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SCWC-30006

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Application

of

TRUSTEES UNDER THE WILL OF THE  
ESTATE OF JAMES CAMPBELL,  
DECEASED

to register and confirm title to land situate at  
Kahuku, District of Koolauloa, City and  
County of Honolulu, State of Hawaii

APPLICATION NO. 1095  
L.C. CASE NO. 08-1-0054  
LAND COURT

HONORABLE GARY W.B. CHANG,  
JUDGE

INTERMEDIATE COURT OF APPEALS  
ICA NO. 30006

HONORABLE CRAIG H. NAKAMURA  
Chief Judge

HONORABLE DANIEL R. FOLEY  
Associate Judge

HONORABLE JEANNETTE H.  
CASTAGNETTI  
Circuit Judge in place of Recused Associate  
Judges

**RESPONDENT-APPELLEE JAMES CAMPBELL COMPANY LLC'S RESPONSE  
TO APPLICATION FOR WRIT OF CERTIORARI BY THE STATE OF HAWAI'I**

**APPENDIX A**  
**CERTIFICATE OF SERVICE**

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**RESPONDENT-APPELLEE JAMES CAMPBELL COMPANY LLC'S RESPONSE  
TO APPLICATION FOR WRIT OF CERTIORARI BY THE STATE OF HAWAI'I**

Respondent-Appellee JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company ("James Campbell Company LLC") submits this Response to the State of Hawai'i's (the "State") Application for Writ of Certiorari filed October 4, 2013 as JEFS Dkt. #1<sup>1</sup> ("Application"), under HRAP Rule 40.1(e). The State challenges the Opinion of Intermediate Court of Appeals ("ICA") dated June 13, 2013 in In the Matter of the Application of THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, to register and confirm title to land situated at Kahuku, District of Ko'olauloa, City and County of Honolulu, State of Hawai'i, No. 30006, JEFS 30006 Dkt. #87, as corrected, JEFS 30006 Dkt. #91 (collectively, the "Opinion").

**I. INTRODUCTION**

The Court should reject the State's Application. This is a simple Land Court subdivision case. The Opinion is limited to the facts and circumstances of this case, which are not in dispute. The Certificate of Title for the Subject Property,<sup>2</sup> issued by the Land Court to James Campbell Company LLC's predecessor in interest over seventy years ago, contained no reservation of mineral or metallic mines in favor of the Territory of Hawai'i (the "Territory"). The Territory was a party to the original Land Court registration proceedings and failed to claim ownership of any mineral or metallic mines. The Territory did not appeal the Land Court's Original Decision or Original Decree, and James Campbell Company LLC, its predecessor, and other persons, have relied on the express terms of the Certificate of Title issued by the Land Court for over seventy years. Within this factual framework, the State fails to identify (i) any grave error of law by the ICA; or (ii) inconsistencies in the Opinion with prior decisions of this Court, the federal courts, or the ICA. *See* HRS § 602-59.

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<sup>1</sup> Citations to the record on appeal are abbreviated as follows: "JEFS Dkt. \_\_" when referring to documents filed electronically as part of the Application for Writ of Certiorari; and "JEFS 30006 Dkt. \_\_" when referring to documents filed electronically as part of the proceeding at the ICA. Citations to "ROA \_\_" refer to the Record on Appeal before the ICA, *i.e.*, the proceedings in Land Court. "JEFS" refers to the Judiciary Electronic Filing and Service System.

<sup>2</sup> The "Subject Property" was originally Lot 30 (less erosion), shown on Map 4, and Lot 1198, shown on Map 157, which was consolidated and resubdivided in this Land Court Case, into Lot 1218 and Lot 1219, shown on Map 176, all maps filed with Land Court Application No. 1095.

## **II. COUNTER STATEMENT OF QUESTIONS PRESENTED**

The real question presented by the State's Application is whether the Territory relinquished its reservation of mineral and metallic mines in the Subject Property when, in 1937, it appeared and affirmatively raised its interests in Land Court Application No. 1095 without claiming a reservation of mineral or metallic mines, and whether the State's failure to appeal the Land Court's Original Decision and Original Decree which determined that the land was free and clear of a mineral or metallic reservation, should be excused, in disregard of the Land Court statute, case law and the reasonable expectations of *bona fide* purchasers who took title for value and in good faith. *See* HRS § 501-82.

The question is not whether the State's purported reservation of mineral or metallic mines includes geothermal rights, nor is it whether the Kamehameha III Deed includes an implied reservation of mineral or metallic mines.

## **III. COUNTER STATEMENT OF THE CASE**

The facts in this case are not disputed and are well presented by the ICA. JEFS 30006 Dkt. #87, at 1-8. For more than seventy years the Subject Property has been held free and clear of a reservation of mineral and metallic mines in favor of the government. Ironically, the State insures title of all land registered in Land Court, including the Subject Property, title to which the State attacks in this proceeding. HRS § 501-212.

This appeal had its genesis as a simple subdivision matter. The one and only reason the State had a right to participate in the subdivision is because a portion of the approximately 270-acre Subject Property is along the shoreline and had experienced erosion.<sup>3</sup> Accordingly, the State would not be a party to actions to subdivide other portions of the 15,000 acres that were registered under Land Court Application No. 1065, although those lands similarly are held free of any mineral or metallic reservation in favor of the State. The State fails to acknowledge that it has no procedural mechanism to impose the relief it seeks in this case on the remaining 14,732

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<sup>3</sup> On July 2, 2008, James Campbell Company LLC and the two Co-Appellees commenced this case by filing a petition in Land Court (L.C. Case No. 08-0054) to consolidate and re-subdivide the Subject Property. Op., JEFS 30006 Dkt. #87, at 5. The Subject Property abuts the sea, and as required by HRS §§ 501-42, 501-85 and Land Court Rule 15, the State was named a party. Respondent's Answering Br., JEFS 30006 Dkt. #25, at 6. *Contra* Land Court Rule 15 (petitions for subdivisions not involving accretion or erosion are not served on the Attorney General).

acres of land under Application No. 1065. The State also fails to acknowledge the mischief that would result if this Court grants the State the right to reopen hundreds of other Land Court registrations in order to impose its alleged mineral and metallic reservation.

**A. CURRENT LAND COURT PROCEEDINGS**

In August, 2006, the Trustees under the Will and of the Estate of James Campbell, Deceased (“Trustees”), the original Applicant in Land Court Application No. 1065, holding Original Certificate of Title No. 17,854 issued to their predecessor Trustees in 1938, sold for value an undivided interest in the Subject Property to Co-Appellee Continental Pacific, LLC, a good faith purchaser. Continental Pacific, LLC in turn sold an undivided interest in the Subject Property to Co-Appellee James C. Reynolds, Inc., another good faith purchaser who took title for value.<sup>4</sup> Original Certificate of Title No. 17,854 did not contain a reservation of mineral or metallic mines in favor of the government. As such, the Trustees relied on the express contents of Original Certificate of Title No. 17,854—which had remained unchanged for nearly seventy years—when giving a deed to Continental Pacific, LLC free and clear of a reservation of mineral or metallic mines in favor of the State. Respondent’s Answering Br., JEFS 30006 Dkt. #25, at 5-6.

James Campbell Company LLC acquired all of the Trustees’ remaining interest in the Subject Property in 2007 upon termination of the Estate of James Campbell. Again, in reliance on the contents of Original Certificate of Title No. 17,854, the deed given by the Trustees to James Campbell Company LLC did not contain a reservation of mineral or metallic mines in favor of the State. Respondent’s Answering Br., JEFS 30006 Dkt. #25, at 5-6.

In anticipation of completing the subdivision of the Subject Property, James Campbell Company LLC entered into an agreement with the United States Fish and Wildlife Service to sell it a portion of the Subject Property for inclusion in the James Campbell National Wildlife Refuge. This purchase and sale agreement has no reservation of mineral or metallic mines in favor of the State in the agreed-upon list of encumbrances, again because the Certificate of Title issued to James Campbell Company LLC does not contain such a reservation. Respondent’s Answering Br., JEFS 30006 Dkt. #25, at 5-6; ROA 741.

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<sup>4</sup> The undersigned counsel appears for James Campbell Company LLC only. Co-Appellees, James C. Reynolds, Inc. and Continental Pacific, LLC have separate counsel.

James Campbell Company LLC has not been able to close this transaction with the United States Fish and Wildlife Service due to the State's appeal of the 2009 Land Court Order that subdivided the Subject Property. For more than four years James Campbell Company LLC, Co-Appellees and the U.S. Fish and Wildlife Service have been in limbo while the State has attempted to re-open a matter that was fully determined in 1938 and never appealed. If any party has experienced the "manifest injustice" claimed by the State, that party is James Campbell Company LLC and the parties with whom it contracted for the purchase and sale of portions of the Subject Property.

On February 12, 2009, James Campbell Company LLC and Co-Appellees filed an Amended Petition in Land Court (the "**Amended Petition**") seeking to finalize the consolidation and resubdivision of the Subject Property. Op., JEFS 30006 Dkt. #87, at 5. The State filed an answer to the Amended Petition, and sought, among other things, to have the Land Court recognize and encumber title to the Subject Property with the following claimed interest: "The State owns all mineral and metallic mines of every kind or description on the property, including geothermal rights, and the right to remove the same[.]" Op., JEFS 30006 Dkt. #87, at 6.

As stated in the Opinion, the Land Court held in James Campbell Company LLC's favor and denied the State's request to burden title to the Subject Property with a reservation of mineral and metallic mines in favor of the State. Op., JEFS 30006 Dkt. #87, at 7.

The Land Court granted the Amended Petition and ordered the entry of a Decree in accord with the Land Court's Findings of Fact, Decision and Order (Map 176) (the "**D&O**"). That Decree was filed in the Land Court on July 16, 2009. Op., JEFS 30006 Dkt #87, at 7. The D&O (ROA 990-1002), which is incorporated into the Land Court Order in L.C. Case No. 08-1-0054, was recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Order No. 179811, on August 5, 2009. A certified copy of Land Court Order No. 179811 is attached as **Appendix A** for ease of reference.

The State appealed the D&O and the Decree issued in this case (JEFS 30006, Dkt. #1), resulting in the ICA's Opinion and, now, the State's Application to this Court. JEFS, Dkt. #1.

## **B. LAND COURT PROCEEDINGS IN 1934-1938**

Over seventy years ago, in 1934, under the then-applicable Land Court Registration Statute the Trustees filed Application No. 1095 with the Land Court to register title to approximately 15,000 acres of land located on the North Shore of the Island of O'ahu, of which

the Subject Property is a small portion. Respondent's Answering Br., JEFS 30006 Dkt. #25, at 2. The Trustees had obtained the Subject Property through four separate sources of title: two Land Commission Awards with Royal Patents, one Royal Patent Grant, and one Kamehameha III Deed. The Kamehameha III Deed did not contain an express reservation of mineral or metallic mines. Op., JEFS 30006 Dkt. #87, at 4. The other three conveyances contained an express reservation of mineral or metallic mines in favor of the Hawaiian Government.

The Territory was a party to the 1934 Land Court registration proceeding. In 1937, the Territory filed an Answer and Claim asserting claims of title to some of the land proposed for registration, as well as certain utility and road easements over the Trustees' lands to access public highways. The Territory's Answer and Claim did not include any claim of ownership of mineral or metallic mines. Op., JEFS 30006 Dkt. #87, at 4-5.

On November 30, 1937, the Land Court issued its decision (the "**Original Decision**") in Application No. 1095. On January 24, 1938, the Land Court issued its original decree (the "**Original Decree**") in Application No. 1095, and from this Original Decree, the original certificate of title (the "**Original Certificate of Title**") for the registered land was issued. Op., JEFS 30006 Dkt. #87, at 5. The list of encumbrances in the Original Decree and in the Original Certificate of Title does not contain a reservation of mineral or metallic mines in favor of the government. The Territory did not appeal from the Original Decision or the Original Decree. Op., JEFS 30006 Dkt. #87, at 5.

