The Environmental Center at the University of Hawaii has again reviewed the owner's application for a Special Management Area (SMA) 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 by Diane Drigot and Jacquelin Miller of the Environmental Center and the Staff of the Coastal Zone Management Project. Our statement does not represent an institutional position of the University of Hawaii.

We appreciate the Council's decision to hold a special public hearing before voting on the SMA Use Permit for the proposed Kawainui subdivision. We wish to call your attention to several important aspects of our earlier testimony presented at the February 19, Public Hearing, which are incompletely and inadequately addressed in the DLU Director's Report (80/SMA-98 (SM)).

Additional analysis of the application materials and related communication, since then, strongly reinforce our original concerns that it may be premature and perhaps exceeding its statutory authority for Council to rule on this SMA Use permit application at this time. Thus, we ask that you consider the following facts and related questions in making your determination on this matter.

1. We question the Department of Land Utilization's conclusion (page 2 of the DLU Directors' Report (80/SMA-98 (SM)) that this project is a "logical and reasonable extension of an existing subdivision" on the basis of inconsistent and divergent City and State zoning and land use policies.
The project site is zoned R-6 Residential. This zoning is inconsistent with current City and State land use policies for this site (as expressed in the City Detailed Land Use Map (DLUM) for Kailua (Ordinance No. 2473, July 29, 1964) and by the State Land Use Commission district use map for this area). Furthermore, the draft Development Plan for this site, reflecting community sentiment and the City Department of General Planning's professional expertise on this matter, shows this entire area in Preservation use. The City's professional planning staff has found the supply of land zoned "residential" on this island to be far in excess of the present and predicted future demand. Thus, they recommended "downzoning" of undeveloped parcels such as this one. (See Department of General Planning Staff Report, Development Plan Land Use Analysis, April 1980, 129 pages.) Since current zoning for this site is inconsistent with City and State land use designations for the area, which expression of land use policy prevails?--that which is defined in the Comprehensive Zoning Code (CZC), the City General Plan, or by the State Land Use Commission districts? Will the Council be exceeding its statutory authority to rule on this SMA use application as spelled out in Chapter 205A of the Hawaii Revised Statutes, as amended? See, for example, the Corporation Counsel Memorandum M 80-8, January 30, 1980 on this matter. Can additional legal counsel be sought to clarify the statutory authority prior to ruling on this application?

2. The DLU Director's Report (p. 11) suggests that the current Residential use option is more viable than the park use option for this site. The objective rationale for this statement is not presented. In addition to strong community support, the park use option has been recommended by the City Department of Parks and Recreation. Thus, in a February 18, 1981 letter to DLU, they say that the "slopes immediately abutting Kawainui Marsh is a vital and integral part of any park, conservation, or open space use and management of this area." The park use option is also consistent with the Preservation designation for this site, on the draft Development Plan for this area. It is our understanding that the baseline studies which will permit adequate evaluation of this site for all possible uses will be completed in 2-3 years, (DLU Director's Report, p. 11). A land use decision prior to the completion of these studies seems quite inappropriate. Furthermore, the cost of waiting for this information would seem to be quite insignificant when measured against the irreversible commitment of the significant resources on this site that are specifically earmarked (for protection and enhancement) under current State and City coastal zone management laws.

3. Is DLU's acceptance of an outdated 1977 EIS for a different project valid when questions have been raised as to the legal justification for using the 1977 EIS to meet the EIS requirements of HRS Chapter 343? We note that the proposed action has been substantially modified since 1977; and that new evidence has been brought to light that different and likely increased environmental aspects not previously dealt with will accrue from the proposed project. The redefinition of the project and the anticipated new, significant impacts would appear to definitively preclude the use of the 1977 EIS, without also requiring a Supplemental Statement. (See Sub-Part K(2:10) of the Environmental Quality Commission's EIS Regulations covering Supplemental Statements and Section 6 of Ordinance 4529, as amended.) Pursuant to the above, the rationale we have used in determining that a Supplemental Statement is necessary includes the following:
a. Evidence that the proposed action has been substantially modified since the original proposed project and related EIS in 1977.
   
i) The present alternative of building only part of the original project (Zones 4 and 5) was not addressed as one of the "alternatives to the proposed action" under consideration in Part VI of the original EIS document.
   
ii) The applicant has substantially redefined the project to include an element of significant potential impact—a 6,000 foot long earthen berm, varying in height from 3 to 6 feet, the purpose of which is to retard erosion and runoff into the Marsh during the project construction period. Regardless of whether the berm is a permanent or temporary structure on the landscape, the mere process of constructing and removing the berm on slopes up to at least 40 percent will comprise an impact of potential significance on the Marsh environs, as well as on the "borrow" site, wherever that may be.
   
b. Evidence that new scientifically-based studies have brought to light different and likely increased environmental aspects not previously dealt with.
   
