

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
THE DEPARTMENT OF PLANNING AND) DOCKET NO. A76-420
ECONOMIC DEVELOPMENT)
)
for the Reclassification of)
Certain Lands situated at)
Kawainui, Kailua, Island of)
Oahu)
_____)

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

IN THE MATTER OF THE PETITION OF) DOCKET NO. A76-420
)
The Department of Planning and) FINDINGS OF FACT,
Economic Development) CONCLUSIONS OF LAW,
) AND DECISION AND ORDER
For the Reclassification of Certain)
Lands situated at Kawainui,)
Kailua, Island of Oahu)
_____)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION AND ORDER

Pursuant to Section 205-4, Hawaii Revised Statutes, as amended, the Department of Planning and Economic Development filed a request on October 12, 1976 for reclassification from Urban to Conservation, 244.15 acres of certain lands situated at Kawainui, Kailua, Oahu, City and County of Honolulu, State of Hawaii. On March 18, 1977 a pre-hearing conference was held on the petition. The application was heard on March 24, 1977 and May 4 and 5, 1977 at Kailua, Oahu and on August 16, 1977 and September 8, 1977 at Honolulu, Oahu. Mandatory parties to the proceedings were Petitioner (the State of Hawaii Department of Planning and Economic Development) and the City and County of Honolulu Department of General Planning.

Admitted as intervening parties to the proceedings on February 4, 1976, were Harold K. L. Castle, et al., and the Ad Hoc Committee for Kawainui comprised of the Outdoor

Circle; Shoreline Protection Alliance; Sierra Club, Hawaii Chapter; Congress of Hawaiian People; Coconut Grove Residents Association; Environmental Education Association of Hawaii; Hawaiian Trail and Mountain Club; Kahaluu Neighborhood Board No. 29; Kailua Neighborhood Board No. 31; Kailua Community Council; Kaneohe Community Council; Hawaii Science Teachers Association; Kailua-Hawaii Branch of the American Association of University Women; Social Concerns Committee of the Windward Coalition of Churches; Lanikai Community Association; Hawaii Federation of Garden Clubs, Inc.; Maunawili Park Community Association; Maunawili Estates Community Association; Olomana Community Association; Council of Presidents Policy Committee; The Honorable Faith P. Evans; The Honorable Andrew K. Poepoe; Dorothy Babineau; Arthur F. Beaumont; Hope M. Gray and Manuel N. Sproat (hereinafter referred to collectively as the "Ad Hoc Committee for Kawainui").

The Land Use Commission, having heard the testimony of the witnesses and the evidence received, together with the files and records pertaining to the application herein, makes the following findings of fact and conclusions of law, and issues its decision and order thereon.

Background Information

On September 13, 1974, during the Land Use Commission's 5 year boundary review, the City and County Department of Parks and Recreation wrote to the Land Use Commission requesting that the subject area be reclassified from the Urban to the Conservation District. On October 20, 1974, the Land Use Commission initiated a petition on the

matter (Docket A74-378). On September 22, 1975, the Land Use Commission re-initiated the petition (Docket A75-398) under its new quasi-judicial proceedings. On January 12, 1976, upon the Department of Planning and Economic Development's (hereinafter referred to as DPED) recommendation that it would be more appropriate for the petition to be handled by DPED, the Land Use Commission withdrew its petition. On October 12, 1976, the subject petition (Docket No. A76-420) was filed with the Land Use Commission by the DPED.

FINDINGS OF FACT

Description of the Subject Property

1. The subject properties consist of approximately 240 acres more or less of land situated at Kawainui, Kailua, Oahu. The Tax Map Key designations, area, and ownerships of these properties are as follows:

<u>Tax Map Key</u>	<u>Acreage</u>	<u>Owner/Lessee</u>
4-2-13: 5	0.59	Harold K. L. Castle Trust Estate Richard J. H. Wong et al
4-2-13: 7	0.165	Annie Laahia Aling Akoi
4-2-13: 10	139.215	Harold K. L. Castle (Kaneohe Ranch Co., Ltd.) le
4-2-13: 20	0.018	State of Hawaii
4-2-13: 22 (por)	10.52	City and County of Honolulu
4-2-13: 23	0.016	State of Hawaii

