

# **Bends In The Road: Problems Affecting The Implementation Of Capital Improvement Projects**

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Report No. 16, 1992

Legislative Reference Bureau  
State Capitol  
Honolulu, Hawaii

## FOREWORD

This report has been prepared in response to House Concurrent Resolution No. 187, H.D. 1 (1992), which requested the Legislative Reference Bureau to conduct a study on the problems that affect the implementation of capital improvement projects.

This study attempts to explore some of the problems and relevant developments that affect the orderly and timely implementation of proposed capital improvement projects by state and county agencies that will be the principal users of the proposed projects when the projects are completed.

The Bureau has no particular expertise with respect to the technical issues in his area. As such, the Bureau is sincerely appreciative of the time, thought, and knowledge contributed to this study by:

- James Nakamura, Administrator of the Budget, Program Planning and Management Division; E. Ann Nishimoto, Administrator of the Financial Administration Division; Michael Lim, Acting Chief of the Capital Improvements Program Branch; and Karen Yamauchi, Program Budget Analyst with the Capital Improvements Program Branch, Department of Budget and Finance;
- Ralph Morita, Acting Head of the Public Works Division, Planning Branch, Education Section, Department of Accounting and General Services;
- Brian Choy, Director of the Office of Environmental Quality Control;
- Maile Bay, Planning and Policy Analyst; James Yamamoto, Planning and Policy Analyst; and Douglas Tom, Chief of the Hawaii Coastal Zone Management Program, Office of State Planning;
- Francine Wai Lee, Executive Director of the Commission on Persons With Disabilities;
- Loretta Chee, Deputy Director; Calvin Ching, Head of the Zoning Division; Kathy Sokugawa, Chief of the Regulations Branch, Department of Land Utilization, City and County of Honolulu; and
- All the individuals who participated in the Bureau's informal, exploratory interviews and discussions, and provided materials relating to the implementation of proposed projects.

The generous assistance and cooperation of these individuals contributed significantly toward the preparation of this report and made its timely completion possible.

Samuel B. K. Chang  
Director

December 1992

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## **Chapter 1**

### **INTRODUCTION**

House Concurrent Resolution No. 187, H.D. 1, which is included in this report as Appendix A, requests the Legislative Reference Bureau (Bureau) to:<sup>1</sup>

- (1) Identify those problems that affect the orderly and timely implementation of proposed capital improvement projects by "user agencies" (*i.e.*, state and county agencies that will be the principal users of the proposed projects when the projects are completed);
- (2) Identify those problems and delays caused by the permitting process; and
- (3) Identify those problems that adversely affect the orderly and timely completion of proposed projects.

This study focuses on those problems that affect the orderly and timely implementation of proposed capital improvement projects by state and county agencies that will be the principal users of the proposed projects when the projects are completed. This study does not attempt to determine the feasibility of decentralizing the capital improvement program functions currently performed by the Department of Accounting and General Services for user agencies. House Standing Committee Report No. 1634-92 on House Concurrent Resolution No. 187, H.D. 1, stated:

The purpose of this concurrent resolution is to request the Legislative Auditor to study the feasibility of decentralizing the capital improvement project (CIP) implementation functions currently performed by the Department of Accounting and General Services (DAGS) to individual departments.

Testimony from DAGS pointed out that the department processes only about 40% of the State's total construction volume, and that centralization has allowed for development of expertise in such areas as energy management and other areas of building construction.

Accordingly, your Committee [on Legislative Management] has amended this resolution to request that the Legislative Reference Bureau study the current CIP implementation process and to identify problems adversely affecting the timely implementation of projects by all departments involved in CIP projects.

This study does not delve into the issue of whether or not the Governor is empowered to exert unilateral control over expenditures for proposed capital improvement projects that have been authorized by the Legislature (through the passage of the general appropriations acts and supplemental appropriations acts) and approved by the Governor (through the signing of these acts). Whether or not the Governor is empowered to exert unilateral control over these expenditures is a question that must be addressed by the courts. Conversely, what the Legislature should do in order to prevent the Governor from exerting unilateral control over these expenditures is a policy issue that must be addressed by the Legislature. Senate Standing Committee Report No. 2988 on House Concurrent Resolution No. 187, H.D. 1, stated:

Your Committee [on Ways and Means] finds that because of the importance that government construction plays in implementing state policy, it is appropriate that the State review the adequacy of the existing capital improvement project implementation process and determine whether or not the current system represents the most efficient, effective, and prudent way by which capital improvement projects should be implemented.

For the purposes of this study, the term "implementation" refers to the process of building proposed capital improvement projects that have been authorized by the Legislature and approved by the Governor. The term includes those activities falling into the following cost elements for the cost category "capital investment": plans and design, land acquisition, construction, and equipment and furnishings. The term does not include those activities falling into the following cost categories: research and development, and operating. More specifically, the term does not include:

- (1) "Planning" (as in the State's *Planning, Programming, and Budgeting* or PPB system) or the process by which government objectives are formulated; measures of effectiveness in attaining the objectives are identified; alternatives for attaining the objectives are determined; the full cost, effectiveness, and benefit implications of each alternative are determined; the assumptions, risks, and uncertainties of the future are clarified; and cost and effectiveness and benefit tradeoffs of the alternatives are identified; or
- (2) "Programming" or the process by which government's long-range program and financial plans are scheduled for implementation over a six-year period and which specifies what programs are to be implemented, how the programs are to be implemented, when the programs are to be implemented, and what the costs of this implementation are.



## INTRODUCTION

To the extent that planning and programming affect the orderly and timely implementation of proposed projects, this study addresses planning and programming in the context of specific implementation problems. Expanding the scope of this study to address planning and programming in the context of the State's capital improvements program would have been impractical given the time considerations dictating the submission of the Bureau's report to the Legislature.

In addition to this introductory chapter and a summary chapter, this study consists of five major chapters, each discussing selected laws and procedures that have an impact upon the orderly and timely implementation of projects. Chapter 2 describes, in outline form, the many steps involved in implementing proposed capital improvement projects.

Chapter 3 addresses the use of document reviews to ensure that all plans and specifications for the construction of public buildings and facilities by the State or any county are prepared so the buildings and facilities are accessible to and usable by persons with physical disabilities, and in conformance with applicable design specifications or the Uniform Federal Accessibility Standards (UFAS). Chapter 4 addresses the use of a state or county agency's failure to prepare an environmental assessment, an agency's issuance of a negative declaration, or the Governor's or a mayor's acceptance of a final environmental impact statement (EIS), to halt the implementation of a proposed capital improvement project pursuant to the environmental impact statements law. Chapter 5 addresses the use of agency implementation and expenditure plans, allotment requests and allotment advices, standards and criteria, and other administrative mechanisms, to administer the State's capital improvements program and monitor the implementation of proposed projects in accordance with Governor's Executive Memorandum No. 88-16. Chapter 6 addresses the use of land use and development laws and plans (such as the law relating to the land use commission, the coastal zone management law, the Hawaii State Planning Act, the county general plans and development plans, and land use ordinances) to establish state and county goals and objectives for land use and development, and the use of permits and approvals to attain these goals and objectives.

The Bureau selected the four abovementioned activities for analysis since all user/expending agencies must generally conform to or comply with applicable design requirements or the UFAS, the environmental impact statements law, Governor's Executive Memorandum No. 88-16, and land use and development laws and plans, during the initiation and implementation of proposed capital improvement projects.

The Department of Education, which relies on the Department of Accounting and General Services for the implementation of proposed capital improvement projects, is an example of a "user agency". The Department of Accounting and General Services, which implements proposed projects for the Department of Education, is an example of an "expending agency". The Department of Land and Natural Resources, which does *not* rely on the Department of Accounting and General Services or other state agencies for the implementation of proposed projects, is an example of a "user/expending agency". Strictly

speaking, user agencies do not "implement" proposed projects; rather, user agencies "initiate" projects that are subsequently implemented by expending agencies. Likewise, expending agencies do not "initiate" proposed projects, but instead "implement" projects that were previously initiated by user agencies.

This study does not address the working relationships between user agencies and expending agencies since each is dependent on the other with respect to the orderly and timely implementation of proposed capital improvement projects. Presumably, the failure of one agency to work effectively and efficiently with the other agency would adversely affect the orderly and timely implementation of proposed projects. Since the objectives of this study were to:

- (1) Produce understandable analyses that will address the concerns of the Legislature;
- (2) Produce useful recommendations that will lead to changes in existing agency practices;
- (3) Provide the bases for future studies that will expand on the scope and depth of this study; and
- (4) Provide the bases for future studies that will evaluate the changes brought about by this study;

the Bureau chose not to analyze activities that, by design, would require it to fix the blame for some failure on a particular user agency or expending agency.

This study, to a large extent, is based on the on-the-job experience and insight of persons connected with the implementation of proposed capital improvement projects. The Bureau utilized a "goal-free" type of interviewing technique for this study, which allowed for flexible responses and follow-up questions, in order to draw on these persons' experiences and insights. Some of the advantages of this methodology and interviewing technique are the ability to:

- Produce useful results in an easy-to-understand format;
- Make use of a person's on-the-job experience and insight; and
- Accommodate a variety of different situations and circumstances.

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Some of the disadvantages of this methodology and interviewing technique are the inability to: generate reproducible and quantifiable results; reconcile conflicting experiences and insights, as well as personal prejudices and institutional biases; and make generalizations that are applicable in all situations and under all circumstances.

By choosing not to analyze activities that would require the Bureau to fix the blame for some failure on a particular user agency or expending agency, the Bureau felt it was appropriate to analyze:

- (1) The use of document reviews to ensure that public buildings and facilities are constructed in a manner that makes them accessible to and usable by persons with physical disabilities, and in conformance with applicable design specifications or the UFAS;
- (2) The use of an agency's failure to prepare an environmental assessment, an agency's issuance of a negative declaration, or the Governor's or a mayor's acceptance of a final EIS, to halt the implementation of a proposed capital improvement project;
- (3) The use of agency implementation and expenditure plans, allotment requests and allotment advices, standards and criteria, and other administrative mechanisms, to administer the State's capital improvements program and monitor the implementation of proposed projects; and
- (4) The use of land use and development laws and plans to establish state and county goals and objectives for land use and development, and the use of permits and approvals to attain these goals and objectives.

These four activities were selected by the Bureau after informal, exploratory interviews and discussions with representatives from the Department of Transportation, Department of Land and Natural Resources, Hawaii Housing Authority, Hawaii Community Development Authority, Housing Finance and Development Corporation, Department of Education, University of Hawaii, Department of Accounting and General Services, Office of State Planning, Office of Environmental Quality Control, Department of Budget and Finance, and City and County of Honolulu Building Department. Formal, in-depth interviews and follow-up discussions were conducted with representatives from the Commission on Persons with Disabilities, the Office of Environmental Quality Control, and the Department of Budget and Finance, using information and materials collected by the Bureau during the informal, exploratory interviews and discussions. Adjunct interviews were conducted with representatives from the City and County of Honolulu Department of Land Utilization and the Office of State Planning Coastal Zone Management Program, to address specific aspects of certain problems.

This study is not an audit of the State's capital improvements program or the implementation of proposed capital improvement projects.<sup>2</sup> The Bureau does not have the technical expertise or the personnel needed to conduct this kind of inquiry.

Finally, this study is neither comprehensive nor exhaustive in its analysis of the State's capital improvements program and the implementation of proposed capital improvement projects. There was insufficient time to conduct a comprehensive and exhaustive analysis of: every problem that affects the orderly and timely implementation of proposed projects by user agencies; every problem and delay caused by the permitting process; and every problem that adversely affects the orderly and timely completion of proposed projects.

### **Comments Regarding a Preliminary Draft of this Report**

On December 1, 1992, the Bureau transmitted to the Department of Budget and Finance, the Department of Accounting and General Services, the Office of Environmental Quality Control, the Office of State Planning, the Commission on Persons With Disabilities, and the City and County of Honolulu Department of Land Utilization, selected chapters from a preliminary draft of this report. The Bureau asked that these agencies make any comments, cite any errors, state any objections, or suggest any revisions to these drafts. The Bureau's transmittal letters, and the responses of the City and County Department of Land Utilization, the Department of Budget and Finance, and the Office of State Planning to these drafts, are included in this report as appendices H, I, and J, respectively. When deemed appropriate by the Bureau, revisions to these drafts were made and the agencies' comments and suggestions incorporated into this report.

Since not all of the agencies' comments and suggestions were incorporated into this report, the Bureau included the agencies' unedited comments to the abovementioned drafts as appendices.

The responses of the Department of Accounting and General Services and the Commission on Persons With Disabilities were limited to technical issues and, therefore, not included in this report. The Office of Environmental Quality Control informed the Bureau that it was not planning to comment on the preliminary draft of this report.<sup>3</sup>

In the interest of accuracy and fairness, and to facilitate the external review process, the Bureau submitted early rough drafts of this study to those individuals who were quoted in this report. These individuals were allowed to rephrase or, if necessary, retract their comments as they saw appropriate.

## INTRODUCTION

## ENDNOTES

1. House Concurrent Resolution No. 187, H.D. 1, Sixteenth Legislature, State of Hawaii, 1992.
2. For example, see Hawaii, Legislative Auditor, Audit of the School Construction Program of the State of Hawaii, Audit Report No. 72-5 (February 1972), 313 pp
3. Telephone conversation with Brian Choy, Director, Office of Environmental Quality Control, December 17, 1992.

## Chapter 2

### CAPITAL IMPROVEMENT PROJECTS

#### What are Capital Improvement Projects?

Proposed projects that qualify as capital improvements include:<sup>1</sup>

1. Acquisition of Land (including related fees and costs).
2. Construction and Other Improvements (including architectural and other technical fees, installing built-in equipment and fixtures, etc).
  - a. Site improvements.
  - b. Construction of buildings and other major new permanent improvements.
  - c. Landscaping and beautification.
  - d. Additions or major improvements to, or conversions of, existing facilities.
3. Allowable Equipment Purchase.
  - a. Built-in equipment and fixtures.
  - b. Initial equipment and furnishings for new buildings necessary for the proper functioning of the building.
  - c. Absolutely essential, non-replaceable equipment items required over and beyond any equipment now in use that can be transferred into the new building.
  - d. Common use furniture and equipment may be purchased only if such items have been approved explicitly as (departmental) Statewide C.I.P. policy and criteria. Such purchase shall not precede the release of the specific funds.
4. Works of Art.

One percent for works of art in accordance with Section [sic] 103-8, HRS, as amended.

Proposed projects that do not qualify as capital improvements include:<sup>2</sup>

1. Items normally included in the operating budget.

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2. Maintenance and Repair Projects Which Do Not Constitute Conversion from One Type of Use to Another.
  - a. Improvements to an existing building or facility involving painting, redecoration, repair and replacement in kind (such items as roof, floor, locks, windows), resurfacing of roads and parking areas or similar work.
  - b. Minor alterations and renovations which basically involve or can be accomplished as maintenance work.
3. Non-Allowable Equipment Purchase.
  - a. Equipment generally provided for personnel and positions authorized in the operating budget; e.g., desks, chairs, filing cabinets, typewriters, etc.
  - b. Equipment and furnishings for existing buildings.
  - c. Books.
  - d. Supplies and expendable materials.
  - e. Maintenance equipment such as ladders, garden hoses, etc.
  - f. Motor vehicles.
4. Operating costs as defined under Section 37-62 as recurring costs of operating, supporting and maintaining authorized programs, including the following major cost items:
  - a. Personnel salaries and wages.
  - b. Employee fringe benefits (retirement system and health fund contributions).
  - c. Other expenses of [a] consumable nature such as materials and supplies, travel expenses, utilities, stamps, consultant fees, building and equipment rentals.

### Implementing Capital Improvement Projects

Pursuant to Governor's Executive Memorandum No. 88-16, all requests to implement proposed capital improvement projects must address the following concerns, as applicable:<sup>3</sup>

1. Planned scope of project conforms with appropriation language.
2. The immediate benefits to be derived as related to needs within the project area.

## BENDS IN THE ROAD

3. The relationship of the requested project to other planned developments within the area.
4. The basis for preferred timing of the project.
5. The consequences of possible project deferral.
6. Other appropriate concerns.
  - a. The basis for estimating capital requirements (e.g., enrollment, staffing, nature of program activities, traffic patterns and volume, need for recreational facilities).
  - b. The standards or criteria used to translate space and facilities required by the operating program into specific requirements (e.g., square feet of space, miles of highway, acres of recreational area). Published standards currently in use for major categories of capital facilities, such as school buildings, must be kept on file with the Department of Budget and Finance.
  - c. An analysis of the alternative ways of meeting capital requirements. These alternatives may, for some programs, include more efficient use of existing facilities; renovation and/or expansion of existing facilities [sic], construction of new facilities [sic], leasing facilities, construction of temporary facilities. They may also include alternative definitions of service areas in combination with alternative minimum/maximum criteria governing the size of facilities. Different sets of alternatives will, of course, apply to other types of facilities having objectives relating to the flow of traffic, water development, flood control, etc.
7. Plot plan, drawn to scale if possible (submitted with each capital project request) to illustrate the following:
  - a. Existing buildings and roads in the area of the proposed project.
  - b. Outline of improvements marked as follows:
    - 1) Existing improvements ..... \*\*\*\*\*
    - 2) Improvements under construction ..... XXXXX
    - 3) Improvements previously authorized by the Legislature but not yet under construction ..... /////
    - 4) Proposed improvements ..... ooooo



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c. Land use requirements in acres. This is the "lot" that would be used, indicating setback from road, right-of-way, parking areas, landscaped areas, open areas, and building areas.

d. Location description, with street address if possible.

(NOTE: A project site unable to be located on a map or plot plan may be an indication of a premature request for funds, and a possible need for reconsideration of the project's implementation priority or need.)

e. Other details as follows:

1. By notes on the plot plan, the name and purpose of the project, if not clearly indicated by its name.
2. By notes and description the plot plan structures which would be replaced by the proposed project.
3. If the facility is to be used by more than one department, the expending agency should prepare and submit one plot plan showing the floor areas being used by each department.

