants you to do is to take the
25 testimony and evidence on those three issues and then to

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1 whether or not that would affect our final decision. If not,
2 then we send everything to the court again for his final
3 review.

4 THE CHAIRPERSON: One other definition that is
5 not clear to me. That is commercial. It seems to be clear
6 as you read that decision, or whatever you call that, that
7 simply stockpiling coral on a piece of land is not a
8 commercial use.

9 But that if one decides to crush it up and sell it
10 from there or either one of those, you then have a commercial
11 use. Is that your understanding?

12 MR. LIM: That's not my understanding, but that's
13 what the judge thinks.

14 THE CHAIRPERSON: That's what I mean, from the reading
15 of that.

16 MR. LIM: We were arguing at the court hearing
17 that no commercial activity in terms of exchange of money
18 and the direct pick up by trucks was going to occur on the
19 site. I think that will be covered by the applicant today
20 and clarified somewhat.

21 But it was our position at the court hearing that the
22 mere fact of a commercial activity being conducted on a
23 SUP site should not affect the validity of the SUP because
24 I cannot think of what has been handled that hasn't been
25 involved in a commercial activity.

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1 THE CHAIRPERSON: I understand that, but what I
2 want the Commission very clear on is what the judge's
3 understanding of commercial seems to be as evidenced by
4 his words here. That's obviously what we have to go on,
5 not your argument.

6 MR. LIM: I think maybe the parties could clarify
7 it if I don't say it to their satisfaction. But I felt
8 that the judge wanted to make sure just exactly how the
9 coral was to be stockpiled and how it was to be set up for
10 sale.

11 I think he was concerned with who was going to be
12 coming to pick up the coral and how it was going to be done
13 because that wasn't in the record.

14 THE CHAIRPERSON: So then if we get that information
15 into the record, is the judge going to make a decision
16 about whether or not this Special Use Permit is proper?

17 MR. LIM: I believe that's what he is going to do.

18 THE CHAIRPERSON: Okay. Thank you, Steve.

19 Are there any other questions from the Commission
20 before we proceed.

21 Miss Kishimoto.

22 MS. KISHIMOTO: Mr. Chairman, our first witness
23 is Robert Johnsen.

24 ROBERT JOHNSEN

25 having been called as a witness, and, being previously

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1 sworn to tell the truth, the whole truth and nothing but
2 the truth, was examined and testified further as follows:

3 DIRECT EXAMINATION

4 BY MISS KISHIMOTO:

5 Q Mr. Johnsen, would you please state your name for the
6 record.

7 A My name is Robert Johnsen.

8 Q What is your occupation?

9 A I'm operations officer for the Estate of James Campbell.

10 Q Are you an officer of Aina Nui Corporation?

11 A Yes, I am.

12 Q What office do you hold?

13 A I am presently Assistant Secretary.

14 Q What is the relationship of Aina Nui Corporation to
15 the property, to the use of the property that's the subject
16 of this application?

17 A Aina Nui Corporation is, first of all, a wholly
18 owned subsidiary of the Estate of James Campbell. Actually,
19 it's of the James Campbell Corporation which is wholly
20 owned by the trustees of the Estate of James Campbell.

21 Two years ago, the trustees of the Estate entered into
22 an agreement with Aina Nui Corporation which agreement
23 provides that Aina Nui Corporation would have the right to
24 process and sell the coral material that would be, then
25 prospectively to be coming out of the deep water harbor site.

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1 Q Are you familiar -- in your capacity as operations
2 officer of Campbell Estate and assistant secretary of Aina
3 Nui Corporation, are you familiar with the property and
4 the surrounding area?

5 A Yes, I am.

6 Q Are you familiar with the plans for the use of the
7 property?

8 A Yes, I am.

9 Q What are these plans?

10 A Excuse me. I'm assuming you're talking about the
11 stockpiling, use of the stockpiling area.

12 Q Yes.

13 A As the application and the permit granted heretofore
14 allows, the stockpiling of the coral material on the
15 approximate 177 acres of land surrounding and consisting of
16 stockpilers 1, 2, and 3. That material is presently being
17 stored on the site by the contractor under his separate
18 contract with the Corps of Engineers.

19 Q How will this coral be disposed of?

20 A It will be undoubtedly in a variety of ways, one of
21 which is to simply take directly from the stockpile the
22 coral by means, for example, of a front-end loader, if you
23 will, that would just simply come in and scoop the material
24 up, put it in a truck. The truck would then simply transport
25 it off the site.

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1 Q And is this for sale?

2 A The material, yes, it is for sale.

3 Q Who would be operating the trucks that are removing
4 the coral?

5 A Undoubtedly it will be -- and this will depend on who
6 the purchaser of the coral material will be. It may be a
7 separate contractor. It may be entity's own vehicle.

8 Q In other words, by that entity, you mean the purchaser?

9 A The purchaser, yes.

10 Q Under this method of disposal, will any processing of
11 the coral take place on the site?

12 A Not in the case, no -- not in the case where the
13 material would be directly hauled from the stockpile off
14 site, if you will.

15 Q Are there any plans for onsite processing of the coral?

16 A Not at this time. By site, I'm assuming you mean the
17 stockpile sites.

18 Q Well, are there plans for processing the coral, in
19 other words, crushing it, sorting it? Are there plans for
20 processing the coral on the stockpile sites?

21 A No. Not at this time.

22 Q What do you mean by not at this time?

23 A Well, for at least the time being, the stockpile area
24 is entirely going to be covered with the coral material.
25 There really would not be room on the site itself for

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1 processing equipment.

2 Q Arae there -- is there a possibility that there may
3 be the need for processing the coral on the site in the
4 future?

5 A That is possible, yes.

6 Q It's -- can you describe what this possibility is?

7 A Well, because of the size of the stockpile area, it is
8 possible that, over time, portable type of equipment would
9 be moved onto the site. Portable equipment would consist
10 of conveyor belts and crushing units, if you will, and would
11 move from place to place within the stockpile area.

12 Q Has any sort of definite decions been made to conduct
13 any processing activities on site?

14 A No.

15 Q If any processing activities were to take place,
16 crushing, again by that I mean crushing, sorting -- if any
17 activity such as this are to take place on site, is Campbell
18 Estate or Aina Nui Corporation prepared to apply for
19 boundary redesignation as Judge Wakatsuki's order suggest?

20 A Oh, yes, no question about that.

21 Q Are you familiar with the water available to Campbell
22 Estate for use in the stockpiling area?

23 A I am generally familiar with the water availability
24 as to its relationship to the stockpile area. It's not
25 exactly been quantified at this point in time. We're

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1 referring to the processing part of it --

2 Q No. You heard Mr. Larsen's testimony regarding the
3 water needs.

4 A Yes.

5 Q Of animal husbandry on the sites.

6 A Yes.

7 Q Is that a mountain type of water available?

8 A The water presently that -- domestic water that is
9 available is largely already committed for both residential
10 uses at Makakilo as well as industrial uses within the
11 existing and planned expansion of the industrial park.

12 Q Other than Tongg Ranch which formerly used this land
13 for grazing, has anyone approached Campbell Estate to raise
14 animals on the property?

15 A No.

16 MS. KISHIMOTO: I have no further questions.

17 THE CHAIRPERSON: Any questions from the Commission
18 for Mr. Johnsen?

19 Excuse me a minute, please. Go ahead, Gerri.

20 MS. KELIIKOA: Not for Mr. Johnsen, but more for
21 Diane.

22 You said, other than Tongg Ranch, has anyone made
23 inquiries about the ag use of the land? What did you mean,
24 did Tongg Ranch approach the Estate?

25 MS. KISHIMOTO: During the initial hearing on the

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1 matter, Mr. Stender, who is the chief executive officer for
2 the Estate, testified as to the past use of the property,
3 and one of the past uses was Tongg Ranch that used the
4 property for grazing. They subsequently decided it was just
5 not profitable even to let cattle run loose on the property --
6 they subsequently decided that it was just not profitable
7 to even graze cattle on this very barren, scrubby land.
8 So they gave up their lease and the land's been fallow ever
9 since.

10 THE CHAIRPERSON: Any other questions? Shige.

11 MR. NAKATANI: The coral that, you know we're
12 talking about, you say that they plan to sell the coral.

13 THE WITNESS: Yes.

14 MR. NAKATANI: How soon do you expect to sell
15 you know, you pile the coral? They start dredging
16 right in September or October of last year, because now
17 the project is stopped. How soon do your subsidiary, I guess
18 you call them, plan to sell that coral?

19 THE WITNESS: We're presently getting into much
20 more detail than we have in the past and trying to work
21 out the details of such an arrangement that might permit us
22 access to the site more immediately, that is as soon as
23 possible.

24 Number one, depending upon the market which right
25 now isn't terribly ripe for needs for this material, but

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1 secondly, because technically, under the Corps of Engineers
2 contract with its contractor, we are not technically allowed
3 access to the area until completion of the project.

4 But all parties have expressed a willingness to want
5 to try and work it out sooner, which is our hope, likewise.

6 That's not our exact answer, but we would like to get
7 on the site as soon as possible. We don't have an immediate
8 plan. We have talked to several people expressing interest
9 in the material and have not yet, however, concluded any
10 arrangements

11 THE CHAIRPERSON: Any other questions?

12 I have a couple.

13 The order makes mention of \$2 million worth of rock
14 crushing equipment in the following matters: whether the
15 \$2 million worth of rock crushing equipment and other
16 improvements to be used and then talks about what they are
17 for.

18 Where does he get this \$2 million worth of rock
19 crushing equipment; do you know?

20 THE WITNESS: I believe that was a figure
21 mentioned earlier in the hearings. The origin of it was
22 I believe, in a study several years ago -- This goes back
23 perhaps five, six, seven years ago, that in general, antici-
24 pated that if a major crushing plant, if you will, big
25 buildings, that sort of thing, were necessary and were --

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1 and were necessary to construct in order to process this
2 material, that was order of magnitude of the cost.

3 I was just going to add that the type of equipment
4 now days, you might say a more contemporary type of process-
5 ing equipment is considered to be literally portable type
6 of equipment and substantially less in cost.

7 THE CHAIRPERSON: Thank you.

8 The judge also speaks as if he has the notes that it
9 is to be used regardless of its cost.

10 Is that apprehension on his part; do you think?

11 THE WITNESS: You mean that would be a \$2 million
12 facility?

13 THE CHAIRPERSON: Let's forget the cost. The
14 judge's sentence reads as if he is under the impression that
15 rock crushing equipment will be used. It's clear from his
16 wording that he has that understanding. Is that a
17 misunderstanding, in your opinion?

18 THE WITNESS: I think, as I understand it, and
19 I admit that the language was a little bit unclear, that,
20 yes, there was discussion over whether or not crushing
21 equipment would be built on this same 177 acres.

22 I believe it was not entirely clear, thus, the reason
23 we're back here on that particular question.

24 From our standpoint, as I've mentioned earlier,
25 whatever permits are necessary, if such an installation

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1 were to be built on the site of this permit application, if
2 there are any further permits, zoning requirements, and so
3 forth to enable it, we were perfectly prepared to come back
4 and separately apply for those.

5 At this time, however, because the entire area is
6 going to be literally filled with coral, there really
7 isn't room.

8 THE CHAIRPERSON: I heard that part. Thank you,
9 Mr. Johnsen.

10 Anybody else on the Commission have any questions?
11 Gerri?

12 MS. KELIIKOA: You know the SUP was granted a
13 long-term period for use of stockpiling of the coral. Now,
14 why was it put there if Campbell did not intend to stockpile
15 the coral over a long period, and if she intended to
16 commercialize on the stockpiling of the coral in the near
17 future.

18 THE WITNESS: I'm sorry. I'm not entirely sure
19 I understand. Why would we have put the coral on this
20 site if we --

21 MS. KELIIKOA: No, I -- I'm a new commissioner,
22 and I -- so it's almost a question statement. It's a
23 half-and-half thing. Unless I can recall the SUP, a Special
24 Use Permit, granted Campbell the right to stockpile the
25 coral for a long-term period of 20 to 30 years.

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1 Now, if that was the case, what are we talking about
2 commercializing and sales at this early stage?

3 THE WITNESS: Let me see if I do understand it.

4 There is an approximate ten million cubic yards of
5 material to come out and based upon the estimated time to
6 absorb or, in effect, to sell this material, it would
7 probably take -- well, we don't know. The earlier, the
8 sooner the better from our standpoint, but estimates have
9 ranged from 10 to 15 years or more, depending upon the
10 duration of the material. It will take that long simply
11 to dispose of all the material.

12 I believe the Commission set a period of 19 years,
13 20 years, something of that sort. So we have to work pretty
14 hard to get it off.

15 THE CHAIRPERSON: Shige.

16 MR. NAKATANI: This is why I question about when
17 it will -- how soon you're planning to sell the coral
18 because my understanding, when you applied for the --
19 the coral was going to stay here stockpiled.

20 THE WITNESS: As is, you mean?

21 MR. NAKATANI: Yeah. because -- well, maybe
22 my question at this time maybe is wrong. It may be a
23 conclusion or whatever, I don't know. If I'm wrong,
24 Madam Chairman, tell me.

25 THE CHAIRPERSON: You're not wrong, but your

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1 question is not going to issue an answer to the three issues
2 we have to look at today. So, if we could just go on --
3 the amount of time that the Special Use Permit is allowed
4 for, the amount of time they have to sell the coral is not
5 an issue here today, I don't think, unless you can show me
6 how it's related.

7 MR. NAKATANI: Well, because of commercial usage,
8 the question of commercial usage, at the time when we granted,
9 you know, the permit, well, had a question of how long that
10 coral is going to be stockpiled in the area that was rented,
11 you know, the permit, which to my recollection -- I thought
12 the coral could be there 20, 30 years, not for commercial
13 usage, you know.

14 But, this is why I'm questioning that.

15 THE CHAIRPERSON: You didn't understand that the
16 intent of the company was to sell that coral?

17 MR. NAKATANI: You mean, at that time, yeah.

18 THE CHAIRPERSON: You did not understand that at
19 the time.

20 MR. NAKATANI: Yeah, because my understanding,
21 I mean, my personal understanding was, wasn't for commercial
22 use in the next 20, 30 years, you know what I mean?

23 THE CHAIRPERSON: Yeah --

24 MR. NAKATANI: That's why I'm questioning, see.

25 THE CHAIRPERSON: I think you must have just missed

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1 something because it was very clear that there was intent
2 to sell the coral that would be removed to dredge the harbor.

3 MR. NAKATANI: But not right away.

4 THE CHAIRPERSON: I don't think anybody was concerned
5 when they would sell it. There was talk about there would
6 be so much of it, much as Mr. Johnsen has just said, that it
7 could very well take 20 or 25 years to sell unless they were
8 extremely lucky, someone wanted to fill in Hanauma Bay or
9 something like that, I suppose.

10 I can't imagine how many roads you have to build to use
11 all of that. In any case, I remember that very clearly,
12 and I'm sure the record would show.

13 MR. NAKATANI: This why I question, see. If, you
14 know, what -- immediate commercial uses, you know.

15 THE CHAIRPERSON: I don't think the judge is
16 interested in when the commercial activity takes place.
17 Insofar as he is clear about what commercial means, he
18 wants to know if it's going to be a commercial activity.
19 And that's what we have to determine today, not when it
20 would be.

21 Martha?

22 MS. CAIRL: Am I to understand that nothing is
23 being sold now?

24 THE WITNESS: That's right, at this time,
25 nothing has been sold.

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1 MS. CAIRL: And there is no crushing or sorting
2 equipment on location at this time?

3 THE WITNESS: That's right. There is none.

4 THE CHAIRPERSON: Thank you.

5 Diane, do you want to proceed?

6 MS. KISHIMOTO: I'm done.

7 THE CHAIRPERSON: I'm sorry. Your turn to cross
8 examine, Alan.

9 MR. MURAKAMI: Thank you.

10 CROSS EXAMINATION

11 BY MR. MURAKAMI:

12 Q Mr. Johnsen, as an operations officer, how is your
13 duties distinct from Mr. Stender's duties?

14 A In many respects, I work and assist Mr. Stender in
15 a variety of areas, both from the development, planning and
16 administrative side of the estate's operations.

17 Q So, is it fair to say that you have a more detailed
18 knowledge of the things that he testified about earlier?

19 A I wouldn't say that I have more detailed knowledge.
20 In many areas of his expertise, I'm a good listener and --

21 Q Well, who has more expertise in this area, Mr. Stender
22 or you as to the stockpiling and the resulting operations
23 from the stockpiling?

24 A I think perhaps both of us share about the same
25 amount of knowledge on that subject.

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1 Q But -- oh, I see. Same amount.

2 Now, as I understand your testimony, you indicated
3 that front-end loaders would be used to remove the existing
4 coral stockpile into trucks for ultimate trucking away.

5 A That's one means of removing the coral, yes.

6 Q As I understand it, that's just one alternative. There
7 could be other alternatives, such as the use of rock crushing
8 equipment.

9 A That's right.

10 Q Okay. Now, am I correct in saying that the rock
11 crushing activity that is contemplated as an alternative
12 is the same kind of activity that is going on in Makakilo?

13 A By Makakilo --

14 Q There's a quarry there, of sorts.

15 A Yes, blue rock quarry, operated by another firm.

16 Q And they have rock crushing equipment on site there?

17 A They have, right.

18 Q Is that a portable type of equipment?

19 A No, it is not.

20 Q What about Kailua? Is it any different?

21 A Kailua, again, is a permanent type of installation
22 as at Makakilo.

23 Q Aside from the fact of the portability, is there any
24 difference between a fixed plant and a portable plant
25 for rock crushing equipment?

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1 A Well certainly, in the size and cost and the fact
2 that it is portable reflects the fact that because of the
3 sizable area involved with the stockpile, it does move from
4 place to place rather than being a fixed -- in a fixed
5 location. It accomplishes the end result being the same.

6 Q Same thing?

7 A Yes.

8 Q There may be a difference as to capacity?

9 A That's quite possible. I'm not an expert on plant
10 equipment.

11 Q Now, as I understand it, this alternative of merely
12 trucking it away, this is brand new; isn't it?

13 A No.

14 Q Isn't it new as of the date of the last hearing before
15 this Commission?

16 A No.

17 Q That wasn't one of the alternatives considered at
18 the last hearing?

19 A Oh, maybe I misunderstood. It is not a new alternative.
20 It has always been one of the alternative methods of getting
21 rid of the coral, if you will.