<u>Tax Map Key</u>	<u>Acreage</u>	<u>Owner/Lessee</u>
4-2-13: 38 (por)	19.79	Henry H. Wong
4-2-14: 2 (por)	.83	Harold K. L. Castle (Kaneohe Ranch Co., Ltd.) le
4-2-15: 6 (por)	39.50	Michael C. Baldwin Trust, et al
4-2-15: (por of FAP No. I-H3-1(2))	5.23	State of Hawaii
4-2-16: 1 (por)	7.00	City and County of Honolulu
4-2-16: 6 (por)	.99	City and County of Honolulu (Honolulu Construction & Draying Co., Ltd.) le
4-2-17: 20 (por)	15.41	Harold K. L. Castle
4-2-17: 21 (por of FAP No. I-H3-1(2))	1.71	State of Hawaii
4-2-17: (por of Mokapu Saddle Road; F.A.S.P. No. S-0630(7))	.41	State of Hawaii
4-4-34: 25	2.240	Harold K. L. Castle (Kaneohe Ranch Co., Ltd.) le
4-4-34: 26	0.452	Harold K. L. Castle (Kaneohe Ranch Co., Ltd.) le
4-4-34: 27	<u>0.063</u>	State of Hawaii
TOTAL	244.15	

2. The subject properties are located within and/or adjacent to Kawainui Marsh. The total marsh area consists of approximately 819 acres. Approximately 750 acres are presently within the City-owned Conservation District lands. The remaining 69 acres are included in the subject petition. The properties adjoin the Conservation District and can be generally described as lying within the confines of the following: Kapaa Quarry Road to the west;

Mokapu Saddle Road to the north; Coconut Grove Subdivision to the east; Kalaniana'ole Highway and Kukanono Subdivision to the south.

3. Most of Kawainui, particularly the marsh area, is relatively flat, with slopes generally less than 5%. However, topographic maps for Kawainui, prepared by the City and County of Honolulu Department of Parks and Recreation in conjunction with the Kawainui Park planning efforts, reflect that approximately 20% of the subject properties have slopes of 20% or greater.

4. The report, "Detailed Land Classification - Island of Oahu" by the Land Study Bureau, dated December, 1972, indicates that the Kawainui area contains the following land types:

Land Type C13. Deep, moderately well to imperfectly drained, fine textured, non-stony Hanalei soil; slope 0-10%; elevation 0-300 feet; annual rainfall 30-60 inches. Productivity rating: Overall Class C.

Land Type C14. Deep, moderately well to imperfectly drained, fine textured, non-stony Hanalei soil; slope 0-10%; elevation 0-300 feet; annual rainfall over 60 inches. Productivity rating: Overall Class C.

Land Type E78. Marsh; slope 0-5%; elevation 0-100 feet; annual rainfall 15-35 inches; productivity rating: Overall Class E.

Land Type E105. Variable depth, well-drained, rocky, rough broken lands; slope 38-80%; elevation 0-1,500 feet; annual rainfall 20-35 inches. Productivity rating: Overall Class E.

Land Type E106. Variable depth, well-drained, rocky lands, slope 0-35%; elevation 0-2,000 feet; annual rainfall 35-60 inches. Productivity rating: Overall Class E.

Land Type E107. Variable depth, well-drained, rocky, rough broken lands; slope 36-80%; elevation 0-2,000 feet; annual rainfall 35-60 inches. Productivity rating: Overall Class E.

These land types indicate the properties have moderate to very poor potential for agricultural activities. (Class C land types are moderate in production. Class E land types are very poor or the least suited for agricultural use.)

5. The U.S. Department of Agriculture Soil Conservation Service "Soil Survey Report" descriptions of the soil types of the area (as listed below) generally confirm the LSB ratings with respect to agricultural suitability of the properties.