### Capital Improvement Projects Implementation Outline

This outline is based, in part, on an 18-square foot flow chart developed by the Department of Public Safety,<sup>4</sup> in consultation with the Department of Accounting and General Services, to describe the implementation of proposed capital improvement projects. The information displayed in the flow chart and, consequently, this outline are intended for illustrative purposes only and should not be construed as a directive for operations.

Readers are cautioned to keep in mind the fact that this outline is a highly generalized, greatly reduced, and overly simplified, representation of the abovementioned flow chart. For example it was not possible to distinguish between simultaneous and sequential events since an outline is limited to describing events one dimension at a time. Further, it was not possible to describe all the permutations and combinations of possible events and relationships since the real world is much too complex and diverse to describe in a simple outline. In addition, this outline seeks to describe the numerous factors and relationships that affect the implementation of proposed capital improvement projects in "generic terms", rather than focusing on the specific working relationship between the Department of Accounting and General Services and the Department of Public Safety, or any other expending agency and user agency.<sup>5</sup> Finally, certain steps in this outline may not be applicable to all proposed projects even when the projects are substantially similar in design and function. These steps have been identified with the following caveats and conditional statements: "as required",

"significant effects anticipated", "part of \_\_\_\_\_", "for \_\_\_\_\_ in the City and County of Honolulu", "as requested by state agency", "for purchases less than \$4,000", and "for purchases greater than \$4,000".

The Bureau would especially like to acknowledge the generous assistance of Mr. Ralph Morita of the Department of Accounting and General Services' Public Works Division, Planning Branch, Education Section, in helping to review this outline for accuracy and consistency.<sup>6</sup>

- I. Agency expenditure and implementation plan<sup>7</sup>
  - A. Preparation of budget execution policies and instructions for upcoming fiscal year by Department of Budget and Finance (BUF)
  - B. Update agency expenditure and implementation plan based on instructions from BUF - submit updated plan to BUF for review
  - C. Review of plan and establishment of statewide and agency expenditure limits by BUF - limits approved by Governor based on recommendations from BUF

#### Plans

- II. Project development report (PDR)<sup>8</sup>
  - A. Prepare scope of work for PDR
  - B. Obtain allotment advice for PDR from Governor and approval to hire consultant from Comptroller - submit allotment request to Governor through BUF and request to hire consultant to Comptroller
  - C. Select consultant for PDR
  - D. Negotiate consultant fee
  - E. Prepare and process consultant contract (includes submitting contracts to Department of the Attorney General (ATG) for approval as to form)
  - F. Prepare draft PDR
  - G. Review draft PDR
  - H. Publish and distribute PDR
- III. Project specifications for land acquisition - determine size of lot needed for proposed project from PDR
- IV. Site selection study (SS)<sup>9</sup>
  - A. Prepare scope of work for SS
  - B. Obtain allotment advice for SS from Governor and approval to hire consultants from Comptroller - submit allotment request to Governor through BUF and request to hire consultants to Comptroller
  - C. Select consultant for SS
  - D. Negotiate consultant fee

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- E. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
  - F. Select alternative sites - review and evaluate each site
  - G. Prepare draft SS
  - H. Review draft SS
    - 1. Discuss draft SS with state and county agencies, and community organizations
    - 2. Modify draft SS (as required)
  - I. Publish final SS and distribute to state and county agencies
  - J. Select site based on SS
  - K. Obtain approval for selected site from Governor - submit request for site approval to Governor through BUF
  - L. Prepare metes and bounds survey work program for selected site
  - M. Select consultant (surveyor) for survey
  - N. Negotiate consultant fee
  - O. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
  - P. Obtain survey
- V. Environmental impact statement (EIS)<sup>10</sup> for selected site (significant effects anticipated) (part of SS)
- A. Obtain allotment advice for EIS from Governor and approval to hire consultant from Comptroller - submit allotment request to Governor through BUF and request to hire consultant to Comptroller
  - B. Select consultant for EIS
  - C. Negotiate consultant fee
  - D. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
  - E. Publish EIS preparation notice in *OEQC Bulletin*
    - 1. Prepare environmental assessment
    - 2. Prepare EIS preparation notice
  - F. Prepare draft EIS
  - G. Submit draft EIS to accepting authority for review and publish notice of availability in *OEQC Bulletin*
  - H. Respond to comments regarding draft EIS, prepare final EIS, and submit final EIS to accepting authority for determination of acceptability - accepting authority to publish notice of determination in *OEQC Bulletin*
- VI. Archaeological survey (part of EIS)
- A. Obtain allotment advice for archaeological survey from Governor and approval to hire consultant from Comptroller - submit allotment request to Governor through BUF and request to hire consultant to Comptroller
  - B. Select consultant (archaeologist) for survey

- C. Negotiate consultant fee
  - D. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
  - E. Obtain survey
  - F. Obtain concurrence with survey from Department of Land and Natural Resources (LNR)
- VII. Land acquisition<sup>11</sup> for selected site (as required)
- A. Obtain allotment advice for land acquisition services from Governor - submit allotment request to Governor through BUF
  - B. Prepare land acquisition work program
  - C. Obtain approval of land transaction from Board of Land and Natural Resources - submit transaction request to Board through Department of Land and Natural Resources
  - D. Prepare appraisal report
  - E. Negotiate land acquisition price
  - F. Obtain allotment advice for land acquisition from Governor - submit allotment request to Governor through BUF
  - G. Prepare expenditure voucher and check
  - H. Complete land negotiations or obtain order of possession
- VIII. Complex development report (CDR) or master plan (MP)<sup>12</sup>
- A. Obtain allotment advice for CDR or MP from Governor and approval to hire consultant from Comptroller - submit allotment request to Governor through BUF and request to hire consultant to Comptroller
  - B. Prepare topographic survey for selected site
    - 1. Prepare topographic survey work program
    - 2. Select consultant (surveyor) for survey
    - 3. Negotiate consultant fee
    - 4. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
    - 5. Obtain right-of-entry for survey
    - 6. Obtain survey
  - C. Prepare CDR or MP
    - 1. Prepare CDR or MP work program based on PDR, EIS, and SS
    - 2. Select consultant for CDR or MP
    - 3. Negotiate consultant fee
    - 4. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
    - 5. Prepare and review alternative plans
    - 6. Prepare 1-line building diagram (schematic floor layout) and alternative site layouts
    - 7. Prepare and review incremental development schedule

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8. Finalize schematic floor layout, incremental development schedule, and ultimate site plan
  9. Approve ultimate site plan
  10. Prepare and review ultimate utility grading plans
  11. Prepare and review increment plans
  12. Prepare and review cost estimates and schedules
  13. Prepare and review 1st increment plans and estimates
  14. Submit 1st increment plans and estimates to agency's project management team and user for approval
  15. Prepare, review, and revise draft CDR or MP
  16. Publish and distribute final CDR or MP
- IX. Supplemental EIS<sup>13</sup> for CDR or MP (as required)(part of CDR or MP)
- A. Obtain allotment advice for supplemental EIS from Governor and approval to hire consultant from Comptroller - submit allotment request to Governor through BUF and request to hire consultant to Comptroller
  - B. Select consultant for supplemental EIS
  - C. Negotiate consultant fee
  - D. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
  - E. Publish supplemental EIS preparation notice in *OEQC Bulletin*
    1. Prepare supplemental environmental assessment
    2. Prepare supplemental EIS preparation notice
  - F. Prepare draft supplemental EIS
  - G. Submit draft supplemental EIS to accepting authority for review and publish notice of availability in *OEQC Bulletin*
  - H. Respond to comments regarding draft supplemental EIS, prepare final supplemental EIS, and submit final supplemental EIS to accepting authority for determination of acceptability - accepting authority to publish notice of determination in *OEQC Bulletin*
- X. State land use district boundary amendments, special use permits, and zone changes (as required)
- A. Obtain land use district boundary amendment
    1. Greater than 15 acres - submit petition to Land Use Commission for review and approval
    2. Less than 15 acres - submit petition to Department of General Planning (DGP); review by DGP, Planning Commission, and Mayor; approval or disapproval by City Council; approval or veto by Mayor (for land use district boundary amendments in the City and County of Honolulu)<sup>14</sup>
  - B. Obtain special use permit (for state agricultural district)<sup>15</sup> (as required)
    1. Greater than 15 acres - submit petition to Department of Land Utilization (DLU); review by DLU and Planning Commission; review

- and approval by Land Use Commission (for special use permits in the City and County of Honolulu)
- 2. Less than 15 acres - submit petition to DLU; review and approval by Planning Commission
- C. General Plan and Development Plan amendments and zone changes (for plan amendments and zone changes in the City and County of Honolulu)
  - 1. Obtain General Plan amendment - submit application to DGP; review by DGP, Planning Commission, and City Council; approval or veto by Mayor
  - 2. Obtain Development Plan amendment - submit application to DGP; review by DGP, Planning Commission, and City Council; approval or veto by Mayor
  - 3. Obtain zone change - submit application to DLU; review by DLU, Planning Commission, and City Council; approval or veto by Mayor
- XI. Subdivision and consolidation of land (as required)
  - A. Prepare title search
  - B. Prepare parcel (metes and bounds) map
  - C. Prepare Land Court map (as required)
  - D. Prepare Land Court petition (as required)
  - E. Obtain land owner's approval to subdivide or consolidate, or both
  - F. Obtain subdivision and consolidation approval from DLU (for subdivision and consolidation of land in the City and County of Honolulu)<sup>16</sup>
  - G. Obtain subdivision and consolidation approval from Land Court (as required)
  - H. Preparation of Executive Order by Department of Land and Natural Resources (as requested by state agency)
- XII. Relocation of tenants and graves (as required)
  - A. Obtain allotment advice for relocation plan from Governor and approval to hire consultant from Comptroller - submit allotment request to Governor through BUF and request to hire consultant to Comptroller
  - B. Select consultant for relocation plan
  - C. Negotiate consultant fee
  - D. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
  - E. Obtain relocation plan - prepare conceptual relocation plan for two best sites
  - F. Tenant relocation
    - 1. Obtain approval of conceptual relocation plan from Housing Finance and Development Corporation (HFDC)<sup>17</sup>
    - 2. Modify plan (as required)
    - 3. Obtain allotment advice for tenant relocation services from Governor and approval to hire consultant from Comptroller - submit

## CAPITAL IMPROVEMENT PROJECTS

allotment request to Governor through BUF and request to hire consultant to Comptroller

4. Select consultant (relocation agency) for relocation services
  5. Negotiate consultant fee
  6. Obtain approval of relocation agency selection from HFDC
  7. Prepare and process contract with relocation agency (includes submitting contracts to ATG for approval as to form)
  8. Obtain right-of-entry for relocation survey
  9. Conduct survey of displaced persons
  10. Conduct survey of available housing
  11. Prepare relocation assistance plan
  12. Submit plan to HFDC for review not less than 120 days before displacement
  13. Obtain allotment advice for tenant relocation payments from Governor - submit allotment request to Governor through BUF
  14. Set up subsidiary office
  15. Establish list of eligible persons
  16. Issue notices to vacate
  17. Issue certificates of displacement
  18. Implement tenant relocation program
  19. Process tenant relocation subsidies
- G. Grave relocation
1. Obtain allotment advice for grave relocation services from Governor - submit allotment request to Governor through BUF
  2. Publish legal notice for graves with unknown heirs
  3. Obtain quotations for grave reinterments from known heirs
  4. Obtain disinterment permit from Department of Health
  5. Prepare and process contract for reinterment (includes submitting contracts to ATG for approval as to form)
  6. Obtain allotment advice for grave relocation payments from Governor - submit allotment request to Governor through BUF
  7. Reinter remains
  8. Process grave relocation payments

### Design

#### XIII. Project design

- A. Prepare soils investigation report
1. Obtain allotment advice for soils investigation report from Governor and approval to hire consultant from Comptroller - submit allotment request to Governor through BUF and request to hire consultant to Comptroller
  2. Select consultant (soils engineer) for report
  3. Negotiate consultant fee

4. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
    5. Obtain report
  - B. Prepare project design
    1. Obtain allotment advice for design services from Governor and approval to hire consultant from Comptroller - submit allotment request to Governor through BUF and request to hire consultant to Comptroller
    2. Select consultant (architect) for design services
    3. Negotiate consultant fee
    4. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
    5. Prepare, review, and analyze schematic plans and estimates - review by state, county, and federal agencies (as required)<sup>18</sup>
    6. Approve schematic plans
- XIV. Supplemental EIS for project design (as required)(part of project design process)
  - A. Obtain allotment advice for supplemental EIS from Governor and approval to hire consultant from Comptroller - submit allotment request to Governor through BUF and request to hire consultant to Comptroller
  - B. Select consultant for supplemental EIS
  - C. Negotiate consultant fee
  - D. Prepare and process consultant contract (includes submitting contracts to ATG for approval as to form)
  - E. Publish supplemental EIS preparation notice in *OEQC Bulletin* (Office of Environmental Quality Control)
    1. Prepare supplemental environmental assessment
    2. Prepare supplemental EIS preparation notice
  - F. Prepare draft supplemental EIS
  - G. Submit draft supplemental EIS to accepting authority for review and publish notice of availability in *OEQC Bulletin*
  - H. Respond to comments regarding draft supplemental EIS, prepare final supplemental EIS, and submit final supplemental EIS to accepting authority for determination of acceptability - accepting authority to publish notice of determination in *OEQC Bulletin*
- XV. Preliminary plans
  - A. Prepare equipment layout plans and estimates
  - B. Prepare, review, and analyze preliminary plans, specifications, and estimates - review by state, county, and federal agencies (as required)



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- C. Obtain necessary zoning waivers from Department of Land Utilization (as required)(for City and County of Honolulu)<sup>19</sup>
  - D. Obtain necessary easements from Department of Land and Natural Resources (state), county, or private land owner (as required)
  - E. Approve preliminary plans
- XVI. Bidding documents and estimates for construction
- A. Prepare preliminary bidding documents and estimates as specified by Department of Accounting and General Services (AGS)
    - 1. Obtain comments on building permit submittals from Building Department (for City and County of Honolulu)<sup>20</sup>
    - 2. Obtain comments (preliminary document review) on plans from Commission on Persons with Disabilities regarding conformance with applicable design specifications or the Uniform Federal Accessibility Standards (UFAS), and prepare specifications for final document review
    - 3. Obtain comments on draft bidding documents and estimates from other state, county, and federal agencies (as required)
  - B. Prepare, review, and analyze final bidding documents and estimates
    - 1. Make final corrections to building permit submittals as suggested by Building Department (for City and County of Honolulu) and obtain building permit approvals
    - 2. Make final corrections to plans as suggested by Commission on Persons with Disabilities and obtain written report (final document review) on plans and specifications
    - 3. Make final corrections to bidding documents and estimates as suggested by other state, county, and federal agencies (as required)
  - C. Approve final bidding documents and estimates

## Construction

- XVII. Request for construction bids
- A. Obtain Governor's approval to advertise for bids - submit request to advertise for bids to Governor through BUF
  - B. Print final documents
  - C. Advertise for construction bids - process substitution requests and prepare addenda (as required)
  - D. Open and analyze bids
  - E. Obtain allotment advice for construction and approval to award contract from Governor - submit allotment request and request to award contract to Governor through BUF
  - F. Obtain approval of proposed contract award from federal government (as required)

- G. Award contract
  - H. Prepare and process contract (includes submitting contracts to ATG for approval as to form)
  - I. Issue notice to proceed with construction
- XVIII. Construction, inspection, and evaluation of project
- A. Project construction
    - 1. Construct project - conduct ongoing inspections of project during construction
    - 2. Prepare post-contract drawings
    - 3. Issue change orders
  - B. Project inspection and corrections
    - 1. Conduct prefinal inspection and prepare "punch list"
    - 2. Conduct final inspection and accept project
    - 3. Install equipment and ready project for occupancy or use - submit project for federal audit (as required)
    - 4. Obtain certificate of occupancy from Building Department (as required) (for City and County of Honolulu)<sup>21</sup>
    - 5. Occupy or use project
    - 6. Evaluate project and equipment
    - 7. Monitor complaints and make corrections (as required)
    - 8. Notify contractor and have corrections made to project
    - 9. Conduct up-grading inspection
    - 10. Prepare informal bidding documents for correcting deficiencies
    - 11. Solicit informal bids
  - C. Project evaluation - evaluate building or facility for appropriate design considerations on future projects

### **Equipment**

- XIX. Equipment
- A. Procurement from "AGS price list"
    - 1. Prepare equipment list for procurement from Department of Accounting and General Services' price list
    - 2. Bidding documents prepared by AGS
    - 3. Prepare and review equipment specifications - review by AGS and federal government (as required)
    - 4. Approval to purchase equipment (includes approval to advertise for bids) obtained from Governor by AGS - request for approval submitted to Governor through BUF by AGS
    - 5. Make final corrections to specifications
    - 6. Final specifications printed by AGS
    - 7. Request for bids advertised by AGS - substitution requests processed and addenda prepared by AGS (as required)

## CAPITAL IMPROVEMENT PROJECTS

8. Bids opened and analyzed by AGS
9. Approval to award contract obtained by AGS from Governor and federal government (as required) - request for approval to award contract submitted to Governor through BUF by AGS
10. Contract awarded by AGS
11. Preparation and processing of contract by AGS (includes submitting contracts to ATG for approval as to form)
12. Prepare equipment list for procurement from state price list
13. Order equipment based on prices from state price list
14. Install equipment
- B. Procurement of equipment in excess of \$4,000
  1. Prepare equipment list for procurement
  2. Prepare and review plans and specifications - review by AGS and federal government (as required)
  3. Prepare and process invitation for bids (includes submitting bids to ATG for approval as to form)
  4. Obtain approval to advertise for bids from Governor - submit request to advertise for bids to Governor through BUF
  5. Make final corrections to plans and specifications
  6. Print final specifications
  7. Advertise for equipment bids - process substitution requests and prepare addenda (as required)
  8. Open and analyze bids
  9. Obtain allotment advice for equipment and approval to award contract from Governor - submit allotment request and request to award contract to Governor through BUF
  10. Obtain approval of proposed contract award from federal government (as required)
  11. Award contract
  12. Prepare and process contract (includes submitting contracts to ATG for approval as to form)
  13. Issue notice to proceed with equipment procurement
  14. Order equipment
  15. Install equipment

## ENDNOTES

1. Hawaii, Office of the Governor, "Executive Memorandum No. 88-16: Procedures for Requesting the Implementation of Capital Improvement Projects", July 1, 1988, p. 1 of Appendix I.