22 Q Well, but wasn't the only method offered to the
23 Commission or alternative at that time, was the use of
24 rock crushing equipment?

25 A I can't really answer that. I'm not sure.

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1 Q Well, I'm going to hand you a copy of page -- by the
2 way, you were here during the proceedings during the last
3 set of hearings, right?

4 A Yes.

5 Q I'm going to hand you a page of -- page 57 of the
6 October 20th transcript of the Commission proceedings of
7 this matter in 1981, I believe.

8 All right. This is a discussion between my self and
9 Mr. Stender at the time where we were talking about what
10 would be done with this coral stockpiling.

11 My question to him was: "As your operation of the
12 stockpiling, you envision systemic removal of that coral
13 stockpile for eventual processing? Answer: Yes.

14 "Would that entail additional --

15 MS. KISHIMOTO: Objection. The record speaks
16 for itself.

17 MR. MURAKAMI: Well, I'm trying to refresh --
18 to see whether or not he remembered this particular
19 discussion.

20 THE CHAIRPERSON: Alan, do you think it would be
21 appropriate if you're going to be asking questiong about
22 Mr. Stender's responses or testimony, to address those
23 questions to Mr. Stender, rather than --

24 MR. MURAKAMI: I could, that's why I started off
25 asking whether he knew more or less as much as Mr. Stender,

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1 and he said he knew that he knew substantially as much as
2 Mr. Stender. So I assumed --

3 THE CHAIRPERSON: But you're using Mr. Stender's
4 testimony to question him. I'm just questioning whether or
5 not that's appropriate.

6 MR. MURAKAMI: Well, I don't understand that
7 Mr. Stender is going to testify today. This is my only
8 opportunity to bring this point up. If he is, fine.

9 MS. KISHIMOTO: I was not planning to call
10 Mr. Stender.

11 THE CHAIRPERSON: Continue with the question a
12 little bit and see where you're going.

13 Q (BY MR. MURAKAMI): The question was, would that
14 entail additional equipment. The answer was, yes, it might
15 require crushing, screening.

16 "On the coral disposal site?

17 Answer: "Probably".

18 "Can you give us an idea of the cost of equipment that
19 might be available for that operation."

20 Answer: "We did a preliminary study that indicated
21 initial investment that we did back in 1976, 1977,
22 \$2 million equipment cost."

23 Question: "That would be equipment storage cost,
24 sheds?"

25 Answer: "We wouldn't need any sheds."

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1 "This would be for crushers?"

2 "It wouldn't be no different than the crushing operation
3 you see at Makakilo. It'd be no different than the
4 crushing operation at Kailua. It would be a similar
5 operation except there would be no excavating being carried
6 out."

7 Now, as I understand your testimony, you appear to be
8 saying that the rock crushing is not the only alternative and
9 you're trying now to say that you're just going to remove
10 this from the site and take it to some other site.

11 MS. KISHIMOTO: Objection. That's an argumen-
12 tative question.

13 MR. MURAKAMI: Well, I'm just -- if that's not --
14 if it's not a fair characterization of his testimony, he can
15 say so.

16 THE CHAIRPERSON: I think I would like it better
17 if you just try to clarify the alternative as Mr. Johnsen
18 sees them now.

19 MR. MURAKAMI: All right.

20 Q (BY MR. MURAKAMI): So, I'm again asking you,
21 doesn't this testimony appear to you to suggest that rock
22 crushing was the method of removing this coral stockpile
23 at the time of October 20, 1981?

24 MS. KISHIMOTO: Objection. That's still an
25 argumentative question. I think the Commissioners should

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1 read the transcript themselves and draw their own
2 conclusions.

3 It's clear, if you want an argument on it, that
4 Mr. Stender's -- it might entail. It's not -- the methods
5 that Mr. Stender described aren't exclusive of other methods.

6 THE CHAIRPERSON: Sustained.

7 Try once more, Alan.

8 Q (BY MR. MURAKAMI): Was there any alternative proposed
9 at the time of the October 20, 1981 hearing contemplated
10 to merely remove this with trucks and the use of a front-end
11 loader?

12 A Of course, I cannot speak directly for Mr. Stender,
13 but, as you pointed to the words of the testimony, the
14 words -- the statements in answer, I believe, to a
15 specific question.

16 I can say fairly to you that there has never been
17 one single and mutually exclusive means. That was one
18 means. The means I've described to you today are other
19 means.

20 Q All right. Well, let me ask you this then,
21 Mr. Johnsen.

22 Isn't it true that regardless of how you deal with
23 this material once stockpiled, either through crushing or
24 removal by front-end loader, the coral is going to be sold?

25 A The coral will be sold, yes.

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1 Q And it's there specifically to be sold at a later
2 time?

3 A That is correct.

4 Q Maybe I'm misunderstanding, but I'd like to clarify.

5 As Commissioner Nakatani asked, isn't this sale to
6 occur throughout the period of stockpiling, so called
7 stockpiling period of anywhere from 17 to 30 years?

8 A It will be sold, yes, throughout the stockpiling
9 period. The duration is certainly in question. It could be
10 a whole lot sooner. We hope it will be a whole lot sooner.

11 Q But, if you got -- I'm sorry.

12 A If it goes as long as the Special Use Permit allows,
13 yes, it will occur during that whole period.

14 Q Bit if you got a deal tomorrow for the use of this
15 coral stockpile, you'd begin to sell it right away, wouldn't
16 you?

17 A Yes, we would.

18 THE CHAIRPERSON: Excuse me, Alan. Can you tell me why --
19 when the selling takes place is relevant to whether or not
20 the rock crusher is going to be used or -- point C?

21 MR. MURAKAMI: Well, actually, in my mind, it
22 really doesn't matter either whether it starts 30 years
23 from now or tomorrow. But the point is that there is a sale
24 going on and it's contemplated throughout the period. And
25 there is a sale going on and it's contemplated throughout

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1 the period in question.

2 If that's not commercial, I don't know what is.

3 THE CHAIRPERSON: I'm not sure I heard you, Alan.

4 If there is a sale going on, did you say?

5 MR. MURAKAMI: If there is an on-going sale of
6 material, going on throughout the period.

7 THE CHAIRPERSON: You're contending that's a commer-
8 cial activity?

9 MR. MURAKAMI: Yes.

10 THE CHAIRPERSON: That's what you're trying to --
11 I think we'll accept the sale of a product is a commercial
12 activity.

13 Q (BY MR. MURAKAMI): Mr. Johnsen, maybe to clarify this.
14 Is this \$2 million equipment cost estimated by the 77 study
15 is that an estimate of portable equipment?

16 A No. That was an estimate of a, if you will, a fixed
17 plant, such as described and related by Mr. Stender in his
18 testimony similar to the Makakilo or Kailua plant.

19 Q Are you familiar with the features of that -- of
20 whether it would be portable or fixed equipment to rock
21 crush?

22 A Excuse me. Would you repeat that.

23 Q Yes.

24 Are you familiar with the features of rock crushing
25 unit, whether it be portable or fixed?

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1 A Well, in general, again, I'm not an expert on the
2 plant equipment.

3 Q Would the equipment necessitate the use of water?

4 A Yes.

5 Q Would you know how much water it would use?

6 A I do not know to the extent of being able to quantify
7 it for you. It would vary from zero on the one extreme to
8 quantities, which I repeat, I can't give you a figure
9 on from the zero end though, simply in the case where it
10 would be transported from the site to another location,
11 whether it be a separate plant, totally distant from
12 Barbers' Point, or possibly to the cement plant where they
13 presently do the same thing, that is crush the
14 material which they have been extracting from the Barbers'
15 Point area for the past 25 years.

16 Q Are any of the witnesses here today prepared to
17 testify as to how much water this operation will use?

18 A The crushing operation?

19 Q Yes.

20 A No.

21 Q That estimate is available somewhere though, is it not?

22 A We do not have such an estimate.

23 Q Well, would you not have some study available for
24 knowing what the water requirements are for equipment you
25 may, in the future, purchase in order to rock crush?

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1 A We do not.

2 Q Is that information available anywhere?

3 A Not that I'm aware of. Well, Let me get back -- when
4 I say I'm not aware of it, whoever sells such equipment,
5 you understand, would certainly know what those quantities
6 are.

7 Q But James Campbell Estate does not know how much.

8 A We do not.

9 Q Now, just one last question in that area.

10 Is that water requirement necessary -- how is it
11 necessary for the operation of the rock crusher; do you know?

12 A Where it would be required, it would be -- citing one
13 use, I could give you an example, would be that of the
14 cement plant. In order to wash the material, washing out,
15 if you will, the salt to an acceptable level, which is what
16 they do presently. In that sense, it would be -- source
17 of material, but performing the same function and using the
18 same quantities they have been using over the years.

19 Q And the rock crusher is used to wash the coral?

20 A Well, in that case, there would be no rock crushing
21 operation on the Special Use Permit site. It would be --

22 Q I understand that.

23 A It would be trucked to the cement plant.

24 Q But in the alternative rock crushing operations, you
25 would utilize the water to wash the coral as it's being rock

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1 crushed?

2 A If it were used for other than -- or it might be used
3 for road base material or it might be used for fill material,
4 you wouldn't have to wash it.

5 Q Those studies, of course, those marketing studies are
6 not definite. You don't know where you're going to sell
7 the coral to.

8 A We do not, I mean, other than in general, the types of
9 uses we talked about.

10 Q All right, Mr. Johnsen, isn't it true that there are
11 some marketing studies on the estimates on the revenues for
12 the sale of this coral?

13 THE CHAIRPERSON: How is that relevant, Alan?

14 MR. MURAKAMI: Well, I think the amount or the
15 extent of the commercial nature of this activity is important
16 to the judge. I would like to explore that.

17 THE CHAIRPERSON: Can you show me where he has
18 indicated it's important to him?

19 MR. MURAKAMI: If we talk about sale, I think
20 one relevant aspect of this is just, what is the extent
21 of this commercial nature.

22 MS. KISHIMOTO A --

23 THE CHAIRPERSON: Just a minute, if you don't
24 mind.

25 It's not at all clear to me from the order that when the

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1 judge talks about commercial, he's only talking about sale.
2 I'm not even sure he means sale is not allowed.

3 So I don't want my acceptance of selling as a commercial
4 activity to be misconstrued as saying that I think that the
5 judge is talking about only sales activity. It's not all
6 together clear, but his use of the word commercial in
7 Item C, immediately follows Item B, of course, which is
8 about crushing rock and that sort of business.

9 It's not at all clear that he means that if any sales
10 are taking place from or on this property that land use
11 boundaries shall be sought. In the light of that, I'm not
12 sure what the volume of sales has to do with the issue.

13 MR. MURAKAMI: Okay. I will lodge an objection
14 to being precluded to go into that area, but --

15 THE CHAIRPERSON: Into volume of sales?

16 MR. MURAKAMI: Into the extent of the sale.

17 THE CHAIRPERSON: Okay.

18 Is that all right with you, Steve?

19 MR. LIM: I think what we should focus on is what
20 somebody standing at the site would see of the operation.
21 I think that's what the judge wanted to know.

22 MR. MURAKAMI: I'm a little confused. If I'm
23 going to be guided into areas that I can't go into or can
24 go into -- when you say other than sale, what areas are you
25 speaking of in terms of commercial nature of the activity?

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1 THE CHAIRPERSON: Well, I wasn't in court, but --
2 so all I've got is the order to go by. It sounds to me
3 that he's much more concerned about the rock crushing
4 equipment and other improvements as a commercial activity
5 being unsuitable for a SUP.

6 MR. MURAKAMI: Okay. All right.

7 THE CHAIRPERSON: So that was only my attempt to
8 try to understand what the judge means by commercial.

9 MR. MURAKAMI: All right.

10 Q (BY MR. MURAKAMI): Mr. Johnsen --

11 THE CHAIRPERSON: I'm sorry. We have to have five
12 minutes to change the tape -- five seconds to change the
13 tape.

14 MR. MURAKAMI: I think you're going to have to
15 stop me because I'm not sure I understand your concern.

16 Q (BY MR. MURAKAMI): Mr. Johnsen, is it true that the
17 disposal and sale of the coral stockpile is an integral
18 part of the state's agreement with the Campbell Estate to
19 transfer certain lands related to the harbor development?

20 MS. KISHIMOTO: Objection. There is a coral
21 sales agreement, I believe it's called, on the record, and
22 that speaks for itself.

23 MR. MURAKAMI: On that --

24 MS. KISHIMOTO: Contract to sell coral in place.

25 MR. MURAKAMI: I'm not sure it's coral sales

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1 agreement, but you can raise an objection.

2 Q (BY MR. MURAKAMI): Isn't the purpose of this coral
3 sales agreement to pay for certain transfer of the land
4 necessary for harbor development?

5 MS. KISHIMOTO: Objection. That's not relevant.

6 MR. LIM: Like we stated, I think that
7 Judge Wakatsuki was concerned about what exactly was going
8 to happen on the site in terms of how you're going to process
9 the coral and the fact of the contract negotiations
10 and where the payment would take place.

11 We talked about that at court. We basically came
12 to the conclusion that had Campbell Estate wanted to conduct
13 all the cash transactions off of the property, they could
14 do that. And there would be no difference as to the actual
15 activity on the site. That's what I think we got to
16 concentrate on, what's happening on the site.

17 MS. KISHIMOTO: We're not denying that the coral
18 is going to be sold. We never have made secret of the
19 fact. I think that the fact that it's going to be sold
20 doesn't make a difference as to what we're doing with the
21 property on site.

22 MR. MURAKAMI: It does make a difference as to
23 what I believe is to be the commercial nature of this
24 activity because it -- the evidence of that commercial
25 activity.

1 THE CHAIRPERSON: That's what the judge is trying
2 to decide. I think you would be best to try to elicit
3 what Steve has said, what the operation is going to look
4 like and perhaps if you wish, that animal husbandry is a
5 better way to go or that -- I'm not going to give you
6 suggestions for how --

7 MR. MURAKAMI: As you, or I was confused by the
8 wording of the order itself --

9 THE CHAIRPERSON: The order is not very well written.

10 MR. MURAKAMI: I am directing myself to the
11 commercial nature of the activity which I believe to mean
12 what kind of sales, how much of the sales, and things of
13 that nature. Those features of the arrangement.

14 THE CHAIRPERSON: I'm -- clear as it is, it seems
15 quite clear to me that he's not very interested in volume
16 of sales. I really don't think that's relevant to what
17 we have to look at.

18 MR. MURAKAMI: Well, let me try.

19 THE CHAIRPERSON: Anything that --
20 it's big business out here, judge and we're not interested.

21 MS. KISHIMOTO: May I make a statement that might
22 help, Mr. Murakami.

23 We don't deny that the sales -- the coral is being
24 sold, as Mr. Johnsen has indicated. Campbell Estate would
25 love it if all of it was sold. And so I think, how much is

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1 being paid for it, you've got what information you need
2 already on the transcript.

3 THE CHAIRPERSON: Thank you. Okay, Alan.

4 Q (BY MR. MURAKAMI): Now, this rock crushing operation,
5 Mr. Johnsen, is it expected that there will be only one
6 buyer for this coral?

7 MS. KISHIMOTO: Objection.

8 MR. MURAKAMI: I think that does have something
9 to do with this beyond what the revenue generation potential
10 of this particular operation is. If they have many buyers,
11 this thing can last throughout the period until continuous
12 rock crushing operations as opposed to just merely hauling
13 the thing offsite into someplace else.

14 I think that's what --

15 THE CHAIRPERSON: There is going to be a lot of coral
16 dug from the harbor put onto the site. No matter who it's
17 sold to, it's going to have to be carried off that site.
18 Now, unless they change the size of trucks, it's going to
19 take so many trucks to take that pile of coral off of there,
20 no matter who buys it.

21 So, try again.

22 Q (BY MR. MURAKAMI): Do you have any idea of how much
23 of the coral can be processed by the rock crusher per day?

24 A I do not.

25 Q Is there any study that reflects what the rock crusher

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1 can do per day?

2 A None that I'm aware of, no.

3 Q Campbell Estate doesn't have that available for this
4 Commission to consider at this time; is that right?

5 A We do not. We just don't have such a study.

6 Q Now, let me get this straight, then. If this rock
7 crusher is placed on site, I take it that there will be
8 some need for equipment to initially remove portions of the
9 coral stockpile to feed into the crusher.

10 A Yes, typically with a portable type of crushing
11 operation, again, front-end loaders which would simply
12 scoop the material up and place it on the belts of the
13 crusher.

14 Q All right. So it would be placed from the stockpile
15 by a front-end loader onto belts. Where would this belt
16 take the material?

17 A Typically, it would carry it up through a series of --
18 well, large teeth, if you will, crushing devices within the
19 unit itself.

20 Q What would become of this material once the crushing
21 mechanism is finished?

22 A After it goes through the process, it would end up
23 basically in a finished state. If you were manufacturing
24 sand, for example, or smaller size aggregate material, it
25 would drop from the conveyor unit, processing unit, into

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1 a stack or into another truck. It could be a truck at the
2 other end of the processing unit.

3 Q I take it, depending on what the material is going to
4 be used for, there's going to be a need for a washer in
5 between somewhere.

6 A That's right.

7 Q There would be some --

8 A It'd be a dust control type of washer, yes.

9 Q There would be some screening operations to go through?

10 A Screening?

11 Q Yes.

12 A Undoubtedly, yes.

13 Q There would be trucks hauling this material off site?

14 A That's correct.

15 Q Now, what possibilities are there that other operations
16 will merely receive whatever is trucked out and process it
17 on their own sites?

18 A I would say that is one of the possibilities and
19 I'd say it's a very good possibility.

20 Q Is that the possibility -- would that possibility
21 exclusively use the whole coral stockpile?

22 A I would not really -- it would be just a wild guess.
23 I just really don't know.

24 Q Okay. So it appears to be that you could just as
25 well have two kinds of operations; isn't that true?

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1 One to merely remove the material for off site processing
2 by another operation, some other private contractor; and,
3 secondly, ongoing rock crushing activity on site.