#### **IV. ARGUMENT**

##### **A. THE INTERMEDIATE COURT OF APPEALS CORRECTLY DETERMINED THE REAL ISSUES IN THIS PROCEEDING**

**QUESTION 1.** Could and did the Territory relinquish its reservation of mineral or metallic mines in the Subject Property when it appeared and affirmatively raised its interests in Land Court Application No. 1095 without claiming a reservation of mineral or metallic mines, resulting in the Original Decision, the Original Decree and the Original Certificate of Title being issued free and clear of such reservation?

For the reasons stated in the Opinion and herein, the answer clearly is yes. The ICA held that "the Original Decree and the Original Certificate of Title extinguished the express government reservations of mineral and metallic mines" set forth in three of the four sources of title, and "also extinguished any implicit reservation in the Kamehameha III Deed." OP., JEFS 20006 Dkt. #87, at 8. That holding is entirely consistent with prior decisions of this Court.

In *Waikiki Malia Hotel, Inc. v. Kinkai Properties Ltd. Partnership*, 75 Hawai‘i 370, 391, 862 P.2d 1048, 1060 (1993), this Court stated: “[t]he fundamental intent of HRS § 501-82 is to preserve the integrity of titles.” In *Honolulu Memorial Park, Inc. v. City and County of Honolulu*, 50 Haw. 189, 436 P.2d 207 (1967), this Court stated:

[T]o allow the assertion of unregistered rights, be they legal or equitable, would be to subvert the obvious intent and purpose of the title registration system. The integrity of titles can only be preserved if anyone dealing with registered property is assured that the only rights or claims of which he need take notice are those which are registered in the prescribed manner. If for that reason alone, the provisions of the title registration statute must be allowed to prevail over any contravening doctrine of the common law.

*Id.* at 193, 436 P.2d at 210 (emphasis added).

This Court has held that even if a Land Court decision and decree may be in error, the State, like any other party, is bound by the Land Court’s decision, if the State fails to appeal such decision. In *State v. Magoon*, 75 Hawai‘i 164, 858 P.2d 712 (1993), this Court stated:

[E]ven assuming that *In re Kelley* (1768) determined that the land court’s decision and decree in 1767 was erroneously decided, the State’s failure to appeal 1767 precludes it from relitigating that case. Merely because the litigant in this case is the State of Hawaii, which claims on behalf of the public the enjoyment of the parcels in dispute, we cannot disregard the applicable law. We are compelled to hold the State accountable for its failure to appeal in the same manner and to the same extent as private individuals under like circumstances.

*Id.* at 189, 858 P.2d 724 (emphases added). Moreover, as the ICA correctly points out in its Opinion, under Revised Laws of Hawaii § 5037 (1935) (applicable at the time of registration), “every decree of registration of absolute title shall bind the land . . . [and] shall be conclusive upon and against all persons, including the Territory[.]” Op., JEFS 30006 Dkt. 87 at 9. See also HRS § 501-71 (“Every decree of registration of absolute title shall bind the land . . . [and] shall be conclusive upon and against all persons, including the State[.]”).

In Land Court Application No. 1095, the Territory appeared as a necessary party and affirmatively asserted its claims of title and to certain other real property interests, but did not claim ownership of any mineral or metallic mines. After issuance of the Original Decision in 1937, and the Original Decree, and the Original Certificate of Title in 1938 —none of which gave the State a reservation of mineral or metallic mines —the State failed to appeal the Original Decision and Original Decree. Op., JEFS 30006 Dkt. #87, at 4-5. The State argues that the Territory’s failure to assert its reservation of mineral or metallic mines in these original

proceedings in Land Court, and the Territory's failure to timely appeal the Land Court's Original Decision is "regrettable." Application, JEFS Dkt. 1, at 9. Such failure is "regrettable" because it is fatal to the State's current argument. That is the holding of *Magoon*. See *Magoon* at 189-90, 858 P.2d at 724-25.

The State argues that the ICA's reliance on this Court's opinions in *Waikiki Malia Hotel* and *Honolulu Memorial Park* was a grave error because (i) with respect to *Waikiki Malia Hotel*, this Court held that an unregistered covenant was unenforceable; and (ii) with respect to *Honolulu Memorial Park*, this Court held that an unregistered easement was unenforceable. The State tries to claim that a reservation of mineral or metallic mines is neither a covenant nor easement, and so those cases are distinguishable. The State overstates its position.

This Court's opinion in *Waikiki Malia Hotel*, discussed the effect of an "unregistered encumbrance." *Waikiki Malia Hotel*, 75 Hawai'i at 391-92, 436 P.2d at 1060-61. This Court's opinion in *Honolulu Memorial Park*, also speaks in terms of an "unregistered encumbrance[.]" *Honolulu Memorial Park*, 50 Haw. at 192, 436 P.2d at 209. The State's attempt to distinguish those cases on the basis that an encumbrance in the nature of a reservation is fundamentally different than an encumbrance that is either a covenant or an easement is silly at best and disingenuous at worst. At oral argument at the ICA "the State conceded that the government's reservation of mineral or metallic mines constitutes an encumbrance on the property[.]" Op., JEFS 30006 Dkt. 87, at 14. The ICA did not gravely err in relying upon those binding decisions of this Court, and on the State's own characterization of the nature of its mineral and metallic reservations, to deny the State's claim in this case.

#### 1. The State Failed To Carry Its Burden

The State attempts to create a grave error where none exists. The State asserts that "[m]inerals and metallic mines were never part of the 'bundle of sticks' that was awarded to any original landowner[.]" Application, JEFS Dkt. #1, at 7-8. It is factually undisputed that the Royal Patents and the Royal Patent Grant originally contained a reservation of mineral or metallic mines in favor of the government. Below at the Land Court, again at the ICA, and here with this Court, the State continues to argue that Land Court registration cannot grant the applicant any greater title than it already had. That ignores the true question, which is: can the Territory's reservation of mineral or metallic mines be extinguished by Land Court registration? Based upon the facts and unique circumstances of this case, the ICA correctly said yes.

The Trustees did not gain a reservation of mineral or metallic mines through the Land Court registration process. In 1938 the Territory lost its pre-existing reservation of mineral or metallic mines upon issuance of the Original Decree, and due to its failure to timely appeal the Original Decision and the Original Decree. The ICA correctly analyzed and decided this issue.

The State also makes baseless arguments that the issuance of the Original Decision and the Original Decree had the effect of an illegal adverse possession against the State with respect to its reservation of mineral or metallic mines (Application, JEFS Dkt. #1, at 8), and that in an adverse possession action the plaintiff has the burden of proof to prove its title. The State's argument has no bearing on Land Court registration proceedings, which are explicitly binding upon the State. *See HRS § 501-71.*

The State fails to cite to correct law of this Court stating the respective burdens of proof of an applicant and the State (or Territory) in a Land Court registration proceeding. Instead, the State directs this Court to cases concerning quiet title and adverse possession. Application, JEFS Dkt. #1, at 8. The registration of land under the Torrens system is made under the exclusive and original jurisdiction of the Land Court, and subject to the unique statutory scheme promulgated for that purposes. The cases cited by the State (*Hustace v Jones*, 2 Haw. App. 234, 629 P.2d 1151 (1981), *Territory of Hawaii v. Puahi*, 18 Haw. 649 (Haw. Terr. 1908)), are inapplicable because the Land Court statute expressly provides that a Land Court decree of registration "shall be conclusive upon and against all persons, including the State[.]" HRS § 501-71.

The Trustees had the burden of proving that they owned fee simple interest in the lands subject to Land Court Application No. 1095, including the Subject Property. *In re State of Hawaii*, 50 Haw. 507, 444 P.2d 909 (1968); *Hana Ranch, Inc. v. Kumukahi*, 6 Haw. App. 341, 720 P.2d 1023 (1986). However, once the Territory was served and appeared, the burden of proving its interests, including any reservation of mineral or metallic mines in the Subject Property, shifted to the Territory. *See Magoon*, 75 Hawai'i at 189-90, 858 P.2d at 724-25.

The State does not, because it cannot, dispute that in the Territory's Answer and Claim in 1937, it failed to claim a reservation of mineral or metallic mines in its favor affecting the Subject Property. The ICA correctly held that the Original Decree therefore extinguished these reserved rights. Op., JEFS 30006 Dkt. #87 at 18-19. This was not a grave error.

## 2. The State Failed to Appeal the Original Decision and Original Decree

If the Territory had made the same claims in 1937, in response to the original Land Court

registration, that it made in this 2009 subdivision matter, the outcome might have been different. Although factually distinguishable, this Court’s opinion in *Application of Robinson*, 49 Haw. 429, 421 P.2d 570 (1966), is illustrative. There, the Land Court held (for factual reasons not relevant here) that a reservation of mineral or metallic mines in favor of the State did not exist. On the State’s timely appeal of that issue, this Court held that, in the factual circumstances of that case, the Land Court erred and should have included the reservation of mineral or metallic mines in favor of the State as an encumbrance on the applicant’s title.

In this case, unlike in *Application of Robinson*, the Territory failed to make a claim for a mineral and metallic reservation, although the Territory quite ably pursued claims for other interests in the land subject to registration. The Territory also failed to appeal the Original Decision and Original Decree. Suddenly, more than 70 years later, in a proceeding that affects less than 2 percent of the land subject to Land Court Application No. 1095, the State tries for a second bite at the apple. The proper time to challenge the Original Decision and Original Decree has long passed.<sup>5</sup> The State therefore is precluded from raising its claims now—in this simple subdivision case—for reasons stated in the Opinion.

### 3. Public Trust Is Not At Issue

Finally, in footnote 2 of the Application (Application, JEFS Dkt. #1, at 2), the State tries to bait this Court with a public trust argument by stating that “[a]ll public natural resources [including minerals and energy sources] are held in trust by the State for the benefit of the people.” At oral argument at the ICA “the State conceded that the government’s reservation of mineral or metallic mines constitutes an encumbrance on the property, and more importantly, that the government’s reservation of mineral or metallic mines is an alienable right, which the State could convey, relinquish, or waive at its option.” Op., JEFS 30006 Dkt. 87, at 14. In addition, other than this footnote, the State failed to argue the public trust doctrine as a basis for its claim of a reservation of mineral or metallic mines, either at the Land Court or on appeal at the ICA, and is therefore precluded from raising it with this Court. *See, e.g., Blaisdell v. Dep’t of*

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<sup>5</sup> *See* HRS § 501-71 (“The decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding for reversing judgments or decrees, except that any person deprived of land or of any estate or interest therein by a decree of registration obtained by fraud may file a petition for review within one year after the entry of the decree, unless an innocent purchaser for value has acquired an interest.”) (emphasis added).

*Public Safety*, 119 Hawai‘i 275, 282, 196 P.3d 277, 284 (2008) (questions raised for the first time in application for certiorari waived, when not raised in trial pleadings or in briefs on appeal); *Arquette v. State of Hawai‘i*, 128 Hawai‘i 423, 442 n.24, 290 P.3d 493, 512 n.24 (2012) (arguments not raised at trial are waived on appeal). No public trust issue exists in this case.

**B. QUESTIONS CORRECTLY LEFT FOR ANOTHER DAY**

The questions below are what the State seems determined to get this Court—or any court—to decide. Questions 2 and 3 below were not decided by the Land Court in its D&O, and therefore the record in this case is devoid of any facts upon which either the ICA or this Court could or should decide these questions.

