

Environmental Impact Statements: Avoiding the Pitfalls

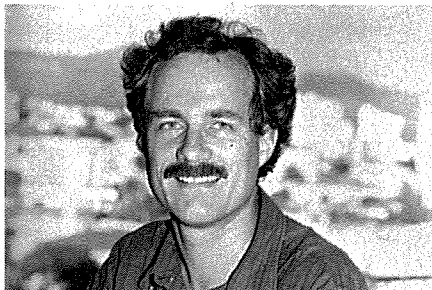
by Diana Lomont, Staff Writer

Most developers probably groan at the thought of having to prepare an Environmental Impact Statement (EIS). If done properly, an EIS can be completed in six to nine months, but the process could easily run into a year or more, especially if a supplemental EIS is required.

A developer usually hires a consultant to prepare an EIS. This means added costs in the project planning stage, but if the consultant does a good job, the expenditure will help avoid delays and other costs as a developer seeks permits and project approvals.

The key, say EIS reviewers, is to follow the process established by state law, and thoroughly consult with the appropriate government agencies and concerned community groups during EIS review periods.

Before an agency such as the Department of Land and Natural



EIS administrator Robin Foster

Resources (DLNR) determines whether or not an EIS is necessary, a developer will usually have to do an environmental assessment of the project. Under Chapter 343 of the Hawaii Revised Statutes (HRS), an environmental assessment is required for projects that:

- Require a county general plan amendment;
- Propose to use state or county funds or lands;

- Are to be located on land classified as a conservation district by the state Land Use Commission under chapter 205, HRS;

- Are to be located in the state's shoreline setback area (20 to 40 ft from the shoreline);

- Are to be located within the Waikiki-Diamond Head area, and

- Are to be located on a historic site.

Fewer than 5 percent of projects that require environmental assessments end up needing an EIS, according to Robin Foster of the Environmental Affairs branch of the Department of Land Utilization (DLU).

Foster encourages developers who think they may need an EIS to visit his agency in the early stage of a project. Foster said he and his staff can sometimes tell a developer to go right to the EIS and skip the environmental assessment.

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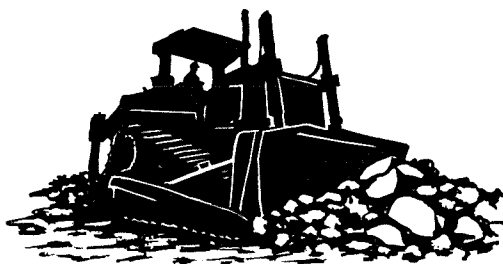
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"Most of the time it will be clear from the magnitude of the project if an EIS is required," Foster said. "In other cases, where there is a judgment to be made about whether an EIS should be done or not, we encourage the developer to do a good environmental assessment."

"If you do a thorough environmental assessment, then you improve your chances of getting a negative declaration (no EIS required) if indeed there aren't any impacts," he added. "And if we determine an EIS is required, then you're that much farther along on actually preparing a draft EIS because the work you've put into your assessment can go directly into the EIS."

Not all agencies offer developers the chance to go directly to an EIS, however. EIS reviewer Roger Evans always requires a developer to do an environmental assessment first. Evans is head of the DLNR's Conservation and Environmental Affairs section.

"For us to make a judgment that a developer must do an EIS - if we've never seen an environmental assessment - we could end up making the developer do an EIS even if the project

actually wouldn't require it," Evans said.

But what if it's a large project that would obviously require an EIS? "Nothing's obvious these days. We would have to see the environmental assessment," Evans replied.

Once the appropriate agency makes a determination, the Office of Environmental Quality Control (OEQC) issues a notice in its semi-monthly bulletin to inform the public and other government agencies whether an EIS has been deemed necessary.

If an EIS is required, a developer has up to 60 days from the time notice is given in the OEQC bulletin to consult with agencies, citizen groups and anyone interested in the project. A developer has an unlimited period to respond to all questions and comments before producing a draft EIS.

After receiving the draft EIS, the OEQC publishes a notice in its bulletin that the public has 45 days to comment on the EIS. The developer then has 14 days to respond to comments and file a revised EIS, and the accepting agency has 30 days to determine whether the EIS is acceptable.

Acceptance of an EIS does not mean that the project is environmen-

tally sound, only that the document meets EIS rules.