4 A Yes, yes.

5 THE CHAIRPERSON: Alan, I wonder if you could shorten
6 this up a little instead of asking him to speculate about,
7 will this happen or could that happen, just ask him why he
8 doesn't know more about what's going to be happening.

9 MR. MURAKAMI: I'm just about to.

10 THE CHAIRPERSON: Oh, good.

11 Q (BY MR. MURAKAMI): Now you -- I take it, Campbell
12 Estate has done some studies on the marketing of this
13 material; hasn't it?

14 A There were some studies done, I believe, five, six,
15 seven years ago.

16 Q All right. Have any of those studies been made
17 available to this Commission to evaluate what the mix
18 of the activity on the coral stockpile would be?

19 A No.

20 Q Is there any reason for that?

21 MS. KISHIMOTO: Objection. That's irrelevant.

22 MR. MURAKAMI: I think the Commission wants to
23 know.

24 MR. LIM: Perhaps Mr. Johnsen could be asked the
25 question why he's not so sure of what's going to happen with

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1 the coral on the site.

2 THE WITNESS: I'm sorry. That was your question?

3 Basically, we're not sure because we just fundamentally
4 do not know. We have a good idea of some of the likely
5 uses of the material.

6 As I mentioned earlier, and technically, we are not,
7 at this time, allowed entry onto the site until the comple-
8 tion of the harbor.

9 On the other hand, we have had a number of people
10 having expressed interest in use of the material, in finer
11 aggregate to manufacture hollow tile block, by the cement
12 company to use for substitution of the material they have
13 been quarrying out of this area for many years.

14 Those are two very, you know, likely near term uses.
15 There is aggregate material. There are, hopefully, going to
16 be construction projects in the near term that are going to
17 utilize a lot of this material. But, we do not at this time,
18 know what those exact uses -- who they're going to be.

19 MR. LIM: In summary, your answer would probably
20 be, at this time, the range of activities with regard to
21 processing of the coral could go anywhere from using a
22 simple front loader straight into the trucks, to using some
23 sort of a portable rock crushing equipment with a conveyor
24 belt or processing it into finer aggregates.

25 THE WITNESS: That's right.

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1 Q (BY MR. MURAKAMI): Is your witness on landscaping
2 going to be able to quantify or give estimates of the
3 quantity of water needed to maintain the groundcover to
4 control dust of the stockpile?

5 A Yes.

6 (Mr. Nakatani left the hearing room.)

7 Q (BY MR. MURAKAMI): Mr. Johnsen, has the Campbell
8 Estate considered the availability of water for this rock
9 crusher operation?

10 A We have not in any detail, no.

11 Q Has the Campbell Estate considered the fact that the
12 Pearl Harbor water district is now designated ground water
13 control area?

14 MS. KISHIMOTO: That question is vague.

15 Objection.

16 MR. MURAKAMI: Do you understand the question,
17 Mr. Johnsen?

18 THE CHAIRPERSON: Excuse me. Alan, it would seem
19 to me, since Mr. Johnsen has already agreed, if the time
20 comes when rock crushing equipment is going to be installed,
21 they would go in for a boundary amendment at that time.

22 I would imagine that the water question would have to
23 be resolved. He said that at the very beginning. In fact,
24 you haven't gotten any new information out of him yet.

25 MR. MURAKAMI: Well, that's not surprising.

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1 I wasn't aware that he -- they stated the rock
2 crushing activity alone would trigger an application for --

3 MR. LIM: I think he said something about, if
4 permanent rock crushers were to go in like Makakilo or
5 Kailua quarries, then they would be proceeding for a boundary
6 amendment.

7 But, I don't think he said they were planning to put
8 in any permit --

9 THE CHAIRPERSON: We better make clear what he did
10 say.

11 Q (BY MR. MURAKAMI): Can you clarify that point?
12 Do you understand the concern of the Commission, Mr. Johnsen?

13 A Well, I will try my best to give you our position.
14 We will comply with whatever zoning or permit requirements
15 are imposed on us. At this time, we do not plan to put in
16 any crushing equipment on the SUP site. We do not.

17 If we come along later and decide that within the
18 SUP site makes most sense to put a crushing plant, and that
19 requires, which I am in the understanding believe that it
20 will, at that time, require a zoning or whatever type of
21 permit, we will apply for it.

22 THE CHAIRPERSON: About questions, I think I would
23 rather let Alan finish even though I'm giving him a hard
24 time. As a matter of fact, I was going to say that I
25 wanted to apologize for questioning -- all of us questioning

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1 Mr. Johnsen before you had your opportunity. We will not
2 do that with subsequent witnesses.

3 This is the first time I've chaired a contested case
4 hearing. I won't make that mistake again.

5 MR. MURAKAMI: It really doesn't matter to me.

6 THE CHAIRPERSON: Thank you, but we won't do it
7 again.

8 Let's let Alan finish, Martha.

9 MR. MURAKAMI: Yeah, I only have a couple, three --

10 THE CHAIRPERSON: Okay.

11 Q (BY MR. MURAKAMI): Mr. Johnsen, aside -- like I said
12 earlier, aside from the portability, there really is no
13 difference in the activity of using the portable crusher
14 as opposed to a fixed plant, is there?

15 A Difference in the ultimate -- no, there's no difference
16 in what the ultimate result to be achieved, no.

17 Q Once again, I don't know if you can answer this
18 question, but I did ask you whether the Campbell Estate
19 considered the fact that Pearl Harbor water district has
20 been designated a ground water control area.

21 MS. KISHIMOTO: Objection. Considered in what?

22 MR. MURAKAMI: In the potential rock crushing
23 operation which uses water. Apparently, substantial amounts
24 of water, although not yet quantified.

25

1 THE CHAIRPERSON: He's testified that they have no
2 plans to put a rock crusher on. My guess is they would
3 not have looked at the water --

4 MR. MURAKAMI: Well, with all due deference,
5 Madam Chairman, I believe he did testify that they are
6 contemplating at least some portable rock crushing
7 activity because they cannot sell the whole thing by
8 merely removing it off site.

9 He did testify that there would be a mix, at least,
10 of activity on site and that activity, as I understand it,
11 unless everything is used for some kind of road surface,
12 will necessitate the use of water to wash that coral.

13 MS. KISHIMOTO: He's also testified that the
14 Estate did not consider it in any great detail the avail-
15 ability of water for rock crushing.

16 MR. MURAKAMI: Well, that was not the question.

17 THE CHAIRPERSON: What was your last question?

18 MR. MURAKAMI: The question was whether the
19 Campbell Estate considered the availability of water in
20 view of the fact that the Pearl Harbor water district has
21 been designated a ground water control area.

22 THE CHAIRMAN: Consider it for what purpose?

23 MR. MURAKAMI: For their contemplated rock
24 crushing activity.

25 THE CHAIRPERSON: Do you want to answer that

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1 question, Mr. Johnsen, please?

2 THE WITNESS: In general, we have considered it.
3 We have not been able to quantify it. We do realize that
4 whatever water is going to be required and whatever
5 permit will be necessary to obtain that water if it's not
6 available, and it, if it requires, and in some cases, it's
7 also fair to say and recall that it doesn't necessarily
8 require potable, domestic type of water.

9 So there are a variety of, I suppose, of responses to
10 that, fundamentally, to be sure we have considered it.
11 But, we have not quantified it. We don't know the type
12 of plant at this point time, or type of equipment, plant
13 or equipment.

14 Q (BY MR. MURAKAMI): Is James Campbell Estate considering
15 sinking a well near or on the site of the coral stockpile
16 to service this water need?

17 A That would be one possible alternative, yes.

18 Q So the consideration of the ground water control area
19 designation is a significant factor, is it not, in
20 determining whether or not you're going to do that?

21 A It certainly will guide because whatever the ground
22 water control regulations are, we must comply, remembering
23 also that within this area is not domestic potable water
24 supply, although others here, I believe who can testify.

25 Q Did your hydrologist know what effects sinking a well

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1 in the aquifer on the ewa plain have on the Pearl Harbor
2 water basin?

3 A Yes.

4 MR. MURAKAMI: Madam Chairman, for this witness,
5 I would just offer into evidence the previous testimony
6 of Mr. Stender and designation by the Board of Land and
7 Natural Resources, that this is a ground water control area
8 in which this operation is contemplated for.

9 THE CHAIRPERSON: Is it a record from our own
10 transcripts?

11 MR. MURAKAMI: Yes, that's --

12 THE CHAIRPERSON: It's part of the record already?

13 MR. MURAKAMI: Yes. I do have a letter designa-
14 ting -- indicating that the Pearl Harbor water district has
15 been designated a ground water control area. With special --

16 THE CHAIRPERSON: That's part of our record, too,
17 not that particular letter, but that's a well known fact
18 to the Commission.

19 MR. MURAKAMI: If the Commission can take notice
20 of that, that's fine. I have the documents available for
21 you.

22 THE CHAIRPERSON: Thank you. I'm sure the
23 Commission takes note of it. It comes up every single
24 project in this area. We really are familiar with it,
25 Alan. Thank you for bringing it up.

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1 MR. MURAKAMI: Can I ask one last question?

2 THE CHAIRPERSON: Mr. Johnsen, isn't it true that
3 the stockpile now has been contemplated to be 50 feet high
4 instead of 35 to 30 feet high?

5 A I do not know that that is the case.

6 MR. MURAKAMI: Could I offer for this Commision's
7 consideration an environmental assessment done by the Corps
8 of Engineers which indicates that the coral stockpile is
9 now upwards of 50 feet.

10 THE CHAIRPERSON: If you can show me how it relates
11 to the three points we're supposed to be clarifying for
12 the judge, we'll look at it.

13 MR. MURAKAMI: Well, I might go to the amount
14 of rock crushing that has to be done.

15 THE CHAIRPERSON: It has to do with volume again;
16 doesn't it? I still can't see that volume of any kind
17 of activity or even a pile is relevant to this clarification
18 we must go through.

19 MR. MURAKAMI: Even beyond that though, Madam
20 Chairman, I'm offering that because we do have the benefit
21 of new and better information now as time has passed.

22 We did -- I believe this Commission did pass this
23 permit, approved this permit, on the basis of a 30-foot
24 stockpile. This is quite a significant increase.

25 MS. KISHIMOTO: There is no --

1 THE CHAIRPERSON: That may be true, but I'm not
2 sure that that's relevant to what we're hearing today.
3 If there is some other way you can challenge the information
4 upon which the permit was approved, I think that's an
5 entirely different matter.

6 MR. MURAKAMI: Well, I'm only offering it because
7 if this -- obviously, if there are no restrictions on the
8 height of the stockpile, they could stockpile to a 100 feet
9 and it wouldn't violate the permit terms, and --

10 THE CHAIRPERSON: If they violate the permit terms,
11 that's an issue that might be taken up at the time of the
12 violation. We are not here to talk about potential
13 violation. We're here to clarify three points that the
14 judge brought up.

15 MR. MURAKAMI: I'm merely offering it for the
16 Commission's information, new information.

17 THE CHAIRPERSON: Thank you very much. I really
18 don't see the relevance. Are you finished, Alan?

19 MR. MURAKAMI: Yes, I am.

20 THE CHAIRPERSON: Any questions from the Commission
21 for Mr. Johnsen?

22 Martha, you had a question.

23 MS. CAIRL: Yes. I wanted to be clear. If the
24 coral is moved off to another location for cement, then it
25 needs to be washed with clean water so to remove the salt

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1 from it; is that true?

2 THE WITNESS: Yes.

3 MS. CAIRL: But that would not be done on site;
4 that would be done at their plant?

5 THE WITNESS: That is right.

6 MS. CAIRL: If it needs to be washed to keep down
7 dust or some other thing, it will be done but not with
8 potable water.

9 THE WITNESS: Yes.

10 MS. CAIRL: Okay. Will there be or would there
11 be a substantial amount of dust created by crushing on site?

12 THE WITNESS: We would not contemplate that there
13 would be. Potentially, there could be were it not for the
14 kind of control not only that zoning and other governmental
15 agencies, but we ourselves impose on -- or will impose and
16 have already included in our agreement of allowing or
17 requiring that a number of measures be taken in addition
18 to the watering.

19 There are also what they call bag devices, dust
20 collection devises, and so forth, that would be
21 required.

22 MS. CAIRL: And those are part of portable
23 crushing equipment?

24 THE WITNESS: Yes.

25 MS. CAIRL: You're not able to do anything with

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1 the coral until the harbor is completed; is that my under-
2 standing? You're not allowed to take it off and sell it or
3 crush it or do anything with it until the harbor's completed?

4 THE WITNESS: Technically that is correct, and as
5 I stated earlier, however, both we and the contractor
6 as well as the Corps are presently in dialogue, if you will,
7 negotiations and whatever, to allow us earlier access.

8 The reason for that, fundamentally, was, and conceptually
9 that we could not enter onto the area to do anything by
10 way of perhaps traffic moving back and forth that might
11 potentially impinge upon the contractor's ability to do his
12 work. So in a sense, he has first priority, but he is
13 quite willing and happy to be able to work something out,
14 and the Corps is, if the contractor is willing and if we are
15 in a stage of trying to work that out and we do anticipate
16 earlier entry than completion.

17 MS. CAIRL: I would think that if he would be
18 allowed to, that would tend to help keep the site -- the
19 size of the pile down, also.

20 THE WITNESS: Right.

21 MS. CAIRL: If there has to be dust and confusion
22 from blasting and all the other things that better get it
23 all done at the same time. If there's going to be one big
24 one instead of lots of little ones for 30 years.

25 THE CHAIRPERSON: Any other questions.

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1 MS. CAIRL: Thank you.

2 THE CHAIRPERSON: Just a technical question he
3 might -- a piece of information you might have. Are you
4 familiar with cement plants, I take it? They have rock
5 crushers there? Do they use water on the rock crushers?

6 THE WITNESS: Yes, they have -- they have the
7 27-acre plant site at Campbell Industrial Park which they
8 lease from the Campbell Estate. As I mentioned earlier,
9 during the past 25 years or so, they've quarried the material
10 out, trucked it to the plant where they, themselves, have
11 crushed it over the past years.

12 THE CHAIRPERSON: And that just ordinarily in the
13 course of crushing rock uses water?

14 THE WITNESS: It does.

15 THE CHAIRPERSON: It does. Okay. Thank you.

16 Any other questions.

17 Can we take five minutes. Is that all right with
18 you, Diane?

19 MS. KISHIMOTO: Yes, sure.

20 (A recess was taken.)

21 MS. KISHIMOTO: Madam Chairman, I'm not sure
22 Mr. Johnsen had been sworn in. I think he may have been
23 earlier, but maybe jsut to be sure.

24 MR. LIM: Mr. Johnson was sworn before, I think,
25 in the first hearing. For all the rest of the people who

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1 have not been sworn yet or intend to testify today, would
2 you please rise and raise your right hand.

3 Do you solemnly swear or affirm that the testimony
4 you are to give today, will be the truth, the whole truth,
5 and nothing but the truth?

6 (The witnesses answered affirmatively.)

7 MR. LIM: Thank you.

8 THE CHAIRPERSON: Thank you. Diane.

9 MS. KISHIMOTO: The next witness is Thomas Nance.

10 THOMAS NANCE

11 having been called as a witness, and, being duly sworn to
12 tell the truth, the whole truth and nothing but the truth,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. KISHIMOTO:

16 Q Mr. Nance, will you please state your name for the
17 record.

18 A Thomas Nance.

19 Q What is your occupation?

20 A Civil engineer, hydrologist.

21 Q What is hydrology?

22 A Study of natural occurrence of water on the ground
23 surface, underneath the ground.

24 Q Have you testified before and been accepted as an
25 expert witness by courts or administrative agencies in this

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1 state?

2 A Yes, to both.

3 Q g Would you describe briefly when and where?

4 A Testified in federal court, Judge King. Testified
5 several times in court in Hilo, Hawaii, and I've testified
6 in the State Land Use Commission three or four times.

7 Q Mr. Nance, I direct your attention to what is marked
8 Petitioner's Exhibit -- I've lost track of the exhibit
9 numbers. I believe it's 26, the next in order for
10 identification.

11 Does that accurately summarize your educational
12 background and work experience?

13 A It does.

14 Q I offer Petitioner's Exhibit next in order, which is
15 entitled, "Thomas F. Nance, Civil Water Resources Engineer",
16 as Petitioner's Exhibit next in order.

17 MR. LIM: Are you also at this time, asking to
18 qualify Mr. Nance as an expert in hydrology.

19 MS. KISHIMOTO: Yes, I am.

20 MR. LIM: Any objections, Mr. Murkami?

21 MR. MURAKAMI: No.

22 MR. LIM: Thank you. The Commission wil qualify
23 Mr. Nance as an expert in the field of hydrology.

24 Q (BY MS. KISHIMOTO): Mr. Nance, are you familiar
25 with the availability of ground water in the vicinity of

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1 the stockpile sites?

2 A Yes, I am.

3 Q Statement had been made earlier that the properties
4 in the designated ground water control area -- what does
5 this mean?

6 A Properties within the geographic limits that have been
7 set aside by the Department of Land and Natural Resources
8 as part of the Pearl Harbor ground water control area.

9 Within that area, there are different ground water
10 bodies which the Department of Land and Natural Resources
11 applied different sort of judgments in their regulation of
12 it.

13 In the area of the stockpile which is sitting out on
14 a limestone formation about 200 feet thick, underlain by
15 alluvium which is about another 100 feet thick, and finally,
16 by lava at great depth, there are two different aquifers
17 that you need to consider. The first is the ground water
18 that is contained in the limestone near the surface.
19 The second is the water that is contained in the salt
20 aquifer at depth.

21 They are hydrologically discontinuous and activity in
22 the upper formation in the limestone does not influence
23 what is going on in the aquifer at depth.