**QUESTION 2. Does the State’s purported reservation of mineral or metallic mines, include geothermal rights?**

The State in its pleadings at Land Court, at the ICA, and again in its Application with this Court (Application, JEFS Dkt. #1, at 1, 12) continues to argue that a reservation of mineral or metallic mines “includes geothermal rights[.]” This abstract proposition is wholly unrelated to the subdivision sought by James Campbell Company LLC and the Co-Appellees. This question was not addressed in the Land Court’s D&O (ROA 990-1002), and very possibly could not be addressed by the Land Court because such a determination is arguably outside the scope of the limited jurisdiction given to the Land Court by HRS Chapter 501. *In re Application of Campbell*, 66 Haw. 354, 358, 662 P.2d 206, 209 (1983) (“The Land Court is a court of limited jurisdiction created by the legislature for the special purpose of carrying into effect the Torrens title system of land registration.”).

Citing this Court’s opinion in *Wong v. Bd. of Regents, Univ. of Hawaii*, 62 Haw. 391, 394-395, 616 P.2d 201, 204 (1980), the ICA correctly chose not to decide this abstract question that is not directly in controversy. Op., JEFS 30006 Dkt. #87, at 15, n.10. Specifically, the ICA states:

Because we conclude that the State does not have a reserved ownership interest in mineral and metallic mines on the Subject Property, we need not reach the State’s contention that its claimed reservation of mineral and metallic mines includes geothermal rights. Indeed, we would not reach this issue even if we had come to the opposite conclusion regarding the State’s ownership of mineral and metallic mines on the Subject Property. There is no indication that the Subject Property contains any known geothermal resources. Thus, with respect to the instant Land Court proceeding, the issue of whether a reservation of mineral and metallic mines includes geothermal rights is an abstract question that is not directly in

controversy. Accordingly, this case is not a proper vehicle to decide that issue. Op., JEFS 30006 Dkt. 87, at 15.

The correct venue for a determination of this question is an actual case or controversy involving the State's assertion of its reservation of mineral or metallic mines, including geothermal rights, in the Circuit Court. This Court recently rejected a request for clarification of a similarly abstract proposition because the resolution requested would have no effect on the actual rights in controversy. *See In re 'Iao Ground Water Management Area High-Level Source Water Use Permit Applications*, 128 Hawai'i 228, 245, 287 P.3d 129, 146 (2010) (dismissing as "an abstract proposition" a public trust claim where judicial resolution of the alleged public trust claim would not affect any party's rights under the water permits in actual controversy).

A subdivision action in the Land Court is not the proper venue to determine whether the State's mineral and metallic reservations include geothermal rights. Correctly choosing not to issue an advisory opinion on an abstract legal question arising in a Land Court subdivision case is not a grave error of law, and this Court should reject the State's Application on this basis.

**QUESTION 3. Does the Kamehameha III Deed include an implied reservation of mineral or metallic mines?**

The State in its pleadings at Land Court, at the ICA, and again in its Application with this Court (Application, JEFS Dkt. #1, at 7-8) continues to argue that the Kamehameha III Deed contained an implicit reservation of mineral or metallic mines. The Land Court dispensed with this argument in its FOFs 31 and 32, both quoted in the Opinion. Op., JEFS 30006 Dkt. #87, at 7. The Land Court's specific findings of fact simply were that the State did not produce sufficient evidence to support its argument. FOF 32; ROA 998; Op., JEFS 30006 Dkt. #87, at 7.

The ICA stated that "We need not, and therefore do not, decide the State's contention that the Kamehameha III Deed should be read as including an implicit, self-effectuating government reservation of mineral or metallic mines." Op., JEFS 30006 Dkt. #87, at 15. Again, in the context of this Land Court subdivision case, the ICA correctly chose not to decide this abstract legal question. *Id.*

The correct venue for a determination of this question is an actual case or controversy involving the State's actual exercise of its claimed reservation of mineral or metallic mines on land that has as its source a deed such as the Kamehameha III Deed. Again, the proper venue for such a determination would be the Circuit Court, not a subdivision action in the Land Court.

Correctly choosing not to issue an advisory opinion on an abstract legal question arising in a Land Court subdivision case is not a grave error of law, and this Court should reject the State's Application on this basis.

**C. OTHER CLAIMED GRAVE ERRORS**

As stated above, the ICA correctly relied on this Court's binding precedential opinions of *Waikiki Malia Hotel* and *Honolulu Memorial Park*. Such reliance was not a grave error. The ICA's Opinion did not rest solely on its reliance on the Ninth Circuit Court of Appeals case in *United States v. Fullard-Leo*, 156 F.2d 756 (9th Cir. 1946) (en banc), and therefore, even if misplaced, such reliance cannot amount to grave error.

While the State desires to distinguish the clearly applicable binding precedents of this Court referenced above, the State demands that the ICA rely upon *Estate of Koester v. Hale*, 211 N.W.2d 778 (Min. 1973). Application, JEFS #1, at 11-12. The ICA correctly pointed out that *Estate of Koester* is not binding legal precedent in Hawai'i and is, in any event, distinguishable. That determination certainly is within the ICA's purview and not a grave error.

That the James Campbell Company LLC may not have addressed each point in the State's Application does not indicate agreement therewith. The State's Application should be rejected.

**V. CONCLUSION**

For the reasons set forth above and based upon the entire record on this appeal, Respondent and Appellee James Campbell Company LLC respectfully requests that this Court dismiss the State's Application.

DATED: Honolulu, Hawai'i, October 21, 2013.

Respectfully submitted,

/s/ Mark K. Murakami

---

MARK K. MURAKAMI  
JENNIFER A. BENCK  
WILLIAM M. HARSTAD

Attorneys for Respondent - Appellee  
JAMES CAMPBELL COMPANY LLC

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L-278 STATE OF HAWAII  
OFFICE OF ASSISTANT REGISTRAR  
RECORDED  
AUG 05, 2009 08:02 AM  
L.C. Order No(s) 179811  
on Cert(s) 830,716 & 828,091  
Issuance of Cert(s) 954,309  
Thru 954,310



46 1/1 24

I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances.

Nick Ann Thompson  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii

Is/ NICKI ANN THOMPSON  
ASSISTANT REGISTRAR

After recording, return by mail  or pick-up

### CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

ASB TOWER, SUITE 2200  
1001 BISHOP STREET  
HONOLULU, HAWAII 96813  
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Mark K. Murakami

Document contains 46 pages

issue  
2ct

25 retm  
26 addl pgs  
50 2 TC  
101 proc

Lot 1218 - Continental Pacific LLC 86.63%  
James C. Reynolds 13.37% TC  
Lot 1219 - James Campbell Company LLC

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of ) LAND COURT APPLICATION  
THE TRUSTEES UNDER THE WILL AND ) NO. 1095  
OF THE ESTATE OF JAMES CAMPBELL, )  
DECEASED, ) DECREE (MAP 176)  
to register and confirm title to land situated )  
at Kahuku, District of Koolauloa, )  
City and County of Honolulu, State of Hawaii )  
)

---

DECREE (MAP 176)

2009 JUL 16 PM 4:01  
ALL

In conformity with the Findings of Fact, Decision and Order entered herein on  
JUL 16 2009, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
that:

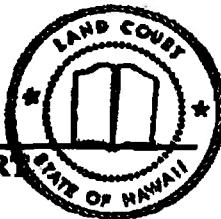
1. Map 176 of Land Court Application No. 1095 be and the same is hereby approved;
2. The high-water mark, being the seaward boundary of new Lot 1218, and new Lot 1219, as of November 21, 2005, is as shown on Map 176;
3.  JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company, one of the petitioners herein, is the owner of new Lot 1219 as shown on Map 176;
4.  CONTINENTAL PACIFIC, LLC, a Delaware limited liability company, and JAMES C. REYNOLDS, INC., a California corporation, both petitioners herein, are the owners of new Lot 1218, as shown on Map 176, with CONTINENTAL PACIFIC, LLC, a Delaware limited liability company, owning an undivided eighty-six and sixty-three one hundredths percent (86.63%) fee simple interest therein, and with JAMES C. REYNOLDS, INC., a California corporation, owing the remaining undivided thirteen and thirty-seven one

hundredths percent (13.37%) fee simple interest therein, with CONTINENTAL PACIFIC, LLC, and JAMES C. REYNOLDS, INC. being tenants in common; and

5. The Assistant Registrar of the Land Court is hereby authorized and directed to endorse on the new Certificate of Title to be issued for Lot 1218 and on the new Certificate of Title to be issued for Lot 1219 a reference to this decree and to said map.

DATED: Honolulu, Hawaii JUL 16 2009

**KATHLEEN HANAWAHINE**  
**REGISTRAR OF THE LAND COURT**



IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of ) LAND COURT APPLICATION  
THE TRUSTEES UNDER THE WILL AND ) NO. 1095  
OF THE ESTATE OF JAMES CAMPBELL, )  
DECEASED, ) FINDINGS OF FACT, DECISION  
to register and confirm title to land situated ) AND ORDER (MAP 176);  
at Kahuku, District of Koolauloa, ) CERTIFICATE OF SERVICE  
City and County of Honolulu, State of Hawaii ) L.C. Case No. 08-0054  
)  
)

**FINDINGS OF FACT, DECISION AND ORDER (MAP 176)**

The records show the following:

1. The Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements of JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company, CONTINENTAL PACIFIC, LLC, a Delaware limited liability company, and JAMES C. REYNOLDS, INC., a California corporation for correction of boundary to reflect erosion of Lot 30, as shown on Map 4 of Land Court Application No. 1095 and other relief sought therein was filed on July 2, 2008, and it, together with the map showing such erosion filed with said petition, was referred to the State Land Surveyor, who reported "that the description and map has been examined and checked as to form and mathematical correctness and found to be in accord."

2. The Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements of JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company, CONTINENTAL PACIFIC, LLC, a Delaware limited liability company, and JAMES C. REYNOLDS, INC., a California corporation, for correction of boundary to reflect erosion of Lot 30, as shown on Map 4 of Land Court Application No. 1095 and other relief sought therein was filed on February 12, 2009.

3. The only adjoining landowner other than James Campbell Company LLC, Continental Pacific, LLC and James C. Reynolds, Inc., is the State of Hawai'i.

4. Due notices were served on the Attorney General, and all other interested parties as required by law and the rules of this Court.

5. The State of Hawai'i filed an Answer with the Court on March 11, 2009.

6. The City and County of Honolulu filed an Answer with the Court on March 20, 2009.

7. A return hearing was held on March 30, 2009, and the matter was set for hearing on June 1, 2009.

8. Petitioner James Campbell Company LLC filed a Reply Memorandum in Support of its Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements with the Court on March 24, 2009.

9. Petitioner James Campbell Company LLC filed a Supplemental Memorandum of Facts and Law in Support of its Petition with the Court on May 20, 2009.

10. The State of Hawai'i filed a Memorandum in Opposition to Petitioner's 'Reply Memorandum' dated March 24, 2009 with the Court on May 22, 2009.

11. Petitioner James Campbell Company LLC filed a Supplemental Memorandum in Response with the Court on May 27, 2009.

12. The State of Hawai'i, by its attorneys, Julie China, Esq. and Linda Chow, Esq., Deputies Attorney General, appeared at the hearing on June 1, 2009 and argued the matter on behalf of the State of Hawai'i.

13. Petitioner James Campbell Company LLC, by its attorneys, Christopher J. Cole, Esq., and Mark K. Murakami, Esq., appeared at the hearing on June 1, 2009 and argued the matter.

14. Continental Pacific, LLC, by its attorney, Burt T. Lau, Esq., appeared at the hearing on June 1, 2009, but did not argue the matter.

15. Except as noted above, no answers have been filed or appearances noted.

**BASED UPON THE FOREGOING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:**

1. On or around July 16, 1934, the Trustees under the Will and of the Estate of James Campbell, Deceased, filed an Application with this Court to register title to their land in Kahuku, Island of Oahu, City and County of Honolulu, Territory of Hawaii and to bring that land under the operation and provisions of Chapter 186 of the Revised Laws of Hawaii, 1925.