i) Preliminary studies of Kawainui Marsh (supported by the Hawaii Coastal Zone Management Program, and conducted by internationally recognized geologist, Dr. John C. Kraft, University of Delaware (a visiting Sea Grant Scholar at the University of Hawaii)), verify archaeological evidence that aboriginal settlement along the margins of Kawainui Marsh on the proposed project site may be among the oldest in the Hawaiian Islands. These findings clearly establish the fringe of the Marsh as a resource of irreplaceable social and cultural value.
   
ii) The significance of Dr. Kraft's findings contributed to the Bishop Museum's reversal of their original recommendation that salvage of a representative sample of surface archaeological resources would be an adequate mitigative measure prior to alterations of this project site. Instead, they recommended, in an October 1980 proposal to the Castle Estate Trust, that further test excavations leading to the necessity of on-site preservation of these earliest cultural deposits in Hawaii (circa 500 A.D.), an option to be left open before any further development action is taken.

4. Several new issues with respect to the anticipated environmental impacts pursuant to sewage, siltation and archeological sites have been called to our attention by members of the University community, citizens groups and City, State, and Federal agencies. We call some of these issues to your attention and would appreciate your consideration of their significance in your review of the permit application.
a. Sewage and Related Cost Concerns

i) Project plans call for the sewer lines of the proposed subdivision to be connected with the proposed Olomana and Maunawili Interceptor Sewer. Construction will be by the City's Department of Public Works after the Final EIS is accepted and the U.S. Army Corps grants the necessary permit. In the event that the City is denied its Corps permit, and the proposed hookup to the City's interceptor is thus not possible, the applicant has offered to assume the full cost burden of constructing the required sewer main to hook to the existing sewer pump station, treatment facility, and Mokapu ocean outfall. (P. 13, DLU Director's Report)

ii) On February 20, 1981, the Federal Advisory Council on Historic Preservation advised the U.S. Army Corps of Engineers that, after consultation with the Federal Environmental Protection Agency (EPA) on this matter, EPA expressed grave reservations at the cost estimates associated with this proposed interceptor project as well as the capacity of the existing regional system to handle any additional sewage at this time, regardless of how it is financed.

b. Concerns Relative to the Initiation of Permit Decisions Before Applicable Studies are Completed

i) The February 20 communication to the U.S. Army Corps from the Federal Advisory Council on Historic Preservation also indicates that the Advisory Council and the EPA strongly concur that the City of Honolulu should coordinate with the time-tables of all the studies currently underway--at the local, state, and federal level--with respect to the future use of the Kawainui Marsh and environs, including the ongoing Kaneohe-Kailua regional sewage treatment study, financed by EPA.

ii) The City's Department of Public Works has stated that they will be better able to determine water quality characteristics of stormwater drainage from the proposed subdivision after the results of a cooperative study with the U.S. Geological Survey is completed in December 1981. (Letter to DLU, 12-5-80)

iii) The State Department of Health has conditionally accepted the Storm Water Runoff Report for the subject project, while reserving the right to reverse this acceptance and to impose environmental restrictions when the final project plans are completed. (Letter to DLU, 2-18-81)

iv) The State Department of Planning and Economic Development (DPED) cites the applicant's contracted Storm Water Runoff Report as appropriately concluding that the present capacity of the Marsh to absorb additional influx of various chemicals from the proposed subdivision is unknown in the absence of a nutrient and suspended particle budget study. It continues by citing that they have such a study currently underway, as part of the CZM-funded efforts
of the Kawainui Technical and Policy Advisory Committee (KTPAC). It concludes by recommending that a moratorium on the issuance on any permits be declared, pending the findings of these and other studies being completed by this Committee. (Letter to DLU, 2-4-81.)

v) The U.S. Fish and Wildlife Service states that there is already sufficient evidence of potential deleterious impact on the fish and wildlife resources that currently exist in the Marsh to warrant permit denial. (Letter to DLU, 1-29-81) The U.S. Fish and Wildlife Service is also currently assessing the potential of the Marsh for inclusion in the National Wildlife Refuge System, and the delineation of the peripheral slopes up to the 20-foot contour line of the proposed project site, for inclusion as a Critical Habitat designation for the officially endangered bird species who currently are found there. This critical habitat recommendation has been made in cooperation with the State of Hawaii Water Bird Recovery Team.