24 Q Now, what kind of water is available for the stockpile
25 sites?

1 A If the stockpile site water is confined to developing
2 water from the limestone, it should work with water near
3 the surface of the limestone because there is a pronounced
4 linear degradient within the limestone. Water is saltier
5 the deeper you go. Water at the top is brackish. It is far
6 from potable but still fresh enough for uses such as
7 industrial cleaning, irrigation, salt tolerant plants, that
8 kind of --

9 Q What other types of water are available to the
10 stockpile site -- I'm sorry, strike that.

11 I want to clarify something. This water, brackish
12 water, that you said is from the coral limestone aquifer,
13 is that at all connected to any of the fresh water
14 aquifers in the area?

15 A It is not connected directly. It is sometimes
16 the recipient of water which may be upward or come over
17 the top of the limestone at inland locations. But there
18 is no transfer of water from the limestone into the lava,
19 even though the lava is beneath it.

20 Q What sort of potable water is available?

21 A To obtain potable water in that area, you'd have to
22 connect to the Board of Water Supply system pipeline
23 which runs down the Campbell Park -- Industrial Park
24 access road.

25 Q And this water is from which aquifer?

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1 A That water is pumped from wells which are located in
2 Waipahu. It is pumped from what is called the Pearl Harbor
3 salt aquifer in that location. That water is potable. It
4 is pumped all the way to the Barbers' Point tanks which
5 are mauka of the highway and then flows by gravity down to
6 Campbell Industrial Park.

7 Q How would Campbell Estate get to the water in the
8 coral limestone aquifer?

9 A The easiest use, the one which has been employed
10 successfully by Oahu Sugar is to simply take a bulldozer,
11 probably with a ripper, and cut yourself a trench down to
12 about sea level and make the trench long enough, given the
13 amount of water you're going to pump from that specific
14 location, and simply put a pump and pump from the surface
15 of the ground water.

16 A drilled well in this location could be utilized but
17 it would get poor quality water.

18 Q Would Campbell Estate need a permit to do this
19 sort of trench well?

20 A Yes, they would. They would have to go to the
21 Department of Land and Natural Resources and apply under
22 the rules of the Pearl Harbor Ground Water Control Act --
23 apply for a permit.

24 Q Would the fact that this land is in the Pearl Harbor
25 Ground Water Control District prevent Campbell Estate from

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1 getting the permit?

2 A No. It would not. The department recognizes the
3 different ground water bodies and recognizes their
4 hydrological relationship. A measure of that is that for
5 wells in the salt aquifers which are at depth, they have
6 specified one of these and have halted certain exploitation.

7 There are no quantities set for water to be taken
8 out of the limestone aquifer. In fact, the process of
9 approval would be quite brief and very likely successful.

10 THE CHAIRPERSON: Excuse me, Diane. Could you
11 tell me where this line of questioning is relevant to
12 these three issues?

13 MS. KISHIMOTO: There are two points I'm trying
14 to make. Mr. Larsen had earlier testified to the water
15 needs of animal husbandry. Second, since this Commission
16 has taken judicial notice that the property is within the
17 Pearl Harbor ground water control district, I wanted to
18 discuss -- briefly, I'm almost done -- what the impact
19 of that would be.

20 I've got three short questions, maybe, four, excuse
21 me, real fast.

22 Q (BY MS. KISHIMOTO): How much water could be obtained
23 from one of these wells?

24 A It would simply depend on how big you dug the trench.
25 An example is over on the east side of the ewa plain, some

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1 of those facilities are pumped as much as eight million
2 gallons a day, which is obviously much more than needed in
3 this instance.

4 Q How salty is this water?

5 A At the moment, the best we can do is to speculate
6 based on drill holes put in by the Corps when they were
7 doing some exploratory work for the harbor. I would
8 guess that the chloride content, which is the measure of
9 salinity, is about 1000 to 1500 parts. A 1000 would be
10 as good as you could expect and 1500 is reasonable to
11 expect.

12 Q Is this water suitable for watering animals?

13 A I think as a steady diet it's not. There are certainly
14 occasions when animals subsist for some period of time on
15 saltier water than that, but if you were to plan a
16 facility, this isn't the kind of quality tha you would
17 base your planning on.

18 MS. KISHIMOTO: No further questions.

19 THE CHAIRPERSON: Thank you. Alan?

20 CROSS EXAMINATION

21 BY MR. MURAKAMI:

22 Q It's Mr. Nance, right?

23 A Right.

24 Q Do you have any knowledge of the water requirements
25 for animals?

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1 A In what regard?

2 Q Was that any part of the study that you did as a
3 hydrologist?

4 A For this specific instance?

5 Q No. For any kind of animals.

6 A Again, can you be more specific about what you
7 mean by --

8 Q Do you know how salt tolerant animals are, as a
9 matter of your professional study?

10 A Which animals are you referring to? Are you referring
11 to a --

12 Q I'm referring to any animals.

13 A Name me -- the requirements are not identical.

14 Q Do you know what the requirements are for specific
15 animals?

16 A I would say that you wouldn't want to base some kind
17 of an animal husbandry facility on more than about 500 parts
18 chloride, 500 milligrams --

19 Q Is that based on the studies you made as a hydrol-
20 ogist?

21 A No. It's based on a fairly acceptable standard.

22 Q Have you had any projects in your resume which
23 measured the salt tolerance of different animals of water?

24 A No.

25 Q Do you have any specific knowledge of what a rock

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1 crusher needs for water to wash?

2 A No. I do not.

3 Q Do you know of any specific needs of the contemplated
4 rock crusher at James Campbell Estate for water?

5 A No. I do not.

6 Q This area of limestone water, is this, as you say,
7 this water is separated from the lower water lense, I believe
8 you called it, is that the right terminology?

9 A You could call the water in the limestone a lense.
10 The water at depth would be improperly called a lense.
11 It's called an aquifer.

12 Q All right. Would the aquifer be totally separate
13 from the lense?

14 A Yes, it is.

15 Q It could not be mixed?

16 A It's probably instructive for you to consider that
17 the water in the limestone aquifer at depth is under
18 pressure. In fact, if you drill a hole all the way through
19 it, through the limestone, through the alluvium below,
20 and into the lava, the water would push out of the ground.
21 You would have a flowing well. So it is under pressure,
22 confined by the alluvium above it.

23 MR. MURAKAMI: That's all the questions I have.

24 THE CHAIRPERSON: Thank you. Any questions?

25 Martha?

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1 MS. CAIRL: How thick is the limestone layer that
2 you're talking about taking brackish water out of?

3 THE WITNESS: In this vicinity, it can only be
4 speculated. Nobody has drilled a hole out there right
5 through it. The Corps drilled their holes up to a 100 feet
6 thick and did not go into through the limestone into the
7 alluvium.

8 If you make a projection of the Waianae lava inland
9 and do some estimates of how that slope might change, ~~the~~
10 people come up with the number, the limestone is probably
11 200 feet thick, and the alluvium beneath the limestone
12 another 100 feet, and basalt, 300 feet down, the top of
13 the basalt.

14 THE CHAIRPERSON: Any other questions?

15 Thank you, Mr. Nance.

16 Next witness, Diane.

17 MS. KISHIMOTO: Next witness is Alan Clarke.

18 ALAN CLARKE

19 having been called as a witness, and, being duly sworn to
20 tell the truth, the whole truth and nothing but the truth,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. KISHIMOTO:

24 Q Mr. Clarke, please state your name for the record.

25 A Alan B. Clarke.

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1 Q What is your occupation?

2 A I'm a landscape architect.

3 Q Are you licensed in the State of Hawaii?

4 A Yes, I am.

5 Q What is landscape architecture?

6 A Landscape architecture is the design, planning, and
7 management of the land. It utilizes many different
8 materials, but the primary one is plant materials.

9 Q I direct your attention to Petitioner's Exhibit next
10 in order, with the name Alan B. Clarke on it. Does this
11 accurately summarize your educational and work experience?

12 A Yes, it does.

13 MS. KISHIMOTO: We offer Petitioner's Exhibit,
14 I believe it's 27, but I don't know. That's Petitioner's
15 Exhibit next in order.

16 MR. LIM: Thank you. We'll accept that into
17 evidence. Any objections, Mr. Murakami?

18 MR. MURAKAMI: No.

19 Q (BY MS. KISHIMOTO): Now Mr. Clarke, you indicate
20 that you have a Bachelor of Science in landscape architec-
21 ture from California State Polytechnic University, Pomona.

22 Does this training, or the requirements for this
23 Bachelor of Science in landscape architecture, did it
24 include courses in choice of plants for a given site?

25 A Yes, it included courses in plant material

1 identification, selection, courses in horticulture, courses
2 in planting design and general landscapedesign.

3 Q Have you used beach morning glory in projects in
4 Hawaii?

5 A Oh, yes, many times.

6 MS. KISHIMOTO: We offer Mr. Clarke as an
7 expert regarding the cultivation of beach morning glory.

8 MR. MURAKAMI: I'm going to have to object to
9 that. There has been no foundation.

10 THE CHAIRPERSON: Excuse me. I didn't hear your
11 comment just before his objection. May I ask you to repeat
12 it.

13 MS. KISHIMOTO: We offer Mr. Clarke as an expert
14 in the cultivation of beach morning glory.

15 THE CHAIRPERSON: In the cultivation of what, Diane?

16 MS. KISHIMOTO: Beach morning glory.

17 THE CHAIRPERSON: Morning glories, oh.

18 MS. KISHIMOTO: And if you'd like an offer of
19 proof, the -- the Petitioner's Exhibit No. 2, which is the
20 construction contract, calls for the maintenance of vines
21 and what the vine is. is beach morning glory.

22 THE CHAIRPERSON: I remember that. Can you tell
23 me how that is going to relate to whether or not animal
24 husbandry -- unsuitability of the property for animal
25 husbandry has been supported by the Commision's evidence

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1 and whether the rock crushing and all the rest has to do
2 with commercial, and you know, the other one?

3 MS. KISHIMOTO: Well, Mr. Murakami has asked
4 the Commission to take judicial notice of the fact that
5 this property is in the Pearl Harbor ground water control
6 district. Mr. Clarke's very brief testimony is addressed,
7 again, to the impact of the location of the property
8 vis-a-vis the water needs of beach morning glory.

9 THE CHAIRPERSON: I don't see that it has anything
10 to do with what we're trying to clarify, Diane.

11 MS. KISHIMOTO: It's --

12 THE CHAIRPERSON: Now, I'm continuing to understand
13 what's happening. You people are continuing what was going
14 on in court. The judge didn't send us everything that was
15 going on in court. He sent us only three items that we're
16 suppose to clarify.

17 So if this is an issue you two were discussing
18 or arguing, or whatever you were doing, then it has
19 relevance to your court case, but not to our part in your
20 court case. So I would really rather not --

21 MR. MURAKAMI: I don't know what the Chair is
22 talking about -- talking about other issues. I haven't
23 been, personally.

24 THE CHAIRPERSON: I'm talking about this one right
25 now.

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1 MS. KISHIMOTO: Well, Mr. Murakami had asked
2 the Commission to take judicial notice of the fact that
3 the property is in the Pearl Harbor ground water control
4 district. Under the Chapter 91, when the Commission takes
5 judicial notice of something, the opposing party should
6 have the opportunity to present rebuttal evidence.

7 This is what I'm doing.

8 THE CHAIRPERSON: You're going to rebut the fact
9 that it's in the Pearl Harbor ground water control district?

10 MS. KISHIMOTO: The impact of what I believe
11 Mr. Murakami is planning to argue -- as I say, this
12 testimony is very short. It deals with how much water each
13 beach morning glory needs and how salty it can be.

14 THE CHAIRPERSON: Your questions may be short,
15 but by the time Mr. Murakami gets a chance at him, we'll
16 be here until --

17 MR. MURAKAMI: I can assure the Commission that
18 my questions will not be nearly as long as that for
19 Mr. Johnsen, about as long as for Mr. Nance.

20 THE CHAIRPERSON: I don't even know that we need
21 it, but go ahead.

22 MS. KISHIMOTO: All right.

23 Q (BY MR. KISHIMOTO): Are you -- has Mr. --

24 MS. KISHIMOTO: Has Mr. Clarke been accepted
25 as an expert in the cultivation of beach morning glory?

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1 MR. MURAKAMI: Well, I would object to that. I
2 don't think there is any foundation for that.

3 THE CHAIRPERSON: I don't think there's any
4 relevance to the three points. I guess I'm not going to
5 admit the testimony. I would rather not.

6 I don't see how we can use anything, the morning
7 glory, or a landscape expert has to say on these three
8 issues. I don't see that there's -- whatever it means that
9 we took judicial notice is not clear to me. I don't think
10 we need to take judicial notice of something we've all
11 known for years.

12 If I'm missing some implications of that, Steve,
13 can you help me

14 MR. LIM: I think what Diane is trying to do is
15 counter an argument made by Mr. Murakami in court that
16 the Planning Commission did not consider the requirements
17 for water in the watering of the vines that's going to
18 cover the project, right?

19 MS. KISHIMOTO: Yes, and I'm also trying to
20 counter the argument that I know Mr. Murakami is going to
21 make when he made an issue of the fact that the property is
22 in the Pearl Harbor ground water control district.

23 MR. LIM: Possibly, one way to solve it is,
24 although the judge has sent us back those three items for
25 clarification, if Mr. Murakami thinks that he will drop

1 that argument about the water, we don't need to hear it,
2 but if you're going to continue it in court, since we're
3 here, we might as well hear it.

4 THE CHAIRPERSON: Let's take time out.

5 (There was a discussion held off the record.)

6 MS. KISHIMOTO: We offer Mr. Clarke as an expert
7 in the cultivation of beach morning glory.

8 THE CHAIRPERSON: Exactly.

9 MR. MURAKAMI: I object for the record.

10 Q (BY MS. KISHIMOTO): Mr. Clarke, have you reviewed
11 the contract specifications for the establishment of
12 beach morning glory on the coral mounds? Again, I refer
13 you to section 2D of Petitioner's Exhibit 2.

14 A Yes, I have.

15 Q Can beach morning glory be grown at the stockpile
16 sites planted according to the specs?

17 A Yes, it should be.

18 Q How much water would beach morning glory need, one,
19 during the initial establishment period, and during a
20 period to just maintain them?

21 A We did some calculations of some very large --
22 probably some excessive quantities of water and came up
23 with numbers of approximately a million gallons a day
24 during the establishment period and an ongoing amount of
25 about 680,000 gallons a day.

1 Q Okay. Now the establishment period is about how long?

2 A About four months.

3 Q And this is for the entire 170-some odd acres?

4 A Yes, ma'am.

5 Q How salty -- how much salt or chloride can the beach
6 morning glory tolerate in their irrigation water?

7 A I'm not sure of the upper limit. I know that we've
8 experienced projects where beach morning glory has been
9 grown continuously with 2500 parts chloride and we've
10 seen it growing along the shoreline where it's pretty much
11 the only source of irrigation is the ocean water, which is
12 something in the vicinity of 18,000 or 19,000 parts, I
13 understand.

14 MS. KISHIMOTO: Thank you. No further questions.

15 THE CHAIRPERSON: Alan.

16 CROSS EXAMINATION

17 BY MR. MURAKAMI:

18 Q Mr. Clarke, are you aware of how soon the morning
19 glory will be planted on the disposal site?

20 A No. I don't know when that occurs in the contract.

21 Q Do you know how effective morning glory is to
22 control dust?

23 A Once it covers the site, it should be very effective.

24 Q Am I correct in saying that it will take four months
25 to grow this cover?

1 A Yes, from where it's being painted, possible even
2 less. That's a very ideal condition to grow the morning
3 glory in.

4 Q What is an ideal condition?

5 A Just a very hot sunny area.

6 Q So your claim is that morning glory will control dust
7 effectively?

8 A Yes, once it covers, yes, it should.

9 Q And it would need no additional watering, per se,
10 to control the dust?

11 A Once the plant covers, no, it shouldn't -- there
12 would be no --

13 Q Have you been given any contract to do this planting
14 by the James Campbell Estate?

15 A No. We're landscape architects, we're not contractors.

16 Q All right. Who would actually do it then, if not a
17 landscape architect?

18 A Either a landscape contractor or possibly a general
19 contractor.

20 Q So you have no knowledge of how soon the planting
21 should be done?

22 A No. I don't.

23 Q By the way, how many projects have you worked on with
24 this morning glory?

25 A We cannot -- we did a quick count and came up with

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1 at least 15 in the past five years. We used it on many
2 large projects along the shoreline and near shoreline
3 areas.

4 Q What's the largest projects prior to this that you've
5 used this plant?

6 A Several projects up at Kapahulu where they've
7 installed three or five acres of it.

8 Q Four or five acres?

9 A Yes.

10 Q How did they water those plants of four or five acres?

11 A Primarily with overhead irrigation -- permanently
12 installed irrigation.

13 Q Permanently installed overhead irrigation?

14 A Uh-huh.

15 Q Have you given any consideration of how the watering
16 of this site will occur?

17 A I can speculate. There's nothing in the specifica-
18 tions that states pecifically how it can be done.

19 Q Were you asked to look into the kinds of equipment
20 it would take to water 177 acres of morning flory?

21 A Just briefly in that it would be drip -- probably a
22 drip irrigation system. Again, the specs do not make any
23 reference as to how the water is to be applied. It's
24 technically feasible in several different ways.

25 Q During the period of the establishment of this plant,

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1 over four months, I believe, is that right? You anticipate
2 needing a million gallons a day. Does that include
3 enough water to control dust?

4 A Yes. That was based on complete coverage of the area,
5 whether the plants had grown on there or not.

6 Q All right. But isn't it true that it's a hot and
7 sunny area where the stockpile will dry out on -- at least
8 on the surfact, quite rapidly?

9 A Uh-huh.

10 Q Does that include -- that million gallons per day,
11 include the rewetting of this area throughout the day to
12 control dust?

13 A Yes. That was the concept that we used when we
14 developed the number. In other words, the million gallons
15 a day it takes equate to an inch and a half of water per
16 week, and I realize that that sounds a little bit apples
17 and oranges, but it's a fairly common method of measuring
18 uses for landscape plants and an inch and a half a week is
19 a very generous amount of water.

20 Q Have you studied the wind conditions on the ewa plain,
21 near the site?

22 A Not as a result of this project.

23 Q So you don't know what the directions the wind blows
24 or what pattern it blows in?

25 A Other than general trade -- knowledge of where the

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1 trade winds come from.