2. In accordance with Section 3219 of Chapter 186 of the Revised Laws of Hawaii (1925), the Court referred the Application to a Court appointed examiner of title, and after a review of the title, a Report of Examiner was filed with this Court on October 2, 1934.

3. As set forth in the Report of the Examiner, title to the registered land that is now the subject of the Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements that is being adjudicated by

this Court in this action derived from four (4) sources. They are: (1) Land Commission Award No. 8452 Apana 1 and Royal Patent No. 5616, both to A. Keohokalole, for lands in the ahupua'a of Malaekahana, (2) Land Commission Award No. 7130 and Royal Patent No. 5693, both to Kinimaka for roughly one half of the lands in the ahupua'a of Keana, (3) Grant No. 550 to Charles Gordon Hopkins for the remaining one half of the lands in the ahupua'a of Keana, and (4) Deed of Kamehameha III to Charles Gordon Hopkins dated September 10, 1851, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 5, Page 153 for lands in the ahupua'a of Kahuku.

4. Royal Patent No. 5616 to A. Keohokalole, for the lands in Malaekahana, Royal Patent No. 5693 to Kinimaka for roughly one half of the lands in Keana, and Grant No. 550 to Charles Gordon Hopkins for the remaining one half of the lands in Keana were then subject to a reservation of mineral and metallic mines in favor of the territorial government at that time.

5. The Deed of Kamehameha III to Charles Gordon Hopkins dated September 10, 1851, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 5, Page 153 for lands in the ahupua'a of Kahuku did not contain a reservation of mineral and metallic mines in favor of any government or person.

6. The Territory of Hawaii was provided notice of the application proceedings in Land Court Application No. 1095, as evidenced by the Citation filed on September 14, 1936 in this Land Court Application.

7. The Territory of Hawaii, through its Attorney General, filed an Answer and Claim of the Territory of Hawaii (the "Territory's Answer and Claim") in this Court on February 26, 1937.

8. The Territory of Hawaii made a claim to this Court, including a claim of fee simple title to two parcels, a claim that the legal descriptions of Exclusions 8, 9 and 10 of which the Territory of Hawaii had title, were erroneous, a claim for easements over Lot J, Lot C, and Lot D, and a claim that the Territory of Hawaii and all other owners of Kuleanas situated within the lands described in the application are entitled to rights-of-way by necessity to the nearest public highway.

9. The Territory's Answer and Claim did not assert a claim for a reservation of mineral and metallic mines of every kind or description on the property, including geothermal rights, and the right to remove the same.

10. The Territory's Answer and Claim asserted "[t]hat the Territory of Hawaii and all other owners of Kuleanas situated within the lands described in the application are entitled to rights-of-way by necessity to the nearest public highway."

11. The Territory's Answer and Claim did not assert a claim for a reservation of the rights of native tenants.

12. The Territory's Answer and Claim did not assert a reservation of all right, title, interest, or claim to waters having their source upon or flowing over or under the property.

13. The Territory's Answer and Claim did not assert a claim of a reserved easement for the free flowage of waters through, over, under, and across the property.

14. The Territory's Answer and Claim did not assert a claim for a reservation of the Territory's interest in all religious, historical, and archeological sites on the property.

15. The Territory's Answer and Claim did not assert any other rights.

16. After a hearing, this Court issued its decision (the "Decision") which was filed on November 30, 1937. This Court's Decision stated that all claims of the Territory of Hawaii in the Territory's Answer and Claim have been settled by agreement with the applicants or by exchange deeds filed in the record herein.

17. This Court's Decision addressed the matter of rights of way for exclusions out to the government road.

18. This Court entered its original Decree which was transcribed and resulted in the issuance of Original Certificate of Title No. 17,854.

19. The list of encumbrances set forth at pages 64-66 in the Original Certificate of Title No. 17,854 did not contain a reservation of mineral and metallic mines of every kind or description on the property, including geothermal rights, and the right to remove the same, a reservation of the rights of native tenants, a reservation of all right, title, interest, or claim to waters having their source upon or flowing over or under the property, a reserved easement for the free flowage of waters through, over, under, and across the property, a reservation of the Territory's interest in all religious, historical, and archeological sites on the property, or a reservation of any other rights.

20. Neither the Territory of Hawaii nor any other party took an appeal from this Court's Decree of registration of the lands of the Trustees under the Will and of the Estate of James Campbell, Deceased in Land Court Application No. 1095.

21. Petitioner JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company, Petitioner CONTINENTAL PACIFIC, LLC, a Delaware limited liability company, and Petitioner JAMES C. REYNOLDS, INC., a California corporation, are the current owners of Lot 30, as shown on Map 4, and Lot 1198, as shown on Map 157 that are the subject of the Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements that is the subject of this case.

22. The high-water mark, which is the seaward boundary of new Lot 1218, and new Lot 1219, as of November 21, 2005, is as shown on Map 176 of Land Court Application No. 1095.

23. The change in location of the seaward boundary has been due entirely to natural erosion of the original Lot 30 on the seaward side.

24. The State of Hawai'i has asserted, and the Court finds that the State of Hawai'i owns the submerged lands up to the highest reaches of the wash of the waves, including 34.113 acres of eroded land.

25. Lot 30 less erosion is consolidated and resubdivided and redesignated as Lot 1218 and Lot 1219, both as shown on Map 176, that a 60 foot shoreline setback line is created and shown on Map 176 as affecting Lot 1218 and Lot 1219, both as shown on Map 176,

that Easement "396" (area 72.186 acres) for conservation purposes is designated on Lot 1219, and that Easement "397" (area 6.750 acres) for drainage purposes is designated on Lot 1218.

26. Petitioner JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company is owner of new Lot 1219, as shown on Map 176; and

27. Petitioner CONTINENTAL PACIFIC, LLC, a Delaware limited liability company, and Petitioner JAMES C. REYNOLDS, INC., a California corporation are the owners of new Lot 1218, as shown on Map 176, with CONTINENTAL PACIFIC, LLC, a Delaware limited liability company, owning an undivided eighty-six and sixty-three one hundredths percent (86.63%) fee simple interest therein, and with JAMES C. REYNOLDS, INC., a California corporation, owing the remaining undivided thirteen and thirty-seven one hundredths percent (13.37%) fee simple interest therein, with CONTINENTAL PACIFIC, LLC, and JAMES C. REYNOLDS, INC. being tenants in common.

28. The State of Hawai'i has asserted, and the Court finds that the State of Hawai'i has reserved an interest in water rights, if any, that may affect the land that is the subject of the Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements, but the interest of the State of Hawai'i, if any, is not an easement or encumbrance upon registered title.

29. The State of Hawai'i has asserted, and the Court finds that the State of Hawai'i has reserved an interest in the rights of native tenants, if any, that may affect the land that is the subject of the Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements, but the interest of the State of Hawai'i, if any, is not an easement or encumbrance upon registered title.

30. The reservations of mineral and metallic mines in (i) Royal Patent No. 5616 to A. Keohokalole, for the lands in Malaekahana, (ii) Royal Patent No. 5693 to Kinimaka for roughly one half of the lands in Keana, and (iii) Grant No. 550 to Charles Gordon Hopkins for the remaining one half of the lands in Keana were extinguished by issuance of the original decree in Land Court Application No. 1095 in 1938.

31. The land in Kahuku conveyed by Deed of Kamehameha III to Charles Gordon Hopkins dated September 10, 1851, recorded in the Bureau of Conveyances of the State of Hawai'i in Liber 5, Page 153, never was subject to a reservation of mineral and metallic mines in favor of any government or person.

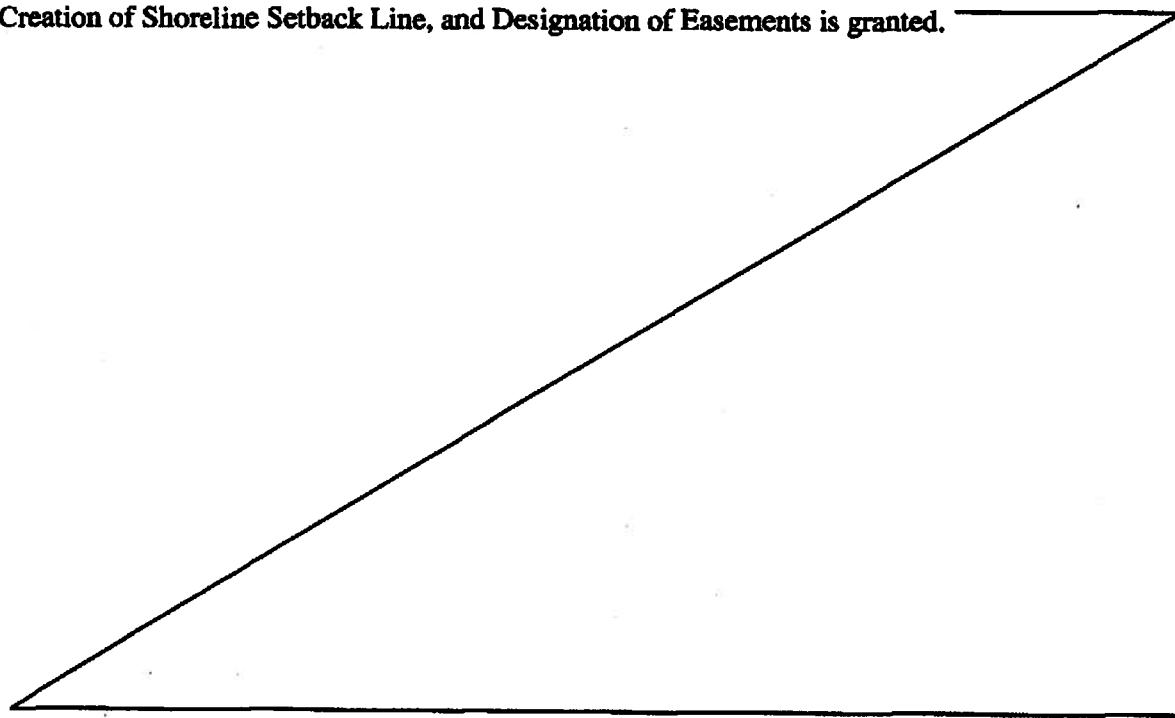
32. Except for the rights described in Finding of Fact No. 24, and except for the reserved rights, if any, described in Finding of Fact No. 28 and Finding of Fact No. 29, the State of Hawai'i has not produced sufficient evidence to support its argument that the State of Hawai'i has the ownership or other reserved interests described in paragraphs 1, 3, 4, 5, 6 and 7 of the prayer for relief set forth on pages 4-5 of the Answer of the State of Hawai'i filed with this Court on March 11, 2009.

33. As set forth in the Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements in this matter, Lot 1198 and new proposed Lot 1218 are subject to a grant of easement in favor of the City and County of Honolulu and its Board of Water Supply, and new proposed Lots 1218 and 1219 are subject to the location of the shoreline setback line in accordance with City's regulation and/or ordinance.

34. That Lots 30 and 1198 and the new proposed Lots 1218 and 1219 are subject to the paramount power of the City and County of Honolulu to assess and collect real property taxes, penalties and interest which are or may become due, and which, under HRS Section 501-82(2), need not be noted as an encumbrance against title.

**BASED UPON THE FOREGOING, THE COURT HEREBY ISSUES THE FOLLOWING DECISION AND ORDER:**

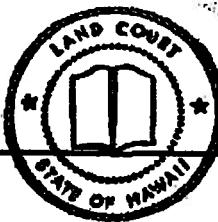
1. Except for the rights described in Finding of Fact No. 24, and except for the reserved rights, if any, described in Finding of Fact No. 28 and Finding of Fact No. 29, the State of Hawaii's request to have this Court rule that the State of Hawai'i has, or has reserved, any ownership interest in or reservation affecting the subject property, including, without limitation, those set forth in paragraphs 1, 3, 4, 5, 6 and 7 of the prayer for relief set forth on pages 4-5 of the State of Hawaii's Answer filed herein on March 11, 2009, is denied.