Capital improvement projects are nonrecurring in nature. State appropriations and authorizations for proposed capital improvement projects include land acquisition, plans, design, construction, equipment, and furnishings. (See section 37-62, Hawaii Revised Statutes, regarding the definition of "cost elements".)

2. Hawaii, Office of the Governor, "Executive Memorandum No. 88-16: Procedures for Requesting the Implementation of Capital Improvement Projects", pp. 1 - 2 of Appendix I.

3. Ibid., pp. 2 - 3 of Appendix I.
4. Hawaii, Department of Public Safety. "C.I.P. Implementation Flow Chart" (February 20, 1992), 1 p.
5. The Department of Accounting and General Services implements proposed capital improvement projects on behalf of the Department of Public Safety
6. Interview with Ralph Morita, Acting Head, Department of Accounting and General Services, Public Works Division, Planning Branch, Education Section, November 6, 1992
7. These were the standing procedures for the 1991-1992 fiscal year. See Hawaii, Department of Budget and Finance. "Memorandum from Yukio Takemoto, Director of Finance to All State Agencies with CIP Appropriations regarding the updating of the CIP expenditure plan for FY 1993" (October 14, 1992), 12 pp. (with attachments), for the standing procedures for the 1992-1993 fiscal year.

See Appendix B for an explanation of the expenditure plan/allotment advice process.

8. See Appendix C for a description of project development reports.
9. See Appendix D for a description of site selection studies.
10. See Appendix E for an explanation of environmental impact statements.
11. See Appendix F for an explanation of the land acquisition process.
12. See Appendix G for an explanation of the master planning process.

*Overly simplified, the difference between a complex development report (CDR) and a master plan (MP) is that a CDR is a site layout for multiple sites that require incremental construction while a MP is a site layout for one site that requires incremental construction. Neither a CDR nor a MP are required if a proposed capital improvement project does not require incremental construction.*

13. An environmental impact statement (EIS) that is accepted with respect to a particular capital improvement project is usually qualified by its size, scope, location, and timing, among other things. If there is any major change in any of these characteristics, the original EIS will no longer be completely valid because an essentially different project would be under consideration. As long as there is no substantial change in a proposed project, the EIS associated with that project will be deemed to comply with Title 11, chapter 200, Hawaii Administrative Rules (Department of Health; Environmental Impact Statements). If there is any major change, a supplemental EIS must be prepared and reviewed as provided by Title 11, chapter 200, Hawaii Administrative Rules. Section 11-200-26, Hawaii Administrative Rules.

The accepting authority for the EIS is responsible for determining whether or not a supplemental EIS is required. This determination must be submitted to the Office of Environmental Quality Control for publication in the OEQC Bulletin. State and county agencies must prepare for public review supplemental environmental impact statements whenever the proposed capital improvement project for which an EIS was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental EIS is warranted when the scope of a proposed project has been substantially increased, when the intensity of 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. Section 11-200-27, Hawaii Administrative Rules.

The contents of the supplemental EIS are the same as required by Title 11, chapter 200, Hawaii Administrative Rules, for the EIS and may incorporate by reference unchanged material from the EIS;

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however, in addition, the supplemental EIS must fully document the proposed changes from the original EIS and completely and thoroughly discuss the EIS process followed for these changes, the positive and negative aspects of these changes, and must comply with the content requirements of section 11-200-16, Hawaii Administrative Rules, as they relate to the changes. Section 11-200-28, Hawaii Administrative Rules.

14. Because of time constraints, the Bureau limited its description of this particular topic to the City and County of Honolulu. This description and the ensuing descriptions should not be construed as a criticism of the City and County of Honolulu.
15. A special use permit may also be required for natural area reserves. An application is submitted to the Department of Land and Natural Resources. The application is then reviewed and approved by the Natural Area Reserves System Commission and the Board of Land and Natural Resources.
16. Because of time constraints, the Bureau limited its description of this particular topic to the City and County of Honolulu. This description should not be construed as a criticism of the City and County of Honolulu.
17. See chapter 111, Hawaii Revised Statutes, regarding assistance to displaced persons.
18. Review and approval by the federal government would be required only when federal moneys were being used to implement a proposed capital improvement project. Morita interview.
19. Because of time constraints, the Bureau limited its description of this particular topic to the City and County of Honolulu. This description should not be construed as a criticism of the City and County of Honolulu.
20. Because of time constraints, the Bureau limited its description of this particular topic to the City and County of Honolulu. This description and the ensuing descriptions should not be construed as a criticism of the City and County of Honolulu.
21. Because of time constraints, the Bureau limited its description of this particular topic to the City and County of Honolulu. This description should not be construed as a criticism of the City and County of Honolulu.

## Chapter 3

### DESIGNING BUILDINGS AND FACILITIES TO ACCOMMODATE PERSONS WITH PHYSICAL DISABILITIES

#### State Laws

**Considering the Needs of Persons with Physical Disabilities.** Without exception, section 103-50(a), *Hawaii Revised Statutes*, requires all plans<sup>1</sup> and specifications<sup>2</sup> for the construction<sup>3</sup> of public buildings and facilities by the State or any county to be prepared so the buildings and facilities are accessible to and usable by persons with physical disabilities, and in conformance with the Uniform Federal Accessibility Standards (UFAS).<sup>4</sup> Section 103-50(b), *Hawaii Revised Statutes*, also requires all state and county agencies to seek advice and recommendations from the Commission on Persons with Disabilities on any construction plans. The establishment of procedures and assignment of responsibilities related to the implementation of section 103-50, *Hawaii Revised Statutes*, are discussed in Governor's Administrative Directive No. 90-16.<sup>5</sup>

**Architectural Access Committee.** Section 103-50.5(a), *Hawaii Revised Statutes*, establishes within the Department of Health for administrative purposes an architectural access committee composed of three members appointed by the Governor without the advice and consent of the Senate. The members of the committee are required to have a special interest or knowledge concerning design standards for persons with physical disabilities.

The committee is authorized to vary<sup>6</sup> specific accessibility requirements when the variance will ensure an alternate design that provides equal (or greater) access for persons with physical disabilities, and to establish guidelines for design specifications not covered in the UFAS.<sup>7</sup> The Director of Health is required to adopt rules pursuant to the Hawaii Administrative Procedure Act (chapter 91, *Hawaii Revised Statutes*) to permit the committee to issue these variances, and to establish guidelines for design specifications not covered in the UFAS.<sup>8</sup> Section 103-50.5(c), *Hawaii Revised Statutes*, permits the committee to hire staff, who are exempted from the civil service and compensation laws, to assist in the performance of the committee's duties.

#### Suggested Practices for Architects and Project Managers

**Requesting a Preliminary Review.** According to the Commission,<sup>9</sup> architects are encouraged to submit building and facility plans for a preliminary review early in the design phase of a proposed capital improvement project or when the plans are not more than sixty to eighty percent complete.<sup>10</sup> The purpose of a preliminary review is to identify, as early as possible, those design features of a building or facility that may render the building or facility inaccessible to or unusable by persons with physical disabilities and, consequently, out of conformance with applicable design specifications or the UFAS. A preliminary review affords

an architect and the Commission the opportunity to discuss problems with the overall design of a building or facility before additional time and money are expended on a proposed project.<sup>11</sup> When the plans for a building or facility are essentially complete, the Commission conducts a final document review to verify that the building or facility does indeed conform to applicable design specifications or the UFAS. The Commission also reviews building and facility specifications, such as the type of fixtures to be installed and the height of these fixtures, for conformance with applicable design specifications or the UFAS once the plans are complete.<sup>12</sup>

Actually, the Commission's "review" is not an approval; rather, it is a written report to the architect and the project manager indicating that the plans and specifications for the building or facility appear to conform to applicable design specifications or the UFAS. Final authority for enforcing compliance with these plans and specifications rests with the agency overseeing the construction of and expending monies for the building or facility.

Architects who neglect to submit building and facility plans for a preliminary review run the risk of encountering lengthy and costly project delays if errors are detected during the later stages of project implementation (e.g., construction).<sup>13</sup> Architects who submit building and facility plans that lack sufficient structural detail for a preliminary review run the risk of encountering similar (but less severe) project delays by having the plans returned to them for additional information.<sup>14</sup> If extensive design changes are needed to conform the plans for a building or facility to applicable design specifications or the UFAS, substantial time and money may be needed.<sup>15</sup> Since the Commission is under no obligation to approve building and facility plans that do not conform to applicable design specifications or the UFAS,<sup>16</sup> an architect who neglects to submit plans for a preliminary review has but four options to pursue when the Commission opines that the plans do not conform to applicable design specifications or the UFAS.

The first option is to contest the Commission's opinion in the hope that the Commission will relent and "allow" the architect to retain the existing design of the building or facility. The second option, which usually follows after the first option has been exhausted, is to apply to the architectural access committee for a variance from the requirements of applicable design specifications or the UFAS. An architect may not choose to obtain the relief sought through a variance because:

- (1) A variance from the requirements of applicable design specifications and the UFAS must ensure an alternate design that provides equal or greater access for persons with disabilities;<sup>17</sup>
- (2) A proceeding must be held on a petition for a variance before the variance can be granted;<sup>18</sup> and
- (3) The architectural access committee is under no obligation to grant a variance from the requirements of applicable design specifications or the UFAS.<sup>19</sup>

Further, since a proceeding held on a petition for a variance must be preceded by a fifteen-day notice period and the committee has sixty days from the date a petition for a variance is filed to initiate and complete a variance review proceeding,<sup>20</sup> an architect may not obtain the desired relief in a timely manner.

The third option is to disagree with the Commission and proceed with the construction of the building or facility, and hope to prevail if a complaint is filed regarding compliance with the requirements of applicable design specifications or the UFAS. The fourth option is to acknowledge any deficiencies but, because of fiscal limitations or time constraints, proceed with construction and handle these deficiencies in a "change order" or subsequent (future) capital improvement project.<sup>21</sup>

Although the law does not expressly require state and county agencies to obtain the "consent" of the Commission to proceed with the implementation of a proposed capital improvement project, most agencies will not proceed with a proposed project until the Commission opines that the plans for the building or facility conform to applicable design specifications or the UFAS.<sup>22</sup>

Arguably, the more an architect tries to avoid having to make the necessary changes to the plans for a building or facility to conform to applicable design specifications or the UFAS, the more committed the architect becomes to pursuing the abovementioned options to save time and money. Given the strength of the laws regarding access for persons with physical disabilities, architects who neglect to submit plans for a preliminary review put themselves in the position of having no viable options to choose from.

**When to Request a Preliminary Review.** According to the Commission,<sup>23</sup> the number of plans and specifications awaiting review during the 1991-1992 fiscal year ranged from a low of ten during the month of February to a high of 160 during the month of June. During the month of June this backlog delayed the review of documents by approximately eight to ten weeks, compared to a typical document review time of approximately two weeks. The Commission attributed this backlog to a rush of last-minute spending during the fourth quarter of the fiscal year (*i.e.*, proposed capital improvement projects initiated during the months of April, May, and June) and staff vacancies. Consistent with the Commission's observation, the number of documents awaiting review at the end of the 1991-1992 fiscal year was approximately 110.

According to the Commission,<sup>24</sup> architects are encouraged to submit plans for a preliminary review during the second and third quarters of the fiscal year (*i.e.*, during the months of October, November, December, January, February, and March), when the backlog of documents awaiting review is low compared to the first quarter of the fiscal year (*i.e.*, during the months of July, August, and September)<sup>25</sup> and the fourth quarter of the fiscal year. The Commission also encourages architects to allow at least six months lead time from the initiation of a preliminary review to the closeout of a project phase (*e.g.*, the advertisement



for bids). Architects who submit plans during the fourth quarter of the fiscal year can expect to encounter a delay of approximately eight weeks, not including the time needed to conduct a document review. Arguably, proposed capital improvement projects initiated close to the end of the fiscal year (*i.e.*, June 30) may leave architects with no choice but to forego a preliminary review or to submit plans that are essentially ready for bid, in order to finish a proposed project before June 30.

According to the Commission,<sup>26</sup> "repeat" architects--those who have gone through the document review process before--tend to submit building and facility plans for a preliminary review early in the design phase of a proposed capital improvement project and have less deficiencies in their plans. It is the "new" architects--those who have never gone through the document review process before--who usually neglect to submit building and facility plans for a preliminary review or who submit plans containing more deficiencies. Since it is the individual architect, not the architectural firm, who submits a plan for a building or facility for a preliminary review, "new" architects may not necessarily benefit from the experience and guidance of "repeat" architects. The Commission recommends that state and county project managers encourage all architects to submit building and facility plans for a preliminary review early in the design phase of a proposed project.

**Conducting Field Inspections During Construction.** According to the Commission,<sup>27</sup> the occupancy of a building or facility can be delayed even when the plans and specifications for the building or facility conform to applicable design specifications and the UFAS. These delays are usually caused by contractors who fail to adhere to the plans and specifications for a building or facility, and by the lack of adequate field inspections by architects and project managers. Architects and project managers, rather than the Commission, are responsible for ensuring that contractors adhere to the plans and specifications for a building or facility. If an agency takes possession of a building or facility that does not conform to applicable design specifications or the UFAS, the agency (rather than the Commission) becomes responsible for correcting these deficiencies or seeing that these deficiencies are corrected by the contractor. The Commission recommends that architects and project managers routinely inspect the work of contractors to ensure adherence to the plans and specifications for buildings and facilities and, consequently, conformance to applicable design specifications or the UFAS.

## Analyses

**Structural Detail.** As previously mentioned, the Commission encourages architects to submit building and facility plans for a preliminary review early in the design phase of a proposed capital improvement project or when the plans are not more than sixty to eighty percent complete. While this description appears to provide a somewhat quantifiable measure for architects and project managers with respect to the level of structural detail needed by the Commission to conduct a preliminary review of building and facility plans, it does not describe the minimum kind of structural detail needed by the Commission to review these plans. The kind of structural detail needed by the Commission to conduct a preliminary

review may vary between buildings and facilities, as well as from building to building and from facility to facility; and that knowing what kind of details to include in the plans for a building or facility is just as important, if not more so, than knowing the amount of details to include in those plans.

**Commission Personnel.** As previously discussed, the number of plans and specifications awaiting review during the 1991-1992 fiscal year ranged from a low of ten during the month of February to a high of 160 during the month of June. During the month of June this backlog delayed the review of documents by approximately eight weeks, compared to a typical document review time of approximately two weeks.

According to the Commission,<sup>28</sup> at least six full-time equivalent (FTE) technician positions are needed to conduct document reviews, and at least two FTE supervisory positions are needed to provide technical assistance, conduct site surveys, and perform periodic spot checks and final checks. The Commission presently has three FTE technician positions (plus one additional FTE technician position beginning July 1, 1992) and one FTE supervisory position assigned to perform document reviews. For reasons that are not relevant to this analysis, only two of the four FTE positions assigned to perform document reviews are presently (*i.e.*, as of June 29, 1992) operational. Because of personnel shortages and the increased volume of document reviews and training sessions, the Commission no longer conducts site surveys, and periodic spot checks and final checks, and no longer performs document reviews on building and facility plans that are not subject to section 103-50, *Hawaii Revised Statutes*.<sup>29</sup>

The lack of sufficient personnel resources to conduct site surveys means that state and county agencies are unable to utilize the expertise of the Commission in accurately determining the scope and cost of capital improvement projects intended to renovate existing buildings or facilities, and to remove architectural barriers that prevent persons with physical disabilities from gaining access to and using these buildings and facilities. While the Commission provided these kinds of consultative services in the past, the lack of sufficient personnel resources makes this practically impossible at the present time.<sup>30</sup>

Agencies that are unable to accurately determine the scope and cost of projects to renovate existing buildings or facilities, and to remove architectural barriers that prevent persons with physical disabilities from gaining access to and using these buildings and facilities, run the risk of encountering project delays related to insufficient funding and cost overruns.

Although the Commission used to conduct periodic spot checks with architects and project managers to verify that contractors were adhering to the plans and specifications for a building or facility, the Bureau questions whether this was and still is a function more appropriately performed by architects and project managers alone. The Bureau believes that the Commission should verify that a building or facility does not conform to applicable design specifications or the UFAS when the architect or project manager has determined that the

contractor is not adhering to the plans or specifications for the building or facility. The Bureau also believes that the Commission should verify that a building or facility does not conform to applicable design specifications or the UFAS when the architect or project manager has refused to take possession of the building or facility from the contractor because of suspected construction-related accessibility problems.

The Commission's practice of accompanying architects and project managers to project sites to verify that contractors are adhering to the plans and specifications for a building or facility appears contrary to the rationale for having an architect and project manager. Presumably, if a contractor adheres to the plans and specifications for a building or facility, the plans and specifications conform to applicable design specifications or the UFAS, and the architect and project manager routinely monitor the work performed by the contractor, then the Commission should only have to verify that the building or facility does not conform to applicable design specifications or the UFAS, or that the architect or project manager is justified in refusing to take possession of the building or facility.<sup>31</sup>

Given the Commission's personnel shortages and the current state of Hawaii's economy--characterized by a decline in state revenues, the Bureau believes that the Commission should reassess its current priorities and the present allocation of personnel resources as they relate to document reviews, site surveys, and periodic spot checks and final checks until such time as the personnel shortages are eliminated.

**Contractors and Construction Workers.** As previously discussed, the Commission recommended that architects and project managers routinely inspect the work of contractors to ensure adherence to the plans and specifications for buildings and facilities and, consequently, conformance to applicable design specifications or the UFAS. While the Commission has compiled an extensive array of instructional materials and conducted numerous training classes and workshops for engineers and architects, it may be necessary to provide similar instructional materials and conduct similar training classes and workshops for contractors and construction personnel in supervisory positions. If the people constructing these buildings and facilities fail or refuse to take notice of design changes that make buildings and facilities accessible to persons with physical disabilities, then construction-related accessibility problems will continue to persist. It is not feasible for any agency to have an architect or project manager "on site" every hour of every day, inspecting and verifying every piece of work performed on every ongoing capital improvement project in the State. Consequently, education rather than enforcement may yield better, if not more immediate, results.