2 Q Have you done temperature measurements of this area?

3 A No.

4 Q Wait a minute. You said you calculated a million
5 gallons per day, but you never took any temperature readings
6 of this area?

7 A This was based on a water usage of an inch and a half
8 of water per week.

9 Q That's based on some other experience?

10 A Yes.

11 Q What experience is that?

12 A This is an amount of water that is used -- you could
13 expect to use either for plant establishment for groundcover
14 establishment.

15 Q I'm asking -- that's not the answer to my question.
16 The question was whether that was based on a specific area
17 with similar wind and temperature conditions as the ewa
18 plain?

19 A Yes.

20 Q What area is that?

21 A I was thinking primarily of the Wailea area where
22 we've done extensive studies also using these plants and
23 using a brackish water.

24 Q Now, have you done comparisons to show -- to determine
25 whether there are comparable temperature readings in the

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1 Wailea area as there are in the Barbers' Point area?

2 A No. As I said, we haven't done any temperature
3 studies.

4 Q Have you done any similar studies for wind?

5 A No. As I said, no specific wind studies.

6 THE CHAIRPERSON: You made your point about the
7 wind.

8 MR. MURAKAMI: Thank you. That's all I have.

9 THE CHAIRPERSON: Thank you, Alan.

10 Any questions from the Commission?

11 Mary Alice?

12 MS. EVANS: Am I to understand the beach morning
13 glory will be grown to cover the stockpile in the interim
14 period while the coral is waiting to be sold, or is this
15 going to cover the land after the coral has been removed
16 from it?

17 THE WITNESS: The specifications are to put
18 the beach morning glory on the coral while it is waiting
19 to be sold, yes. It is part of the general contractor's
20 scope of work.

21 MS. EVANS: I see. Thank you.

22 THE CHAIRPERSON: Any other questions?

23 Gerri?

24 MS. KELIIKOA: Is this million gallons a day,
25 one and a half inches, how often you intend to water?

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1 THE WITNESS: As I said, it's a little bit of
2 apples and oranges, and maybe I got myself into it.

3 An inch and a half of water per week over -- per
4 week, yes. So it would be a function of how the system was
5 divided up, how big the pipes serving it were.

6 MS. KELIIKOA: That would be sufficient water
7 for that large acreage, 177 acres. Is that how much you're
8 going to be planting?

9 THE WITNESS: Yes, that's the number we used
10 to develop the million gallons a day requirement.

11 THE CHAIRPERSON: Martha?

12 MS. CAIRL: So this particular plant, the morning
13 glory, likes salty soil?

14 THE WITNESS: Yes.

15 MS. CAIRL: Oh, goody. She and I are very
16 happy about that.

17 THE WITNESS: Also likes a lot of sunlight.

18 THE CHAIRPERSON: Fits for your yard, doesn't
19 it Martha?

20 MS. CAIRL: Right.

21 THE CHAIRPERSON: Any other questions of
22 Mr. Clarke? Thank you, Mr. Clarke.

23 (The witness was excused.)

24 MS. KISHIMOTO: No futher witnesses.

25 THE CHAIRPERSON: Alan, do you have your first

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1 witness?

2 MR. MURAKAMI: Well, I have Mr. Buddy Neller
3 in the audience to offer his testimony on materials that
4 I believe this Commission is well aware of, his specialty.

5 THE CHAIRPERSON: He's an archaeologist. Can
6 you tell me how it relates to the three items we're supposed
7 to clarify?

8 MR. MURAKAMI: I can only offer Mr. Neller as
9 a witness with the benefit of some new knowledge that I
10 don't believe this Commission has considered previously.

11 I think it's very relevant to the conditions that
12 are imposed on this particular permit, that this Commission
13 is special --

14 THE CHAIRPERSON: We're not rehearing the
15 conditions of the permit, unfortunately, Alan.

16 MR. MURAKAMI: Well, I have -- the information
17 that Mr. Neller has relates to violations of certain
18 understandings this Commission has with respect to this
19 permit.

20 MS. KISHIMOTO: This is not a hearing for --

21 THE CHAIRPERSON: Diane, if you know of some
22 violations, I think we need to document them and report
23 them to, who, Chun-- to the Department of Land Utilization
24 who administers the Special Use Permit.

25 MR. MURAKAMI: All right. So I take it that's

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1 the ruling that we're not going to let Mr. Neller testify.

2 THE CHAIRPERSON: Not unless he can help us with
3 these three items.

4 MR. MURAKAMI: I believe he cannot.

5 THE CHAIRPERSON: Okay.

6 MR. MURAKAMI: But I did want to raise this and
7 offer --

8 THE CHAIRPERSON: I'm sorry we'll miss the
9 opportunity to hear Mr. Neller, but I'm sure you understand,
10 Alan.

11 MR. MURAKAMI: All right.

12 THE CHAIRPERSON: Next witness.

13 MR. MURAKAMI: In that case, I'll call Gwenn
14 Young to the stand.

15 THE CHAIRPERSON: Are we ready to begin?

16 MR. MURAKAMI: Yes.

17 GWENN YOUNG

18 having been called as a witness, and, being duly sworn
19 to tell the truth, the whole truth and nothing but the
20 truth, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MURAKAMI:

23 Q Could you state your name and address for the record.

24 A My name is Gwenn Young, and I live at 92-378 Laaloa
25 Street, that's in Honokai Hale.

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1 Q Could you tell the Commissioners exactly -- well,
2 relatively where your house is situated as opposed to
3 the stockpile areas that are the subject of this hearing?

4 A Okay. I live about three-quarter mile from the
5 stockpile, the first stockpile area. There are three areas
6 designated. I live closest.

7 Q Now, have you -- how long have you lived at your
8 particular residence?

9 A Eighteen years, March 25 will make eighteen years.

10 Q Have you had a chance to notice changes to the -- to
11 your -- to your living environment as a result of the
12 ongoing stockpiling of material at the Barber's Point
13 Deep Draft Harbor site?

14 A Definitely. I mean, we've had dust, we've always
15 had dust.

16 MS. KISHIMOTO: Objection.

17 THE CHAIRPERSON: Alan?

18 MR. MURAKAMI: Yes.

19 THE CHAIRPERSON: Well, go ahead with your
20 objection.

21 MS. KISHIMOTO: I think I see where the question-
22 ing is leading. I understand Ms. Young testified at the
23 Barbers' Point, the federal case concerning, among other
24 things, the impact of the construction of the harbor on
25 her living conditions. I'm not sure how we would be able

1 to separate out the impact of the harbor construction
2 itself and the stockpile alone since both are ongoing
3 together.

4 THE CHAIRPERSON: Well, let's assume that she
5 could and we could. I would still like you, Alan, to tell
6 me how her testimony is going to be relevant to the three
7 issues we must clarify.

8 MR. MURAKAMI: Right. I think the Commission
9 was particularly concerned about the nature of the
10 activity of the removal of the stockpile on -- in terms
11 of just what it would entail.

12 This witness, as well as the others that are here,
13 have unique knowledge about the first-hand effects that
14 they have recognized as a result of the ongoing stockpiling
15 operations currently being done at the site.

16 The same activities that are being utilized to
17 establish the stockpile would be also utilized to the
18 testimony that Mr. Johnsen gave in removing the stockpile,
19 that is the trucking operation, and in fact, it could be
20 worse because of the use of portable rock crushers.

21 Mrs. Young has substantial experience in the last
22 few months of the effects of that kind of activity has
23 been to a very close neighboring site, her home, in the
24 neighboring community of Honokai Hale.

25 I think that's relevant to the consideration of the

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1 so-called commercial nature of the activity.

2 THE CHAIRPERSON: Will you be sure to direct
3 your questions only to matters concerning trucking and
4 stockpiling? I don't want to hear anything about dyna-
5 miting.

6 MR. MURAKAMI: No. That's -- that's clear.

7 MS. KISHIMOTO: One other thing, Madam
8 Chairman, Judge Wakatsuki, in his wisdom, provided for
9 modification of the order, and one of the modifications
10 establishes a procedure for dealing with any complaints
11 resulting from any adverse effects.

12 I'm reading from page 2, adverse effect from the
13 surrounding properties in regard to noise, dust, or glare.
14 There is a procedure established, and I don't think this
15 is the proper procedure. If in fact -- because it appears
16 that the testimony is addressed more to the effects of the
17 stockpiling activity and not what the stockpiling activity
18 entails.

19 THE CHAIRPERSON: I agree with you. However,
20 we listened to quite a few questions about morning
21 glories and answers about the same. So I'll allow you
22 around four questions about the effects of the trucking
23 and the actual stockpiling, about four questions, please.

24 Q (BY MR. MURAKAMI): Ms. Young, can you briefly
25 summarize what kinds of effects you've suffered as a result

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1 of the trucking of coral from the dredging to the stockpile
2 areas, number one.

3 A All right. I live, like I say, three-quarter mile
4 from the site, and the trucks, we can hear. The sounds,
5 they boom, boom, boom, and the varooming, and this goes on.
6 Of course, it went on until 12:30 at night. Yes, ma'am,
7 12:30.

8 The people that live closer -- I live further up from
9 the -- in the subdivision. People that live closer to the
10 piles cannot sleep.

11 MS. KISHIMOTO: Objection. Hearsay.

12 THE CHAIRPERSON: Objection sustained.

13 Just tell about your experience. She's going to
14 be quite technical with your answers.

15 THE WITNESS: Okay. All right.

16 A This causes lot of stress, lot of stress because of
17 the fact that we can't sleep. I cannot sleep. I've talked
18 to other people, all right, right in my own home, my
19 husband. We have children. We have three children at
20 home right now. We start our day early. With all this
21 noise that's going on, if there's going to be more
22 equipment and machinery down there, we anticipate more
23 sounds, more noises.

24 We're going through with it enough right now. I
25 don't think it's fair. I really don't think it's fair that

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1 they should put that stockpile so close to us.

2 Q (BY MR. MURAKAMI): What about the effects of dust?

3 A Dust. Okay, like I said, we always had dust. I take
4 a wet rag to it and it turns brown or mud, but now I see
5 this grayish white. I just noticed it. It hasn't been
6 there before. I've been there 18 years, like I said. We've
7 never had this before.

8 And I have an allergy, yes, but it's been all right.
9 And all of a sudden -- my youngest daughter is 15, and her
10 nose started running and got this drip, and I couldn't --
11 and she kept sniffing and sniffing, so I took her to the
12 doctor, and he said it's an allergy. Of course, I cannot
13 say it's from coral dust, but she's never had it before.
14 Never had it before.

15 So I think -- I feel, I really feel that there is
16 something to it. Of course, I have written to the Depart-
17 ment of Health for a reading to monitor reading on the level
18 of coral dust. So far, I haven't received any answers.
19 Really, like Mr. -- I called Mr. Koizumi first. He's a
20 deputy director. He referred me to Mr. Suneda, who at that
21 time when I talked to him said, yes, Mrs. Young, we'll
22 have a representative there to set up a monitoring device.

23 Then this inspector, Cliffor Furukado calls, and he
24 says, it was erroneous, what Mr. Suneda told me.

25 THE CHAIRPERSON: I'm sorry, Mrs. Young, but we

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1 have not authority over the Department of Health and we can't
2 help you with that part of it, okay?

3 THE WITNESS: All right. I just wanted to let
4 you know that I've done --

5 THE CHAIRPERSON: As a measure of your sincerity
6 and concern, we've got that. Thank you.

7 Q (BY MR. MURAKAMI): All right. Ms. Young, have you
8 taken the opportunity to try to do something about this
9 problem with your whole community?

10 A Oh, yes. We've had this concern and remarks sheet --
11 forms, that we went house to house with, as many houses as
12 we could, fighting the dogs, and we sat with the people
13 and asked about their concerns.

14 I collected these forms here and I've had the job of
15 talking with them and listening to their problems.

16 Q How many homes did you contact?

17 A Oh, forty.

18 Q How many of them submitted forms?

19 A All of them.

20 Q All right.

21 THE CHAIRPERSON: That's your fifth question.
22 One more.

23 MR. MURAKAMI: Madam Chairman, I would offer
24 into evidence, if I could go forward, these forms which are
25 examples of the health effects that people are alleging as

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1 a result of the coral dust.

2 MS. KISHIMOTO: Objection.

3 MR. MURAKAMI: I would offer that because I think
4 it is a unique piece of evidence which is relevant to the
5 concern of the effects of the stockpiling and the
6 contemplated rock crushing that could occur.

7 THE CHAIRPERSON: It is relevant, there's no
8 question, but there's not anything we can do anything about.

9 MR. MURAKAMI: I understand that.

10 THE CHAIRPERSON: It's an enforcement problem.
11 I'm not even sure it will impinge on these three issues
12 that keep coming back to. It doesn't mean we're not
13 concerned about it, and I think she's obviously taking one
14 course, and maybe you could help her with that.

15 If there are violations of the dust regulations or
16 the noise regulations, then those will need to be dealt
17 with with the proper authorities.

18 I can't see that that evidence would help us to
19 clarify these issues, Alan.

20 MR. MURAKAMI: Madam Chairman, I think this
21 evidence would come in if we were starting brand new
22 because of the effect on the surrounding property. What
23 I'm bringing this up for is that, here we have unique
24 knowledge of what could happen as a result of the stockpiling
25 rock crushing operation.

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1 The questions that are being posed by the judge
2 go to, as you say, the commercial nature which you have
3 apparently defined to be the extent, the nature of the
4 activity that could be ongoing as a result of those
5 activities.

6 What we are trying to raise is that if that goes on,
7 we have evidence here of how it's effecting neighboring
8 communities, and if we can utilize this information now,
9 this information that we couldn't have had when we first
10 contemplated this permit, then I think the Commission can
11 have better basis to make a decision.

12 THE CHAIRPERSON: We're not making a decision.
13 We're only clarifying. I think the judge is going to make
14 a decision and already, apparently, had it in mind that if
15 rock crushing equipment is used, there is going to have to
16 be a goundary change requested. It seems to me that that's
17 the time to address these concerns.

18 MR. MURAKAMI: Well, al I'm --

19 THE CHAIRPERSON: There is no use for us to hear
20 them now. Much as we might want to change it all, and I'm
21 sure each and every one of us would like to alleviate the
22 problems that Mrs. Young and the others are having.

23 MR. MURAKAMI: We're not asking this Commission
24 to do that at this time. All I'm offering as evidence is
25 to show that the likely effects of this commercial activity

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1 and this is part of the scope, I believe, of the questions
2 posed by the judge.

3 THE CHAIRPERSON: And I'm saying that those
4 questions can be raised when the boundary amendment is
5 applied for.

6 MR. MURAKAMI: Is there a recommendation now that
7 this permit will be revoked because there are going to be
8 rock crushing equipment used on this project?

9 THE CHAIRPERSON: Is there a recommendation?
10 Where?

11 MR. MURAKAMI: I'm not understanding, I guess,
12 the nature of the scope of this clarification here. If in
13 fact, you need to have this information to clarify the
14 issue, then what we're offering here today is information
15 of what the extent of that commercial activity could be.
16 There is a direct effect on the health of the neighboring
17 communities.

18 That, I think, is relevant to some of the questions
19 posed by the judge in this particular proceeding. What we
20 have here is basically knowledge of the likely effects are
21 if such activities go on. That's what the judge is
22 concerned about.

23 We have it here in writing, as experienced by these
24 people.

25 THE CHAIRPERSON: These complaints that you're

1 bringing up should be taken to the planning director as
2 indicated by the judge in this order. They really do not
3 help us clarify.

4 The judge has not asked us to listen to these
5 complaints and make recommendations regarding them. He has
6 already stated that those should be taken to the planning
7 director, Alan.

8 MR. MURAKAMI: On that basis, then I would have
9 to move to strike the testimony of the previous two witnesses
10 because I thought that's what this Commission was interested
11 in hearing.

12 THE CHAIRPERSON: Well, we may be interested, but
13 it's not what the judge asked us to hear.

14 MR. MURAKAMI: I understand that. My under-
15 standing was this Commission was willing to venture into
16 those areas to clarify certain aspects of --

17 THE CHAIRPERSON: I remember I was willing to
18 venture to if it might help clarify. I must admit that I
19 don't think it did.

20 MR. MURAKAMI: Well then, I would move that this
21 Commission strike that testimony.

22 MR. LIM: The thing we're having problems with
23 is Mrs. Young is testifying to the effects of what's
24 happening to her house in the last three to four months.

25 MR. MURAKAMI: Right.

1 MR. LIM: Maybe you could ask her, maybe she
2 doesn't know -- I don't know if that's caused by blasting
3 or if that's caused by stockpiling.

4 MR. MURAKAMI: No. We're not even mentioning
5 blasting. We're not even alleging that's caused by blasting.

6 MR. LIM: For our information, are they doing
7 stockpiling on the SUP area right now.

8 MR. MURAKAMI: That's what she has testified to,
9 yes. She's about half a mile to three-quarter of a mile
10 from that stockpiling area One.

11 MR. LIM: I asked whether they were stockpiling
12 on the SUP area now.

13 MR. MURAKAMI: Yes, she did testify about that.

14 MS. KISHIMOTO: Stockpile area One is mostly
15 Conditional Use Permit area, to be technical.

16 MR. MURAKAMI: Well, that's a different permit
17 process. We're talking about a Special Use Permit that
18 affects stockpile area One.

19 MS. KISHIMOTO: Bits of it yes, very small bits
20 of it.

21 MR. MURAKAMI: Well, if you want to go into the
22 extent to which stockpile area One has been covered, at
23 least as to existing dredge -- I think she can testify that
24 they have. If you want to point it out on a map, I think
25 she can testify .

1 THE WITNESS: I've seen it.

2 MR. MURAKAMI: Madam Chairman, if anything, this
3 testimony and information is more relevant as to the
4 question of events than the previous two sets of testimony.

5 MS. KISHIMOTO: Madam Chairman, I have a copy
6 here of the land use decision and order which shows which
7 portions of the stockpile area One are effected by the
8 Special Use Permit.

9 It's very small portion of it. Not --

10 THE CHAIRPERSON: I'm sorry. I wasn't listening
11 to you.

12 MS. KISHIMOTO: Most of the stockpile area One
13 is covered by the Conditional Use Permit and not by the
14 Special Use Permit.