2. The Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements is granted. 

3. A decree shall be entered in conformity herewith and the Assistant Registrar of this Court is authorized and directed to endorse on the new Certificate of Title to be issued for Lot 1218 and on the new Certificate of Title to be issued for Lot 1219 a reference to said decree.

DATED: Honolulu, Hawai'i JUL 16 2009, 2009.

*Gary W.B. Chang*  
JUDGE OF THE LAND COURT



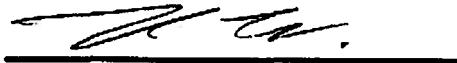
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FINDINGS OF FACT, DECISION AND ORDER (MAP 176); L.C. CASE NO. 08-0054

APPROVED AS TO FORM:

  
**MARK K. MURAKAMI**  
**CHRISTOPHER J. COLE**  
Attorneys for Petitioner **JAMES**  
**CAMPBELL COMPANY LLC**

APPROVED AS TO FORM:

  
**BURT T. LAU**  
**RONALD H. W. LUM, JR.**  
Attorneys for Petitioner **CONTINENTAL PACIFIC, LLC**

APPROVED AS TO FORM:

  
**KENNETH K. P. WONG**  
**BARRY A. SULLIVAN**  
Attorneys for Petitioner **JAMES C.**  
**REYNOLDS, INC.**

APPROVED AS TO FORM:

**JULIE H. CHINA**  
Deputy Attorney General, Attorney  
for Respondent **STATE OF**  
**HAWAII**

APPROVED AS TO FORM:

**WINSTON K. Q. WONG**  
Deputy Corporation Counsel,  
Attorney for Respondent **CITY**  
**AND COUNTY OF HONOLULU**

---

**FINDINGS OF FACT, DECISION AND ORDER (MAP 176); L.C. CASE NO. 08-0054**

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of ) LAND COURT APPLICATION  
THE TRUSTEES UNDER THE WILL AND ) NO. 1095  
OF THE ESTATE OF JAMES CAMPBELL, ) L.C. CASE NO. 08-0054  
DECEASED, ) CERTIFICATE OF SERVICE  
to register and confirm title to land situated )  
at Kahuku, District of Koolauloa, )  
City and County of Honolulu, State of Hawaii )  
)  
)

**CERTIFICATE OF SERVICE**

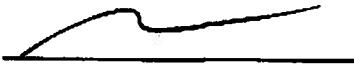
The undersigned hereby certifies that on this date a copy of the foregoing document will be duly served upon the following parties via U.S. Mail, First Class, postage prepaid:

Julie H. China, Esq.  
Deputy Attorney General  
Department of the Attorney General  
Suite 300, Kekuanaoa Building  
465 South King Street  
Honolulu, Hawaii 96813  
Attorney for State of Hawaii

Winston K.Q. Wong, Esq.  
Deputy Corporation Counsel  
City and County of Honolulu  
530 South King Street  
Honolulu, Hawaii 96813  
Attorney for the City and County of Honolulu

DATED: Honolulu, Hawaii, June 15, 2009.

CARLSMITH BALL LLP

By 

MARK K. MURAKAMI  
CHRISTOPHER J. COLE  
Attorneys for James Campbell Company  
LLC, a Delaware limited liability company

*proc*  
**IN THE LAND COURT OF THE STATE OF HAWAII**

In the Matter of the Application )  
of )  
THE TRUSTEES UNDER THE WILL )  
AND OF THE ESTATE OF JAMES )  
CAMPBELL, DECEASED )  
)  
Erosion to Lot 30 as shown on Map 4 )  
consolidation of Lot 30 less erosion and )  
Lot 1198 as shown on Map 157 and re- )  
subdivision of said consolidation into Lots )  
1218 and 1219, designation of a 60-foot )  
shoreline setback line affecting Lots 1218 )  
and 1219 and designation of Easement 396 )  
affecting Lot 1219 and Easement 397 )  
affecting Lot 1218 at Kahuku, District of )  
Koolauloa, City and County of Honolulu, )  
State of Hawaii )

**APPLICATION NO. 1095**  
(Map 176 – Erosion)

LAND COURT  
STATE OF HAWAII  
KAHUKU, HONOLULU  
REGISTRAR  
2009 NOV 19 PM 2:46

**APPLICATION OF**  
**JAMES C. CAMPBELL REYNOLDS, INC., JAMES CAMPBELL COMPANY LLC,**  
**CONTINENTAL PACIFIC, LLC, Owners**  
**For Approval of Erosion**

**AMENDED RETURN OF THE STATE LAND SURVEYOR**

To the Honorable Judge of the Land Court,  
State of Hawaii

Pursuant to an Order duly made and issued out of said Honorable Court on the 2nd day of July 2008, referring the map filed for approval of erosion in the above - entitled matter, to the State Land Surveyor for verification, check on the ground if necessary and report.

The undersigned, the State Land Surveyor begs to report that the description and map has been examined and checked as to form and mathematical correctness and found to be in accord.

And further, that said map has been compared with Certificates of Title No. 830, 716 and 826,091.

Ld. Ct. App. 1095, Map 176  
Return of the State Land Surveyor  
Page 2

This is an application to diminish from Lot 30 as shown on Map 4 consolidation of Lot 30 less erosion and Lot 1198 as shown on Map 157 and resubdivision of said consolidation into Lots 1218 and 1219, designation of a 60-foot shoreline setback line affecting Lots 1218 and 1219 and designation of Easement 396 affecting Lot 1219 and Easement 397 affecting Lot 1218.

NOTE:

Allegations in the petition have been checked and found to be in accord therewith except for the following:

1. Lots 2001 and 2002 have been changed to Lots 1218 and 1219, respectively.
2. Easements 500 and 504 have been changed to Easements 396 and 397, respectively.
3. The area of Easement 397 should be changed to 6.750 Acres.

Only encumbrances as noted in the petition have been checked.

APPROVED by the Department of Planning and Permitting on February 29, 2008.

And pending further instructions and/or approval of the Court, the map and three (3) whiteprints of the herein application are being returned reserving one (1) whiteprint for the Office of the State Land Surveyor.

DATED at Honolulu, this 19th day of November, 2008.

Examined by:

*Ronald S.K. Samie*

Assistant.

lk

*Ronald F. F.*

STATE LAND SURVEYOR

=====

Received from the Office of the State Land Surveyor \_\_\_\_\_ whiteprints marked "ADVANCE SHEET - SUBJECT TO CHANGE" and the tracing map in the above-entitled matter.

Honolulu, Hawaii  
NOV 19 2008, 2008

AMY T. CORCORAN  
CLERK OF THE LAND COURT

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of

THE TRUSTEES UNDER THE WILL AND  
OF THE ESTATE OF JAMES CAMPBELL,  
DECEASED,

to register and confirm title to land situated  
at Kahuku, District of Koolauloa,  
City and County of Honolulu, State of Hawaii

) LAND COURT APPLICATION

) NO. 1095

) MAP 176

) L.C. Case No.  
08-0054

LAND  
REGISTRAR

2009 FEB 12 AM 9:27

AMENDED AND RESTATED PETITION FOR CONSOLIDATION AND  
RESUBDIVISION, CREATION OF SHORELINE SETBACK LINE, AND  
DESIGNATION OF EASEMENTS; ORDER TO SHOW CAUSE; CITATION;  
EXHIBIT 1

REFER TO THE SURVEYOR OF  
THE STATE OF HAWAII FOR  
CHECK AND REPORT

MAPS FILED 1

LAND COURT CERTIFICATE  
OF TITLE NOS. 826,067; 826,091;  
AND 830,716 LOCATED AT THE  
BUREAU OF CONVEYANCES

5 WHITE PRINTS DESIRED  
BY ORDER OF THE COURT:

REGISTRAR

Mark K. Murakami #4573  
Carlsmith Ball LLP  
P.O. Box 656  
Honolulu, Hawaii 96809  
Attorneys for Petitioner James Campbell  
Company LLC, a Delaware limited liability  
company

Jan 13 4 02 PM '09  
Land Court Registrar

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of

LAND COURT APPLICATION  
NO. 1095

THE TRUSTEES UNDER THE WILL AND  
OF THE ESTATE OF JAMES CAMPBELL,  
DECEASED,

to register and confirm title to land situated  
at Kahuku, District of Koolauloa,  
City and County of Honolulu, State of Hawaii

**AMENDED AND RESTATED PETITION FOR CONSOLIDATION AND  
RESUBDIVISION, CREATION OF SHORELINE SETBACK LINE, AND  
DESIGNATION OF EASEMENTS; ORDER TO SHOW CAUSE**

COMES NOW, JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company ("Petitioner JCC"), whose address is 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, CONTINENTAL PACIFIC, LLC, a Delaware limited liability company ("Petitioner Continental Pacific"), whose address is P.O. Box 1350, Santa Rosa Beach, Florida 32459, and JAMES C. REYNOLDS, INC., a California corporation ("Petitioner Reynolds"), whose address is 841 Bishop Street, Suite 1700, Honolulu, Hawaii 96813 (collectively, Petitioner JCC, Petitioner Continental Pacific, and Petitioner Reynolds, being sometimes referred to herein as the "Petitioners"), and petition the Court as follows:

/ On July 2, 2008, the Court accepted for filing Petitioners' Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements dated June 17, 2008 (the "Original Petition");

/ In response to the Return of the State Land Surveyor dated July 30, 2008, Petitioners desires to amend and restate in its entirety the Original Petition as follows:

/ Petitioner JCC, Petitioner Continental Pacific, and Petitioner Reynolds are the owners in fee simple of the following property, all maps referenced hereinbelow being filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1095:

/ **Lot** Lot 30      / **Map** Map 4      / **Certificate of Title** 830,716

/ Petitioner JCC is the owner in fee simple of the following property, all maps referenced hereinbelow being filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1095:

/ **Lot** Lot 962-A      / **Map** Map 161      / **Certificate of Title** 826,067

/ Petitioner JCC and Petitioner Continental Pacific are the owners in fee simple of the following property, all maps referenced hereinbelow being filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1095:

/ **Lot** Lot 1198      / **Map** Map 157      / **Certificate of Title** 826,091

/ That since title to Lot 30 (Map 4) was originally registered there has been natural erosion to Lot 30 (Map 4) so that the boundary along the high-water mark as of November 21, 2005 is as shown on the map prepared by Wilfred Y. K. Chin, Licensed Professional Surveyor (Licensed Professional Land Surveyor Certificate No. 3499-LS, Land Court Certificate Number 177), and filed herewith.

As part of Petitioner's consolidation of Lot 30 (Map 4) and Lot 1198 (Map 157), and the resubdivision of the same into Lot 1218 and Lot 1219 referenced below, Petitioners desire to also register the erosion to such land.

Petitioners file herewith one (1) map showing: (i) the consolidation of Lot 30 (Map 4) (less erosion area) with Lot 1198 (Map 157), and the resubdivision of the same into Lot 1218 and Lot 1219, (ii) creation of 60 Foot Shoreline Setback Line as shown on the map filed herewith, affecting Lot 1218 and Lot 1219, and (iii) the designation of Easement "396" (area 72.168 acres) for conservation purposes affecting Lot 1219, and (iv) the designation of Easement "397" (area 6.750 acres) for drainage purposes affecting Lot 1218.

Upon the issuance of an Order approving and authorizing the consolidation, resubdivision, creation of shoreline setback line, and designation of easements contained herein:

1. Lot 1218 abuts Kamehameha Highway (a public highway), and shall have direct access thereto.

2. Lot 1219 shall have access to Kamehameha Highway (a public highway) over: (a) the unregistered land located within the land identified as "Lot 1002" on the Composite Map prepared by Controlpoint Surveying, Inc. dated May 30, 2006 approved for consolidation and resubdivision by the Department of Planning and Permitting of the City and County of Honolulu on February 29, 2008 (DPP File No. 2006/Sub-189), and (b) Lot 962-A (Map 161).