(MZ)	Marsh
(rSY)	Stony, steep land
(HnA)	Hanalei silty clay, 0 to 2 percent slopes
(WpB)	Waikane silty clay, 3 to 8 percent slopes
(ALF)	Alaeloa silty clay, 40 to 70 percent slopes
(LoC)	Lolekaa silty clay, 8 to 15 percent slopes
(AeE)	Alaeloa silty clay, 15 to 35 percent slopes
(Klab)	Kawaihapai stony clay loam, 2 to 6 percent slopes
(Ph)	Pearl Harbor clay
(PYf)	Papaa clay, 35 to 70 percent slopes
(KtC)	Kokokahi clay, 6 to 17 percent slopes
(KIB)	Kawaihapai clay loam, 2 to 6 percent slopes

6. The "Kawainui Regional Park Preliminary Soil Report", prepared by Walter Lum and Associates, Inc. in 1970 for the Department of Parks and Recreation, points out that soil formations in the Kawainui area are erratic and rarely uniform or regular. Approximately 30% of the subject properties lie within marsh areas and improvements in these areas would be both difficult and costly inasmuch as a long period would be required for settlement of fill materials and conventional construction may not be possible in the areas of recent landfills.

7. Based on U-2 infrared aerial photos of the area, and verified by field surveys, Kawainui area contains the following vegetative types:

1. Dense monkeypod type - consists of monkeypod with scattered Java plum (60% or more of ground covered by trees)
2. Scattered monkeypod type - consists of monkeypod with scattered brassaia and Java plum. Understory typically koa haole, California grass, other grass spp., and/or Christmas berry (less than 60% of the ground covered by trees)
3. Hau type - consists mainly of hau
4. Koa haole type - consists of koa haole with scattered large trees, mainly monkeypod, Ficus spp., African tulip, and Jacaranda
5. Bulrush type - consists mainly of bulrushes, may include patches of California grass
6. California grass type - consists mainly of California grass
7. Grass type - consists mainly of grasses other than California grass. Vegetation maps reflect a similarity between the subject properties and existing Conservation District areas.

8. The geologic types of the subject properties are relatively impermeable and do not serve as a high yield ground water source. The properties can be considered to be an aquiclude (a formation which, although porous and capable of absorbing water slowly will not transmit it fast enough to furnish an appreciable supply for a well or spring.) Although the properties are not a high yield ground water source, they contain ground water which together with tidal

levels, rainfall and runoff, play an important role in the water levels of the marsh environment.

9. A portion of the subject property and Kawainui Marsh are subject to flooding and serve as a natural storage for floodwater prior to their discharge into Kailua Bay via Kawainui Canal and Kaelepulu Stream. The Marsh also acts as a settling basin, minimizing sedimentation in coastal waters.

Heavy storms in 1940 and 1951 caused considerable damage to Kailua. As a result, the U.S. Corps of Engineers and the City and County of Honolulu entered into an agreement to provide appropriate flood control measures for the area. The City was required to purchase the necessary land and to agree to maintain flood storage capacity as specified by the Corps of Engineers. The Corps requirement is that any development of Kawainui Marsh meet a minimum requirement of 3,000 acre feet of floodwater storage at a maximum ponding elevation of 6.6 feet above mean sea level. Any development at Kawainui Marsh affecting flood storage would be subject to approval by the Corps.

Pursuant to Federal flood insurance requirements of the U.S. Army Corps of Engineers as derived from the 100 Year Flood Plan, approximately 50% of the subject properties are prone to flooding.

10. The subject properties are part of a drainage basin, extending from the summit of the Koolau Mountain Range, to Kailua Bay. Kawainui Marsh lies at the lower

edge of this drainage basin. Runoff from mauka portions of the drainage area flows into Kawainui Marsh, chiefly through Maunawili Stream, Kahanaiki Stream, and their tributaries. Other sources of water entering Kawainui Marsh include an unnamed stream which enters from the west, near the Kapaa Quarry area and surface waters from adjoining undeveloped hillsides of the Marsh and urban areas in Pohakapu. These surface water sources are an important element in maintaining the marsh environment of Kawainui.

11. Pollutants also enter Kawainui Marsh via its feeder streams. Two waste water treatment plants discharge treated effluent into Maunawili Stream before it enters the marsh. At the southeastern sector of the Marsh, there are two points of sewage discharge from plants serving Pohakapu and the Kukanono area. With the construction of the Kailua Waste Water Treatment Plant, these discharge points will be eliminated.

Contaminants also occur from existing uses of the area, including the cattle grazing operations, auto wrecking operations next to the Marsh and the City and County Department of Public Works landfill operation. Water quality of the marsh has a direct relation to the existing marine and wildlife values of the marsh.