15 MR. MURAKAMI: But not all of it.

16 THE CHAIRPERSON: I'm not going to rule to
17 strike the testimony . I'll let the Commission decide
18 whether or not they want to comment to the judge about the
19 effects of the trucking and stockpiling that has taken
20 place at this point.

21 I'll let the Commission decide.

22 MR. MURAKAMI: Does that mean we go forward
23 with this testimony?

24 THE CHAIRPERSON: Well, I told you you could
25 have four or five questions, and you're on number six.

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1 MR. MURAKAMI: Well, I'm trying to get this
2 piece of information in concerning Mrs. Young's activities
3 to gather the complaints of the other residents in the
4 area to show that it's not isolated in her case.

5 MS. KISHIMOTO: I would object on the grounds that
6 first of all, it's redundant. It's a question of effects --
7 alleged effects of stockpiling. If that could be separated
8 from the harbor construction.

9 Secondly, if there being -- it's hearsay. I have no
10 opportunity to cross examine the statements or the declarance
11 for making those statements in those reports.

12 MR. MURAKAMI: That's been true of all the various
13 reports that have been accepted by this Commission in this
14 hearing. This Commission is not --

15 THE CHAIRPERSON: Give me a chance to think, okay.

16 MR. MURAKAMI: Okay. May I respond to the hearsay
17 argument? This Commission is not bound by the strict rules
18 on hearsay and of evidence. In addition, we've admitted
19 many, many documents on the basis of hearsay because they
20 were not here before the Commission

21 THE CHAIRPERSON: We'll accept it. I don't
22 think the Commission will have any trouble dealing with what
23 might be legally called hearsay evidence, people that
24 have signed these things.

25 So we know, I think, how much weight to give it and

1 how much not to give it.

2 MR. LIM: Alan and Mrs. Young, our point of
3 view is that the contract requirements for the harbor
4 and also the SUP conditions require the Campbell Estate
5 and the applicant to comply with all the federal, state,
6 and county regs on dust, etc.

7 THE WITNESS: Standards.

8 MR. LIM: If in fact they are not, then it's
9 an enforcement matter. That's what you're talking about
10 right now.

11 All we can say is that you have to comply with the
12 safety regs and the health regs. We cannot force them to
13 do it.

14 MR. MURAKAMI: On the other hand, even if
15 arguably the regulations are observed, testimony here is
16 to show basically that they're having effects on neighboring
17 properties irrespective of that.

18 Ms. Young is talking about loss of sleep and the noise
19 from trucks and the dust from the stockpiling operations.

20 These are the kinds of pieces of evidence that I
21 believe the Commission should address even if they are
22 confining themselves to the supposedly commercial nature.

23 MS. KISHIMOTO: There's no foundation made for
24 testimony. There is no evidence that as to whether or not
25 any of the dust and mitigating procedures are -- right now

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1 it requires the control of the contractor. And there is
2 no evidence for one, for instance, that the stockpiling,
3 removal will take place at night.

4 THE CHAIRPERSON: That's agreed. Admitting the
5 difficulty in sorting out the effects of construction of
6 the harbor itself from the anticipated activities in the
7 stockpiling area, we're going to admit the testimony and the
8 evidence and weigh it with its due.

9 I think we may have trouble figuring out how it's
10 going to help us with the three things the judge has asked
11 us to look at, but we will accept it.

12 Would you proceed, please.

13 MR. MURAKAMI: That's all the questions I have.

14 THE CHAIRPERSON: Thank you.

15 Diane?

16 MS. KISHIMOTO: No questions.

17 THE CHAIRPERSON: Commissioners, do you have any
18 questions for Mrs. Young? I guess not. Thank you.

19 (The witness was excused.)

20 MR. MURAKAMI: May I have a quick minute to confer
21 with my witnesses. We may be able to shorten it drastically.

22 THE CHAIRPERSON: Please do.

23 (There was a discussion held off the record.)

24 MR. MURAKAMI: I'd like to offer the next witness,
25 Jane Ross, for a very brief point only. I would ask either

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1 through stipulation or by notice of this Commission that
2 if they would accept the testimony albeit cumulative
3 Ms. Ross and Ms. Makaiwi. (phonetic) as to the points raised by
4 Ms. Young, if we can just take notice that they would
5 basically say the same thing, and have experienced the same
6 thing, I would be willing to eliminate that portion of the
7 testimony.

8 THE CHAIRPERSON: Okay. Thank you. We're willing
9 to do that.

10 MR. MURAKAMI: Okay, but the two witnesses we had
11 offerd initially was Ms. Jane Ross who is now willing to
12 testify to a brief point in addition to what Ms. Young
13 has testified to, and the testimony of Martha Makaiwi, if
14 those names can be noted for the record, to raise those
15 points by stipulation of opposing counsel, I would be willing
16 to eliminate the testimony.

17 MS. KISHIMOTO: Well, I would renew my objection
18 to their testimony on the same ground that I objected to
19 Ms. Young's testimony.

20 MR. MURAKAMI: All right. But we would be
21 willing to waive testimony, otherwise.

22 THE CHAIRPERSON: Go ahead.

23 JANE ROSS

24 having been called as a witness, and, being duly sworn
25 to tell the truth, the whole truth and nothing but the

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1 truth, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MURAKAMI:

4 Q Were you sworn in, Ms. Ross?

5 A I was.

6 Q Could you state your full name and address for the
7 record please.

8 A My name is Jane A. Ross, R-O-S-S, and I live at
9 92-783 Laaloa Place in Honokai Hale subdivision.

10 Q Would you describe basically your relationship of your
11 residence to the stockpile area that we're talking about.

12 A Yes. I live less than half way up from the stockpile,
13 a little closer than Mrs. Young.

14 Q And can you see the stockpile from your house?

15 A Oh, yes. It is not just a pile. It is a mountain
16 flattened out. In other words, a plateau, five-stories
17 high at this particular point.

18 Q Okay. And are you willing to testify to the same
19 effects that Mrs. Young testified to earlier?

20 A Yes. There's all those things of noise and dust over
21 everything and the health hazards that we're all concerned
22 about. My own nasal passages have been severely irritated
23 by this dust, and in talking with my ear, nose, and throat
24 man, he said that coral dust is much worse to breathe than
25 sand or dirt because of it's organic nature. So it certainly

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1 could cause some of the problems that I've been experiencing.

2 Q This is of a respiratory nature?

3 A Yes. Irritation of the nasal passages. When they
4 closed operations at 12:30, if I get up to go to the lav,
5 maybe at 2:30, I don't feel that same irritation that I do
6 earlier.

7 Q Now, why are you so concerned about the possibility
8 that there would be rock crushers on this site?

9 A Of course, I know that if the piles are there, they've
10 got to be removed. That's the reason for their being there.
11 But when I heard that it was going to be by the method of
12 rock crushing, I was really very concerned because if we're
13 having some problems now, with really a minor operation,
14 and since the stopping of blasting, even less than before,
15 yet we're still seeing that dust come in, and we know we're
16 ingesting it and breathing it.

17 Well, if that's happening now, we can just anticipate
18 a horrendous problem occurring with the rock crushing
19 operations. We have some familiarity with rock crushing
20 operations because just a bit down the road, Honolulu side
21 of our subdivision, is the Pacific Concrete quarry. I
22 think it's the Makakilo quarry.

23 That thing is just generates a tremendous amount of
24 dust. Sometimes in coming home in the evening, you'd see
25 a haze on the road rising up from -- that has risen up from

1 that plant.

2 I know a neighbor had to move because her son was
3 getting dust from that quarry which is -- I don't know, it
4 must be about four miles away from us, minimum, because
5 Makakilo is two, and that's another mile or two further.

6 So if that causes problems from that distance, what is
7 this, which is only a half mile to three-quarters of a mile,
8 going to cause us?

9 There's a lot of concern for it, not only of the
10 adult, but of the children in the community. Do they have
11 a chance?

12 MR. MURAKAMI: That's all I have to ask of
13 Ms. Ross.

14 THE CHAIRPERSON: Thank you, Alan.

15 Any questions, Diane?

16 MS. KISHIMOTO: No questions.

17 THE CHAIRPERSON: Any questions of the
18 Commission? Gerri.

19 MS. KELIIKOA: Ms. Ross, what are the hours of
20 business when they stockpile?

21 THE WITNESS: The stockpiling goes on until
22 12:30 in the morning, right now.

23 THE CHAIRPERSON: Excuse me. That has to do
24 with the construction of the harbor. It doesn't have
25 anything to do with it once it is stockpiled. That's why

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1 I'm worried about separating out the construction of the
2 harbor from stockpile activities.

3 THE WITNESS: That does touch on one of our other
4 concerns, that however they get the coral out, hopefully
5 by just trucking it out in chunks to be ground up elsewhere,
6 that this will not go on at night but be a daytime operation
7 which we could live with because we've never opposed the
8 project, our subdivision. In fact, many people are very
9 supportive of it.

10 We just don't want it to totally devastate our health
11 and our lives.

12 THE CHAIRPERSON: Did you have a question, too?

13 MS. CAIRL: No. Mine was the same as Gerri's.

14 THE CHAIRPERSON: Thank you, Ms. Ross.

15 THE WITNESS: Thank you for letting us testify.

16 MR. MURAKAMI: For the record, is it clear that
17 we were able to introduce into evidence as Intervenor's
18 next in line, the reports of the community that were
19 submitted to Gwenn Young?

20 THE CHAIRPERSON: I thought I accepted that
21 at the conclusion of Mrs. Young's testimony.

22 MR. MURAKAMI: Okay. Thank you.

23 That's all I have.

24 THE CHAIRPERSON: Are you finished.

25 MR. MURAKAMI: Yes.

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1 THE CHAIRPERSON: Chuck has brought up a
2 question that needs to be clarified. May I re-call
3 Mr. Johnsen, please.

4 For all of my referring to this document, Mr. Johnsen,
5 I did not know one crucial point that I would like to have
6 clarified from you.

7 The judge makes it very clear that he wants us to
8 clarify whether or not rock crushing equipment, if and when
9 it may be installed, will be used to crush the coral
10 for sale or merely to facilitate the purpose of stockpiling
11 the coral that's already there.

12 THE WITNESS: If I do understand that point, and
13 let me try this. If there is rock crushing equipment, it
14 would be for the purpose of sale of the material.

15 THE CHAIRPERSON: That was my understanding, but
16 I really wanted that clearly stated for -- rather, Chuck
17 wanted it.

18 Thank you for reminding me about that.

19 Thank you, Mr. Johnsen.

20 MS. KISHIMOTO: We have no further witnesses.

21 MR. LIM: That concludes the hearing. For
22 information of the parties, because some of the Commission
23 members were not present for this meeting and because they
24 will be voting on the matter, we will have to come up
25 with a proposed decision and order which will be served on

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1 the parties.

2 We'll set out the time deadlines for filing of your
3 responses. We'll give you the 15-day notice prior to the
4 hearing.

5 Anything else?

6 Basically the same procedure we followed the last time.

7 No questions, then?

8 MR. MURAKAMI: How soon would the proposed --

9 MR. LIM: I would say within two weeks, mailed
10 to you.

11 MS. KISHIMOTO: So the Commission will be
12 preparing the proposed decision.

13 MR. LIM: Right, because we don't have any
14 director's decision to go off on now. We'll have to
15 propose our own findings as far as these three issues are
16 concerned. We'll be incorporating the positions that
17 the court laid down in the first part of its decision,
18 also.

19 THE CHAIRPERSON: The Commissioners who were not
20 here will be expected to listen to the tape or read the
21 transcript, whichever is convenient for them, before they
22 would be eligible or allowed to vote.

23 Thank you for allowing me to chair this, my very first
24 contested case hearing. I want to assure that the evidence
25 and testimony presented will be read carefully in light of

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1 the instructions given us.

2 Thank you, Diane. Thank you, Alan.

3 MR. MURAKAMI: Thank you.

4 (The hearing adjourned at 5:00 p.m.)

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REPORTER'S CERTIFICATE

I, MARJANN SHAWLER, Shorthand Reporter,
hereby certify that the foregoing is a full, true, and
correct statement of the proceedings had and the testimony
given by the witnesses at the hearing held February 8,
1983, as taken down by me in stenotype and thereafter
transcribed into typewriting under my supervision.

Marjann Shawler
MARJANN SHAWLER

KANE: May I just raise one consideration. We have one family out of 52 who is qualifying for some kind of program. To me it would seem better if there were five families of 52 qualifying for a program. It seems much more workable to me.

KITAGAWA: Mr. Chairman, I think maybe semantics is a problem but, we are looking at it really from the standpoint of adjusting the rezoning of the lot on which 10 units are there. I'm addressing it from that perspective, not the total area.

CHAIRMAN: From that area of 10 families.

KITAGAWA: Yes because we're looking at the rezoning for only that parcel of land.

CHAIRMAN: Mr. Prentiss?

PRENTISS: I'd like a clarification. Your original motion, MaryAlice, you said that you move that the applicant meet with the Department of Housing to discuss affordable or low/moderate income housing. Is that what you meant or did you mean the Commission recommend that it add a condition to the unilateral agreement that so many of the units be indicated?

EVANS: I meant to apply the standard inclusionary zoning condition to it. I did not mean to innovate or develop a new package.

PRENTISS: In other words, you'd have this put in as a condition of the zoning.

EVANS: Yes.

CHAIRMAN: Your motion is for the recommendation of this application with inclusionary zoning of one unit or its equivalent.

EVANS: Yes.

CHAIRMAN: All right. Those in favor, raise your right hand.
The motion is carried.

VOTE

AYES: EVANS, HIRAHARA, KANE, KITAGAWA, YOSHIDA

NOES: CAIRL

ABSENT: NAKATANI, PACHECO, KELIIKOA (present at 2:15 p.m.)

(Mrs. Keliikoa entered the meeting at this point.)

REHEARING
STATE SPECIAL USE PERMIT
(STOCKPILING OF DREDGED
CORAL)
EWA
JAMES CAMPBELL ESTATE
(FILE 81/SUP-6 EY)

Rehearing held December 7, 1982 continued to January 11, 1983 for examination of witnesses. Rehearing of January 11 was rescheduled to February 8 by agreement of both parties. Examination of witnesses and cross examination has been completed. The Commission distributed proposed Findings of Fact, Decision and Order for comment by both parties. Oral argument by the two parties will be heard.

CHAIRMAN: We'll go on now to Ewa State Special Use Permit.
Mr. Prentiss?

PRENTISS: Before we begin, I'd like to bring up one procedural matter. As you know, we prepared the proposed findings of fact. On advice of our attorney, we sent those to the parties and gave them a 10-day deadline to respond in writing to the proposed findings of fact. We received response from the applicant. I believe I gave you a copy of that at the last meeting. We did not receive a response from Mr. Murakami by that deadline. We have since received the response. I didn't send it to you. We have it. We didn't send it to you because I wanted to get a clarification from you today as to whether we should accept that inasmuch as we received it after the deadline.

CHAIRMAN: Miss Kishimoto, do you have any objection to the tardiness of this response?

KISHIMOTO: No I don't.

CHAIRMAN: If you have no objection, the Commission has no objection. We'll take five minutes to read Mr. Murakami's response.

KANE: You mean Mr. Murakami made a response that we'll be able to read in five minutes? Wonderful!

CHAIRMAN: Okay, we're back again. Mr. Steve Lim will give you the procedure.

COUNSEL LIM: Thank you, Mr. Chairman. Why we're here today is to hear oral arguments by the parties. Will the parties please step up to the table?

Basically, this is to fulfill the requirements of HRS 91-11 which states that the commissioners who have not attended all the hearings in person, must be presented with all arguments on the proposed findings that the Commission submitted to the parties.

We will be hearing from the applicant first, to be followed by Na Opio. Then the applicant, I believe, will be giving a rebuttal. The parties can allocate 15 minutes for argument.

CHAIRMAN: Miss Kishimoto?

KISHIMOTO: Mr. Chairman and members of the Commission, as you know I'm Diane Kishimoto. I represent Campbell Estate, the applicant for the special use permit. It finally

Therefore, in addition to the lack of water, plain economic common sense leads to the conclusions that this land is not suitable for animal husbandry.

The Commission's proposed findings reflect the points that I have made in the economic feasibility of animal husbandry on the subject property. We also request that the findings be modified to include a finding covering the availability of water. The proposed language for this findings of fact as well as the related conclusion of law are included in our written comments.

Turning now to the activities planned for the site and whether these activities constitute commercial activity. This is not an application to sanction an existing and permanent use of the property. We've made it clear all along that the coral that would be stockpiled would be brought to the property and that it would be removed from the property. Therefore included within the scope of the stockpiling activity or the activities permitted by the special use permit would have to be some reasonable activity to establish the stockpile and then to remove the stockpile.

Judge Wakatsuki is apparently concerned about whether the activities involved in removing the stockpiled material amount to commercial activity. Now as is indicated by the language of Judge Wakatsuki's decision and is further confirmed by the arguments before Judge Wakatsuki, Judge Wakatsuki's concern is not whether the coral will be sold but whether the intensity of the activities on the special use permit site will arise to a level that might be considered commercial.

Now as Mr. Johnsen's testimony indicated, initially there will be no room on the site for processing. The land is going to be completely covered with coral. So even if he wanted to put a processing plant on the site, it wouldn't be physically possible. So initially the coral will be dug up and hauled away as is. This is essentially the reverse of the process of how the coral will be put on the land. These activities do not rise to the level of activities--in other words, crushing and grading which Judge Wakatsuki was concerned, in which his decision he indicates he considers to be commercial activity.

Now at some point facilities to process the coral to crush it and sort it will probably be desirable as Mr. Johnsen indicated. It is not certain, however,

looks as though we're almost at the conclusion of the case that's been before this Commission for nearly a year-and-a-half.

The application for a special use permit to stockpile coral on 177 acres of Campbell Estate land out in Barbers Point was filed July of 1981. The public hearing was scheduled before this Commission which subsequently turned into a contested case hearing. Contested case hearings were held and this Commission voted to approve the special use permit. This was then sent over to the Land Use Commission which in turn also approved the special use permit.

