The Environmental Center at the University of Hawaii at Manoa has reviewed the owners' application for a Special Management Area Use Permit to develop approximately 39 acres of the proposed Kawainui Residential Subdivision for 153 single-family residential dwellings on two contiguous parcels of land. We have been assisted in the preparation of this statement by the following members of the University Community: Bertell Davis, Anthropology; John Evans and Paul Hummel, Civil Engineering; Diane Drigot and Ronald Renkoski, Environmental Center; and the Staff of the Urban and Regional Planning Program. Our statement does not represent an institutional position of the University of Hawaii.

I. First, we would like to refer to Section 3 of Ordinance 4529, as amended, referring to the objectives and policies of this ordinance as being those contained in Section 205A-2 of the Hawaii Revised Statutes. Among the objectives listed (Section 205A-2, (7)) is that development in special management areas should be managed in such a way as to "improve the development review process, communication, and public participation in the management of coastal resources" thus affected. We would like to point to a problem in the process by which public participation has been solicited on this application that is related to this management directive. In the Notice of Public Hearing issued by the Department of Land Utilization (DLU), it is stated that testimony is being accepted on the permit application as it relates to Sections 3 and 4 of the Ordinance 4529, as amended. Yet, later in the same notice, it is stated that testimony should address the four guidelines that are listed. These guidelines comprise only one part, (A), of Section 4 of the relevant ordinance. However, Section 6 of this same Ordinance specifically states that the Director of the authorized review agency shall assess the significance of a proposed development in the special management area according to all criteria listed in Sections 3 and 4, and pursuant to procedures set forth in Chapter 343 of the Hawaii Revised Statutes and in the EIS regulations issued by the Environmental Quality Commission.
Section 6. Significance Criteria and Procedures

In assessing the significance of a development, the Director shall confine his criteria to Sections 3 and 4 of this Ordinance and, in processing a negative declaration or an environmental impact statement, the Director shall adhere to the procedures set forth in Chapter 343, HRS, and the regulations adopted thereunder by the Environmental Quality Commission. In the event that a development is not subject to the Chapter, but the Director requires an EIS, filing shall be with the agency and appeal by an applicant in the event of non-acceptance shall be to the Council.

Most of our testimony relates to the specific language in Sections 4(B) and 6 of this Ordinance. The rationale for our broader basis of review and comment is that the City Council will be making the final decision in this matter, and their decision must be based on the criteria and procedures indicated in the Ordinance as a whole, not just the four guidelines publicized in the Public Hearing Notice. Furthermore, since the Council is not required to hold additional public hearings on this proposal, and since the Ordinance specifically states that the Director of DLU must consider all relevant sections and procedures, we question the appropriateness of the recommendation that the public--during its one opportunity at a hearing--limit its testimony to only the four guidelines listed in Section 4(A) of the Ordinance. The end result of such a recommendation is that little is contributed toward "improving the development review process, communication, and public participation in the management of coastal resources" (Objective 7, Section 3, Ordinance 4259, as amended) thus affected.

II. The applicant has included reference to the Final Environmental Impact Statement of April 1977, and DLU's 1977 letter of acceptance of that Statement, among the Exhibits attached in support of the current SMA Use Permit application. We would like to point out that, since 1977, the applicant's proposed project design, scope, and incorporated mitigation measures have changed substantially. Furthermore, research in the project area performed since 1977 reveals new evidence of different or likely increased environmental impacts not previously discussed in the 1977 EIS. Thus, for example, a preliminary study of Kawainui Marsh, supported by the Hawaii Coastal Zone Management Program, and performed by Dr. John Kraft (University of Delaware), has already indicated the presence of valuable historic resources in the vicinity of the proposed residential development.

The archaeological evidence recently recovered now points to the possibility that (a) aboriginal settlement along the margins of the Kawainui Marsh may be among the oldest in the Hawaiian Islands, and (b) the settlement may have been a coastal-marine oriented habitation on what was then an open embayment (and not an inland settlement as originally thought). Thus, the fringes of the Marsh are now thought to be an invaluable resource area for investigating the processes of island colonization and expansion in the early prehistoric period of Hawaii.