**Time, Thoroughness, and Money.** Assuming:

- (1) That two weeks is the average amount of time needed by the Commission to conduct a document review;

- (2) That all document reviews conducted by the Commission are equally thorough, though not equally complex or time-consuming; and
- (3) That the periodic backlog of plans and specifications awaiting review is linked inexorably to the nature of the State's budget cycle;

the Bureau believes that one or both of the following activities may immediately reduce the length of time that state and county agencies implementing proposed capital improvement projects must expend on document reviews.

The first activity is to provide the Commission with additional personnel and program resources to reduce to an acceptable amount the periodic backlog of plans and specifications awaiting review, and the length of time need by the Commission to conduct a document review.<sup>32</sup> The second activity is to reduce (limit) the thoroughness of the Commission's document reviews. This second activity can be accomplished by limiting the length of time that the Commission is allowed to spend on any one document review (*i.e.*, imposing a required turnaround time for all document reviews).

Although the current condition of the State's economy may preclude the allocation of additional personnel and program resources, the Bureau believes that limiting the length of time that the Commission is allowed to spend on any one document review may be premature given the lack of an in-depth and systematic assessment of the problem. The Bureau further believes that the policy implications of the second activity may prove to be especially offensive to persons with physical disabilities, who are the primary beneficiaries of the State's accessibility laws, and that these negative implications need to be considered thoughtfully before this activity is undertaken.

Limiting the length of time that the Commission is allowed to spend on any one document review could impel the Commission to arbitrarily opine that the plans and specifications for a building or facility do not contain sufficient structural detail to permit the Commission to determine whether or not the plans and specifications conform to applicable design specifications or the UFAS. Another possible, albeit unlikely, response from the Commission to such a limit would be to arbitrarily opine that the plans and specifications for a building or facility do not conform to applicable design specifications or the UFAS. Since the former response (*i.e.*, insufficient detail) is more credible and less susceptible to challenge on technical merit, and since the latter response implies a finding of nonconformance with applicable design specifications or the UFAS rather than the inability to reach a decision, the Bureau believes that arbitrary findings of nonconformance are unlikely.

## Recommendations

The Bureau recommends that the Commission:

- (1) Describe for architects and project managers the minimum kind of structural detail needed by the Commission to conduct a preliminary review of building and facility plans;
- (2) Reassess the need for and, if appropriate, the priority that should be given to site surveys to assist state and county agencies in accurately determining the scope and cost of capital improvement projects intended to renovate existing buildings or facilities, and to remove architectural barriers that prevent persons with physical disabilities from gaining access to and using these buildings and facilities;
- (3) Reassess the need for and, if appropriate, the priority that should be given to periodic spot checks intended to verify that contractors are adhering to the plans and specifications for a building or facility;
- (4) In coordination with the Department of Commerce and Consumer Affairs (Contractors License Board), assess the need for instructional materials, training classes, and workshops geared primarily toward the activities of contractors and construction personnel in supervisory positions; and
- (5) In coordination with the Department of Accounting and General Services (Public Works Division) and the Department of Personnel Services (Training and Safety Division), assess the need for instructional materials, training classes, and workshops geared primarily toward the activities of architects, project managers, and other personnel who are responsible for ensuring that contractors are adhering to the plans and specifications for buildings and facilities.

The Bureau further recommends that all state and county capital improvement project contracts include, within the description of the scope of work to be performed by an architect, a requirement that the architect submit building and facility plans for a preliminary review when the plans are not more than sixty to eighty percent complete, or when the plans contain the minimum kind of structural detail needed by the Commission to conduct a preliminary review. In addition, the Bureau recommends that Governor's Executive Memorandum No. 88-16 be updated to reference or incorporate the procedures established by and responsibilities assigned under Governor's Administrative Directive No. 90-16.

The Bureau also recommends that the Legislature consider appropriating additional personnel and program resources to reduce to an acceptable amount the periodic backlog of plans and specifications awaiting review, and the length of time need by the Commission to conduct a document review. The Bureau does not recommend that the Legislature limit the length of time that the Commission is allowed to spend on any one document review until an in-depth and systematic assessment of the problem is undertaken, and the negative implications of this course of action can be considered.

## ENDNOTES

1. Plans are drawings made to scale to represent the top view or a horizontal section of a structure or a machine, as a floor layout of a building. Robert Costello, ed., Random House Webster's College Dictionary (New York: Random House, Inc., 1991), p. 1032.
2. Specifications are detailed descriptions of requirements, dimensions, materials, etc., as of a proposed building. Ibid., p. 1285.
3. Construction includes the renovation of existing buildings and facilities, as well as the removal of architectural barriers that may prevent persons with physical disabilities from gaining access to or using these buildings and facilities.
4. 41 C.F.R. §101-19.6, Appendix A.

Making buildings and facilities accessible to and usable by persons with physical disabilities is not a state or county option. Title II of the Americans with Disabilities Act (P.L. 101-336) requires all state and county agencies to ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by persons with physical disabilities. This requirement also applies to state and county agencies that undertake alterations to existing buildings or facilities. The only option left to state and county agencies is whether to follow the UFAS or the Americans with Disabilities Act Accessibility Guidelines (minus the elevator exemption). Hawaii, Commission on Persons with Disabilities, "Fact Sheet, Americans with Disabilities Act - Title II affecting State and Local Governments, An Overview", ADA-5 (March 1992), 4 pp.

5. Hawaii, Office of the Governor, "Administrative Directive No. 90-16: Implementation of Act 382-89, SLH 1989" (March 5, 1990), 2 pp.

Governor's Executive Memorandum No. 88-16 has not been updated to reference or incorporate the procedures established and responsibilities assigned under Governor's Administrative Directive No. 90-16. Hawaii, Office of the Governor, "Executive Memorandum No. 88-16: Procedures for Requesting the Implementation of Capital Improvement Projects" (July 1, 1988), 22 pp. (with attachments).

6. "Vary" does not mean "exempt".
7. Hawaii Rev. Stat., sec. 103-50.5(b). In fact, a variance must ensure equal or greater access for persons with physical disabilities. Section 11-217-2, Hawaii Administrative Rules (Department of Health, Architectural Access Committee Rules of Practice and Procedure) (see definition of "variance").

If the committee finds that an imminent peril to public health or safety requires the adoption, amendment, or repeal of a design specification upon less than twenty days' notice of a proceeding, and states in writing the committee's reason for this finding, the committee may proceed without prior notice or proceeding or upon

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such abbreviated notice and proceeding as the committee finds practicable to adopt an emergency design specification to be effective for a period not longer than one hundred twenty days without renewal Section 11-217-39, Hawaii Administrative Rules

The Committee is only authorized to adopt, amend, and repeal design specifications that are not covered in the UFAS.

8. Hawaii Rev. Stat., sec. 103-50.5(d). See also Hawaii Administrative Rules, Title 11, chapter 217.
9. Interview with Francine Wai Lee, Executive Director, Commission on Persons with Disabilities, June 29, 1992.
10. At this point in the design phase, the plans for a building or facility usually contain sufficient structural detail for the Commission to identify problems with the design of the building or facility. Specifications such as the type of fixtures to be installed and the height of these fixtures, are usually not available or complete at this point in the design phase. The lack of these details is not a serious problem during a preliminary review since the intent of such a review is to identify conceptual problems with the overall design of a building or facility, rather than specific problems with the requirements, dimensions, materials, etc. of the building or facility. Ibid.
11. Specifications are inexorably linked to the overall design of a building or facility. When the design of a building or facility changes, the specifications will also change.
12. Although specific requirements, dimensions, materials, etc., can and, in fact, do help to make buildings and facilities more accessible to and usable by persons with physical disabilities, these details are largely irrelevant if persons with physical disabilities are unable to enter or maneuver within these buildings and facilities because of basic design problems (e.g., the lack of elevators in high-rise buildings, narrow hallways and doorways, steep walkways, etc.).
13. This probably applies equally to architects who do so out of ignorance of the law and architects who are aware of the law but do not take it seriously.
14. According to the Commission, building and facility specifications are similarly returned to architects for further information when there is insufficient detail about specific requirements, dimensions, materials, etc. Lee interview.
15. Advances in computer-aided design (CAD) may have reduced the amount of time and money needed to make these kinds of changes.
16. Approval by the Commission is discretionary and not ministerial.
17. Hawaii Rev. Stat., sec. 103-50.5(a); section 11-217-2, Hawaii Administrative Rules (see definition of "variance").
18. Section 11-217-10, Hawaii Administrative Rules.
19. State law gives the architectural access committee the authority to issue a variance, but does not require the committee to do so. Hawaii Rev. Stat., sec. 103-50.5(b).
20. Section 11-217-12(a)(2), Hawaii Administrative Rules.
21. With respect to: (1) the third option, i.e., hoping to prevail if a complaint is filed regarding compliance with the requirements of applicable design specifications or the UFAS; and (2) the fourth option, i.e., acknowledging

any deficiencies but, because of fiscal limitations or time constraints, proceeding with construction and handling these deficiencies in a "change order" or subsequent capital improvement project. A recent opinion letter from the Office of Information Practices regarding document reviews prepared by the Commission on Persons with Disabilities will make it easier for disabled persons to monitor and, if necessary, initiate civil actions in circuit court to enforce conformance with applicable design specifications or the UFAS. According to the Office of Information Practices:

... The Commission is concerned that the Document Reviews may possibly be used by future litigants against government agencies who believe that such agencies have failed to comply with federal laws requiring government buildings to be accessible to the disabled. While the UIPA [Uniform Information Practices Act (Modified)] does not require the disclosure of government records that would not be discoverable in a civil action to which the agency is or may be a party (section 92F-13(2), Hawaii Revised Statutes), a fear that a record may be relevant to future litigation is not, in and of itself, a valid exception to required agency disclosure under the UIPA.

Hawaii, Department of the Attorney General, Office of Information Practices, "OIP Opinion Letter No. 92-5" (June 16, 1992), pp. 1-2.

22. Lee interview.

23. Ibid.

24. Ibid.

25. The backlog of documents awaiting review during the first quarter of the fiscal year is greater than the backlog of documents awaiting review during the second or third quarters of the fiscal year, but less than the fourth quarter. The Commission attributes the backlog during the first quarter of the fiscal year, in part, to the rush of proposed capital improvement projects initiated at the beginning of the fiscal year (i.e., July 1). Ibid.

Arguably, the large number of documents awaiting review at the end of the fiscal year contributes to the backlog during the first quarter of the fiscal year, too.

26. Ibid.

27. Ibid.

28. Ibid.

29. Ibid.

The Commission conducted 407 unduplicated document reviews during the 1990-1991 fiscal year, an increase of more than 108 percent over the 1989-1990 fiscal year (195 unduplicated document reviews). The Commission conducted a total of 530 document reviews during the 1990-1991 fiscal year, an increase of more than 142 percent over the 1989-1990 fiscal year (219 total document reviews). It is interesting to note that the ratio of unduplicated document reviews to duplicative (repetitive) document reviews decreased from 8.125 in fiscal year 1989-1990 to 3.310 in fiscal year 1990-1991, indicating an increase in the incidence of duplicative document reviews between fiscal year 1989-1990 and fiscal year 1990-1991. Hawaii, Department of Health, "Report of Activities on H.R.S. 103-50, Relating to Accessibility for Persons with Disabilities, July 1, 1990 - June 30, 1991", p. 2.

30. Lee interview.



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- 31 It is possible for a contractor to deviate from the plans and specifications for a building or facility but still have the building or facility conform to applicable design specifications or the UFAS.
- 32 This is not to say that existing personnel and program resources are inadequate; rather, the Bureau merely recommends that the Legislature consider appropriating additional personnel and program resources to reduce to an acceptable amount the periodic backlog of plans and specifications awaiting review, and the length of time need by the Commission to conduct a document review.

## Chapter 4

### THE HAWAII STATE ENVIRONMENTAL IMPACT STATEMENTS LAW

#### State Law

Subject to certain exceptions, section 343-5(b), *Hawaii Revised Statutes*, conditions the implementation of a proposed capital improvement project by any state or county executive branch agency on the acceptance<sup>1</sup> of a final environmental impact statement (EIS),<sup>2</sup> when the project proposes, among other things, the use of state or county funds or the use of state or county lands.<sup>3</sup>

#### Procedural Irregularities

Hawaii's environmental impact statements law<sup>4</sup> neither prevents state and county agencies from undertaking environmentally-adverse capital improvement projects, nor provides for the termination of proposed capital improvement projects because of their adverse environmental consequences.<sup>5</sup> The law has been used successfully, however, to halt (*i.e.*, interminably delay) proposed projects for procedural irregularities in their implementation.<sup>6</sup>

According to the Office of Environmental Quality Control (OEQC),<sup>7</sup> these delays usually stem from lawsuits challenging a state or county agency's failure to prepare an environmental assessment (EA),<sup>8</sup> an agency's issuance of a negative declaration,<sup>9</sup> or the Governor's or a mayor's acceptance of a final EIS. According to the OEQC,<sup>10</sup> some of the delays encountered by "certain state and county agencies"<sup>11</sup> during the implementation of proposed projects stem partly from the agencies' "failure to integrate the environmental impact statements process into their ongoing planning activities".<sup>12</sup>

Section 343-7, *Hawaii Revised Statutes*, requires judicial proceedings to be initiated:

- (1) Within one hundred twenty days:
  - (A) Of a state or county agency's decision to implement or approve a proposed capital improvement project, if the agency decides to implement or approve the proposed project without preparing an EA; or
  - (B) After an agency starts a proposed project, if the project is started without a formal determination by the agency that an EIS is or is not required;

- (2) Within thirty days after the public has been informed of an agency's determination that an EIS is not required for a proposed project;<sup>13</sup> and
- (3) Within sixty days after the public has been informed of the Governor's or a mayor's acceptance of a final EIS.

To assist state and county agencies in meeting their responsibilities under the environmental impact statements law, the Environmental Council has adopted rules that:

- Prescribe the contents of an EIS;<sup>14</sup>
- Prescribe procedures for preparing an EA;<sup>15</sup>
- Establish criteria to determine whether or not an EIS is acceptable;<sup>16</sup>
- Establish procedures whereby specific types of proposed capital improvement projects, because they will probably have minimal or no significant effects on the environment, can be declared exempt from the preparation of an EA;<sup>17</sup> and
- Prescribe the contents of an EA.<sup>18</sup>

In addition, the OEQC has published "A Guidebook for the Hawaii State Environmental Review Process",<sup>19</sup> which contains two appendices respectively entitled:

- (1) "Appendix F: Environmental Assessments Contents and Notice of Determination"; and
- (2) "Appendix G: Draft and Final Environmental Impact Statement Checklist".

Together with the guidebook, these two appendices provide an easy to understand, step-by-step, item-by-item, guide to preparing and reviewing environmental assessments, draft environmental impact statements, and final environmental impact statements.<sup>20</sup>

According to the OEQC,<sup>21</sup> delays involving a state or county agency's failure to prepare an EA stem partly from the agency's failure to consult<sup>22</sup> with the office on the matter of whether an EA should be prepared for a proposed capital improvement project. According to the OEQC,<sup>23</sup> delays involving an agency's issuance of a negative declaration or the Governor's or a mayor's acceptance of a final EIS stem partly from the lack of early consultation during the preparation of the EA<sup>24</sup> and partly from the failure to consult with appropriate agencies and concerned citizens and groups prior to filing the draft EIS, respectively.<sup>25</sup>

The OEQC<sup>26</sup> recommends that state and county agencies:

- (1) Consult with the office on the matter of whether an EA should be prepared for a proposed capital improvement project if there is any uncertainty about the need for an EA; and
- (2) Give due consideration to the rules requiring early consultation during the preparation of an EA and consultation with appropriate agencies and concerned citizens and groups prior to filing a draft EIS.

The OEQC points out that changes to the environmental impact statements law enacted on June 17, 1992:<sup>27</sup>

- Establish procedures to make available for public review and comment a draft EA for which a negative declaration is anticipated;
- Require a draft EA to be made available for public review and comment for thirty days;
- Require the office to inform the public of the availability of a draft EA for public review and comment;
- Require state and county agencies to respond in writing to comments received during the review and to prepare a final EA to determine whether an EIS is required; and
- Require any judicial proceeding, the subject of which is the determination that an EIS is not required for a proposed capital improvement project, to be brought within thirty (rather than sixty) days after the public has been informed of the determination.

Interestingly, prior state laws and the changes to the environmental impact statements law do not expressly prevent a state or county agency from submitting to the OEQC for "publication" in the *OEQC Bulletin*<sup>28</sup> a draft EA that is clearly deficient with regard to the requirement for early consultation. For that matter, state law does not expressly prevent an agency from submitting to the OEQC a draft EA that is manifestly deficient with regard to other content requirements. The only remedy available to aggrieved parties under these circumstances is to initiate a lawsuit challenging an agency's determination that an EIS is not required for a proposed project.

Despite the lack of specific statutory authority, the OEQC had informally begun to advise state and county agencies that the office would no longer publish in the *OEQC Bulletin*<sup>29</sup> environmental assessments that did not meet the requirement for early consultation.<sup>30</sup> On the advice of the Department of the Attorney General, however, the OEQC subsequently reversed its decision not to publish these environmental assessments in the bulletin.<sup>31</sup>

### **The "No Action" Alternative and Other Alternative Actions**

According to the OEQC,<sup>32</sup> a state or county agency's decision to proceed or not to proceed with the implementation of a proposed capital improvement project, or the decision to proceed with the implementation of an alternative action, should be shaped by the final EIS for the proposed project. In some instances, however, a final EIS for a proposed project is used by an agency to rationalize or defend the agency's decision to proceed with the implementation of the project in a predetermined manner.<sup>33</sup> In fairness to these agencies, the OEQC<sup>34</sup> pointed out that a proposed project is typically authorized by the Legislature before the final EIS for the project has been prepared by the implementing agency. Consequently, a final EIS for a proposed project could be inconsistent with the project authorized by the Legislature through no fault of the implementing agency.