Subsequently, Na Opio Aloha Aina appealed the issuance of the special use permit. This appeal was argued before Judge Wakatsuki in the First Circuit Court. Judge Wakatsuki ordered that certain modifications be made after the argument. Judge Wakatsuki ordered that certain modifications be made to the special use permit.

He also ordered that the Planning Commission and Land Use Commission conduct further proceedings to clarify three issues. These three issues are first of all, whether the land in question is suitable for animal husbandry. The second and third questions are related and these are whether crushing and processing activities will take place on the special use permit site, and whether these activities constitute a commercial.

Hearings were held by this Commission on these three issues and the Commission has submitted to us for our comment, proposed findings of fact, decision and order. We have submitted written comments on the proposed findings and now have this opportunity to present our comments orally.

First of all, the land is not suitable for animal husbandry. As both Jack Larsen and Thomas Nance testified, large quantities of water, potable water are needed to raise animals. As Mr. Johnson and Mr. Nance testified, these quantities of water are not available on the stockpile, on the special use permit sites. And even if water were available, the cost of establishing animal husbandry on the property is prohibitive.

Mr. Stender testified to cost and the hundreds of thousands of dollars per acre, just to get this land in shape for any sort of use. On top of this, would be the cost of actually establishing running an animal farm operation as described by Mr. Larsen.

where these facilities will be--whether they'll be on site or whether in fact they'll be off site in other urban zoned, urban designated land.

We recognize however, that under the view adopted by Judge Wakatsuki, crushing and sorting activities require a land use boundary amendment to the urban district and Campbell Estate is prepared to apply for such an amendment if and when it is necessary.

Therefore in conclusion, the evidence before the Commission clearly shows that the subject property is not suitable for animal husbandry. The evidence before the Commission also clearly shows that initially, there will be no rock crushing or sorting activities on the stockpile site and that the stockpile material will be dug up for sale as is. The activities initially planned for the stockpile site therefore, do not constitute commercial activities within the meaning of Judge Wakatsuki's use of the word.

Therefore, we respectfully submit that this Commission should reaffirm its original decision to grant Campbell Estate the right to stockpile coral on its land out at Barbers Point, and should adopt its proposed findings, subject to the modifications requested in our written comments.

Thank you.

CHAIRMAN: Mr. Murakami?

MURAKAMI: Thank you, Mr. Chairman. Since I recognize that we've been through a pretty lengthy process of examining all various aspects of this case, I don't intend to go into very much detail.

I suffice to say that based on our current posture of this proceeding, you're concerned here with two things basically, the commercial nature of this venture and secondly, the test on whether agricultural use is suitable in this area has been met.

First of all as to the commercial nature. Judge Wakatsuki apparently was concerned with the nature of the processing activity that will occur on the given site. I think it's totally undisputed based on the record before the Commission that the initial proceedings during which we took testimony from

Mr. Stender clearly indicated--and I believe this might be also in earlier proceedings--that rock crushing was an integral part of this particular venture. I previously pointed out the sections in the transcripts in which rock crushing was described as a necessary part of removal of the coral stockpile and as Ms. Kishimoto already indicated, at some point there are apparently some plans contemplated to begin that processing of coral, although at some undefined date.

Now, whether or not the initial rock crushing begins as of the completion of the stockpile really doesn't matter because you always run into a problem of drawing a fine line as to when a particular permit should be invoked for a particular purpose or particular activity.

We have 177 acres here on which 10.8 million cubic yards of coral spoil will be deposited. Now it seems that we can rest assured that James Campbell Estate will now agree to seek a land use boundary redesignation as Na Opio has claimed it should in inception of these proceedings. We proceeded in the beginning parts of this whole process with that argument, that rock crushing was a part of this activity and therefore redesignation was proper. Now this was never contested before Judge Wakatsuki addressed this issue. Rock crushing was never an issue as to whether or not James Campbell Estate would actually do it or not. Now we suddenly find that since the Judge decides that this particular kind of activity would be improper for this permit, we find James Campbell Estate backpeddling and saying okay, we're not going to do it now. That was just one of the options. We may do it in the future but we don't know so we'll promise to go forward with an application for redesignation at some later time. Now, I think that just basically backs this Commission and the Land Use Commission up in a corner. We deposit 10.8 million cubic yards on 177 acres of land on assurance that there is no contemplated rock crushing activity at this time. That's fine and well. Five years from now when Campbell Estate comes in and asks the Land Use Commission for redesignation because they now need to remove that coral, what else is the Commission suppose to do but grant that request if the coral's already there and no use can be made of it except to rock crush it and process it for further production for them to build roads or highways or to produce cement.

I think when we start to draw lines on that kind of distinction by saying we don't know what we're going to do with it now, it's not our plans right now to rock crush it although we previously said we are going to rock crush it, go ahead and grant us the special use permit, give it to us and we'll put this stuff on the 177 acres of land. Then we'll come back and reassess this and we may or we may not ask for a redesignation because we may or we may not have to rock crush this. I think this is really playing games with this procedure. This Commission should recognize this at the outset.

Now, as to the agricultural use. I objected to the testimony of Mr. Larsen from the outset because of his limited background in this area. Now contrary to what Ms. Kishimoto indicated is a test, we are not here to determine whether or not this land is suitable for agriculture. We're here to determine whether or not this land can indeed be unsuitable and therefore be eligible for a special use permit to stockpile this coral.

What Mr. Larsen showed, I think, clearly was that Hawaii is in a bad competitive position relative to the mainland as to swine and poultry production. I don't think he showed that this particular parcel was unsuitable for agriculture. In fact, in my cross examination you will recall he admitted that these activities were feasible. And, if we had expanded the so-called minimum economic size that he had identified, on 177 acres of land it was possible to increase that economic size so that economic activities dealing with swine and poultry production is feasible on this particular parcel.

Now the subsidiary question of whether or not there'd be water to support that activity came up also. I think it was alleged by Mr. Nance that so-called water that is available in the aquifer below this site was unsuitable for animal husbandry. On my cross examination, I clearly brought out the fact that Mr. Nance was not trained in animal husbandry, he had no basis for making that statement, and the applicant has produced no evidence that water cannot be used for animal husbandry. In fact, Mr. Nance indicated that it could be used for a limited period of time, in his own words if you look at the transcript.

But beyond that, what we're seeing here is a situation where although the current picture maybe that water maybe unavailable, we have the situation where I think this Commission can take notice of that Oahu Sugar currently using hundreds of millions

of gallons of water is phasing out. What is going to be the impact of this major use being eliminated as to the availability of water? This brings up the point that I previously stressed in my comment that if this Commission evaluates the suitability or unsuitability of this particular site based on the current economic situation as to agricultural activities, then I think you're going to be making a case for a lot of property owners who hold so-called agricultural land to be able to redesignate that into urban use because number one, the water situation may change. Secondly, the economic situation may change. And, if we judge the suitability of land on the basis of tempering current economic conditions, then I think we're being led blindly into a position that a lot of agricultural land will be eligible for redesignation into urban lands.

I think that is the situation here. The suitability should not be applied to the economic feasibility that can change, rather it should be viewed as to whether or not the projected activity is feasible. And that's what the special use permit is all about. That particular test was invoked to allow such building in the system where land is unsuited for agriculture. And based on the evidence that was adduced by the applicant, that was not shown in these proceedings.

Now the rest of the substance of my comments are contained in the written documents. I think I'll leave that point for your consideration on what I have already submitted. But, it's suffice to say that Na Opio believes that this as it always has, has been an improper way in which to view the projected proposed use of this particular parcel. This proceeding is ill-conceived and ill-designed to evaluate all the potential impact that this particular use will have on this particular parcel on the kinds of land that Na Opio has been interested in, in evaluating its various activities in the past.

So, if there are any questions, that's all I have. Thank you.

CHAIRMAN: Ms. Kishimoto?

KISHIMOTO: Mr. Prentiss, how much time do I have left for my rebuttal?

PRENTISS: About five minutes.

KISHIMOTO: Okay. Campbell Estate is being charged with the heinous offense of trying to obey the law. It may

have been unclear before Judge Wakatsuki's decision whether or not rock crushing or sorting was permitted on the stockpile site. At least Judge Wakatsuki says its not. We'll accept his decision and say it's not. We'll work within it. To the extent that the coral can be removed without processing on site, that's what we'll attempt to do. And should it become apparent that rock crushing and sorting will need to be done on site--and as Mr. Johnson's testimony indicated, it's not necessarily clear whether or not this processing needs to be done on site. There are other urban-zoned lands owned by Campbell Estate available in the vicinity that would not need a boundary redesignation for such activities.

So assuming that it's necessary to conduct these activities on site, we are prepared to obey the law and apply for a boundary review designation should that become necessary.

Na Opio argues that this land is really not unsuitable for agricultural use because notwithstanding the lack of water, notwithstanding the economic difficulties of developing the land for animal husbandry, economic conditions may change or there may be a change in the availability of water that may sometime in the future make this land suitable for animal husbandry. Now this maybe the case but the fact remains that at the present time, the land is not suitable for animal husbandry. It doesn't make any sense to keep the land in limbo because on the mere speculation that maybe sometime in the future, it may become suitable for animal husbandry. This land is barren and it's fallow and it's not being used for anything. It's not suitable for anything except for things that would require space. It doesn't have to be preserved in its present condition in order for it to be suitable for animal husbandry sometime in the future should economic conditions or water conditions change. In the meantime, the land might as well be put to a productive or useful purpose, in this case storing coral.

The basic value of this land insofar as it had any suitability for agricultural use, animal husbandry is its space. The space will still be there when the stockpiling is completed.

No further comments. Thank you.

CHAIRMAN:

Okay. Mr. Yoshida has elected not to vote on this matter. Why don't we take a break till 2:45 p.m. and come back for discussion.

APR 19 1983

RECESSED AT 2:30 p.m.
RECONVENED AT 2:45 p.m.

CHAIRMAN: Welcome back. Counsels, do you have any problem of staying here for clarification by the commissioners?

KISHIMOTO: No.

MURAKAMI: How long is this going to be?

CHAIRMAN: 8 o'clock. No, perhaps 4 o'clock.

KANE: Not long.

MURAKAMI: Okay.

CHAIRMAN: A motion is in order.

KANE: Do we move to accept and then work on changes?

CHAIRMAN: Yes.

KANE: I'll move to accept the proposed findings of the Commission, ours.

CAIRL: Second.

CHAIRMAN: It's been moved and seconded. Discussion?

KANE: Now for the changes. May I?

CHAIRMAN: Yes.

KANE: I want to speak to the provision in our proposed findings as a fact that allow for the applicant to in time, if so desired, go for a boundary amendment on this SUP site. The understanding is or the words say that if it becomes necessary, desirable I think is the word, to use rock crushing equipment on the site, the applicant will go in for a boundary amendment.

I may as well discuss Ms. Kishimoto's suggestion that that phrase be changed to include or any other permits desirable or needed. I'd like this point to say that I think that's not a good idea to add the other possibility. In fact, I don't think it's a good idea to leave the options for applications for a boundary amendment in a special use permit.

My reasons are these. When approval was recommended for this permit, one of the forceful arguments that was brought out was that even though the Commission

found that animal husbandry was not feasible economically at this time, there was concern around this table that the land stay in ag. Therefore, an SUP was the vehicle that would keep that land in agriculture. If that SUP--and one of the reasons for it being to keep the land in ag.--is now going to be very explicit about encouraging, not only allowing but encouraging the applicant to go for a boundary amendment sometime later, we have lost that very forceful reason for recommending approval of the SUP in the beginning.

I think another thing happens if that is left in special use permit. No one knows when such approval might be sought. I would submit that if it's terminated two years from now or five years from now, the deck will be stacked in favor of the applicant when that applicant goes to the boundary amendment. I'm not commenting right now whether or not the boundary amendment ought to be approved. I'm just noting that the deck would be stacked in favor of the applicant simply because the urban use is firmly established and it's going to be much more difficult to look at should this piece of land now in ag. be permanently redistricted, that would be had the boundary amendment been sought initially. I don't think this Planning Commission is in the business of recommending approval of special use permits to facilitate applications through boundary amendments.

The judge has made clear that he does not want that kind of activity on an SUP site. So if this Commission still believes that it's important to keep that land in ag. and recognition of the fact that changes can occur in time that would make the land feasible for agricultural use, we have no choice but to specifically prohibit rock crushing on the SUP site throughout the life of the permit or I suppose the other option we have is quite drastic and I don't expect it to happen, is that we could at this point recommend that the SUP not be approved, and it's very argumentative at this point.

But really what I'm asking is that we specifically prohibit rock crushing on the SUP site throughout the life of the SUP.

CHAIRMAN:

Ms. Kishimoto, for the Commission's information, will you please reiterate what the rock crushing equipment is for? Is it to facilitate the rock from the stockpiling or is it to remove the stockpile?

KISHIMOTO:

As Mr. Johnson testified, rock crushing equipment on or off site maybe necessary as part of the removal of the stockpile materials on the site.

CHAIRMAN: It's to remove the stockpile not to facilitate its stockpile.

KISHIMOTO: No.

CHAIRMAN: This rock crushing equipment, is it going to be on the stockpile area or off the stockpile area?

KISHIMOTO: It's really not certain. It can't be on the site now once the stockpiles are established because there's just no room as Mr. Johnson testified. And insofar as once some of the coral has been removed so that there's space on the site, it's not clear whether or not you necessarily have to put it on the site. There's urban land available off site and we could dump coral into trucks, haul it off site and then crush it and sort it, that sort of thing.

CHAIRMAN: So rock crushing is not required for facilitation of stockpiling nor is it required on the site for the removal of the stockpile.

KISHIMOTO: Not for the bare removal, no. It might facilitate it you know, make it more disposable. But again, it doesn't have to be done on site.

CHAIRMAN: Let me ask you the question. Is it needed or not to remove the stockpile?

KISHIMOTO: Not simply to remove it.

CHAIRMAN: Okay.

KISHIMOTO: You can take it away without crushing it on the site.

CHAIRMAN: Okay. You don't need the rock crushing equipment on the site or to facilitate the stockpile nor to remove it. Is that pretty clear? Any other questions from the Commission? So we're not having any rock crushing equipment on the site for the SUP. It's not that clear.

MURAKAMI: But that's not clear in the evidence.

KANE: Excuse me. It's not clear in the proposed decision and order that we're amending right now. I am moving to make it clear.

CHAIRMAN: That there will not be any rock crushing equipment on the SUP site.

KANE: On the SUP site, that's right, and that there be no provision left that will be attached to the SUP that

will allow the applicant to subsequently go in for a boundary amendment, at some future time the applicant decides that rock crushing equipment would be desirable.

CHAIRMAN: I think that's extraneous. If we're not going to allow any rock crushing equipment, they can do whatever they want later. But, we're saying there will be no rock crushing equipment. That's a Commission finding.

KANE: Fine, as long as it's very clear. I'm not preventing that it be said both positively and negatively.

EVANS: Harriet, are you proposing to delete paragraph 3 of the conclusions of law in that case? Page 4 and it goes over to page 5, that by eliminating the entire paragraph which points out that should rock crushing equipment be desirable at a later date, the applicant will seek a boundary amendment, that by eliminating that paragraph and any comment on later activities requiring rock crushing equipment?

KANE: Absolutely. The only sentence that I can see either in number 2 or number 3 that might say is "Therefore, no change in the issued permit is required." Obviously that means we must come up with a sentence to put ahead of it or there's no point in having the "therefore". But, some kind of language that clearly indicates that rock crushing equipment will not be used on the SUP site.

CHAIRMAN: Mr. Kitagawa?

KITAGAWA: In our first finding, did we mention anything about rock crushing equipment?

EVANS: You mean in our draft?

CHAIRMAN: No, in the one that we issued for the SUP.

KITAGAWA: I'm asking because if there was mention of rock crushing equipment there, we have to address it in this document because it does in response to the judge's response.

KANE: Yes in response to the judge's concern, I think we do.

KITAGAWA: Yeah.

CHAIRMAN: So you're saying if we had no mention of the rock crushing in the findings of fact, our decision was not based on the rock crushing equipment, originally.

- KITAGAWA: No, I only wanted to mention. It's not considered period. But if we recognize rock crushing equipment as part of this SUP, then there needs to be some modification or some mention of that particular use.
- KANE: That's right. The judge says, "If it is found that commercial activity is intended on the stockpiling sites--and the applicant has said that intention is possible, they can't be sure--then the applicant shall be ordered to petition for a land use boundary amendment." The text in this fashion does not say later. It does not. "If not, then the decision and order shall specifically prohibit any commercial activity to be conducted on or from the stockpiling sites." The only commercial activity that could be questioned would be the rock crushing itself. So I think it's directive though to include it at this point, specifically prohibiting rock crushing and grading on the SUP site.
- COUNSEL LIM: On page 19 under subsection 6.c. it states, Campbell Estate contemplates the temporary extension of \$2 million worth of equipment for rock crushing equipment and other improvements on the site in order to facilitate the removal of the dredged coral. I think that's where the judge got the condition about the coral.
- CHAIRMAN: And it was said, Ms. Kishimoto said that rock crushing equipment will not be situated on the SUP site.
- KANE: And in light of the judge's concern over that, I think it's appropriate that we specifically prohibit it in this new document we're preparing right now.
- COUNSEL LIM: What we'll probably do is to issue an amended decision and order in which we would include everything that was in here originally, plus the amended conditions. The judge had added two or three conditions which we had no problems with. We can also add these findings of fact to the decision and whatever else you decide.
- KITAGAWA: I have another question which perhaps we may want to discuss and that is whether or not we feel commercial activity is permitted in an SUP. Apparently the Judge does not feel commercial activity is permitted. I'm not sure that's a correct interpretation.
- COUNSEL LIM: At the hearing on the matter, we argued that commercial activities are probably the only reason for getting an SUP, and all the SUPs have commercial activity of some form or another; that if we're going to maintain that there are no rock crushing equipment or commercial activities going to be on the site in the Barbers Point

case, then that's going to be a moot issue. Our Commission doesn't address that commercial activity is prohibited.