Given these facts: (1) that the proposed action has been substantially modified since 1977; and (2) that new evidence has been brought to light that different or likely increased environmental impacts, not previously dealt with, will accrue from the proposed
project—we submit that these factors fit the conditions listed in Sub-Part K(2:10) of the Environmental Quality Commissions' EIS regulations covering Supplemental Statements.

Proposing agencies and/or applicants shall prepare for public review Supplemental Statements whenever the proposed action for which a Statement was accepted has been modified to the extent that new or different environmental impacts are anticipated. A Supplement would be warranted when the intensity of the environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts, not previously dealt with.

Furthermore, it would seem to be in the interest of both the applicant and the SMA administering authority to delay the preparation of the Supplemental Statement until the Kawainui Marsh Study is completed. This intensive, multi-disciplinary, multi-agency endeavor, backed by an $80,000 funding commitment from the Office of Coastal Zone Management, is already underway. Its central purpose is to produce the necessary baseline information for development and implementation of a management plan for the Kawainui area, and to thus improve the basis for decision-making on all resource use and conservation options being proposed. There is a possibility that a variety of other resources and potential impacts may become evident after the completion of these studies which could not be adequately assessed by a prematurely prepared Supplemental Statement.

III. In addition to the previously noted recent archeological evidence and procedural requirements, the following actions have been taken into consideration in arriving at our recommendation that a Supplemental Statement be prepared prior to issuance of the SMA permit:

a. The U.S. Army Corps of Engineer's EIS review of the City's pending permit application for the proposed Olomana-Manawili Sewer alignment through the Kawainui Marsh has not been completed, and this development decision will, in turn, affect the waste water treatment aspects of the SMA permit applicant's proposed development;

b. The previously mentioned comprehensive Kawainui Marsh Study being coordinated through the State of Hawaii Coastal Zone Management Program at Department of Planning and Economic Development (DPED) is currently underway. Once completed, it will contribute to a coordinated resource management plan for the entire Kawainui Marsh area and its environs;

c. The Kawainui Marsh and environs has been declared eligible for nomination to the National Register of Historic Places;

d. The State of Hawaii has already declared the Kawainui Marsh Area as an Essential Habitat for several endangered Hawaiian waterbirds and has cooperated with the U.S. Fish and Wildlife Service in its current ongoing review of a proposed designation of the Kawainui Marsh area as a Critical Habitat for the same endangered bird species.
In view of the fact that these actions are in process, it is our judgement that their completion will yield information on environmental impact and planning options for the entire Kawainui Marsh area, which will assure that the City and County's development decisions are in conformance with the following criteria as listed in Ordinance No. 4529, as amended:

a. Section 1(b), covering the Purpose of the Ordinance, wherein it states "It is the City and County of Honolulu's policy to preserve, protect, and, where possible, to restore the natural resources of the coastal zone of Hawaii," and to "avoid permanent loss of valuable resources and foreclosure of management options" (our emphasis).

b. Section 4(B), which states that "No development shall be approved unless the Council has first found that: (1) The development will not have any substantial, adverse environmental or ecological effect...Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual development,...and the elimination of planning options" (our emphasis).

IV. We wish to commend the applicant for responding to earlier public concerns regarding sedimentation into Kawainui Marsh during grading of the site and construction of streets, houses, and other improvements that will be involved if and when the project is approved. From our review of available material, the proposed construction of an earth berm, and its related features, as a means of mitigating the sediment runoff into the marsh, appears to be consistent with accepted engineering practice.

We recommend, however, that the required earthwork be done during the summer months when there is less chance of heavy rainfall and that planting the berm to grass be performed immediately. After the subdivision itself is completely installed and grassed, relatively little erosion is expected to occur during the house construction phase. Once the houses are completed, less sediment production is expected than from the unimproved area.

If the berm is to be left permanently, it needs to be modified from the plans, which were available to the public prior to tonight's hearing. If the berm is left as currently designed, it will flood parts of at least 40 lots, making them unacceptable to potential buyers.