c. Concerns Relative to Siltation

i) The City's Department of Parks and Recreation states that an environmental impact statement is necessary to properly address the potential impact of the proposed "high dike" (i.e. earthen berm) as an erosion control measure. (Letter to DLU, 2-17-81)

ii) The U.S. Army Corps of Engineers advises that a ten-foot buffer is necessary between the wetland boundary--as yet to be measured in metes and bounds--and any alterations that are undertaken on the project site, including the placement of the proposed berm. (Letter to DLU, 12-17-80)

iii) The U.S. Department of Agriculture Soil Conservation Service has stated that the proposed berm "wouldn't serve much purpose for sediment control if left permanently on site." (Letter to DLU, 2-10-81)

iv) The State Department of Land and Natural Resources (DLNR) states that the placement of the berm is a "step in the right direction of creating a buffer zone" between the proposed subdivision and the Marsh habitat. However, they raise additional concerns regarding the adequacy of the berm in preventing human intrusion and animal predation on marsh wildlife, and question whose responsibility it will be to maintain the berm and its related features. (Letter to DLU, 2-18-81)

v) The U.S. Fish and Wildlife Service has stated concern that the proposed project, regardless of the berm, would eliminate the existing de facto buffer zone that already exists on the vegetated slopes below the existing and planned subdivision. (Letter to DLU, 1-29-81)
d. Archaeological Concerns

i) The Bishop Museum has stressed the significance of the area proposed for subdivision development as containing some of the earliest known cultural deposits in Hawaii that are part of an interrelated set of archaeological sites in Kawainui Marsh and thus have been declared eligible, as a complex, for the National Register of Historic Places. Furthermore, the Museum has indicated that a thorough program of archaeological investigations should be conducted on the land parcels before any impacts occur; and that they need more information before committing themselves to a salvage plan suggested by the owner/applicant. The Department of Land and Natural Resources, Historic Sites Section, is referred to as a party in the discussions leading to the recommendation that further study is necessary before final decisions are made affecting this site. (February 19, Hearing Testimony and Letter to the Editor of the Honolulu Advertiser, March 3, 1981, from the Bishop Museum Department of Anthropology.)

ii) The City Department of Parks and Recreation has acknowledged the significance of the recent archaeological investigations on the site proposed for development and has thus called for an environmental impact statement to properly address archaeological concerns. (Letter to DLU, 2-17-81)

iii) The State Department of Planning and Economic Development has referred to the test borings conducted in the marsh by Dr. John C. Kraft, and the preliminary report of his research indicating that the periphery of Kawainui Marsh is extremely important in terms of Hawaiian history and pre-history. Dr. Kraft's findings are sited as part of the accumulating evidence of the Marsh's historic and ecological significance as being so great as to lead to their recommendation for a moratorium on all permit decisions until all DPED-led studies are completed leading toward a Marsh Management Plan. (Letter to DLU, 2-4-81)

5. We question the basis of the cost benefit analysis and the stated positive impact of this project on the economically disadvantaged families. The landowners argument that the proposed Kawainui subdivision will indirectly benefit the young or economically disadvantaged families desirous of first time, single-family ownership through the generation of a "ripple effect" in the housing market is questionable. (In a Windward Sun Press interview on February 18, 1981 and related testimony at February 19 Public Hearing.)

The landowner said that the Kawainui homes would themselves not be affordable by most younger or economically disadvantaged residents desirous of owning their first, single-family home. However, the completion of this subdivision--it is argued--would add to the overall housing inventory and would thus have a "ripple effect" of indirect benefit to this most needy group. The Kawainui homes would be bought by families already in other, older homes, thus vacating these older homes for the first-time single-family home buyer.
Preliminary analysis of available housing statistics provided by the Honolulu Board of Realtor's Records does not support this well-intentioned statement. These Realtor's Records show that, since 1975, single family resale units have always been more expensive than new single family units, to the point where, by 1979, the average selling price of single family used houses was $151,744. By contrast, new single-family homes, on the average, reached the selling price of $114,800 in the same year. Thus, new single-family homes have been selling at an average price of $36,974 LESS than resale single-family homes, according to recent records. In addition to this cost factor, the State Housing Functional Plan, in which these statistics appear (Table III-8, page III-20) presents additional information which suggest that (1) the older, single-family homes are generally larger, better built, and occupy larger parcels in more favorable locations. Thus their current occupants may be disinclined to move; and (2) people desirous of first-time single-family home ownership may not be able to afford the higher prices of these older resale units, even if they did become available.

Based on this preliminary analysis, a review of the costs and benefits of the proposed residential use option vs. the park use option for this site should be addressed. The central question remains: which use options are most viable, most reasonable, and most logical, in terms of serving the greater, long term public interest embodied in relevant coastal zone and environmental impact management programs applicable to this area.

In conclusion, we suggest that before your decision is made, Council seek legal clarification on points we raised concerning statutory authority to rule on this permit; that a Supplemental Statement be prepared to address the new anticipated significant impacts of this substantially redefined project; and that the timing of its preparation be determined in such a way as to coordinate with the results of other planning, research, and assessment activities already underway at the City, State, and Federal levels of government. Such coordination will allow for well planned and executed developed decisions to proceed in the interests of the long term well being of the entire community.