- KITAGAWA: What I have is a bigger issue and that is what do we do about SUPs that come before us in the future?
- KANE: The way I see it then Yuki, is that he is choosing to zero in on what he considers a commercial activity. We are not even--I think we shouldn't even use that word. It's sort of like sidestepping. But then I think that's what you're suggesting too because clearly, commercial activities are carried out on SUPs. As Steve said, there's no other reason to get one.
- KITAGAWA: Yes.
- KANE: But didn't you read the transcript? It clearly really went to the intensity of it, that sort of thing. It wasn't altogether clear to me that he felt one should never do anything commercial.
- CHAIRMAN: You have problems with the Judge's interpretation? I think he's just got a problem with crushers whether industrial, commercial, urban or non-urban. He just doesn't want rock crushing on agricultural land.
- EVANS: I share Yuki's concern that at some future date, if we don't clarify that commercial activity is a permitted use in an SUP, that at some future date this could be used as a precedent to basically change the intent of the SUPs through some sort of case law, not actually amending the statute that set up SUPs.
- CAIRL: But on the same light, couldn't you consider just the trucking out of the coral to be crushed somewhere else, that could be a commercial activity. So even if we say no rock crushing, we still have the commercial activity of removing the fill somewhere else.
- EVANS: Oh, okay.
- CAIRL: We're just preventing one portion of that.
- CHAIRMAN: I think commercial, everybody has a different kind of view of commercial. The judge seems to have it in rock crushing. I think hauling it away is not commercial. I think changing it to some other product on the site is commercial--maybe lime, cement or some other thing. Sale of the concrete--sorry, I mean the lime, coral--they need to get rid of it. Isn't that commercial? They're going to sell it. But does

that require a zone change? I don't think it requires a zone change because on agricultural land they sell. They sell coral or rock. Commercial itself is not an issue. It's the rock crusher. That's the only thing I can see.

KANE: As you read the transcript, when he talks about the rock crusher, if you just substitute for commercial the word industrial, heavy industrial use, I think you could zero in on his concern. He doesn't use that phrase but it's that kind of activity he seems to be concerned about.

CHAIRMAN: Even synonymously.

KITAGAWA: I'm still not satisfied because you can use other terms besides commercial. I guess my point is that if he is interpreting the law that no commercial activity is allowed in an SUP, then I think I have a problem in other petitions that come before us. Because, we're going to have to face that questions when the intended use is a commercial purpose or not.

CHAIRMAN: He has a good point because everytime that comes up, we have to amend our SUP proceeding.

COUNSEL LIM: Well, what I was going to say was because of the way the proceedings have gone so far in this case, whether it's commercial use or not is no longer an issue. So, the judge wouldn't be ruling on it in any event. If he does saying something in his final decision and order such that--I don't think he will--but if he just mentions something like commercial activities will somehow be subject of the SUP site, then I will have to appeal that point.

KITAGAWA: I see your point but if we can work on it basically, based on what you said and still have a reasonable decision.

COUNSEL LIM: I think you can just refer to your comments and the judge can see your comments when the case goes before him.

KITAGAWA: No, I didn't want the final thing to go to court.

CHAIRMAN: You don't want to test it in other words.

KITAGAWA: Not on this case.

COUNSEL LIM: It cannot be tested on this case because as the proceedings have turned out, there will be no commercial activities on the site.

KITAGAWA: On this one the issue is moot.

COUNSEL LIM: Yes.

KITAGAWA: Yes for this one. I think we may have problems in the future.

KANE: I think it can be argued just piling the coral there is a commercial activity. It isn't agriculture. It isn't residential. It isn't preservation.

CAIRL: It's back to the semantic thing again. He doesn't consider trucking it out commercial. I consider trucking it out commercial.

CHAIRMAN: Well, let me give you an example. The Soil and Conservation is constructing a dam in Kahana, Maui on agriculture land. Contractors are coming inside, haul the soil out, rocks, concrete rubble and all these things. Is that commercial activity?

CAIRL: The process of doing it is probably commercial because he's getting money for it but the outcome of it is not going to be.

CHAIRMAN: But he doesn't require a zone change because that's commercial. He's getting paid for it.

MURAKAMI: So what is that?

CAIRL: He's just giving an example.

MURAKAMI: No, I'm just curious. What is the purpose of the dam?

CHAIRMAN: To channel the runoff from taking off topsoil.

MURAKAMI: So it's for a related agricultural use. Can I just say one thing?

CHAIRMAN: No, unless we ask you. MaryAlice?

EVANS: I think I'm coming around to Harriet's point of view. If we then delete all reference to requiring the applicant to seek a state land use boundary change in regarding to rock crushing equipment, then we're not going along with the judge's definition that commercial activity should not be allowed under an SUP as he sees it, assuming he sees rock crushing equipment as the point of which commercial activity commences, even given that he may mean industrial activity or something like that. So if we left paragraph 1 as is and changed paragraph 2, simply to indicate that no rock crushing

equipment has been acquired and none is being acquired at the present time, and take out all the way down from the 3rd sentence starting "The applicant" to the end of that sentence, "boundary change" and then leave in the last sentence "Therefore, no change in the issued permit is required."

PRENTISS: That's what I had thought of doing. What about the first sentence, do you want to leave that in?

KANE: You want to leave in "the proposed rock crushing equipment"?

EVANS: No, I don't think so. I guess the first sentence has to come out too and then take out "however" in the 2nd sentence and just have "no rock crushing equipment has been acquired and none is being acquired at the present time." That addresses the judge's concern for clarification.

KANE: Right. Just "no rock crushing equipment has been acquired and none is being acquired."

EVANS: Right.

KANE: Whatever "at the present time" means, "therefore, no change in the issued permit is required" as long as the issued permit doesn't make it possible to use it.

CHAIRMAN: Well, let's not delve into more. Are you trying to prevent any other situation from occurring?

KANE: No we're still clarifying how we're going to say--

CHAIRMAN: Okay, if you did it like this, clear, addressed, forget it and that's it.

EVANS: Do we need to have something under paragraph 3 because he indicated there was some concern? What's the 3rd issue he needed clarification on? Oh, if it is found that commercial activity is intended on the stockpiling sites.

CHAIRMAN: No it's not. Our conclusion is it's not.

EVANS: No, no. We're back on page 3, paragraph c. We do have to address that. We get right back into us versus the judge on commercial activity.

KANE: We can avoid it by saying the permit prohibits rock crushing.

EVANS: As opposed to commercial activity; just rock crushing.

KANE: Just rock crushing.

CHAIRMAN: The permit does not allow for rock crushing.

EVANS: All right.

COUNSEL LIM: Are you talking about page 3, quotes from the judge's order?

EVANS: No, no. I was just referring to that in terms of paragraph 3 under the conclusions of law. So under paragraph 3 we--oh, okay. We just need paragraphs 1 and 2 as amended.

KANE: Eliminate paragraph 2.

EVANS: Eliminate paragraph 3.

KITAGAWA: You'll also eliminate 2.c.?

EVANS: No. Steve has indicated that we don't have to modify that because it's simply a quote from the judge's order.

KANE: You're looking at a different one.

EVANS: Oh, I'm sorry.

KANE: Page 4 of the findings, where it mentions about the testimony. All it says is that's what we heard. So now here we're saying that's what we heard but--

EVANS: Oh, you're right. Could we substitute under that 2.c., at the present time rock crushing activity is not intended on the stockpiling site rather than commercial activity?

KANE: It would be clearer. That's a good idea.

EVANS: And put rock crushing.

KANE: Yeah, we'd better stick with that.

EVANS: The paragraph seems to read okay with that change.

KANE: That'll help eliminate any confusion.

KITAGAWA: Will someone read paragraph 2?

KANE: As amended?

EVANS: As amended?

KITAGAWA: Yes.

EVANS: No rock crushing equipment has been acquired and none is being acquired at the present time. Therefore, no change in the issued permit is required.

KANE: You can leave out "at the present time." That's the intent of the word "being".

CHAIRMAN: Ms. Kishimoto, is that a fact?

KISHIMOTO: Pardon?

CHAIRMAN: No rock crushing has been acquired at the present time?

KISHIMOTO: That's the testimony of Mr. Johnson, yes.

KANE: Please leave out "at the present time". Present tense verbs mean at the present time. That's why they're present tense. I'd appreciate it.

EVANS: Mr. Chairman, is it in order at this time to propose an amendment to the motion?

KANE: Wait. The last sentence, remember that part you read does mention the rock crushing so I think we just need to take that out. So that paragraph 2 is just that one sentence, "no rock crushing equipment has been acquired and none is being acquired."

CHAIRMAN: Paragraph 3?

EVANS: Is eliminated entirely.

COUNSEL LIM: Paragraph 2 is saying, no rock crushing (inaudible). That's the first sentence. Sentence No. 2, maybe you could say that no permits are required nor--

KANE: This is why we need to say no rock crushing equipment shall be placed.

EVANS: Shall be placed, yes. We don't want to prohibit Campbell Estate from acquiring it for someplace else, which we couldn't do anyway.

KANE: So now paragraph 2 reads, no rock crushing equipment shall be placed on the SUP site. No rock crushing equipment has been acquired and none is being acquired. Okay?

EVANS: Yes.

KANE: Is that okay now with you Steve?

COUNSEL LIM: What we'll be doing is Chuck and I will be working on the original SUP, and adding what the Commission has added. We'll modify whatever else we need to write the decision and order.

CAIRL: No rock crushing is allowed on the SUP site.

CHAIRMAN: No, that's not what I'm saying. I'm saying there will not be any rock crushing equipment on the site. I didn't say it's not allowed. My position is it's not going to be done. As far as I'm concerned, they can do rock crushing if they want to.

KANE: No.

CAIRL: That's not what we're saying.

CHAIRMAN: The question was there is going to be rock crushing.

KANE: That's a finding but we're getting with the conclusions right now, Leslie.

CHAIRMAN: My conclusion is I'm not going to say that it's not allowed, an allowable use.

KANE: It says no rock crushing equipment shall be placed on the site.

CHAIRMAN: Well, I won't go for that.

KANE: Well, you don't have to vote for it but that's what we just did.

COUNSEL LIM: That's not conditioning so don't worry about it.

CHAIRMAN: The word allow, it's no rock crushing equipment is not-- I go with that.

KANE: Do you want to vote on each of these changes?

CHAIRMAN: Why don't we settle everything first. Is there anything more?

KANE: Well one other thing, you might want to add. One of the judge's concerns was if animal husbandry is a permitted use, what is our competent preponderance of evidence. So what we've said that raising of animals

is physically possible, animal husbandry is not commercially feasible. We can strengthen the reason by adding animal husbandry is not commercially feasible and sufficient potable water is not available.

CHAIRMAN: How about taking out commercially for economically?

KANE: Okay. It's a small change and it doesn't change the substance of the crust of the whole thing. It just adds one more piece of evidence from the testimony we received.

CHAIRMAN: It seems we have a problem with commercial.

KANE: Well, I wasn't talking about commercial. I'm talking about adding the water, that there's not sufficient potable water right now. This just makes our decision a little more supportive.

CHAIRMAN: You have anything MaryAlice?

EVANS: I have no changes other than what we've already discussed. I'm just wondering if and when it would be appropriate to make these changes into the form of an amendment to the main motion.

CHAIRMAN: Yeah, we're through with the language. Any other discussion? If not, a decision is in order to make the amending motion line by line.

KANE: No, I don't want to do it line by line. It was already understood that Chuck and Steve will come up with the wording so that it's in conformity, and makes sense of it in our SUP.

I would like to move, given the sense of the changes to the proposed findings, decision and order.

CHAIRMAN: Subject to review of the Planning Commission.

KANE: Exactly. My motion would be that the original motion to accept be amended by including reference to no rock crushing equipment being placed on the site, and the addition of insufficient potable water being added as one of the reasons why animal husbandry is not economically feasible on the site. Those are the two changes.

EVANS: And deletion of paragraph 3.

KANE: And deletion of paragraph 3.

CHAIRMAN: What was the first one about rock crushing?

KANE: The motion is to amend the original motion as relating to the discussion about no rock crushing equipment

being placed on the SUP site, the wording to be left up to Corporation Counsel and the Executive Secretary, subject to review of the Commission. Why don't we do that one, do them separately.

CHAIRMAN: Those in favor of this motion, raise your right hand. The motion is carried.

VOTE--

AYES: CAIRL, EVANS, KANE, KELIIKOA, KITAGAWA
NOES: NONE
ABSENT: NAKATANI, PACHECO
ABSTAINED: HIRAHARA

* * * * *

KANE: The second motion is that paragraph 1 under conclusions of law be changed by substituting economically for commercially, and adding sufficient potable water is not available to the first sentence.

EVANS: Second.

CHAIRMAN: Harriet, where did we get that information from? Mr. Johnson?

KANE: I can't remember specifically but they testified several times--Mr. Larsen, Mr. Johnson.

CHAIRMAN: Diane?

KISHIMOTO: Mr. Larsen stated that a lot of water's needed. Mr. Nance and Mr. Johnson testified that there's no water.

CHAIRMAN: The Board of Water?

KANE: I'm not talking about the Board of Water Supply in my motion, Mr. Chairman.

CHAIRMAN: I want to make it sure.

CAIRL: Diane said that today while she was talking. It was one of the things that I wrote down.

CHAIRMAN: What was that Commissioner Cairl?

CAIRL: Diane just said that today when she was testifying earlier about the unavailability of water.

CHAIRMAN: And you were saying what?

CAIRL: And it was one of the things I wrote down so it wasn't something that we have to worry about having happen. She just got through saying that 45 minutes ago.

KISHIMOTO: I have citations to the transcripts in my written comments if you want it, on the issue of water.

CHAIRMAN: Did we vote on this? Those in favor of the motion, raise your right hand. The motion is carried.

VOTE--

AYES: CAIRL, EVANS, KANE, KELIIKOA, KITAGAWA
NOES: NONE
ABSENT: NAKATANI, PACHECO
ABSTAINED: HIRAHARA

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CHAIRMAN: And the 3rd motion?

KANE: The 3rd motion is the deletion of paragraph 3 under the conclusions of law.

EVANS: Second.

CHAIRMAN: Discussion? Those in favor of the motion, raise your right hand. The motion is carried.

VOTE--

AYES: CAIRL, EVANS, KANE, KELIIKOA, KITAGAWA
NOES: NONE
ABSENT: NAKATANI, PACHECO
ABSTAINED: HIRAHARA

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CHAIRMAN: Is that it?

KANE: The original motion.

CHAIRMAN: Those in favor of the original motion, as amended, raise your right hand. The motion is carried.

VOTE--

AYES: CAIRL, EVANS, KANE, KELIIKOA, KITAGAWA
NOES: NONE
ABSENT: NAKATANI, PACHECO
ABSTAINED: HIRAHARA

ADJOURNMENT:

The meeting adjourned at 3:30 p.m.

Respectfully submitted,

Henrietta B. Lyman
Henrietta B. Lyman
Secretary-Reporter

1. Incorporate Commissioner Kane's changes (see copy attached) which were previously recommended in the PUC and Ewa Annual Review of Development Plans.
2. Page A-28, Section 14.2.a. - Delete number 1 and renumber accordingly.
3. Accept Chief Planning Officer's recommendation to his previous recommendation to relocate subsection 5.2b concerning fragile coastlines to Section 4, making it a new Section 4.3. Renumber Section 4.3 accordingly.
4. Section 12d, retain the words "and considered pursuant to the annual review".

AYES: CAIRL, EVANS, HIRAHARA, KANE, KITAGAWA, NAKATANI,
PACHECO, YOSHIDA
ABSENT: KELIIKOA

5. Delete Section 10. Standards and Controls Related to Conditions Along Major Highways.

The motion to delete this section was made by Mr. Yoshida, seconded by Mr. Kitagawa and carried. Speaking for his motion, Mr. Yoshida stated: "I personally feel the overall concept of having control is good, but I feel this is too early in the process to put it into any kind of document. I don't know how the CPO can come before us with this kind of specific standards for traffic maximums for these specific areas. The total idea is good but it requires much more research before it is put into a formal stage."

AYES: HIRAHARA, KANE, KITAGAWA, NAKATANI, PACHECO, YOSHIDA
NOES: CAIRL, EVANS
ABSENT: KELIIKOA

STATE SPECIAL USE PERMIT
(STOCKPILING OF DREDGED
CORAL)

EWA

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

The rehearing held December 7, 1982 was continued to January 11, 1983 for examination of witnesses. Rehearing of January 11 was rescheduled to February 8 by agreement of both parties. Examination of witnesses and cross examination has been completed. The Commission will prepare

proposed Findings of Fact, Decision and Order for distribution to the parties.

The Findings are being prepared by Counsel Lim and Mr. Prentiss.

This matter was deferred to the next meeting on March 8, 1983.

ADJOURNMENT:

The meeting adjourned at 3:00 p.m.

Respectfully submitted,

Henrietta B. Lyman
Henrietta B. Lyman
Secretary-Reporter

CHAIRMAN: Any further questions of Mr. Wanket? If not, we'll take a recess.

When the Commission reconvened, the matter was deferred to the next meeting for the following information:

1. Field trip to the site.
2. DLU to obtain information from the Real Estate Commission; DLNR Land Board Minutes of this item; Land Use Commission proceedings concerning this parcel.
3. Planning Commission findings and minutes re DP amendment on this matter.

STATE SPECIAL USE PERMIT
PROPOSED FINDINGS OF FACT
FOR EWA STATE SPECIAL USE
PERMIT (CORAL DREDGING
OF DEEP DRAFT HARBOR)
(81/SUP-6 EY)

The Proposed Findings of Fact were distributed and discussed.

Questions raised:

1. Is judge's interpretation of the intent of the SUP prohibition against Commercial activity? Is the Commission extending that in accepting it by incorporating His Order into PC's Conclusions of Law?
2. Judge's interpretation seems to be SUP does not allow commercial activity. Applicant should seek boundary change. What is commercial activity? PC believes commercial activity is an appropriate use in SUP area. PC feels judge may not have clear understanding of SUPs.
3. PC should inform judge of the history of SUPs, purpose of SUPs, etc. to make it very clear that commercial activity on ag. lands with an SUP does not require a boundary amendment. He may be pleased to know that. Is there a way to tell him, purely informative without being offensive.

ADJOURNMENT:

The meeting adjourned at 3:45 p.m.

Respectfully submitted,



Henrietta B. Lyman
Secretary-Reporter