The moneys needed to conduct an EIS are typically appropriated as "plan funds", and these funds are specifically attached to a proposed capital improvement project rather than an implementing agency's operating budget. Ongoing planning activities, however, are specifically attached to an agency's operating budget. A state or county agency would have to request that the Legislature amend the authorization for a proposed project if the language in the initial authorization bill precluded the implementation of a different kind of project (*i.e.*, an alternative action) altogether.

Arguably:

- (1) Integrating the environmental impact statements process into the ongoing planning activities of state and county agencies would lessen the likelihood of a final EIS for a proposed capital improvement project being inconsistent with the proposed project authorized by the Legislature;
- (2) Legislative authorization of a proposed project does not automatically make the project the best alternative for attaining a government objective; and
- (3) Conforming a final EIS for a proposed project to an authorization in an appropriations bill takes less time than requesting the Legislature to amend the appropriations bill to conform to the final EIS, assuming this does not initiate a lawsuit challenging the acceptance of the final EIS.

Interestingly, Hawaii Administrative Rules, section 11-200-14, reminds state and county agencies that:

. . . An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action [capital improvement project] . . . .

Examples of alternative actions that should be, but are not always, considered by state and county agencies include:<sup>35</sup>

- (1) The alternative of no action or of postponing action pending further study;
- (2) Alternatives requiring actions of a significantly different nature that would provide similar benefits with different environmental impacts;
- (3) Alternatives related to different designs or details of the proposed actions that would present different environmental impacts; and
- (4) Alternative measures to provide for compensation of fish and wildlife losses, including the acquisition of land, waters, and interests therein.

In each case, an agency's analysis is required to be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of a proposed project and each reasonable alternative action.<sup>36</sup>

Hawaii Administrative Rules, section 11-200-17, states that:

. . . A rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might enhance environmental quality or avoid or reduce some or all of the adverse environmental benefits [sic], costs, and risks [of a proposed capital improvement project] shall be included in the agency review process [environmental impact statement] in order not to prematurely foreclose options which might enhance environmental quality or have less detrimental effects [on the environment] . . . .

### Private Consultants

According to the OEQC,<sup>37</sup> a substantial amount of work related to the environmental impact statements law (e.g., the preparation of environmental assessments, draft environmental impact statements, and final environmental impact statements) is performed by private consultants rather than the staff of state and county agencies. Whether for lack of sufficient personnel resources or staff expertise, or for failure to integrate the environmental

impact statements process into ongoing agency planning activities, the OEQC<sup>38</sup> believes that the State's heavy reliance on the services of private consultants makes it difficult for these agencies to develop the in-house expertise needed to prepare adequate<sup>39</sup> environmental assessments<sup>40</sup> and draft environmental impact statements, and to respond to public comments and concerns about proposed capital improvement projects in a timely and thoughtful manner during the preparation of final environmental impact statements. According to the OEQC,<sup>41</sup> the resultant dissociation of some agencies from the environmental impact statements process may be one of the reasons why these agencies view the process as a hindrance to the implementation of proposed projects rather than an integral part of their own capital improvement programs (*i.e.*, ongoing planning activities).<sup>42</sup>

### Use of Negative Declarations to Save Time

According to the OEQC,<sup>43</sup> negative declarations are sometimes issued by state and county agencies, without regard to environmental effects, to save time and keep proposed capital improvement projects on schedule. According to the OEQC,<sup>44</sup> this appears to happen most often when the appropriation for a proposed project is due to lapse at the end of a fiscal year. The OEQC believes, in some instances, that an agency may have waited too long before beginning work on an EIS and that the agency could have little or no choice (because of time and budget constraints) but to issue a negative declaration in order to keep a proposed project on schedule.<sup>45</sup>

### Exemptions

Section 343-6(7), *Hawaii Revised Statutes*, requires the Environmental Council, after consultation with the affected state and county agencies and in accordance with the Hawaii Administrative Procedure Act (chapter 91, *Hawaii Revised Statutes*), to establish procedures whereby specific types of proposed capital improvement projects, because the proposed projects will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an EA.<sup>46</sup> According to the OEQC,<sup>47</sup> some agencies are preparing environmental assessments and issuing negative declarations for proposed projects that could be declared exempt from the preparation of an EA pursuant to section 343-6(7), *Hawaii Revised Statutes*. According to the OEQC,<sup>48</sup> the issuance of a negative declaration theoretically delays the implementation of a proposed project for a minimum of sixty days while the time for initiating a lawsuit to challenge an agency's determination runs out.<sup>49</sup>

The OEQC<sup>50</sup> recommends that state and county agencies, in consultation with the office, utilize the procedure specified in Hawaii Administrative Rules, section 11-200-8, to declare exempt from the preparation of an EA specific types of proposed capital improvement projects that will probably have minimal or no significant effects on the environment.

## Analyses

**Content Requirements.** Arguably, the changes made to the environmental impact statements law by Act 241, Session Laws of Hawaii 1992, may:

- (1) Reveal deficiencies in environmental assessments that, until now, would have gone unnoticed by other agencies as well as citizen groups and individuals;
- (2) Increase public scrutiny of state and county agencies' rationales for issuing negative declarations;
- (3) Subject state and county agencies to lawsuits challenging an agency's determination that an EIS is not required for a proposed capital improvement project; and
- (4) Delay the implementation of proposed projects while the implementing agency's negative declaration is litigated.<sup>51</sup>

The OEQC's unsuccessful attempt to refuse to publish in the *OEQC Bulletin* environmental assessments that did not meet the requirement for early consultation raises the following policy question for the Legislature: "Should the OEQC be allowed to refuse to publish in the *OEQC Bulletin* a draft EA<sup>52</sup> or a draft EIS that, in the office's opinion, is clearly deficient with regard to content requirements?" If the answer to the foregoing question is "yes", then the next policy question is: "Should this authority be established by statute?"

It is interesting to note that Governor's Executive Memorandum No. 88-16 states:<sup>53</sup>

### 5. Concurrence of Preliminary Plans

#### General Policies

\* \* \*

- b. The Office of Environmental Quality Control will evaluate the environmental impact of CIP projects in accordance with Executive Order of August 23, 1971 and with Chapter 343, Hawaii Revised Statutes, and with the Environmental Impact Statement Regulations.

According to the OEQC,<sup>54</sup> the office does not presently evaluate the environmental impacts of proposed capital improvement projects in accordance with the Governor's Executive Order of August 23, 1971, the environmental impact statements law, or the environmental impact statement rules.<sup>55</sup>



If a lawsuit challenging a state or county agency's determination that an EIS is not required for a proposed capital improvement project, or the Governor's or a mayor's acceptance of a final EIS, can be avoided by requiring the agency to revise the draft EA or draft EIS, respectively, then allowing the OEQC to refuse to publish in the *OEQC Bulletin* a draft EA or draft EIS that, in the office's opinion, is clearly deficient with regard to content requirements may save some time and money. Arguably, the approximate savings would be the amount by which the sum of the cost of defending against a lawsuit, the cost of any project delays caused by the lawsuit, and the cost of revising the draft EA or draft EIS if the lawsuit was successful, exceeds the sum of the cost of the OEQC's review, the cost of any project delays caused by the review, and the cost of revising the draft EA or draft EIS.<sup>56</sup> With the new thirty-day public review and comment period for draft environmental assessments created by Act 241, Session Laws of Hawaii 1992, a clearly deficient draft EA may be spotted, tracked, and targeted for a lawsuit before an agency's negative declaration is published in the *OEQC Bulletin*.

Arguably, no time or money would be saved by allowing the OEQC to refuse to publish in the *OEQC Bulletin* a draft EA or draft EIS that was clearly deficient with regard to content requirements unless:

- (1) The draft EA was exposed during the thirty-day public review and comment period, the implementing agency issued a negative declaration, and the negative declaration was challenged in court; or
- (2) The draft EIS was exposed during the forty-five day public review and comment period, the Governor or a mayor accepted the final EIS, and the acceptability of the final EIS was challenged in court.

In addition, no time or money would be saved if the sum of the cost of the OEQC's review, the cost of any project delays caused by the review, and the cost of revising the draft EA or draft EIS, equalled or exceeded the sum of the cost of defending against a lawsuit, the cost of any project delays caused by the lawsuit, and the cost of revising the draft EA or draft EIS if the lawsuit was successful.<sup>57</sup>

**To Proceed or Not to Proceed.** Despite admonitions to the contrary, some final environmental impact statements allegedly become self-serving recitations of the benefits and rationalizations of proposed capital improvement projects. In simpler terms, the decision not to proceed with the implementation of a proposed project because of the project's environmental costs and risks, or to proceed with a less environmentally-detrimental alternative action, does not always receive serious consideration from state and county agencies.

In fairness to these state and county agencies, it could be argued that:

- (1) The politically-sensitive nature of some proposed capital improvement projects tend to discourage--if not actively then at least passively--the conscientious and thorough evaluation of the environmental benefits, costs, and risks of a proposed project and each reasonable alternative action;
- (2) The timely implementation of alternative actions with different environmental benefits, costs, and risks, or the timely implementation of less environmentally-detrimental alternative actions, is effectively precluded by the manner in which moneys for environmental impact statements are typically appropriated; and
- (3) Legislative authorization of a proposed project does not automatically make the project the best alternative for attaining a government objective, but conforming a final EIS for a proposed project to an authorization in an appropriations bill takes less time than requesting the Legislature to amend the appropriations bill to conform to the final EIS.

The alleged failure of some state and county agencies to integrate the environmental impact statements process into their ongoing planning activities should not come as a total surprise to anyone since the monies needed to conduct an EIS are typically appropriated as "plan funds", and these funds are specifically attached to a proposed capital improvement project rather than an implementing agency's operating budget.

**Preparing Environmental Assessments and Environmental Impact Statements.** When state and county agencies are required to research, discuss, and prepare environmental assessments and environmental impact statements, and respond to public comments regarding these documents, the responsibility of addressing environmental concerns is placed where it belongs--on the agency implementing a proposed capital improvement project. Arguably, the responsibility of addressing environmental concerns does not belong to private consultants, other (external) agencies, special interest groups, the general public, or the courts. While this system of checks and balances is essential to maintaining the integrity of the environmental impact statements process, it should not be allowed to take the place of thorough planning and thoughtful intra-agency review.

While there is no way to conclusively demonstrate that the (alleged) dissociation of some state and county agencies from the environmental impact statements process has caused these agencies to view the process as a hindrance to the implementation of proposed capital improvement projects, it stands to reason that task-oriented agencies will tend to reject environmental concerns in much the same manner that the human body rejects foreign tissue.

**Negative Declarations.** In fairness to those state and county agencies that may be issuing negative declarations to save time and keep proposed capital improvement projects on schedule, delays in processing allotment requests and allotment advices, selecting

consultants, selecting a site for a proposed project, acquiring land, preparing plans for and designing the proposed project, advertising for and awarding bids, reviewing and processing contracts, and other related matters, are sometimes beyond the control of these agencies. This is not to imply that saving time and keeping a proposed project on schedule justifies the use of a negative declaration; as a matter of principle, keeping a proposed project on schedule should be a subordinate consideration in an agency's decision to issue a negative declaration.

While it is true that some of the abovementioned activities take place simultaneously rather than sequentially, and that some proposed capital improvement projects are funded in phases rather than all at once, the amount of time actually lost to some of these delays can still be quite substantial. Appropriations for proposed projects that are to be implemented during the second year of the biennium (e.g., July 1, 1992 to June 30, 1993 for the 1991-1993 biennium) lapse two years after the start of the new fiscal year (e.g., on June 30, 1994 for the fiscal year beginning July 1, 1992), rather than three years after the start of the new fiscal year (e.g., on June 30, 1994 for the fiscal year beginning July 1, 1991) for proposed projects that are to be implemented during the first year of the biennium (e.g., July 1, 1991 to June 30, 1992 for the 1991-1993 biennium).

The three-year lapsing requirement for capital improvement project appropriations has no relation to the length of time that is needed to complete a proposed project or to obtain all the permits and approvals needed to implement the project. According to Article VII, section 11, of the Constitution of the State of Hawaii:

All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods, and no such appropriation shall be made for a period exceeding three years. Any such appropriation or any portion of any such appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse; provided that no appropriation for which the source is general obligation bond funds nor any portion of any such appropriation shall lapse if the legislature determines such appropriation or any portion of such appropriation is necessary to qualify for federal aid financing and reimbursement. Where general obligation bonds have been authorized for an appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed.

\* \* \*

Similarly, the General Appropriations Act of 1991,<sup>58</sup> contains the following provision:

Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital investment [improvement] projects authorized in this Act shall not lapse at

the end of the fiscal biennium for which the appropriation is made; provided that all appropriations made to be expended in fiscal biennium 1991-1993 which are unencumbered as of June 30, 1994, shall lapse as of that date; provided further that this lapsing date shall not apply to the appropriations for the projects described in section 66 of this Act which are denoted as necessary to qualify for federal aid financing and reimbursement and which appropriations in their entirety the legislature hereby determines are necessary to qualify for federal aid financing and reimbursement.

**Exempt Projects.** The amount of time and money that are presently spent on proposed capital improvement projects that will probably have minimal or no significant effects on the environment could be reduced, and the amount of time and money now spent on proposed projects that will clearly have significant effects on the environment could be increased, if additional types of projects were categorically exempted from the preparation of an EA in accordance with section 343-7, *Hawaii Revised Statutes*, and Hawaii Administrative Rules, section 11-200-8. Categorically exempting additional types of proposed projects from the preparation of an EA could, however, have negative repercussions if state and county agencies apply these exemptions to projects that clearly exceed the scope of the actions declared exempt (*e.g.*, the replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced).<sup>59</sup>

If a proposed capital improvement project exceeds the scope of the action declared exempt from the preparation of an EA, then the state or county agency implementing the proposed project must prepare a draft EA. (For the purposes of this discussion it is assumed that the proposed project does not clearly require the preparation of an EIS, and that a draft EA would be prepared in anticipation of a negative declaration.) Since no public notification is required for proposed projects declared exempt from the preparation of an EA, the opportunity for misuse and the lack of adequate checks and balances makes this a risky proposition. In fact, state and county agencies are only required to maintain records of proposed projects that the agency has found to be exempt from the preparation of an EA.<sup>60</sup> There are no provisions for the OEQC or any other agency to monitor compliance with the rules, and the initiation of a lawsuit challenging an agency's failure to prepare an EA appears to be the only way to enforce compliance with the rules. If a lawsuit challenging an agency's failure to prepare an EA is initiated under these circumstances, the resultant delays could be very costly and time-consuming.

The lack of public notification requirements for proposed capital improvement projects declared exempt from the preparation of an EA, and the inability of the OEQC or any other agency to monitor compliance with the rules relating to the exemption of proposed projects from the preparation of an EA, means that a lawsuit challenging a state or county agency's failure to prepare an EA will probably be initiated just prior to or during actual construction, when the project becomes visible to the public.

**Time, Thoroughness, and Money.** Assuming:

- (1) That not all proposed capital improvement projects require the preparation of a draft EA;<sup>61</sup>
- (2) That all draft environmental assessments and draft environmental impact statements should be equally thorough, though not equally complex and time-consuming;
- (3) That the thoroughness of draft environmental assessments and draft environmental impact statements depend on the amount of time and money<sup>62</sup> that state and county agencies allot for them; and
- (4) That some state and county agencies will always view environmental concerns as the responsibility of other agencies, special interest groups, and the courts, and not willingly spend the time or money needed to prepare thorough draft environmental assessments or draft environmental impact statements;

the Bureau believes that one or more of the following approaches may immediately reduce delays in the implementation of proposed capital improvement projects.

The first approach involves increasing the amount of program and personnel resources devoted to the preparation of draft environmental assessments and draft environmental impact statements to enable state and county agencies to develop the in-house expertise needed to prepare adequate draft environmental assessments and draft environmental impact statements, and to respond to public comments and concerns about proposed capital improvement projects in a timely and thoughtful manner during the preparation of final environmental impact statements.<sup>63</sup>

The second approach involves encouraging state and county agencies to:

- Consult with the OEQC on the matter of whether a draft EA should be prepared for a proposed capital improvement project if there is any uncertainty about the need for a draft EA; and
- Give due consideration to the rules requiring early consultation during the preparation of a draft EA and consultation with appropriate agencies and concerned citizens and groups prior to filing a draft EIS.

The third approach involves:

- Integrating the environmental impact statements process into the ongoing planning activities of state and county agencies to lessen the likelihood of a final

EIS for a proposed capital improvement project being inconsistent with the proposed project authorized by the Legislature;

- Wording legislative authorizations for proposed projects to allow state and county agencies to determine the best alternative for attaining a government objective through the environmental impact statements process; and
- Wording appropriations bills so that it takes less time to conform an authorization in an appropriations bill to a final EIS for a proposed project than it takes to conform the final EIS to the appropriations bill.

The fourth approach involves encouraging state and county agencies, in consultation with the OEQC, to utilize the procedure specified in Hawaii Administrative Rules, section 11-200-8, to declare exempt from the preparation of a draft EA specific types of proposed capital improvement projects that will probably have minimal or no significant effects on the environment.

The fifth approach involves amending the environmental impact statements law to allow the OEQC to refuse to publish in the *OEQC Bulletin* a draft EA or draft EIS that, in the office's opinion, is clearly deficient with regard to content requirements.

## Recommendations

The Bureau recommends that the Legislature:

- (1) Consider increasing the amount of program and personnel resources devoted to implementing the environmental impact statements law so state and county agencies can develop the in-house expertise needed to prepare adequate draft environmental assessments and draft environmental impact statements, and respond to public comments and concerns about proposed capital improvement projects in a timely and thoughtful manner during the preparation of final environmental impact statements;
- (2) Consider amending the environmental impact statements law so the OEQC can refuse to publish in the *OEQC Bulletin* a draft EA or draft EIS that, in the office's opinion, is clearly deficient with regard to content requirements;
- (3) Integrate the environmental impact statements process into the ongoing planning activities of state and county agencies to lessen the likelihood of a final EIS for a proposed project being inconsistent with the project authorized by the Legislature;

- (4) Word legislative authorizations for proposed projects so state and county agencies can determine the best alternative for attaining a government objective through the environmental impact statements process; and
- (5) Word appropriations bills so it takes less time to conform an authorization in an appropriations bill to a final EIS for a proposed project than it takes to conform the final EIS to the appropriations bill.