12. There have been numerous proposals by the private landowners in the past to develop the subject properties. On January, 1976, a General Plan change from Agriculture to Industrial was initiated by Michael C. Baldwin Trust et al for 35.8 acres identified by TMK: 4-2-15: por. 6. In November, 1972, a General Plan change from

Agriculture to Commercial for a Shopping Center Development was initiated by HKL Castle Estate for 63 acres identified by TMK: 4-2-14: por. 2 and 4-2-13: por. 10. In 1975, a subdivision application for 764 residential lots was submitted to the City and County Department of Land Utilization for 224.152 acres identified by TMK: 4-2-13: 38, 4-2-13: 5 and 10; 4-2-15: por. 6; 4-2-17: 20 and 4-4-34: 25 and 26. Although the subdivision request was refused on January 1976, on November 1976, the landowners resubmitted the subdivision application along with a SMA application. The application is presently pending at the Department of Land Utilization.

State and County Plans

13. Reclassification of the subject properties is not inconsistent with the new City and County of Honolulu General Plan which was adopted on January 18, 1977. This new plan directs growth first to the primary urban center from Honolulu to Pearl City; second to Ewa; and third to the urban fringe area. Kailua, which includes the Kawainui area, is indicated as an urban fringe area, having third priority after the Honolulu-Pearl City area and Ewa area as far as urban development is concerned.

The new General Plan indicates that the rate of population growth in the Kailua area relative to the island-wide rate of population growth, will level off. It projects, in its Distribution of Residential Population, an increase in population for Kailua from 40,722 in 1975 to 49,000 in the year 2000, meaning that the Kailua area would decrease in terms of its percentage of total island population from 5.8% in 1975 to 4.7% in 2000.

The City and County of Honolulu 1964 General Plan designations for the properties are Agriculture, Highway, Preservation, Industrial and Residential.

The Detailed Land Use Map (Ordinance 2473) designation for the properties are Agriculture, Open Space, Residential, Industrial, Highway and Drainage.

The City and County of Honolulu Zoning Designations for the properties are R-4, R-6, and P-1.

14. Portions of the properties are within the City and County of Honolulu Special Management area and subject to development controls for the purpose of protecting the natural resources of the area. State Legislature Conference Committee Report No. 25, dated April 10, 1975 specifically defines the special management area to include Kawainui Marsh.

15. The proposed reclassification is compatible with recommendations contained in the Windward Regional Plan prepared by the DPED.

The Windward Regional Plan recommends that 10 regional policies be adopted by State and County agencies for growth management in the area. Two regional policies apply to the Kawainui lands.

Policy 4 - The Windward Oahu Region is environmentally sensitive because of patterns of rainfall, soil conditions, natural hazards, and topography; human activities in the region must be managed carefully to recognize such environmental sensitivity.

Policy 5 - Maintain large areas of open space to protect water supplies, prevent flash flooding, control

erosion and sedimentation, and preserve the scenic and rural characteristics of the region.

The Windward Regional Plan delineates the Kailua-Kaneohe area as a major urban fringe, and suggests a limited expansion of urban uses through limiting the growth of non-residential uses to supportive activities associated with residential community development.

The Plan recognizes the need for protective policies related to major open spaces which contribute to the suburban character of these two communities.

Kawainui Marsh is a key open space area which articulates the community design of the urban fringe community.

16. Reclassification of the subject properties from the Urban to the Conservation District is not inconsistent with the Shoreline Protection Act and Act 188.

17. Reclassification of the subject properties is not inconsistent with the spirit and intent of Chapter 344 (State Environmental Policy Act) and the following provisions within that Chapter:

1. "Encourage management practices which conserve and protect . . . open space areas" and "promote open space in view of its natural beauty not only as a natural resource but as an ennobling, living environment for its people." (Sections 2D and 4C).
2. ". . . maintain natural areas preserves, wildlife preserves, forest reserves, marine

preserves, and unique ecological preserves"
and "protect endangered species of indigenous
plants and animals . . . " (Sections 2E and
3A)

Need for Growth & Development

18. There are approximately 1,809 acres of vacant land in the Koolauloa and Koolaupoko districts planned for either Residential or Apartment use. These vacant lands have a potential for providing 18,027 dwelling units, housing 75,713 persons (based on an average family size of 4.2 persons).