3. Lot 1218 and Lot 1219 shall be subject to the encumbrances described in paragraphs A, and B, respectively, of Exhibit A attached hereto and made a part hereof by reference.

4. As set forth in paragraph A of Exhibit A, Lot 1218 shall also be subject to the following newly created encumbrances:

- a. 60 Foot Shoreline Setback Line; and
- b. Easement "397" (area 6.750 acres) for drainage purposes.

5. As set forth in paragraph B of Exhibit A, Lot 1219 shall also be subject to the following newly created encumbrances:

- a. 60 Foot Shoreline Setback Line; and
- b. Easement "396" (area 72.168 acres) for conservation purposes.

6. The access rights set forth in paragraphs 1, and 2, above shall supersede any and all existing access rights which run in favor of Lot 30 (Map 4), and Lot 1198 (Map 157), including without limitation, Land Court Order No. 3094, filed April 21, 1938, and Land Court Order No. 148497, filed December 12, 2002.

7. In addition to Petitioners, the State of Hawaii is the only additional adjoining owner, the location of whose lands in reference to such erosion is as shown by the map filed herewith.

8. Except as set forth in the joinders attached hereto, there are no other parties in interest with respect to the lot being affected by the registration of erosion.

consolidation, resubdivision, creation of shoreline setback line, designation of easements, and other matters referenced herein.

WHEREFORE, the Petitioners pray:

- / 1. That the map filed with this petition be referred to the Office of the State Land Surveyor for check and report; and
- / 2. That notice of this petition be served on the State of Hawaii, by its Attorney General, the City and County of Honolulu, by its Corporation Counsel, all adjoining landowners and any other parties the Court may deem necessary and proper to be served; and
- / 3. That the map filed herewith be examined and found to be true and correct; and
- / 4. That an order issue approving and authorizing said consolidation and resubdivision, creation of shoreline setback line, and designation of easements as shown on the map or set forth herein, and directing the Assistant Registrar of this Court to:
  - / a. decree correction of the oceanfront boundary of Lot 30 (Map 4) to reflect the erosion to Lot 30 (Map 4) as shown on the map filed herewith, and to endorse such decree on Certificate of Title No. 830,716.
  - / b. cancel Certificate of Title No. 826,091.
  - / c. cancel Certificate of Title No. 830,716.
  - / d. issue a new Certificate of Title for Lot 1218 (less the erosion shown on the map filed herewith as to Lot 1218) to CONTINENTAL PACIFIC, LLC, a

Delaware limited liability company, whose address is P.O. Box 1350, Santa Rosa Beach, Florida 32459, AS TO AN UNDIVIDED EIGHTY-SIX AND SIXTY-THREE ONE HUNDREDTHS PERCENT (86.63%) FEE SIMPLE INTEREST THEREIN, and to JAMES C. REYNOLDS, INC., a California corporation, whose address is 841 Bishop Street, Suite 1700, Honolulu, Hawaii 96813, AS TO THE REMAINING UNDIVIDED THIRTEEN AND THIRTY-SEVEN ONE HUNDREDTHS PERCENT (13.37%) FEE SIMPLE INTEREST THEREIN, WITH SAID CONTINENTAL PACIFIC, LLC, AND JAMES C. REYNOLDS, INC. BEING TENANTS IN COMMON, subject to all of the encumbrances herein set forth as to Lot 1218,

e. issue a new Certificate of Title for Lot 1219 (less the erosion shown on the map filed herewith as to Lot 1219) to JAMES CAMPBELL COMPANY LLC, a Delaware limited liability company, whose address is the James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, subject to all of the encumbrances herein set forth as to Lot 1219,

f. endorse on Certificate of Title No. 826,067 (for Lot 962-A) a reference to the statement of access over Lot 962-A (Map 161) in favor of Lot 1219, as referenced in paragraph 2 above,

g. endorse on the new Certificates of Title for Lot 1218 and Lot 1219, the statements of access in favor of said lots referred to herein,

h. endorse on the new Certificate of Title for Lot 1218 a reference to the designation of the following encumbrances: (i) 60 Foot Shoreline Setback Line as

all in accordance with Chapter 501, Hawaii Revised Statutes, or any amendments thereto. This Petition is being executed in counterparts, with each Petitioner signing this Petition on a separate page.

DATED: Honolulu, Hawaii, December 15, 2008.

JAMES CAMPBELL COMPANY LLC, a  
Delaware limited liability company

By \_\_\_\_\_  
Its Attorney

The attached document: Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements; Order to Show Cause; Citation; Exhibit 1 dated December 15, 2008, which consists of twenty-Nine (29) pages (including this page), was executed by Mark K. Murakami who was subscribed and sworn to before me this 15<sup>th</sup> day of December, 2008 in the First Judicial Circuit of the State of Hawaii.



(notary stamp or seal)

[Notary Signature]

LS

Printed Name: Liane A. Akana

My commission  
expires: 01-21-2010  
My commission  
number: 90-704

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AMENDED AND RESTATED PETITION FOR CONSOLIDATION AND RESUBDIVISION, DESIGNATION OF SHORELINE SETBACK, AND DESIGNATION OF EASEMENTS OF JAMES CAMPBELL COMPANY LLC, CONTINENTAL PACIFIC, LLC, AND JAMES C. REYNOLDS, INC.

all in accordance with Chapter 501, Hawaii Revised Statutes, or any amendments thereto. This Petition is being executed in counterparts, with each Petitioner signing this Petition on a separate page.

DATED: Honolulu, Hawaii, December 15, 2008.

CONTINENTAL PACIFIC, LLC, a  
Delaware limited liability company

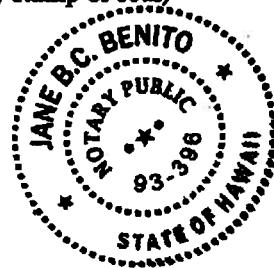
By Ronald J.  
Its Attorney  
Ronald Lum, Jr.

The attached document: Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements; Order to Show Cause; Citation; Exhibit 1 dated December 15, 2008, which consists of twenty-nine (29) pages (including this page), was executed by Ronald Lum, Jr. who was subscribed and sworn to before me this 22<sup>nd</sup> day of December, 2008 in the First Judicial Circuit of the State of Hawaii.

Jane B.C. Benito  
[Notary Signature]  
Notary Public, State of Hawaii  
Printed Name: Jane B. C. Benito

My commission  
expires: 7/22/09  
My commission  
number: Commission No. 93-396

(notary stamp or seal)



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AMENDED AND RESTATED PETITION FOR CONSOLIDATION AND RESUBDIVISION, DESIGNATION OF SHORELINE SETBACK, AND DESIGNATION OF EASEMENTS OF JAMES CAMPBELL COMPANY LLC, CONTINENTAL PACIFIC, LLC, AND JAMES C. REYNOLDS, INC.

all in accordance with Chapter 501, Hawaii Revised Statutes, or any amendments thereto. This Petition is being executed in counterparts, with each Petitioner signing this Petition on a separate page.

DATED: Honolulu, Hawaii, December 15, 2008.

JAMES C. REYNOLDS, INC., a California corporation

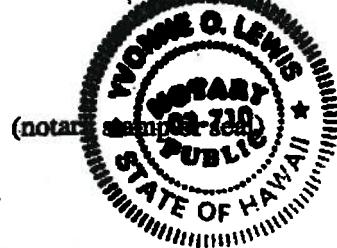
By Kenneth Wong  
Its Attorney

The attached document: Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements; Order to Show Cause; Citation; Exhibit 1 dated December 15, 2008, which consists of twenty-nine (29) pages (including this page), was executed by Kenneth Wong who was subscribed and sworn to before me this 30 day of December, 2008 in the First Judicial Circuit of the State of Hawaii.

Y. Lewis  
[Notary Signature]

Printed Name: Yvonne O. Lewis

My commission  
expires: 12/1/2011  
My commission  
number: 03-710



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AMENDED AND RESTATED PETITION FOR CONSOLIDATION AND RESUBDIVISION, DESIGNATION OF SHORELINE SETBACK, AND DESIGNATION OF EASEMENTS OF JAMES CAMPBELL COMPANY LLC, CONTINENTAL PACIFIC, LLC, AND JAMES C. REYNOLDS, INC.

EXHIBIT A

✓ A. Lot 1218. Lot 1218 shall be subject to the following encumbrances (to which Lot 30 (Map 4) and Lot 1198 (Map 157) are now subject, unless otherwise noted):

✓ 1. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with City and County of Honolulu regulation and/or ordinance and the effect, if any, upon the area of the land described herein.

✓ 2. Easement "Road 5", as shown on Map 4, as set forth by Land Court Order No. 3094, filed April 12, 1938.

✓ 3. Easement "14" (20 feet wide), for roadway purposes, as shown on Map 4, as set forth by Land Court Order No. 3094, filed April 21, 1938.

✓ 4. Easement "111" for roadway purposes, as shown on Map 84, as set forth by Land Court Order No. 50987, filed August 22, 1978.

✓ 5. Access rights over Easement "111" (Map 84) in favor of Lot 564, as set forth by Land Court Order No. 50987, filed August 22, 1978.

✓ 6. Unilateral Agreement dated April 16, 1981, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1064473.

✓ 7. Grant of Easement dated January 31, 1983, in favor of the City and County of Honolulu and the Board of Water Supply, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1278404, affecting Easement "111" (Map 84).

✓ 8. Easement "362" (area 0.027 acre) for slope purposes, as shown on Map 151, as set forth by Land Court Order No. 144117, filed December 5, 2001.

✓ 9. 20 Foot Building Setback Line, as shown on Map 157, as set forth by Land Court Order No. 148497, filed December 12, 2002, and by Land Court Order No. 165124, filed February 28, 2006.

✓ 10. Grant of Easement dated June 19, 2003, in favor of the State of Hawaii, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3042581, affecting Easement "362" (Map 151).

✓ 11. Grant of Easement dated September 22, 2005, in favor of Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc., filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3352331.

12. Co-Tenancy Agreement dated August 17, 2006, made by and between the Trustees under the Will and of the Estate of James Campbell, Deceased and Continental Pacific, LLC, a short form of which is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3468928.

13. Co-Tenancy Agreement (undated), made by and between Continental Pacific, LLC, and James C. Reynolds, Inc., a short form of which is dated October 27, 2006, and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3505380.

14. Access rights to Kamehameha Highway in favor of Lot 39-B (Map 173), as set forth by Land Court Order No. 176102, filed August 28, 2008.

15. Declaration of Covenants (CDUP OA-3414) dated October 8, 2008, made by James Campbell Company LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3803226, with consents of Continental Pacific, LLC and James C. Reynolds, Inc. filed in said Office of the Assistant Registrar as Document No. 3803227.

16. 60 Foot Shoreline Setback Line, as shown on Map 176, as set forth by this Land Court Order.

17. Easement "397" (area 6.750 acres) for drainage purposes, as shown on Map 176, as set forth by this Land Court Order.

✓ B. Lot 1219. Lot 1219 shall be subject to the following encumbrances (to which Lot 30 (Map 4) and Lot 1198 (Map 157) are now subject, unless otherwise noted):

✓ 1. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with City and County of Honolulu regulation and/or ordinance and the effect, if any, upon the area of the land described herein.

✓ 2. Easement "13" (50 feet wide), for drainage purposes, as shown on Map 4, as set forth by Land Court Order No. 3094, filed April 21, 1938.

✓ 3. Easement "109" (area 0.355 acre) for roadway purposes, as shown on Map 83, as set forth by Land Court Order No. 50037, filed May 9, 1978.

✓ 4. Access rights over Easement "109" (Map 83) in favor of Lot 483-B, as set forth by Land Court Order No. 50037, filed May 9, 1978.