The Bureau recommends that all state and county agencies responsible for the implementation of proposed capital improvement projects:

- (1) Consult with the OEQC on whether a draft EA should be prepared for a proposed project if there is any uncertainty about the need for a draft EA;
- (2) Give due consideration to the rules requiring early consultation during the preparation of a draft EA and consultation with appropriate agencies and concerned citizens and groups prior to filing a draft EIS; and
- (3) Utilize the procedure specified in Hawaii Administrative Rules, section 11-200-8, to declare exempt from the preparation of a draft EA specific types of proposed projects that will probably have minimal or no significant effects on the environment, in consultation with the OEQC.

The Bureau further recommends that Governor's Executive Memorandum 88-16 be revised to accurately reflect or clarify the present role of the OEQC in the implementation of proposed capital improvement projects.

## ENDNOTES

1. Acceptance is a formal determination that the document required to be filed pursuant to section 343-5, Hawaii Revised Statutes, fulfills the definition of an environmental impact statement (EIS), adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the EIS. Hawaii Rev. Stat., sec. 343-2 (see definition of "acceptance").

"Acceptance" is not to be confused with "approval", which is a discretionary consent required from a state or county executive branch agency prior to the actual implementation of a proposed capital improvement project. Discretionary consent is a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Hawaii Rev. Stat., sec. 343-2 (see definitions of "approval" and "discretionary consent").

The final authority to accept a final EIS rests with:

- (1) The governor, or the governor's authorized representative, whenever a capital improvement project proposes the use of state lands or the use of state funds or, whenever a state agency proposes a project within the eight categories in subsection 343-5(a), Hawaii Revised Statutes; or

- (2) The mayor, or the mayor's authorized representative, of the respective county whenever a project proposes only the use of county lands or county funds

Hawaii Rev. Stat., sec. 343-5(b).

2. An environmental impact statement is an informational document prepared in compliance with the rules adopted under section 343-6, Hawaii Revised Statutes, and which discloses the environmental effects of a proposed capital improvement project, effects of the proposed project on the economic and social welfare of the community and State, effects of the economic activities arising out of the project, measures proposed to minimize adverse effects, and alternatives to the project and their environmental effects. The initial statement filed for public review is referred to as the draft statement and is distinguished from the final statement, which is the document that has incorporated the public's comments and the responses to those comments. The final statement is the document that is evaluated for acceptability by an accepting authority. Hawaii Rev. Stat., sec. 342-2 (see definition of "environmental impact statement").
3. The eight categories described in subsection 343-5(a), Hawaii Revised Statutes, are:
  - (1) The proposed use of state or county lands or the proposed use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that a state or county agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property, subject to the condition that the agency consider environmental factors and available alternatives in the agency's feasibility or planning studies;
  - (2) Any proposed use within any land classified as conservation district by the Land Use Commission under chapter 205, Hawaii Revised Statutes;
  - (3) Any proposed use within the shoreline area as defined in section 205A-41, Hawaii Revised Statutes;
  - (4) Any proposed use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E, Hawaii Revised Statutes;
  - (5) Any proposed use within the Waikiki area of Oahu, the boundaries of which are delineated in the Land Use Ordinance, as amended, establishing the "Waikiki Special District";
  - (6) Any proposed amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except for new county general plans or amendments to existing county general plans initiated by a county;
  - (7) Any proposed reclassification of any land classified as conservation district by the Land Use Commission under chapter 205, Hawaii Revised Statutes; and
  - (8) The proposed construction of new, or the proposed expansion or modification of existing, helicopter facilities within the State, which by way of their activities may affect: (A) any land classified as conservation district by the Land Use Commission under chapter 205, Hawaii Revised Statutes; (B) the shoreline area as defined in section 205A-41, Hawaii Revised Statutes; (C) any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E, Hawaii Revised Statutes; or (D) until the statewide historic places inventory is completed, any historic site found by a field reconnaissance of the area affected by the helicopter facility and which is under consideration for placement on the National Register or the Hawaii Register of Historic Places.



4. Hawaii Rev. Stat. chapter 343.
5. According to the OEQC, the implementation of some environmentally-adverse projects are challenged on procedural grounds (i.e., on the bases of procedural irregularities) even though the underlying issue is one of aesthetics and the decision to proceed or not to proceed one of executive privilege. Interview with Brian Choy, Director, Office of Environmental Quality Control (OEQC), June 17, 1992.
6. David Callies, Regulating Paradise (University of Hawaii Press, 1984), p. 121.  
  
Callies points out that in Matsumoto v. Brinegar, 568 F.2d 1289 (9th Cir. 1978), the Federal Court of Appeals for the Ninth Circuit stated:  
  
Review of the decision on the merits is not required by NEPA [the National Environmental Policy Act]. The project when finished may be a complete blunder--NEPA insists that it be a knowledgeable blunder.  
  
The same can apparently be said about Hawaii's environmental impact statements law, i.e., a proposed capital improvement project may be a complete environmental blunder when completed--state law merely insists that the proposed project be a knowledgeable (as opposed to an accidental) blunder. Ibid., p. 120.
7. Choy interview, June 17, 1992.
8. An environmental assessment (EA) is a written evaluation to determine whether a proposed capital improvement project may have a significant effect on the environment. Hawaii Rev. Stat., sec. 343-2 (see definition of "environmental assessment").  
  
Choy's references and those of the Bureau are to environmental assessments rather than draft environmental assessments since his perceptions and this interview were based on events that took place prior to June 17, 1992, the effective date of Act 241, Session Laws of Hawaii 1992 (see the subsequent discussion in this chapter regarding the changes made to the environmental impact statements law by Act 241).
9. A negative declaration is a determination based on an EA that a proposed capital improvement project will not have a significant effect on the environment and, therefore, will not require the preparation of an EIS. Significant effect is the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law (e.g., chapter 344, Hawaii Revised Statutes), or adversely affect the economic or social welfare. Hawaii Rev. Stat., sec. 343-2 (see definitions of "negative declaration" and "significant effect").
10. Choy interview, June 17, 1992.
11. The identities of these agencies are not relevant to this study and have been intentionally left out of this report.
12. In certain company, "failure to integrate" is an idiom for going through the required motions but paying little more than "lip service" to a particular activity.
13. Hawaii Rev. Stat., sec. 343-7(b), as amended by Act 241, Session Laws of Hawaii 1992 (see the subsequent discussion in this chapter regarding the changes made to the environmental impact statements law by Act 241).
14. Sections 11-200-16, -17, and -18, Hawaii Administrative Rules (Department of Health, Environmental Impact Statement Rules).

15. Section 11-200-10, Hawaii Administrative Rules. See also Hawaii Administrative Rules, section 11-200-12 which prescribes the "significance criteria", i.e., the criteria used to determine whether the anticipated effects of a proposed capital improvement project constitute a "significant effect" within the context of the environmental impact statements law.
16. Section 11-200-23, Hawaii Administrative Rules.
17. Section 11-200-8, Hawaii Administrative Rules.
18. Section 11-200-10, Hawaii Administrative Rules.
19. Hawaii, Office of Environmental Quality Control, "A Guidebook for the Hawaii State Environmental Review Process" (August 1992), 135 pp. (with appendices).
20. This is not to say that the preparation of an EA, draft EIS, or final EIS, is necessarily an easy matter.
21. Choy interview, June 17, 1992.
22. Although the OEQC's advice regarding the need for an EA is not binding on a state or county agency and the office's opinion carries little or no weight in court, an agency's decision not to prepare an EA is arguably bolstered when the office is consulted prior to the implementation of a proposed capital improvement project. Arguably, the term "failure to consult" includes such other circumstances as an agency's "reluctance to consult" or "refusal to consult" with the OEQC on the matter of whether an EA should be prepared for a proposed project.
23. Choy interview, June 17, 1992.
24. Hawaii Administrative Rules, section 11-200-9, requires state and county agencies to assess proposed capital improvement projects at the earliest practicable time in order to assure thoughtful and deliberate evaluation in determining the significance of various environmental impacts. Subsequent to the conception of a proposed project, but prior to the adoption of a plan of action, these agencies are required to identify potential impacts, evaluate the potential significance of each impact, provide for detailed study of major impacts, and determine the need for an EIS.

State and county agencies are also required to consult with other agencies having jurisdiction or expertise as well as citizen groups and individuals in the assessment process.
25. Hawaii Administrative Rules, section 11-200-15, requires state and county agencies to assure that all appropriate agencies and other citizen groups and concerned individuals are consulted in the preparation of a draft EIS. These state and county agencies are required to develop fully acceptable draft environmental impact statements prior to the time the draft statements are filed with the OEQC, through a full and complete consultation process, and are prohibited from relying solely upon the review process to expose environmental concerns. The rules provide, however, that the entire consultation process may be waived by the Governor or the mayor of a county if the proposed capital improvement project involves minor environmental concerns.

Hawaii Administrative Rules, section 11-200-22(a), prohibits public review from being substituted for early and open discussion with interested persons and agencies, concerning the environmental impacts of a proposed capital improvement project. Review of the draft EIS for a proposed project is intended to provide the public and other agencies with an opportunity to discover the extent to which a state or county agency has examined environmental concerns and available alternatives.
26. Choy interview, June 17, 1992.

27. 1992 Haw. Sess. Laws Act 241. See sections 343-3, 343-5(b) and (c) and 343-7(b), Hawaii Revised Statutes.
28. Technically speaking, draft environmental assessments and draft environmental impact statements are not "published" in the bulletin; rather, notices are published informing the public of the availability of a draft EA or draft EIS for review and comment.
29. Publication in the bulletin is a prerequisite to meeting the public review and comment requirements of the environmental impact statements law. Until a draft EA or draft EIS is published in the bulletin, the draft EA or draft EIS has no status with respect to the environmental impact statements law.
30. Choy interview, June 17, 1992.

Choy's references and those of the Bureau are to environmental assessments rather than draft environmental assessments since his perceptions and this interview were based on events that took place prior to June 17, 1992, the effective date of Act 241, Session Laws of Hawaii 1992.

31. According to Choy, no state or county agency initially challenged the office's decision not to publish in the OEQC Bulletin environmental assessments that did not meet the requirement for early consultation. This recently changed, however, when another government agency challenged the office's decision not to publish an EA that did not meet the requirement for early consultation. Choy interviews, June 17 and September 10, 1992.

According to Choy, the Department of the Attorney General recently informed the OEQC that the office lacked the statutory authority to refuse to publish in the OEQC Bulletin draft environmental assessments that did not meet the requirement for early consultation and advised the office to stop this practice. Choy interview, September 10, 1992.

According to the July 8, 1992, issue of the OEQC Bulletin, the new thirty-day comment period for draft environmental assessments established by Act 241, Session Laws of Hawaii 1992, does not replace the early assessment provisions in Hawaii Administrative Rules, section 11-200-9, which include the requirement for early consultation. Hawaii, Office of Environmental Quality Control, OEQC Bulletin (July 8, 1992), p. 20.

32. Choy interview, June 17, 1992.
33. Ibid.
34. Choy interview, September 10, 1992.
35. Section 11-200-17(f), Hawaii Administrative Rules.
36. Ibid.
37. Choy interview, June 17, 1992.
38. Ibid.
39. "Adequate" does not necessarily mean "acceptable".
40. Choy's references and those of the Bureau are to environmental assessments rather than draft environmental assessments since his perceptions and this interview were based on events that took place prior to June 17, 1992, the effective date of Act 241, Session Laws of Hawaii 1992.

41. Choy interview, June 17, 1992.
42. This is not to say that state and county agencies should be capable of identifying environmental concerns, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for minimizing adverse impacts, entirely on their own. The OEQC does believe, however, that state and county agencies should be capable of researching, discussing, and preparing environmental assessments and environmental impact statements, and responding to public comments regarding these documents, with some assistance from private consultants. Choy interview, September 10, 1992.
43. Choy interview, June 17, 1992.
44. Ibid.
45. Ibid.
46. Hawaii Administrative Rules, section 11-200-8(b), makes these exemptions inapplicable when the cumulative impact of planned successive capital improvement projects of the same type, in the same place, over time, is significant, or when a proposed capital improvement project that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

In the event the Governor declares a state of emergency, the Governor may exempt from complying with Hawaii Administrative Rules, Title 11, chapter 200, any proposed capital improvement project affected by the state of emergency, subject to the condition that a state of emergency need not be declared to exempt emergency repairs for public service facilities from complying with chapter 343, Hawaii Revised Statutes, Section 11-200-8(f), Hawaii Administrative Rules.

47. Choy interview, June 17, 1992.
48. Ibid.
49. Choy's references and those of the Bureau are to environmental assessments rather than draft environmental assessments since his perceptions and this interview were based on events that took place prior to June 17, 1992, the effective date of Act 241, Session Laws of Hawaii 1992.

The changes made to the environmental impact statements law by Act 241 create a thirty-day public review and comment period for draft environmental assessments but reduce from sixty days to thirty days the time for initiating a lawsuit to challenge an agency's determination. Despite these changes to the law, the issuance of a negative declaration will still theoretically delay the implementation of a proposed capital improvement project for a minimum of sixty days. Although a proposed project could be implemented before the time for initiating a lawsuit to challenge an agency's determination ran out, there is an element of risk to this act: the more controversial the project, the greater the risk of a lawsuit.

50. Choy interview, June 17, 1992.
51. The OEQC points out that Act 241, Session Laws of Hawaii 1992, was intended to reduce the likelihood of lawsuits being initiated to challenge an agency's determination that an EIS is not required for a proposed capital improvement project. Choy interview, September 10, 1992.

Act 241 may not reduce the likelihood of lawsuits being initiated to challenge an agency's determination that an EIS is not required for a proposed capital improvement project if "certain state and county agencies" do not integrate the environmental impact statements process into their ongoing planning activities or, in other words, take the process more seriously.

52. The Bureau's references are to draft environmental assessments rather than environmental assessments since Act 241, Session Laws of Hawaii 1992, requires draft environmental assessments rather than environmental assessments to be published in the bulletin.
53. Hawaii, Office of the Governor. "Executive Memorandum No. 88-16: Procedures for Requesting the Implementation of Capital Improvement Projects" (July 1, 1988), 22 pp. (with attachments).
54. Choy interview, June 17, 1992.
55. According to Choy, the office is not asked to evaluate, and has not been asked to evaluate, the environmental impacts of proposed capital improvement projects in accordance with the Executive Order of August 23, 1971, the environmental impact statements law, or the environmental impact statement rules. Ibid.
56. Savings = (the cost of defending against a lawsuit + the cost of any project delays caused by the lawsuit + the cost of revising the draft EA or draft EIS if the lawsuit was successful) - (the cost of the OEQC's review + the cost of any project delays caused by the review + the cost of revising the draft EA or draft EIS).
57. While the quality of the environment may improve if the OEQC is allowed to refuse to publish in the OEQC Bulletin a draft EA or draft EIS that, in the office's opinion, is clearly deficient with regard to content requirements, it is probably easier for the layperson to relate to the amount by which the cost of one scenario exceeds the cost of another scenario.
58. 1991 Haw. Sess. Laws, Act 296, section 212, part VII.
59. Section 11-200-8(a)(2), Hawaii Administrative Rules.
60. Section 11-200-8(e), Hawaii Administrative Rules.
61. The Bureau's references are to draft environmental assessments rather than environmental assessments since Act 241, Session Laws of Hawaii 1992, requires draft environmental assessments rather than environmental assessments to be published in the bulletin.
62. Even the most skilled, knowledgeable, and able consultants cannot cram seven months of work into seven days; there are still certain physical limitations that must be respected even if money was limitless.  
  
The most skilled, knowledgeable, and able consultants are often the most expensive. The more money allotted for a draft EA or draft EIS, the sooner the draft EA or draft EIS can be completed and, if money is a limiting factor, the more thorough the draft EA or draft EIS is likely to be.
63. This is not to say that existing personnel and program resources are inadequate or that existing environmental assessments and draft environmental impact statements are late and incomplete; rather, the Bureau merely recommends that the Legislature consider appropriating additional personnel and program resources to reduce delays caused by a state or county agency's failure to prepare a draft EA, the issuance of a negative declaration, or the acceptance of a final EIS.

## Chapter 5

### EXECUTIVE MEMORANDUM NO. 88-16

#### The Capital Improvements Program Branch

The Capital Improvements Program Branch (Branch) of the Department of Budget and Finance:<sup>1</sup>

. . . [A]dministers the State's Capital Improvements Program (CIP). It reviews State capital improvement projects for consistency with the Hawaii State Plan and reports findings and recommendations to the Governor on the allotment of CIP funds.

- . Maintains and refines systematic reviewing and reporting means to provide efficient, accurate, and timely information on State CIP projects for the Administration.
- . Administers the CIP information system to facilitate information retrieval, file maintenance, and updating of project information to efficiently monitor, control, and implement the State's CIP in support of State goals and objectives.
- . Administers the Comparative Review System of CIP Project Specifications and Standards to facilitate review of explicit guidelines, established by functional agencies, for the implementation of CIP projects on a systematic, equitable, and statewide basis. Reviews each project's conformance with administrative policies and legislative intent.
- . Reviews and evaluates capital improvement projects proposed for undertaking by State and county agencies to assure conformity with the objectives of the State Plan and report findings and recommendations to the Governor relative to allocation of funds.
- . Reviews, analyzes and reports on State and county CIP projects which extend over wide geographical areas of the State and which have significant impact upon economic development, land use, environmental quality, construction employment and executive policy directions including growth management.
- . Monitors, evaluates, and reports the CIP needs of functional programs, such as submitting special impact reports and recommendations on area development plans, site selection studies and master plan studies.
- . Recommends action on specific projects, including coordination required to bridge gaps between and among plans of various State, county, and federal agencies and private concerns.