There are 449 acres of vacant usable land in Kailua zoned for Residential, Apartment or Planned Development-Housing, of this amount 26.32 acres are zoned for Apartment use and 43.67 acres are zoned for PD-H Housing use. It is estimated that this zoned capacity could accommodate about 3,664 housing units with a potential population of between 13,190 to 15,389 persons depending on family size assumptions.

According to the Department of General Planning, reclassification of the subject area from Urban to Conservation would remove about 51 acres of vacant usable Residential zoned lands. In terms of zoned Residential lands, this would result in a reduction of approximately 299 units, and a potential reduction in the population that could be accommodated from 13,190 to 15,389 persons to 12,114 to 14,133 persons.

However, using different criteria, Mr. George Houghtailing estimated that the reclassification would remove approximately 150 acres of vacant usable Residential zoned lands.

Comparison of these statistics with the New General Plan projections of a population growth of about 8,300 between 1975 and the year 2000 shows that there are presently sufficient zoned and planned lands in Kailua, without the need of the subject urban properties.

Resources of the Area

Natural Resources

19. Kawainui Marsh is the largest freshwater marsh remaining in the State of Hawaii.

Kawainui Marsh represents about 2/5 or 39% of the wetlands on Oahu and about 1/10 or ten percent of all wetlands in Hawaii. It is the largest contiguous wetland in Oahu County and one of the largest in the state. "Wetlands" are described as "areas having wet, marshy soil conditions, frequently inundated by or covered with fresh, brackish or saline water, subject to tidal, riparian or drainage ponding influence, and including 'high bogs'; and those areas distinguished by particular and unique vegetative species that require saturated soil conditions for their growth and reproduction."

Under Section 404 of the Federal Water Pollution Control Act Amendments of 1972, the U.S. Army Corps of Engineers has the responsibility to regulate the disposal of dredged or fill material in the waters of the United States. The Corps' jurisdiction extends to all waters of the United States, including navigable waters, contiguous or adjacent wetlands, primary tributaries of navigable

waters, lakes and contiguous adjacent wetlands. Based upon the present information of the subject properties, and, if land fill activity was proposed, the Corps would request that an application for a permit by the Corps of Engineers be submitted.

Wildlife Resource

20. As the largest freshwater marsh in the State of Hawaii, Kawainui Marsh is extremely significant to water-oriented birdlife. At least ten species of migratory or resident waterbirds use the area on a seasonal or year round basis. During the winter and fall months migratory ducks including the pintail, shoveller, green-winged teal, scaup and mallard use the open water areas and edges of ponds for resting, feeding and loafing. The Pacific golden plover, a migratory shorebird is common in open grassy areas including pastures and along stream banks where it feeds on insects. The indigenous black-crowned night heron is a common resident, using trees for roosting and possibly nesting, and feeding on fish and invertebrates in the waters. Between 1969 and 1977 a total of 140 koloa ducks have been released as part of a State restoration project. It uses open and closed water areas including the ponds, drainage canals and ditches for feeding and resting, seeking vegetation for refuge. The Koloa duck is an endemic endangered species, as designated by both the State and Federal governments. Three additional endemic, endangered species use the Kawainui area, the Hawaiian stilt (Aeo), Hawaiian coot (Alae Keo keo) and Hawaiian gallinule (Alae ula).

The viability of the habitats in which these birds live is dependent upon factors inherent in the marsh itself but is also influenced by adjacent areas. An unimpeded, uncontaminated flow of water entering the marsh from Maunawili and Kahanaiki streams is vital to maintaining proper water levels and food organisms used by these species. The establishment of a buffer area between the actual habitat and human activities and facilities may assist in minimizing the effects of disturbance, contamination, and encroachment of exotic plants and animals, particularly during critical breeding seasons. The exotic woodlands, brushlands and grasslands, above the level of the marsh itself presently serve this purpose. For the protection of the endangered wildbirds the only effective buffer zone would be a moat of water that would probably keep out most predators in the area. No other type of buffer zone would be necessary.

The petitioned properties include areas which contain both existing and potential habitat areas, and buffer areas which are necessary to minimize the disturbance of habitat areas.