According to Evans, citizens sometimes misinterpret the objective of an EIS, trying to stop a project by preventing the EIS from being accepted. For example, Evans said, "The public will ask you to measure something unmeasurable (such as certain kinds of chemical compounds) and then take the position that the EIS is not acceptable."

Evans and Foster agree that developers and their consultants generally do a good job preparing EISs, but they said there are areas that could stand improvement.

One is the degree of objectivity in an EIS. Developers sometimes appear to minimize the potential impacts of a project, according to EIS reviewers.

"Sometimes there's a tendency to turn it into a public relations exercise in favor of the project, and short-change the information disclosure and pump up the project," Foster said.

DLU planner Bennett Mark, who reviews EISs, said some developers also do not respond very fully to questions and concerns raised during the consultation periods.

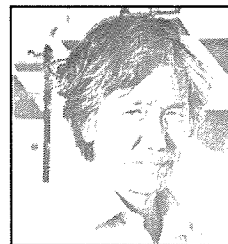
"A lot of problems that we have are that the questions are never answered

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directly. The suggestions that are made are not taken extremely seriously."

Mark said developers can save themselves time and trouble in the long run by diligently responding to concerns raised by agencies and citizen groups during the EIS consultation period.

Consultant Gary Okamoto agrees. Okamoto directs research and preparation of EISs at Wilson Okamoto & Associates Inc., an architectural/engineering and consulting firm that prepares about 20 EISs a year. He said that during the 30-day consultation period, his staff will consult with every involved agency and concerned public group that can be anticipated.

"We go ahead and talk to all the individuals we think will have concerns before we even file the EIS, so that by the time they respond, we've already talked to them and we've flushed their concerns out," Okamoto said.

"We try to resolve them (the concerns) in that first draft EIS that comes out, so when it comes out for review, they're really looking at it for a second time. Then they're able to review it in terms of whether we've addressed

their concerns adequately or not."

Sometimes Okamoto finds himself and his staff arguing with the developer over the need to disclose something in the EIS. "Our clients will say, 'Eh, we don't want to say that. That's going to kill the project.' We tell them, 'Eh, you got to say that. Because if you don't, it's going to kill your project down the line. We've got to address it now and resolve it.'"

Mark said inadequate presentation of design alternatives is a frequent shortcoming of project EISs. Regulations require applicants to discuss as fully as possible any design options that could mitigate the impacts of a proposed project.

"Sometimes there's a tendency to slough over the alternatives discussion..." Mark said, adding that there's not much EIS reviewers can do about such negligence. "When it comes time for us to accept or not to accept an EIS, it gets to be pretty difficult for us to reject an EIS simply because alternatives were not discussed fully enough."

From a consultant's point of view, Okamoto pointed out a different problem concerning design alternatives. "We do come up with alternative, mitigative or corrective measures, but

three years or five years down the line there is no agency that really will look back and see that it was mitigated properly, that the mitigation is being kept up," he said. "Only if there's a complaint does it arise. Somebody will look back into it."

Interestingly, Evans feels that often the developer/consultant is not as much to blame for problems in the EIS process as the process itself, which produces "uncertainty" and a "whipsawing" effect on the EIS applicant.

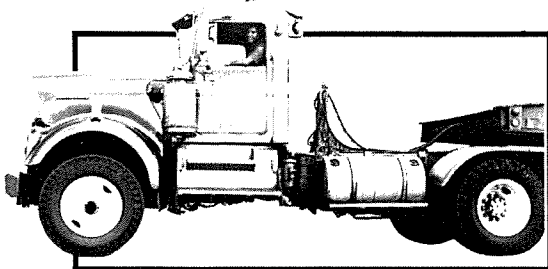
The uncertainty comes from not knowing whether an EIS will be required for certain permits, and the "whipsawing" effect occurs when developers are "bumped around from agency to agency" to acquire permits, Evans said.

This problem, according to Okamoto, usually occurs after a developer prepares an EIS for one agency and then seeks permits from other agencies.

"Sometimes in the scoping process of an EIS, those particular agencies aren't aware of problems that are going to be raised in public hearings coming up down the line," Okamoto explained. "And then when you hit those agencies to get those other permits, they look back on the EIS



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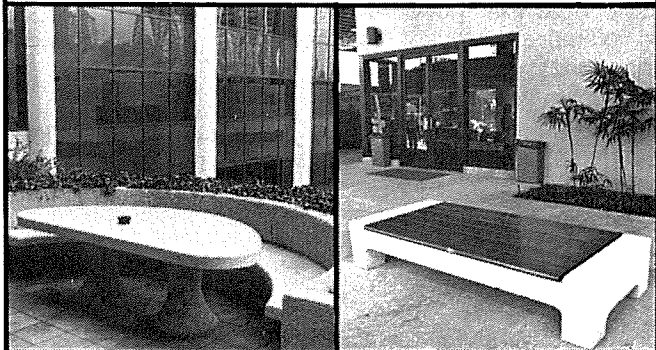
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document, and although it was accepted, it didn't address the issues that were raised in the last six months. And then you have to go back and do a supplemental EIS and run through that whole process again."