- . Develops, clarifies, and interprets executive directives and instructions governing CIP and statewide planning concerns, including technical and statutory requirements in formulating and implementing the CIP.
- . Works in close cooperation with appropriate State, county, and federal agencies and participates in meetings required by private agencies, such as clarifying status of capital improvement projects, justifications necessary for implementation, and coordination required.
- . Directs and coordinates the development of the statewide CIP expenditure and priorities plan, including reviews, evaluations, and recommendations regarding capital expenditure plans of State departments.
- . Processes Form A-15 (Allotment Advice) and monitors, coordinates, evaluates and makes recommendations on requests for CIP appropriations and expenditures from departments of the State and various county governments, and non-profit private agencies.
- . Reviews appropriateness of CIP appropriations and expenditures.
- . Checks on the availability of CIP funds.
- . Maintains liaison with agencies initiating CIP requests while working in coordination with the Departments of Budget and Finance [sic] and Accounting and General Services.
- . Reviews applicability of CIP requests to programs concerned.
- . Prepares the final financial review and makes recommendations on CIP requests to the Governor.

### Scope of the Chapter

This chapter does not delve into the issue of whether or not the Governor, through the Department of Budget and Finance, is empowered to exert unilateral control over expenditures for proposed capital improvement projects that have been authorized by the Legislature (through the passage of the general appropriations acts and supplemental appropriations acts) and approved by the Governor (through the signing of these acts). Article III, section 16, of the Constitution of the State of Hawaii, clearly provides a mechanism for the Governor and the Legislature to exert bilateral control over these expenditures before the expenditures become law. Consequently, this chapter attempts to discern: (1) whether or not this mechanism has become dysfunctional with respect to controlling expenditures for

proposed projects and, ultimately, the State's capital improvements program; and (2) why this mechanism has become dysfunctional, if this is the case.

Whether or not the Governor is empowered to exert unilateral control over expenditures for proposed capital improvement projects that have been authorized by the Legislature and approved by the Governor is a question that must be addressed by the courts. Conversely, what the Legislature should do in order to prevent the Governor from exerting unilateral control over these expenditures once the expenditures become law is a policy issue that must be addressed by the Legislature. This chapter attempts to look beyond the outward symptoms of a perceived problem, and to discern the underlying causes of the problem.

## Repetitive Reviews

Except for proposed capital improvement projects that are initiated by the Legislature on its own volition, proposed projects that are initiated by the Governor through the general appropriations acts and supplemental appropriations acts are reviewed by the Capital Improvements Program Branch for the Department of Budget and Finance when:<sup>2</sup>

- (1) The executive budget is being prepared for submission to the Legislature;
- (2) An agency requests the release of funds for the hiring of consultant services, the purchase of land, the preparation of plans, design, construction, the purchase of equipment, and the purchase of works of art;
- (3) The agency requests permission to negotiate for the purchase of land, advertise a proposed project for bid, or award a contract;
- (4) The agency requests approval of the preliminary plans for a development or construction project or the final plans for a building or other structure having significant aesthetic and land use impacts; and
- (5) There is a change in the proposed project's scope or cost.

The Branch also reviews an agency's capital improvement project implementation and expenditure plan,<sup>3</sup> which is updated by the agency at the beginning of each fiscal year.

According to the Branch,<sup>4</sup> staff shortages (caused partly by two vacancies) and the lack of sufficient time to thoroughly review all proposed capital improvement projects when the executive budget is being prepared for submission to the Legislature delay the timely and orderly implementation of these proposed projects. The Branch consists of five (5.00) full-time equivalent analyst positions and one branch chief position. There are no dedicated clerical-support positions or technical-support positions attached to the Branch. This Branch monitors, coordinates, evaluates, and makes recommendations on all state-funded projects,



including those implemented by county agencies and private nonprofit agencies. According to the Branch,<sup>5</sup> in-depth reviews of proposed projects are conducted when:

- (1) An agency requests the release of funds for the hiring of consultant services, the purchase of land, the preparation of plans, design, construction, the purchase of equipment, and the purchase of works of art;
- (2) The agency requests permission to negotiate for the purchase of land, advertise a proposed project for bid, or award a contract; and
- (3) The agency requests approval of the preliminary plans for a development or construction project or the final plans for a building or other structure having significant aesthetic and land use impacts.

In addition, the Branch<sup>6</sup> acknowledged having to develop recommendations for the Director of Finance (for the Governor) regarding the deferment of proposed projects after the Branch had reviewed an agency's implementation and expenditure plan and established the agency's expenditure ceiling (limit). In other words, an agency's implementation and expenditure plan and expenditure limit could be based on proposed projects that are inconsistent with the State's plans and the administration's policies, among other things, and may be deferred when the agency submits an allotment request for the Governor's approval.

Working with time constraints and the continual loss of institutional knowledge<sup>7</sup> within those agencies that implement proposed capital improvement projects, the Branch must determine after the fact and, sometimes, on the basis of marginally accurate and reliable information:<sup>8</sup>

- (1) Whether or not a proposed project is consistent with the State's plans and the administration's policies;
- (2) Whether or not the proposed project is consistent with the legislative intent of the appropriation; and
- (3) Whether or not funds will be available to implement the proposed project.

According to the Branch,<sup>9</sup> the implementation of a proposed project should be coordinated with the means of financing the project (e.g., general obligation bond and revenue bond sales, appropriations of general funds and special funds, receipt of federal funds, etc.) so that sufficient funds will be available when the funds are needed.<sup>10</sup> In addition, allotment requests for plan funds or design funds are usually not recommended for the Governor's approval (*i.e.*, deferment is usually recommended) unless there is a firm commitment (usually in the form of a future appropriation) from the Legislature or the implementing agency, or both, to construct the proposed project.<sup>11</sup>

### Administrative Delays and Deferments

According to the Branch,<sup>12</sup> the amount of time needed to review an allotment request<sup>13</sup> and process an allotment advice<sup>14</sup> for a proposed capital improvement project varies according to the nature (complexity) of the proposed project. In general, the time needed to review an allotment request and process an allotment advice increases with the complexity of a proposed project. Other factors that affect the amount of time needed to review an allotment request and process an allotment advice for a proposed project include: (1) the familiarity of a program budget analyst with the project or similar projects; (2) the number and complexity of other projects occurring in a particular program area;<sup>15</sup> (3) whether the allotment request is for a new project or an ongoing project; and (4) the amount of work flowing through the Department's chain-of-command to the Governor's office at a particular time.

Since all allotment advices are ultimately approved by the Governor, an allotment advice for a proposed capital improvement project must work its way through the Department's chain-of-command to the Governor's office before it can be returned to the agency implementing the proposed project. Consequently, the amount of time needed to process an allotment advice can also be affected by the amount of other work (*i.e.*, work not related to the implementation of proposed capital improvement projects) flowing through the Department's chain-of-command to the Governor's office.

Section 39-2, *Hawaii Revised Statutes*, requires the proceeds of general obligation bonds issued under the state bonds law to be exclusively devoted to the purpose or purposes defined and expressed in the acts of the Legislature authorizing the issuance of these bonds, and the proceeds to be devoted to such purposes in such order as may be determined by the Governor. The Governor is authorized to allot the proceeds of any issue of bonds to a particular purpose or to several purposes. The proceeds of any issue of bonds may be allotted to various purposes irrespective of whether or not the purposes have all been provided for by the same legislative act and an allotment may be made of only a portion of the proceeds authorized for a particular purpose. The Governor is authorized to amend the Governor's allotments from time to time. The purpose or purposes of issuance need not be stated in any bond.

It is unclear whether or not chapter 39, *Hawaii Revised Statutes*, allows the Governor to delegate to the Director of Finance or the Director's designees any of the abovementioned powers relating to the allotment of general obligation bond proceeds. The apparent conflict is with section 37-33, *Hawaii Revised Statutes*, which states:

Sections 37-31 to 37-42 relating to the allotment system shall apply to all appropriations (including standing, continuing, or annual appropriations and special funds) for all departments and establishments, but shall not apply to refund accounts nor to appropriations for the courts or the legislature nor to payment of

unemployment compensation benefits. In the cases of capital improvements and in other cases where periodical allotments are impracticable, the director of finance may dispense therewith and prescribe such regulations as will insure proper application and encumbering of funds. [emphasis added] Subject to section 37-40, emergency or contingent funds, revolving funds, and trust funds, shall be subject to such regulations as the director may prescribe for controlling the expenditures and encumbering the funds.

The Governor recently allowed the Director of Transportation and the Comptroller to submit their respective allotment advices for the Governor's approval without the normal review by the Department of Budget and Finance in order to facilitate the implementation of proposed capital improvement projects.<sup>16</sup> In addition, the Department of Transportation and Department of Accounting and General Services are accountable and responsible for implementing a list of prior-approved projects consistent with legislative intent and applicable funding requirements, and in conformance with all applicable administrative policies and statutory authorization.<sup>17</sup> According to the Branch,<sup>18</sup> this so called "fast-track" authority was verbally granted to both administrators in an attempt to inject moneys into the State's ailing construction industry and to mitigate the effects of the national recession.<sup>19</sup> (Some of these proposed projects were funded using general obligation bond proceeds.)

Section 103-7, *Hawaii Revised Statutes*, also requires all proposed capital improvement projects utilizing general funds, special funds, general obligation bonds, and revenue bonds of the State, except proposed projects covered by the state risk management and insurance administration law, to be authorized by the Legislature and the Governor. It is unclear whether or not this requirement prohibits the Governor from delegating to the Director of Finance or the Director's designees the power to allot revenue bond proceeds, special funds, and general funds, for the implementation of proposed projects before the proposed projects have been authorized by the Governor. Specifically, it is unclear whether or not the signing of the general appropriations acts and supplemental appropriations acts constitute an "authorization" by the Governor to proceed with the implementation of these proposed projects. Clearly, the passage of these acts by the Legislature constitute an "authorization" to proceed with the implementation of those proposed projects described in the acts. Similarly, the signing of these acts by the Governor would appear to constitute a tacit authorization to proceed with the implementation of those proposed projects not vetoed by the Governor.

According to the Branch,<sup>20</sup> section 103-7, *Hawaii Revised Statutes*, implies that the Governor has the prerogative to instruct the Director of Finance to develop recommendations regarding the approval or deferment of proposed capital improvement projects.<sup>21</sup>

According to the Branch,<sup>22</sup> some of the perceived "delays" in the implementation of proposed capital improvement projects stem from the Branch's recommendation to the Director of Finance (to the Governor) that the implementation of a proposed project be

deferred until a later date. According to Governor's Executive Memorandum No. 88-16, "[r]equests for projects which are not included in a CIP expenditure plan will be necessarily deferred until such time as they may be appropriately considered along with other projects within the expenditure plan."<sup>23</sup>

### Implementation and Expenditure Plans

According to the Financial Administration Division (Division) of the Department of Budget and Finance,<sup>24</sup> the Division is in the process of assessing whether or not it is necessary to establish agency expenditure limits. Specifically, the Financial Administration Division is assessing the relevance of agency expenditure limits to the expenditure tracking functions and program planning functions performed by the Financial Administration Division and the Budget, Program Planning and Management Division, respectively.

The Department's "review"<sup>25</sup> of agency implementation and expenditure plans and the establishment of agency expenditure limits are considered by some state agencies to be prerequisites to the implementation of proposed capital improvement projects. According to the Department's budget execution policies and instructions for the 1991-1992 fiscal year:<sup>26</sup>

In the formulation of your expenditure plan, please include all of your projects in a single priority arrangement, including all projects recently authorized by the 1991 Legislature. It is intended that all departmental expenditure plans be reviewed by this office before developing and recommending FY 1992 ceilings for the Governor's approval [emphasis added].

While each agency is formulating its expenditure plans, and prior to approval of the departmental expenditure ceilings, CIP requests for the following types of projects will be considered without an approved expenditure plan [emphasis added] for the department:

1. Release of funds for projects that have been recently advertised for bids.
2. Projects that are required to meet critical timetables that impact on the operation of programs.
3. Release of additional funds for on-going projects that have unanticipated additional costs.
4. Projects that are of significant priority to the administration.

All of the above type of projects will be considered for processing to the Governor based on the understanding that these projects will be of high priority within your department's expenditure plan.

Some state agencies interviewed by the Bureau expressed concern about the length of time--typically two months from the start of the new fiscal year--that it took to review the agencies' implementation and expenditure plans and to establish the agencies' expenditure limits. These agencies also expressed concern that the Department did not "approve"<sup>27</sup> any implementation and expenditure plans and establish any expenditure limits for the 1991-1992 fiscal year, despite written instructions to the contrary.<sup>28</sup>

In fairness to the Department, the responsibility for establishing statewide and agency expenditure limits had been transferred to the Financial Administration Division from the Budget, Program Planning and Management Division on September 27, 1991 (*i.e.*, shortly after the start of the 1991-1992 fiscal year).<sup>29</sup> Although the Financial Administration Division had assisted the Budget, Program Planning and Management Division with the establishment of agency expenditure limits the year before (*i.e.*, the 1990-1991 fiscal year), the 1991-1992 fiscal year was the first year that the Financial Administration Division was completely responsible for establishing statewide and agency expenditure limits.

In fairness to those agencies that waited for the Department to review the agencies' implementation and expenditure plans and to establish the agencies' expenditure limits before implementing any proposed capital improvement projects, some routines are performed by agencies year-after-year, without question (and sometimes with great anticipation), simply because the agencies believe that the routines must be performed. Arguably, implementation and expenditure plans and expenditure limits are of less concern to agencies whose primary interest is to implement proposed projects before the funds authorized by the Legislature lapse, than the plans and limits are to agencies whose primary interest is the management of the State's finances.

According to the Division,<sup>30</sup> the establishment of agency expenditure limits does not appear to be useful for program planning purposes since all proposed capital improvement projects contained in the executive budget have already been authorized by the Legislature and moneys for their implementation are already available for expenditure, in theory. According to the Division,<sup>31</sup> conditions within the marketplace (*e.g.*, the availability of consultants, contractors, suppliers, *etc.*), rather than agency expenditure limits, determine the number of proposed projects that can be implemented during a fiscal year. According to the Division,<sup>32</sup> few, if any, agencies have ever exceeded or come close to exceeding their expenditure limits. According to the Division,<sup>33</sup> typical agency expenditures have been approximately one-third to one-half of established agency expenditure limits. Consequently, the Department will be consulting with the Department of Accounting and General Services on the development of an expenditure tracking system that is not based on agency expenditure limits.<sup>34</sup>

The Division<sup>35</sup> stated that agency implementation and expenditure plans were useful in identifying proposed capital improvement projects that were about to lapse or that were not likely, if ever, to be implemented by the administration. Although the Division could not fully understand why some agencies felt compelled to wait for the Department to review the

agencies' implementation and expenditure plans and establish the agencies' expenditure limits prior to implementing any proposed projects, the Division<sup>36</sup> acknowledged that Governor's Executive Memorandum No. 88-16 required agencies to obtain the Governor's "approval" prior to implementing any proposed projects.

### Passage of the General Appropriations Acts and Supplemental Appropriations Acts

Article III, section 16, of the Constitution of the State of Hawaii:

- (1) Gives the Governor ten days (excluding Saturdays, Sundays, holidays, and any days during which the Legislature is in recess prior to the Legislature's adjournment) to consider a bill presented to the Governor ten or more days before the adjournment of the Legislature *sine die*. If the bill is neither signed nor returned by the Governor within that time, the bill becomes law in the same manner as if the Governor had signed the bill; and
- (2) Gives the Governor forty-five days, after the adjournment of the Legislature *sine die*, to consider a bill presented to the Governor less than ten days before this adjournment, or presented after adjournment. The bill becomes law on the forty-fifth day unless the Governor by proclamation gives ten days' notice to the Legislature that the Governor plans to return the bill with the Governor's objections on that day.

For the past six years, *i.e.*, 1987, 1988, 1989, 1990, 1991, and 1992:<sup>37</sup>

- (1) The Legislature has not passed the general appropriations acts and supplemental appropriations acts more than three days before the adjournment of the Legislature *sine die*;
- (2) The Governor has signed the general appropriations acts and supplemental appropriations acts thirty-five, thirty-three, thirty-two, thirty-five, thirty-five, and forty-one days after the adjournment of the Legislature *sine die*, respectively;
- (3) July 7, July 1, June 30, July 11, July 11, and July 7, respectively, were the last days for the Governor to sign the general appropriations acts and supplemental appropriations acts before the acts automatically became law;
- (4) June 22, June 17, June 16, June 26, June 26, and June 22, respectively, were the last days for the Governor to veto the general appropriations acts and supplemental appropriations acts or to veto individual items within these acts; and

- (5) No individual items were vetoed from the general appropriations acts and supplemental appropriations acts, except during 1987 and 1991.

Since the Department's final budget execution policies and instructions<sup>38</sup> cannot be transmitted to those agencies implementing proposed capital improvement projects until the general appropriations acts and supplemental appropriations acts become law, agency implementation and expenditure plans cannot be realistically reviewed and agency expenditure limits cannot be realistically established before the start of the new fiscal year (*i.e.*, before July 1). In fact, the Department's budget execution policies and instructions for the 1991-1992 fiscal year, dated July 5, 1991, stated the following:<sup>39</sup>

This office is transmitting to your department the attached computer printout of the CIP expenditure plan (DBF Form 3) which your staff should update for the upcoming fiscal year. Please return your updates by July 31, 1991 [emphasis added].

Since the Department intended to review all agency implementation and expenditure plans before developing and recommending to the Governor agency expenditure limits for the 1991-1992 fiscal year,<sup>40</sup> it is reasonable to assume that all implementation and expenditure plans would not have been reviewed and all expenditure limits would not have been established before September 1, 1991, at the earliest. In the end, however, no expenditure limits were issued for the 1991-1992 fiscal year.