✓ 5. Easement "110" (50 feet wide, area 0.455 acre) for drainage purposes, as shown on Map 83, as set forth by Land Court Order No. 50037, filed May 9, 1978.

✓ 6. Declaration of Drainage Easement dated June 15, 2005, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3302322.

✓ 7. Grant of Easement for Access Rights and Utilities dated June 15, 2005, in favor of the United States of America, by and through its Regional Director, Region One, United States Fish and Wildlife Service, Department of the Interior, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3302324, affecting Easement "109" (Map 83) and other lands.

✓ 8. Grant of Easement (Ditches) and Certain Utilities dated June 15, 2005, in favor of the United States of America, by and through its Regional Director, Region One, United States Fish and Wildlife Service, Department of the Interior, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3302326, affecting Easement "13" (Map 4) and Easement "110" (Map 83), and other lands.

✓ 9. Co-Tenancy Agreement dated August 17, 2006, made by and between the Trustees under the Will and of the Estate of James Campbell, Deceased and Continental Pacific, LLC, a short form of which is filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3468928.

10. Declaration of Covenants (CDUP OA-3414) dated October 8, 2008, made by James Campbell Company LLC, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3803226, with consents of Continental Pacific, LLC and James C. Reynolds, Inc. filed in said Office of the Assistant Registrar as Document No. 3803227.

11. 60 Foot Shoreline Setback Line, as shown on Map 176, as set forth by this Land Court Order.

12. Easement "396" (area 72.168 acres) for conservation purposes, as shown on Map 176, as set forth by this Land Court Order.

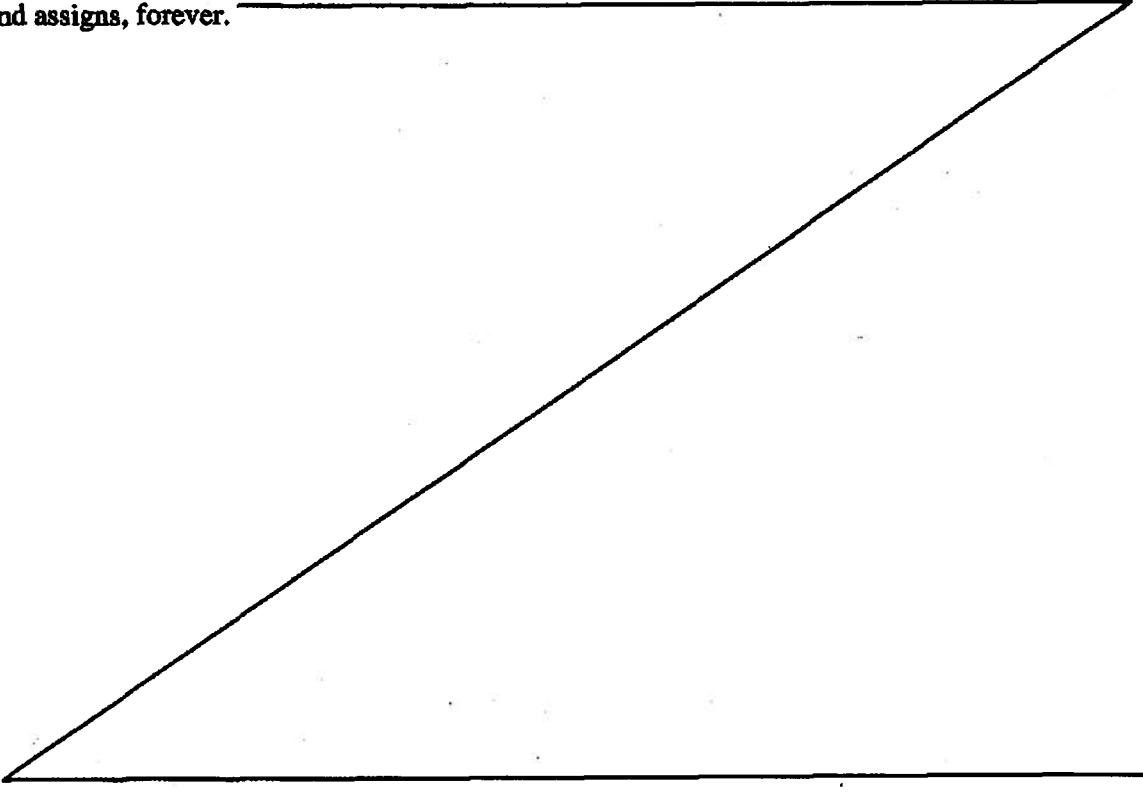
End of Exhibit A

**JOINDER AND QUITCLAIM DEED**

**KNOW ALL MEN BY THESE PRESENTS:**

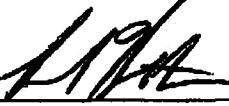
**JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company, one of the fee simple owners of Lot 30 (Map 4), being all of the land covered by Certificate of Title No. 830,716, and one of the fee simple owners of Lot 1198 (Map 157), being all of the land covered by Certificate of Title No. 826,091, does hereby join in, consent to and approve of the consolidation of Lot 30 (Map 4) (less erosion) and Lot 1198 (Map 157), and the resubdivision of the same into Lot 1218 (Map 176) and Lot 1219 (Map 176), all maps referenced herein being filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, all as set forth in the petition to which this joinder is attached.

**JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company, in consideration of the sum of TEN DOLLARS (\$10.00), the receipt of which is hereby acknowledged, **DOES HEREBY RELEASE, REMISE AND QUITCLAIM** unto: (a) **CONTINENTAL PACIFIC, LLC**, a Delaware limited liability company, whose address is P.O. Box 1350, Santa Rosa Beach, Florida 32459, and to (b) **JAMES C. REYNOLDS, INC.**, a California corporation, whose address is 841 Bishop Street, Suite 1700, Honolulu, Hawaii 96813, all of its interest, if any, in Lot 1218 (Map 176) described in the petition to which this instrument is attached **TO HAVE AND TO HOLD** the same unto (a) **CONTINENTAL PACIFIC, LLC**, a Delaware limited liability company, and to (b) **JAMES C. REYNOLDS, INC.**, a California corporation, and to their respective successors and assigns, forever.



IN WITNESS WHEREOF, the undersigned have executed these presents on  
this 30th day of December, 2008.

JAMES CAMPBELL COMPANY LLC,  
a Delaware limited liability company

By   
\_\_\_\_

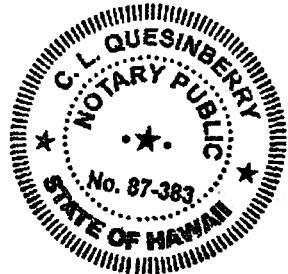
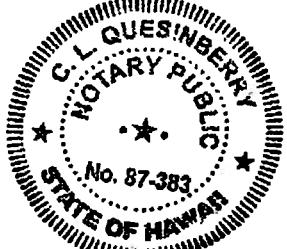
Name: Bertram L. Hatton  
Its: Executive Vice President  
Hawaii Land Management

By   
\_\_\_\_

Name: Gary S. Oliva  
Its: Senior Vice President  
Real Estate Investments

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

On this 30th day of December, 2008, before me personally appeared BERTRAM L. HATTON and GARY S. OLIVA, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Name: C. L. Quesinberry

Notary Public, State of Hawaii C.L. Quesinberry

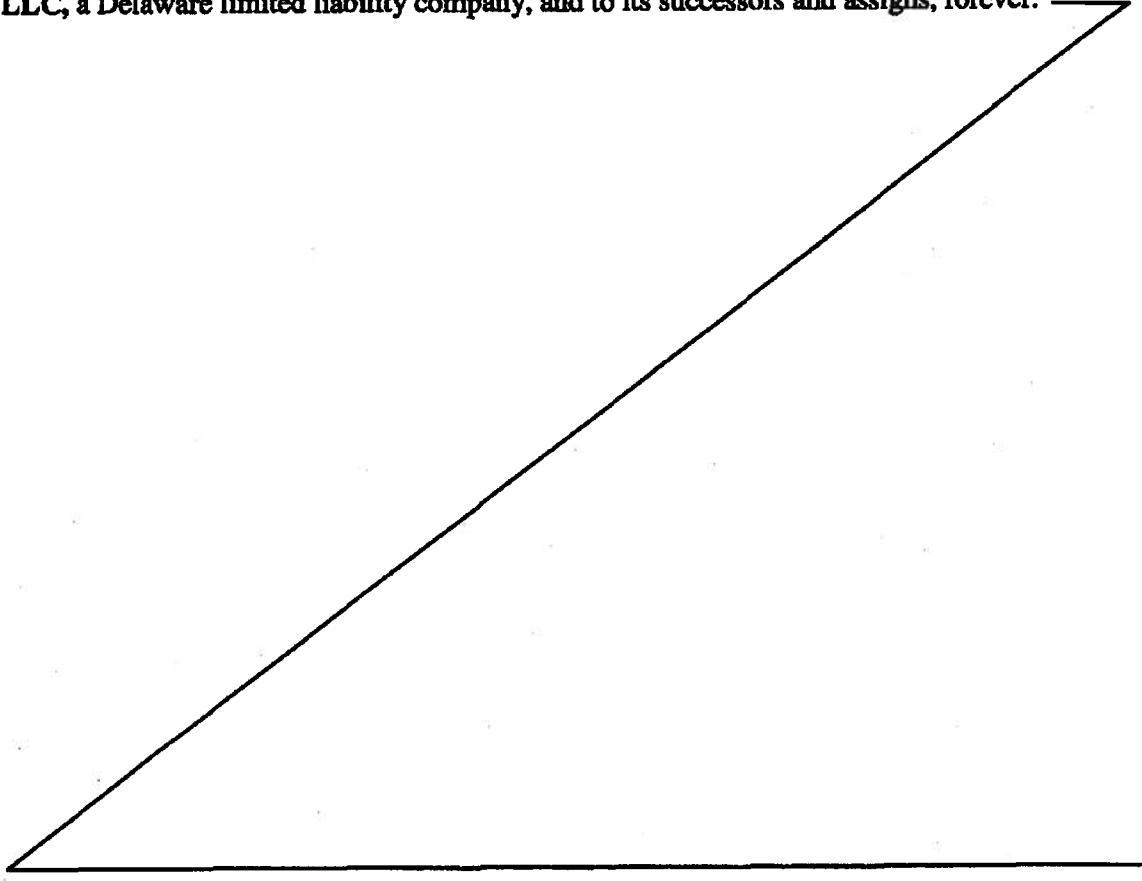
My commission expires: JUL 12 2011

Doc Date: 12/15/2008 # Pages: 29  
C.L. Quesinberry First Circuit  
Doc Description: Amend. & Restated Rotation for Consolid.  
& Resolution etc. (including Transfer of Burden Deal  
C.L. Quesinberry 12/30/2008  
Notary Signature Babs  
NOTARY CERTIFICATION

## JOINDER AND QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

/ **CONTINENTAL PACIFIC, LLC**, a Delaware limited liability company, one of the fee simple owners of Lot 30 (Map 4), being all of the land covered by Certificate of Title No. 830,716, and one of the fee simple owners of Lot 1198 (Map 157), being all of the land covered by Certificate of Title No. 826,091, does hereby join in, consent to and approve of the consolidation of Lot 30 (Map 4) (less erosion) and Lot 1198 (Map 157), and the resubdivision of the same into Lot 1218 (Map 176) and Lot 1219 (Map 176), all maps referenced herein being filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, all as set forth in the petition to which this joinder is attached.

**CONTINENTAL PACIFIC, LLC**, a Delaware limited liability company, in consideration of the sum of TEN DOLLARS (\$10.00), the receipt of which is hereby acknowledged, **DOES HEREBY RELEASE, REMISE AND QUITCLAIM** unto **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company, whose address is the James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, all of its interest, if any, in Lot 1219 (Map 176) described in the petition to which this instrument is attached **TO HAVE AND TO HOLD** the same unto **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company, and to its successors and assigns, forever. 