Another flaw in the system, according to Foster, is the inability to handle regional EIS assessments well. "Right now, for instance, there's three EISs in the works for the Ewa areas, and it's difficult to interpret those and get (a feeling for) overall impacts," said Foster.

Mark cited another inefficiency in the EIS process. It happens when a

developer is required to prepare an EIS for both the state and federal government under the National Environmental Policy Act (NEPA).

NEPA regulations were revised eight years ago to encourage governmental cooperation in the event that a developer had to prepare an EIS for both state and federal agencies, but the process is still not very efficient because state and federal review of the EISs is not coordinated, Mark said.

"For projects like West Beach, where the Corps of Engineers had to actually produce the environmental

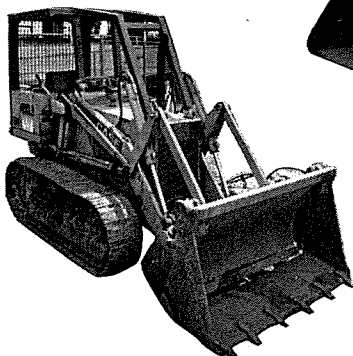
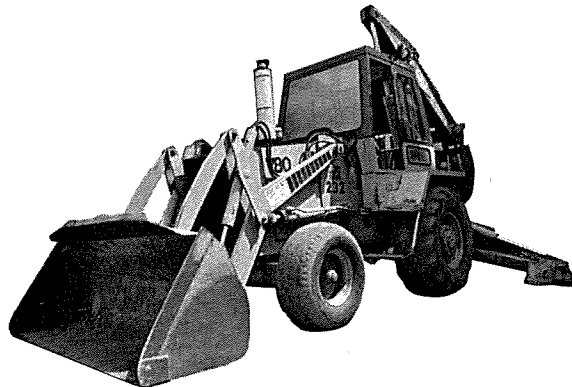
impact statement, their procedures and their timing doesn't fit with ours at all," Mark said. "And what ends up being the case is the developer has to do the EIS twice, which is really a waste of manpower, paper, everything."

It may be some time before anything can be done to drastically improve the EIS process, but the state and counties have been gradually making ground.

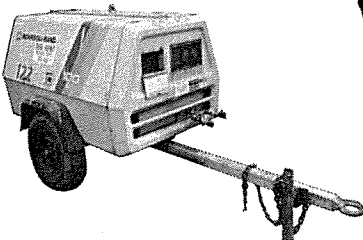
About a year ago, the city and county of Honolulu replaced its Comprehensive Zoning Code with the Land Use Ordinance (LUO). One of the LUO's provisions enables concur-

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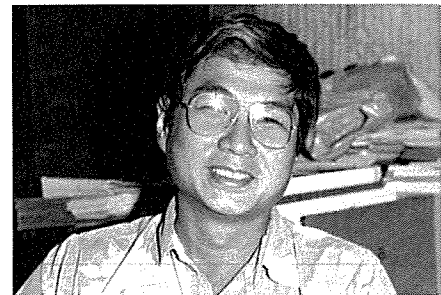


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DLU planner Bennett Mark:
"Sometimes there's a tendency to slough over the (project) alternatives discussion . . ."

rent permit processing when a developer needs permits from more than one agency.

For example, if a developer needs a Waikiki Special District permit and a Special Management Area permit, one public hearing can be held for both, and decisions on both permits can be made simultaneously.

Decisions on zoning variances can also be made more quickly since the City Council voted to shift the decision-making power to the director of the DLU. Previously, a ruling on a zoning request had to be made by the Zoning Board of Appeals, a citizen volunteer group that met every two weeks.

The state has also established a task force and invited the city to participate. The task force will study the situation and recommend ways to make permit processes even more efficient.

Meanwhile, EIS reviewers agree that the best advice for developers and consultants is to do a thorough job preparing their EISs, which will minimize potential delays when seeking permits. □