Kawainui Marsh is the only area in the State where all four of the endangered waterbirds reproduce.

A pond is a stage within an ecological succession; that is, a pond becomes a marsh which in time becomes dry land. Unless extensive clearing of the exotic vegetation within the marsh is done soon, the amount of open water will continue to shrink in size until there will be no habitat for the nesting of these birds.

21. The importance of Kawainui Marsh to endangered waterbirds should be considered in context of the entire Island of Oahu. With the loss of the Moiliili-Kapahulu marshes (Waikiki), Kuapa Pond (Hawaii Kai), Kaelepulu (Enchanted Lake) and other natural water areas, Kawainui Marsh becomes very important to their survival.

The Federal Endangered Species Act of 1973 (Public Law 93-205) and the State Endangered Species Act (Act 65/75) provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved. Pursuant to these Acts, a preliminary draft plan, "Hawaiian Waterbirds Recovery Plan, August, 1975", has been prepared by the Hawaiian Waterbirds Recovery Team.

The objective of the plan is to maintain populations of 3 endangered waterbirds (Stilt, Gallinule, Coot) on all islands in existing habitats in numbers necessary to their survival as species, and to ultimately increase their numbers to a level which will permit their removal from the endangered status. The plan identifies Kawainui Marsh to be a "critical habitat" for the Hawaiian stilt, coot and gallinule.

The plan cites as the major reasons for the decline of the Stilt, Coot and Gallinule, as the loss of habitat areas.

The proposed reclassification action would support the plan as proposed by the Hawaii Waterbirds Recovery Team by including all critical wildlife habitat areas in the Conservation District and also by including buffer areas around these habitat areas.

22. Kawainui Marsh has potential for a wildlife interpretation program similar in certain aspects to that at the Canadian Wye Marsh Wildlife Center. There is a need for contiguous land areas adjoining the marsh habitat to carry out such programs. The extent of acreage needed for a wetland program consisting of wetland and contiguous land area is primarily dependent upon the type of program contemplated.

Marine Resources

23. Kawainui Marsh and its adjoining waterways are the habitat for several species of native and exotic fishlife--including tilapia mossambica, aholehole, mullet, papio, oopu'akupa, smallmouth bass, various mosquito fish, o'opu nakea, and barracuda. Kawainui Marsh is also believed to be serving a valuable function as an estuarine nursery area for some of the species of fish named above.

Historic Resources

24. Kawainui Marsh and its environs, including the subject lands, contain the last remnants of a large and complex cultural system that once supported the most powerful chiefs of O'ahu. Kawainui fishpond, which once encompassed a 450 acre portion of the present marsh was one of the largest inland fishponds in the Hawaiian islands. The pond was recognized as belonging to the chiefs who were exclusively entitled to its fish, which included mullet

and awa. Surrounding the pond, and bordering its tributaries were flat and terraced irrigated pond-fields in which wet taro was cultivated by the ancient Hawaiians. Kawainui fishpond has long since disappeared and the Marsh now takes its place.

Further research and field work is necessary to determine the boundaries of the areas of Kawainui where there are known or likely to be remains of ancient Hawaiian activities. This yet to be determined area will be submitted to the State Review Board of Historic Places. The Review Board will then decide whether to place it on the list of State Historic Places and will also decide whether to nominate it to the National Register of Historic Places. Significant archaeological sites were found on the subject properties in the vicinity of the Kukanono Subdivision and the heiaus.

Recreational Resources

25. There is need for additional recreational areas on Oahu in general and in particular, in the Kaneohe-Waimanalo Planning area. Existing recreational facilities and areas in the district are inadequate to meet present demands, and shortages are expected to continue despite present proposals for development of new recreational areas.

The Kaneohe-Waimanalo Planning area contains some of the most outstanding inland and shoreline recreation, educational, scenic, aesthetic, and open space resources on the island, and recreational development of these areas

should be encouraged. In particular, inland recreation areas should be developed to reduce pressures on overused shoreline areas. Kawainui Marsh, including the subject properties, is one of these inland areas whose recreational development should be encouraged.

The City and County of Honolulu, Department of Parks and Recreation considers the petitioned area necessary for the expansion of its proposed Kawainui Regional Park.