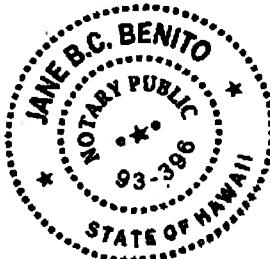
IN WITNESS WHEREOF, the undersigned have executed these presents on  
this 16<sup>th</sup> day of December, 2008

**CONTINENTAL PACIFIC, LLC**, a  
Delaware limited liability company

By   
Name: Eric Morrison  
Its: Authorized Agent

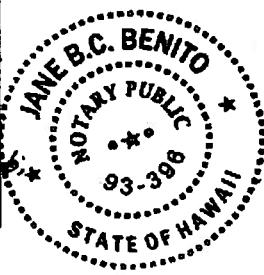
STATE OF HAWAII )  
CITY AND COUNTY OF HONOLULU )  
                                  ) ss.  
                                  )

On this 16<sup>th</sup> day of December, 2008 before me personally appeared Eric Dean Morrison, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Name: Jane B.C. Benito  
Notary Public, State of Hawaii \_\_\_\_\_  
My commission expires: 7/22/09

Date: <u>undated</u>	# Pages: <u>29</u>
Name: <u>Jane B.C. Benito</u>	First Circuit
Doc. Description: <u>Taivader and Antichuan Oral</u> <u>(Attached to Amended and Restated Partition for</u> <u>Condominium and Recreational Condo, creation of</u> <u>Shared Lines, and</u> <u>Setback Line, and</u> <u>Designation of easement</u> <u>order to short come;</u> <u>citation; Exhibit 1)</u>	
Notary Signature: <u>Jane B.C. Benito</u>	
NOTARY CERTIFICATION	

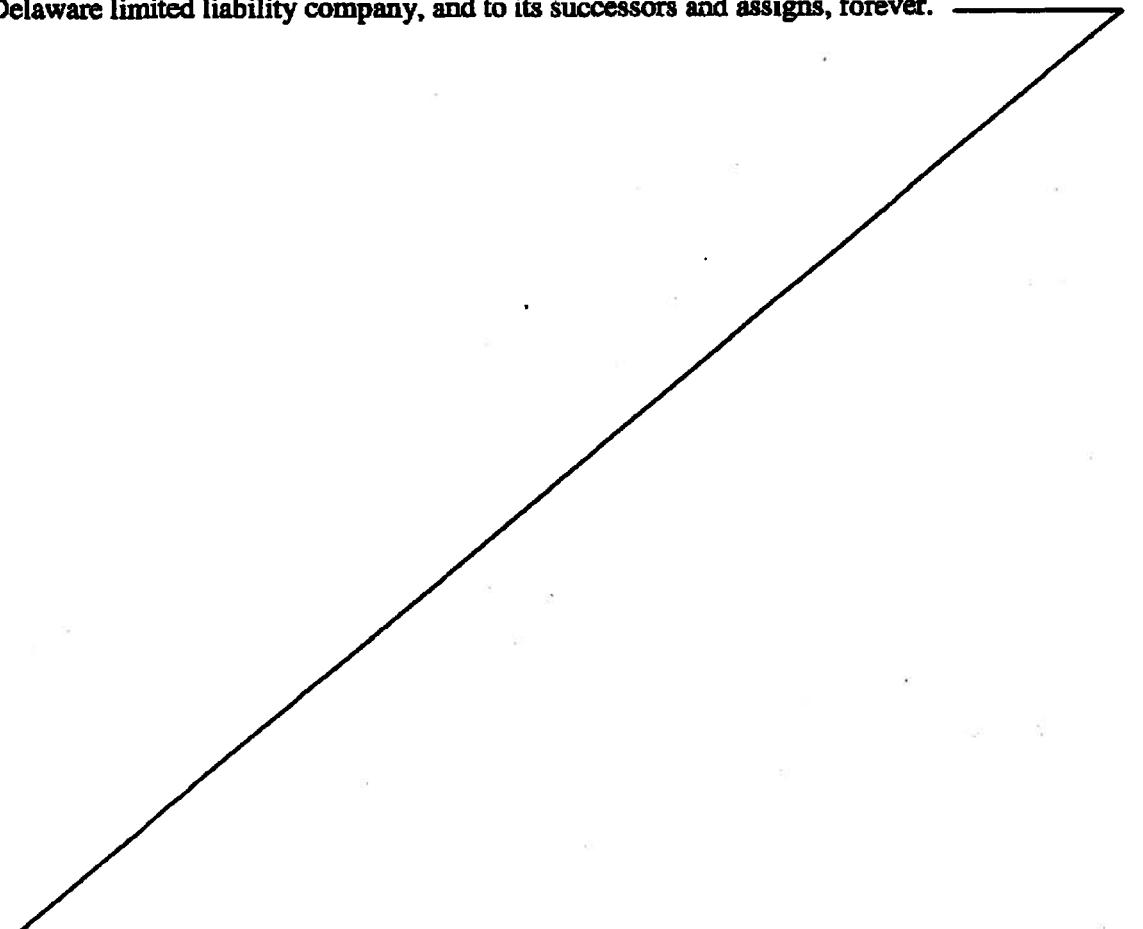


**JOINDER AND QUITCLAIM DEED**

**KNOW ALL MEN BY THESE PRESENTS:**

/ **JAMES C. REYNOLDS, INC.**, a California corporation, one of the fee simple owners of Lot 30 (Map 4), being all of the land covered by Certificate of Title No. 830,716, does hereby join in, consent to and approve of the consolidation of Lot 30 (Map 4) (less erosion) and Lot 1198 (Map 157), and the resubdivision of the same into Lot 1218 (Map 176) and Lot 1219 (Map 176), all maps referenced herein being filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069, all as set forth in the petition to which this joinder is attached.

**JAMES C. REYNOLDS, INC.**, a California corporation, in consideration of the sum of **TEN DOLLARS (\$10.00)**, the receipt of which is hereby acknowledged, **DOES HEREBY RELEASE, REMISE AND QUITCLAIM** unto **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company, whose address is the James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, all of its interest, if any, in Lot 1219 (Map 176) described in the petition to which this instrument is attached **TO HAVE AND TO HOLD** the same unto **JAMES CAMPBELL COMPANY LLC**, a Delaware limited liability company, and to its successors and assigns, forever. \_\_\_\_\_



IN WITNESS WHEREOF, the undersigned have executed these presents on  
this 6th day of January, 2009.

JAMES C. REYNOLDS, INC., a  
California corporation

By   
Name: James C. Reynolds  
Its: President

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of ) LAND COURT APPLICATION  
THE TRUSTEES UNDER THE WILL AND ) NO. 1095  
OF THE ESTATE OF JAMES CAMPBELL, )  
DECEASED, )  
to register and confirm title to land situated )  
at Kahuku, District of Koolauloa, )  
City and County of Honolulu, State of Hawaii )

**ORDER TO SHOW CAUSE**

TO: THE PERSONS LISTED ON EXHIBIT 1 ATTACHED TO THE CITATION  
FILED HEREWITH

WHEREAS, James Campbell Company LLC, a Delaware limited liability company ("Petitioner JCC"), Continental Pacific, LLC, a Delaware limited liability company ("Petitioner Continental Pacific"), and James C. Reynolds, Inc., a California corporation ("Petitioner Reynolds") (collectively, Petitioner JCC, Petitioner Continental Pacific, and Petitioner Reynolds may be referred to as "Petitioners") have filed in this Court an Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements, in which Petitioners pray for the registration of the erosion of Lot 30, as shown on Map 4, filed with Land Court Application No. 1095 of the Trustees under the Will and of the Estate of James Campbell, Deceased (all maps referred to herein being filed with Land Court Application No. 1095), the consolidation of Lot 30 (less erosion) with Lot 1198, as shown on Map 157, and the resubdivision of the same into Lot 1218 and Lot 1219, both as shown on Map 176, the creation of a 60 foot shoreline setback line, as shown on Map 176, the designation of Easement "396", as shown on Map 176, and the designation of Easement "397", as shown on Map 176, all as more fully described in such amended and restated petition, said land being all of

the land covered by Certificate of Title No. 830,716 (as to Lot 30) and Certificate of Title No. 826,091 (as to Lot 1198), and good cause appearing therefor,

IT IS HEREBY ORDERED that THE PERSONS LISTED ON EXHIBIT 1 ATTACHED TO THE CITATION FILED HEREWITH appear before the Honorable Judge Gary W.B. Chang, Judge of the Land Court of the State of Hawaii, in his Courtroom on the Fourth Floor of Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawaii 96813 on MAR -30-2009, 2009, at 9:00 a.m., then and there to show cause, if you have any, why the prayer of said Amended and Restated Petition for Consolidation and Resubdivision, Creation of Shoreline Setback Line, and Designation of Easements of James Campbell Company LLC, a Delaware limited liability company, Continental Pacific, LLC, a Delaware limited liability company, and James C. Reynolds, Inc., a California corporation, for consolidation and resubdivision, creation of shoreline setback line, and designation of easements and registration of erosion and other relief sought therein should not be granted.

  
\_\_\_\_\_  
JUDGE OF THE LAND COURT

Attest:

By Patricia Hanashiro  
Registrar of the Land Court

amended and restated petition, said land being all of the land covered by Certificate of Title No. 830,716 (as to Lot 30) and Certificate of Title No. 826,091 (as to Lot 1198);

YOU ARE HEREBY CITED AND FURTHER NOTIFIED, pursuant to the foregoing Order to Show Cause, to appear before the Honorable Gary W.B. Chang, Judge of the Land Court of the State of Hawaii, in his courtroom on the fourth floor of Kaahumanu Hale, 777 Punchbowl Street, at Honolulu, Hawaii 96813 on MAR -302009, 2009, at 9:00 A.m. to show cause, if you have any, why the prayer of said Amended and Restated Petition should not be granted, and unless you appear at said Court at the time and place aforesaid, your default will be recorded and the Amended and Restated Petition will be taken as confessed and the Amended and Restated Petition will be granted, and you will be forever barred from contesting said Amended and Restated Petition or any judgment, decree or writ entered thereon.

WITNESS, the Registrar of the Land Court of the State of Hawaii.

DATED: Honolulu, Hawaii, FEB 12 2009, 2009.

Parseeen Keanuahine  
REGISTRAR

**EXHIBIT 1**

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Honolulu, Hawaii 96813

Carrie Okinaga, Esq.  
Department of the Corporation Counsel  
City and County of Honolulu  
Honolulu Hale  
530 South King Street  
Honolulu, Hawaii 96813

End of Exhibit 1

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Application  
of

TRUSTEES UNDER THE WILL OF THE  
ESTATE OF JAMES CAMPBELL,  
DECEASED

to register and confirm title to land situate at  
Kahuku, District of Koolauloa, City and  
County of Honolulu, State of Hawaii

APPLICATION NO. 1095  
L.C. CASE NO. 08-1-0054  
LAND COURT

HONORABLE GARY W.B. CHANG,  
JUDGE

INTERMEDIATE COURT OF APPEALS  
ICA NO. 30006

HONORABLE CRAIG H. NAKAMURA  
Chief Judge

HONORABLE DANIEL R. FOLEY  
Associate Judge

HONORABLE JEANNETTE H.  
CASTAGNETTI  
Circuit Judge in place of Recused Associate  
Judges

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date indicated below, a true and correct copy of the foregoing document was duly served at their last known address.

Served electronically through JEFS:

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Attorneys for Respondent-Appellee  
JAMES C. REYNOLDS, INC.

DATED: Honolulu, Hawai'i, October 21, 2013.

/s/ Mark K. Murakami

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JENNIFER A. BENCK  
WILLIAM M. HARSTAD

Attorneys for Respondent - Appellee  
JAMES CAMPBELL COMPANY LLC