In conclusion, we recommend that a Supplemental Statement be prepared; and that the timing of its preparation be determined in such a way as to coordinate with the results of other resource planning, research, and assessment activities already underway at the State and Federal levels of government. Such coordination will allow for well planned and executed development to proceed in the interests of the long term well being of the community.
Office of the Director

February 24, 1981

Mr. Michael McElroy, Director
Department of Land Utilization
650 South King Street
Honolulu, Hawaii 96813

Dear Mr. McElroy:

Enclosed is a copy of our Addendum to the original testimony we submitted at the Public Hearing held February 19, 1981, on the Application for a Special Management Area Use Permit for Kawainui Residential Subdivision, Kailua, Oahu. We would like to take this opportunity to question the procedures by which public review on this application has been implemented, thus necessitating the submission of this Addendum.

In the review package of materials (Application + Exhibits) originally provided to us through Department of Land Utilization, we were not notified—in advance of the hearing—regarding the change in the applicant's proposed earth berm design, from a temporary to a permanent structure. Part I of our February 19th Statement referred to another procedural problem we encountered regarding the way this hearing was publicized.

Since these questions about procedure tend to recur, we wish to take this opportunity to voice our concern about the manner in which the public is kept informed of applications undergoing review by your agency.

We understand that your staff is often overwhelmed by a multitude of public review requests over a number of different actions being reviewed simultaneously. We do appreciate their continuing efforts to keep us as fully informed as possible on applications, EISs, and related documents that we have requested for review purposes.

Sincerely,

Diane C. Drigot, Ph.D.
Acting Director

cc: Ivan MacDougall
Jacquelin Miller
Bertell Davis
John Evans
Paul Hummel
Urban & Regional Planning Program/UH
Ronald Renkoski
City Council/Honolulu
OEQC
Lt. Governor's Office

AN EQUAL OPPORTUNITY EMPLOYER
Dear Mr. MacDougall:

Addendum to Public Hearing Testimony  
Delivered on February 19, 1981 regarding  
Shoreline Management Area Use Permit Application  
for  
Kawainui Residential Subdivision  
Kailua, Oahu

This addendum is necessitated by testimony presented by Community Planning, Inc. at the February 19 Public Hearing: the announcement that the temporary erosion control berms would be left permanently, instead. In a follow-up conversation, Attorney Eric Maehara revealed that despite this change, no design changes were planned in the berms. He added that the water retained by the berms would be allowed to percolate into the ground.

In Exhibit 4A of the application materials made available to the public before this hearing, the applicant presented evidence contradictory to the proposal to leave the earth berms in place permanently: "The existing soil was tested for permeability by Geolabs-Hawaii and determined to have a low percolation value."

In our review of the erosion control plans, we concluded that if constructed as designed, i.e., as temporary earth berms, these structures would mitigate the sedimentation of the marsh during construction of the subdivision.

If the berms are left permanently in place, as currently proposed, water will be ponded on some 40 lots in Zone 4 and some 20 lots in Zone 5. The northern most berm would flood the lower portions of 14 lots; forming a water body up to 6 feet deep, 80 feet wide, and 600 feet long after a heavy rain. The southern most berm would put a few lots completely under water.

We concur with the USDA Soil Conservation Service that the berms need not be permanent. Furthermore, it is inadvisable to leave the berms in place after the houses are built unless the spillways are enlarged, deepened, and seeded/sodded to grass. It may be necessary to install pipe outlets under the berms, also.

AN EQUAL OPPORTUNITY EMPLOYER
In light of the ponding problem and the high degree of coordination needed among future home owners to maintain the berm, we recommend complete removal of the earth berm after the subdivision is adequately grassed.

In conclusion, we wish to emphasize that the incorporation of the aforementioned earth berm—either temporary or permanent in nature—in the proponent's 1980 application for an SMA Use Permit, is one of the factors that has changed substantially since the Final Environmental Statement of 1977 was accepted; and which we referred to in our February 19 Statement. This change, therefore, fits the conditions listed in Sub-Part K(2:10) of the Environmental Quality Commission's EIS Regulations, when Supplemental Statements are required.

Sincerely,

Diane C. Drigot, Ph.D.
Acting Director

RDK

cc: Michael MacElroy
    Jacquelin Miller
    Bertell Davis
    John Evans
    Paul Hummel
    Urban & Regional Planning Program/UH
    Ronald Renkoski
    City Council/Honolulu
    OEQC
    Lt. Governor's Office