A total of approximately \$150,000 of State funds has been appropriated for scientific studies for the marsh area from Act 197/75, Item IV N-3 and Act 197/71, Item K-19. It is anticipated that the studies will provide valuable base data of the marsh ecosystem which will in turn enable the Department of Parks and Recreation to develop appropriate plans for a regional park for the area.

Neither the petitioner, the Department of Planning and Economic Development, nor the City and County of Honolulu, presented any active official public plan for the development of Kawainui Marsh.

At the present time, the entire park project is being re-evaluated by the Department of Parks and Recreation, pending completion of the proposed scientific study. A new Master Plan for Kawainui Marsh will be developed by the Department of Parks and Recreation, in cooperation with community groups and other governmental agencies. By letter dated January 28, 1976, the Department of General Planning notified the Department of Parks and Recreation that a General Plan Amendment is not required to proceed with the park project.

26. Support for the development of the Kawainui area for recreational purposes has been expressed by way of senate resolutions by the State Legislature.

CONCLUSIONS OF LAW

The petition for the reclassification of approximately 244.15 acres of land abutting at Kawainui Marsh, Kailua, Oahu, from Urban to Conservation District, having been heard and all legal requirements of notice and hearing having been complied with, now stands submitted for decision. The Commission concludes that Petitioner has failed to show by a clear preponderance of the evidence that the subject properties conform to a satisfactory degree with the criteria for the Conservation District.

1. The proposed boundary amendment has not been shown to be reasonably necessary to prevent significant adverse effects upon agricultural, natural, environmental, recreational, scenic and historic resources at the subject properties.

2. There is no evidence admitted or offered to support a finding that the subject properties contain lands necessary for protecting watersheds, water sources, and water supplies.

3. There is no evidence that the subject properties include lands used for national or state parks.

4. There is insufficient evidence that the subject properties are necessary for providing park lands and beach reserves.

5. Kawainui pond, before it became a marsh, was part of a major Hawaiian settlement along the shores of Kailua Bay. There is insufficient evidence, however, to conclude that the subject properties bordering the marsh are necessary for the conservation, preservation, and enhancement of scenic and historic sites.

6. Although the marsh itself is necessary for the preservation of the wilderness setting and to conserve the ecosystem within the marsh, there is sufficient evidence showing that such ecosystem exist within the subject properties.

7. There is no evidence that the subject properties include lands having an elevation below the maximum inland line of the zone of wave action.

8. There is no evidence that the subject properties include lands suitable for farming, gardening, operation of nurseries or orchards, growth of commercial timber, grazing or hunting.

9. The evidence shows that the properties are rated as having moderate to very poor potential for agricultural use.

10. The subject properties contain lands with topography, soils and climate that are essentially adaptable for urban use.

11. Although the subject properties do contain lands with a general slope of 20% or more, such lands do not provide for open space amenities and are not of significant scenic value.

12. Neither the petitioner, the Department of Planning and Economic Development, nor the City and County of Honolulu, presented any active official public plan for the development of Kawainui Marsh.

13. The great majority of the evidence and testimony produced at the hearing, and through the submission of documents, was primarily concerned with the historical, scenic, and natural significance of the Kawainui Marsh itself, and not specifically with the subject properties. There has been insufficient evidence showing that reclassification of the subject properties is necessary to protect the value of the marsh and to prevent adverse effects to Kawainui Marsh.


DECISION AND ORDER

It is hereby ordered that the property which is the subject of the petition in Docket Number A76-420, approximately 244.15 acres of land situated at Kawainui, Kailua, Oahu, identified by Tax Map Key numbers (as indicated in Finding of Fact No. 1), continue to be classified as Urban and remain in the Urban District.


DONE at Honolulu, Hawaii, this 7th day of March, 1978, by failure of the motion heard by the Commission on January 19, 1978, in Honolulu, Hawaii.


LAND USE COMMISSION
STATE OF HAWAII


Stanley Sakahashi
Chairman and Commissioner


C. W. Duke
Vice Chairman and Commissioner


Shinsei Miyasato
Commissioner


Mitsuo Oura
Commissioner


Edward Yanai
Commissioner

APPROVED AS TO FORM:


Deputy Attorney General