On October 14, 1992, the Department transmitted new budget execution policies and instructions (procedures) for the 1992-1993 fiscal year to those agencies implementing proposed capital improvement projects.<sup>41</sup> These agencies were advised on July 29, 1992, two and one-half months earlier, that changes to Governor's Executive Memorandum No. 88-16 would be forthcoming.<sup>42</sup> In fairness to the Department, the new procedures for implementing proposed projects represent a substantial departure (conceptually) from the old procedures discussed in Governor's Executive Memorandum No. 88-16. In addition, 1992 is an unusual year to the extent that Hurricane Iniki, which struck on September 11, 1992, has caused many agencies, including the Department, to defer work on nonessential matters and to concentrate on efforts to cleanup and rebuild storm-damaged parts of the State.<sup>43</sup>

The new procedures, which have not been formally approved by the Director of Finance or the Governor and were developed by the Department to facilitate the implementation of proposed capital improvement projects, are intended to do away with the need to establish new agency expenditure limits each year.<sup>44</sup> Under the new procedures, agency expenditure limits would be established for three bienniums (six fiscal years). An agency's expenditure limit would not have to be amended unless the agency anticipated making substantial changes to its implementation and expenditure plan or the State's financial condition was to change substantially. "Substantial changes" would appear to include the addition or deletion of proposed projects by the Legislature. The new procedures are intended to allow agencies to begin implementing proposed projects at the beginning of

the fiscal year, *i.e.*, on July 1 rather than sometime between September 1 and October 1, thus reducing by at least two months the length of time needed to implement these projects.<sup>45</sup>

### Loss of Institutional Knowledge

According to the Branch,<sup>46</sup> the continual loss of institutional knowledge through retirements, resignations, and other forms of attrition has created substantial experience gaps in some agencies that implement proposed capital improvement projects. According to the Branch,<sup>47</sup> these experience gaps impede the timely and orderly implementation of proposed projects because the effectiveness and efficiency of these agencies are reduced while this institutional knowledge is being recreated. Assuming: (1) that an agency's effectiveness and efficiency at implementing proposed projects are determined, in part, by the effectiveness and efficiency of the persons who work for and manage the agency; (2) that a person's effectiveness and efficiency at performing work related to the implementation of proposed projects are determined, in part, by the person's skills, knowledge, and abilities; and (3) that a person's skills, knowledge, and abilities are acquired, in part, by the person performing work related to the implementation of proposed projects (*i.e.*, on-the-job training), it is understandable how the continual loss of experienced individuals can weaken an agency's ability to effectively and efficiently implement proposed projects for several years.

### "Pork Barrel" Projects

Arguably, political accountability is equated largely with a legislator's ability to "bring home the bacon", *i.e.*, to secure proposed capital improvement projects for the legislator's constituents. As a result, these "pork barrel"<sup>48</sup> projects may not totally reflect the actual needs or priorities of an agency.<sup>49</sup> According to the Branch,<sup>50</sup> pork barrel projects impact the implementation of all proposed projects since: (1) pork barrel projects compete with other projects for the same limited resources; and (2) the executive branch's capital improvements program must be reprioritized to allow the implementation of pork barrel and, what executive branch agencies may consider, low-priority projects.

According to the Branch,<sup>51</sup> it takes approximately one week to review a typical allotment request for a proposed capital improvement project to determine, among other things:

- (1) Whether or not the proposed project is consistent with the State's plans and the administration's policies;
- (2) Whether or not the proposed project is consistent with the legislative intent of the appropriation; and
- (3) Whether or not funds will be available to implement the proposed project.



Although the time needed to review an allotment request and process an allotment advice will vary according to the nature of a proposed project, the adverse impacts of these admittedly time-consuming procedures are exacerbated when agencies do not make adequate allowances for the time needed by the Department and the Governor to review multiple allotment requests and process multiple allotment advices.<sup>52</sup>

According to the Branch,<sup>53</sup> it can take as few as three days or more than three months to review an allotment request and process an allotment advice for a proposed capital improvement project. Assuming: (1) that the reviews conducted by the Branch are purely technical in nature and concerned only with determining conformance with existing specifications, standards, and policies; (2) that the reviews conducted by the Branch are comprehensive in their scope and thorough in their execution; (3) that the recommendations made by the Branch to the Director of Finance (to the Governor) fall into only one of two categories--"approval" or "deferment"; and (4) that the reviews conducted by successive officials become less technical and more policy-oriented as these requests work their way through the Department's chain-of-command and to the Governor's office, it could be reasonably asserted that more time is being consumed on nonmaterial<sup>54</sup> reviews of a decidedly nontechnical (i.e., political) nature.

In retrospect, it is ironic that the word, "politics"--which has become synonymous with the use of strategy or intrigue to obtain power, control, or status,<sup>55</sup> should be used to describe the manipulation of proposed capital improvement projects by the executive branch and the Legislature. The nature of the State's constitution virtually ensures that proposed projects will be subject to this kind of manipulation. The Governor and the Legislature are both popularly elected and, arguably, accountable first and foremost to the voters who place them in office. This one, often overlooked fact can be better understood when the relationship between the State Board of Education and the Superintendent of Education is compared to the relationship between the Legislature and the Governor. In the former instance, the Board can fire the Superintendent for failing to carry out the Board's policies and programs, thus ensuring that the Superintendent remains accountable to the interests of the Board or at least a majority of the Board's members. In the latter instance, the Legislature can only impeach the Governor for failing to carry out the Legislature's policies and programs.

Although the Legislature could begin to reassert itself with the Governor (without going to court) by overriding the Governor's veto of program appropriations and statutory changes, or by refusing to pass bills of significant priority to the administration, no Legislature in recent memory has ever overridden a governor's veto or reconvened to contemplate such a drastic action simply to deter the Governor from ignoring the Legislature's policies and programs.

## Assessment of Alternatives

According to the Branch,<sup>56</sup> although assessments of alternatives to proposed capital improvement projects form an integral part of the State's planning, programming, and budgeting (PPB) system,<sup>57</sup> some agencies responsible for implementing proposed capital improvement projects spend little or no time assessing these alternatives.<sup>58</sup> Allotment requests for proposed projects that lack an assessment of alternatives are returned to the implementing agencies for additional information, whenever possible.<sup>59</sup> According to the Branch,<sup>60</sup> some agencies appear to believe that once a proposed project has been authorized by the Legislature and approved by the Governor no further assessment of alternatives (if any was performed in the first place) is needed.<sup>61</sup>

## Miscellaneous

**Appropriateness of Means of Financing.** According to the Branch,<sup>62</sup> an allotment request for a proposed capital improvement project is also reviewed for the appropriateness of the means of financing the proposed project. For example, Governor's Executive Memorandum No. 88-16 does not allow the use of general obligation bonds to pay for repair or maintenance work, or to pay for a proposed project that has a useful life span that is considerably shorter than the amortization period of the debt used to finance the project.<sup>63</sup> According to the Branch,<sup>64</sup> allotment requests for proposed projects that are not consistent with Governor's Executive Memorandum No. 88-16 are recommended for deferment unless general fund savings or balances from authorized general fund program appropriations are determined by the Governor to be available to finance the projects, where the means of financing the project is designated to be the general obligation bond fund.<sup>65</sup>

**Specifications.** (Because of time constraints, the Bureau limited its discussion of this particular topic to the Department of Education's educational specifications. The ensuing discussion should not be construed as a criticism of the Department of Education, the Department of Accounting and General Services, or educational specifications.)

A 1984 memorandum of agreement between the Department of Education and the Department of Accounting and General Services relating to all phases of the capital improvement program states:<sup>66</sup>

The general responsibilities of each department are outlined below:

A. The Department of Education as the user agency shall:

\* \* \*

4. Obtain necessary approval for variances from the Educational Specifications as follows:

- a. For variances (exceptions) which have a statewide implication that exceeds standards - approval of the Governor is required.
- b. For variances involving pilot projects, approval from the Superintendent and the Governor.
- c. For other variances, less than the requirement (specifications), approval from the Assistant Superintendent, Office of Business Services.

\* \* \*

- B. The Department of Accounting and General Services, as the expending agency, shall:

\* \* \*

6. Pursue all CIP projects in accordance with the Project Design Specifications, the latest Educational Specifications and deviations approved by the Superintendent of Education, Board of Education, and the Governor.

"Educational specifications" is defined in this memorandum of agreement as the latest approved edition of the Department of Education published document on educational specifications and standards for facilities.<sup>67</sup> Briefly, the educational specifications are a 900-page, three-volume series organized according to elementary, intermediate, and high school facilities, with each volume providing the framework and guidelines for facilities planning, including:

- (1) Descriptions of educational programs, trends, and consequent facilities requirements based on definitions of functional space requirements;
- (2) General guidelines, policies, and design standards for planning and design;
- (3) Architectural specifications and standards; and
- (4) Furniture and equipment lists for architectural planning and designing purposes.

*Educational Specifications and Standards for Facilities*<sup>68</sup> was adopted by the Board of Education on April 23, 1970.<sup>69</sup> Although the derivation of *Educational Specifications and Standards for Facilities* could not be precisely fixed in time or to one particular legislative action, Conference Committee Report No. 2 on House Bill No. 199, Budget Session of 1966, stated, "[t]he Department of Education shall update its school facilities construction criteria and specifications so that they relate and contribute to the total educational effort of the Department."<sup>70</sup> In addition, House Standing Committee Report No. 81 on House Bill No. 2, Regular Session of 1967, stated:<sup>71</sup>

- (A) The Department of Education shall update its school facilities, construction criteria and specifications so that they relate and contribute to the total educational effort of the department. Copies of the revised criteria and specifications shall be furnished to the 1968 legislature.
- (B) The department shall take such necessary steps as to facilitate the timely school planning and construction of school facilities to meet the needs of the students. The department shall coordinate with all concerned agencies and institute short-cuts whenever feasible. Your Committee [on Appropriations] is concerned that no ostensible progress has been made in this matter.
- (C) The department shall keep abreast of current happenings in school facilities design and planning that are innovative in nature. Economies of scale and multiple use facilities shall be considered to enable building of facilities around the educational programs rather than fitting the programs to the facilities.

The memorandum of agreement between the Department of Education and Department of Accounting and General Services also states that:<sup>72</sup>

This Memorandum of Agreement was developed jointly by the Departments of Accounting and General Services and Education to facilitate the implementation of the capital improvement projects so that school facilities are available when and where they are needed by the Department of Education. The Memorandum of Agreement delineates the duties and responsibilities of each department relating to all phases of the Capital Improvement Program. It shall be the responsibility of each department to develop detailed in-house operational procedures in order to fully implement the Memorandum of Agreement.

No deviation from the Memorandum of Agreement shall be permitted without the written consent of both the State Comptroller and the Superintendent of Education.

According to the Branch,<sup>73</sup> some of the proposed capital improvement projects authorized by the Legislature and approved by the Governor, and implemented by the Department of Accounting and General Services on behalf of the Department of Education, do not conform to educational specifications. According to the Branch,<sup>74</sup> these deviations typically, but not always, involve the implementation of pork barrel projects or projects that are considered "significant". Other deviations involve the submittal of plans that do not conform to educational specifications, the lack of operating funds to conduct routine repair and maintenance work,<sup>75</sup> the lack of necessary variances from educational specifications,<sup>76</sup> and the purchase of non-allowable equipment.<sup>77</sup>

According to the Branch,<sup>78</sup> the inflexibility (exactness) of educational specifications is one reason why some of the proposed capital improvement projects authorized by the Legislature and approved by the Governor, and implemented by the Department of Accounting and General Services on behalf of the Department of Education, do not conform to educational specifications. According to the Branch,<sup>79</sup> educational specifications could be less exact, perhaps allowing for a range of acceptable values rather than one exact value, and still accomplish their intended objectives. In addition to relating the construction of school facilities to the total educational effort of the Department of Education, one of the important objectives of educational specifications is, in the Bureau's opinion, to ensure that limited capital improvement program funds are distributed effectively, efficiently, and equitably throughout the State. Although it could be also argued that the purpose of educational specifications is to establish minimum standards rather than ensure effectiveness, efficiency, and equity, proposed projects that exceed a minimum standard compete for the same limited resources as projects designed to meet, but not exceed, the standard.

According to the Branch,<sup>80</sup> educational specifications also need to consider the differences between new buildings and facilities and existing buildings and facilities since the former can be designed and built to educational specifications while the latter can only be renovated within the structural limitations of existing buildings or facilities, which may have been designed and built without the benefit of educational specifications.

**Project Adjustment Fund.** According to the Branch,<sup>81</sup> some agencies responsible for implementing proposed capital improvement projects are not reporting the existence of unrequired capital improvement program funds (balances) after the objectives of appropriations for proposed projects from the general obligation bond fund and the general fund have been met, as instructed by Governor's Executive Memorandum No. 88-16 and required by section 218, part VII, of the General Appropriations Act of 1991.<sup>82</sup> According to the Branch,<sup>83</sup> some agencies are retaining these unrequired balances and treating them as private contingency funds to be used (and revealed to the Governor) when authorized appropriations for proposed projects are insufficient<sup>84</sup> and where the source of funding for the proposed projects is the general obligation bond fund or the general fund.<sup>85</sup> Supplemental allotments from the project adjustment fund may be used to supplement any cost element of a proposed project.<sup>86</sup> Arguably, the retention of these unrequired balances limits the ability of the Governor to utilize these funds in an orderly and timely manner.

According to the Branch,<sup>87</sup> the Governor is sometimes not made aware of the existence of unrequired balances of capital improvement program funds until an agency requests the Governor's permission to use these balances to supplement a proposed capital improvement project of the agency's choosing.

## Analyses

**Staff Shortages and Insufficient Time.** Assuming that in-depth reviews of proposed capital improvement projects are being conducted when:

- (1) An agency requests the release of funds for the hiring of consultant services, the purchase of land, the preparation of plans, design, construction, the purchase of equipment, and the purchase of works of art;
- (2) The agency requests permission to negotiate for the purchase of land, advertise a proposed project for bid, or award a contract; and
- (3) The agency requests approval of the preliminary plans for a development or construction project or the final plans for a building or other structure having significant aesthetic and land use impacts,

because of staff shortages and the lack of sufficient time to conduct a thorough review of these projects when the executive budget is being prepared for submission to the Legislature, there are at least two activities that the Legislature could undertake to immediately reduce delays in the timely and orderly implementation of proposed projects.

The first activity is to provide the Capital Improvements Program Branch with sufficient personnel (present vacancies notwithstanding) and program resources to conduct a thorough review of all proposed capital improvement projects when the executive budget is being prepared for submission to the Legislature.<sup>88</sup> Ideally, all agencies implementing proposed projects would be provided with sufficient personnel and program resources, including in-depth and ongoing training, to enable these agencies to conduct the research needed to adequately justify a project, and to derive accurate estimates of the project's costs.<sup>89</sup> Arguably, strengthening the capabilities of the Branch without building up the capabilities of those agencies that implement proposed projects would do nothing to improve the quality of the information submitted to the Branch during the preparation of the executive budget and, consequently, do very little to streamline the Branch's review of these projects during their implementation.

An alternative that could be implemented together with or in lieu of the first activity would be to request that the Governor approve allotment requests for plan funds and design funds even when there is no firm commitment from the Legislature or the implementing agency, or both, to construct a proposed capital improvement project. These funds could be used by agencies to conduct more of the up-front (advance) planning work that should have been completed before the proposed project was included in the executive budget and submitted to the Legislature.

The second activity is for the Legislature to delete or exclude from the executive budget any proposed capital improvement project that is not adequately justified or that lacks

reasonably accurate and reliable estimates of the project's costs. This can be accomplished by: (1) requiring the Governor to submit to the Legislature a reasonably complete *Capital Project Information and Justification Sheet* for each proposed project contained in the executive budget when the budget is transmitted to the Legislature;<sup>90</sup> (2) requiring the appropriate subject matter committee or committees of the Legislature to prepare a reasonably complete *Capital Project Information and Justification Sheet* for each proposed project added by the Legislature to the executive budget; and (3) requiring the appropriate subject matter committee or committees of the Legislature to revise a *Capital Project Information and Justification Sheet* for a proposed project that is substantially amended by the Legislature on its own volition or at the request of the Governor, whether the project is contained in the executive budget or added to the executive budget.

Among other things, a *Capital Project Information and Justification Sheet* discusses: (1) the nature and scope of a proposed capital improvement project; (2) the total estimated cost of the proposed project (according to cost elements,<sup>91</sup> means of financing,<sup>92</sup> and past, present, and future appropriations); (3) the improvements that will take place when the proposed project is completed; (4) the significance of the proposed project from the community's and special clients group's standpoint; (5) the identity of individuals and organizations who would be in favor of or opposed to the proposed project; and (6) the justification for the proposed project (in narrative form).

The documents submitted by the Governor should be copies of the very same information and justification sheets submitted to the Branch during the preparation of the executive budget. The documents prepared by the Legislature should accompany a subject matter committee's report to the House Committee on Finance or the Senate Committee on Ways and Means, depending on which legislative body first adds the proposed project to the executive budget or substantially amends the project. A final and, if necessary, revised *Capital Project Information and Justification Sheet* should be prepared by the Committee on Conference for each proposed project added to the executive budget or substantially amended by the Legislature, and transmitted to the Governor upon passage of the executive budget. The preparation of these documents could assist the Branch in determining:

- (1) Whether or not the proposed project is consistent with the State's plans and the administration's policies;
- (2) Whether or not the proposed project is consistent with the legislative intent of the appropriation; and
- (3) Whether or not funds will be available to implement the proposed project;

and reduce the personnel and program resources needed to administer the State's capital improvements program.<sup>93</sup>

**Allotment of General Obligation Bond Proceeds and Other Moneys.** As previously discussed, it is unclear whether or not state law allows the Governor to delegate to the Director of Finance or the Director's designees any powers related to the allotment of general obligation bond proceeds. If the Governor is not authorized to delegate these powers to the Director of Finance or the Director's designees, it would be logical for the Governor to apply a similar limitation to the allotment of revenue bond proceeds, special funds, and general funds for the implementation of proposed capital improvement projects.

If the Governor could delegate the power to review allotment requests and approve allotment advices for proposed capital improvement projects that are to be funded by revenue bond proceeds, special funds, and general funds, the length of time needed to review an allotment request and process an allotment advice could be reduced substantially. The amount of time saved would be commensurate with, though not necessarily proportional to, the amount of authority delegated by the Director of Finance to the Director's designees. The amount of time saved would tend to increase as authority was delegated to progressively lower levels within the Department (i.e., from the Director of Finance to the Deputy Director of Finance, the Administrators of the Financial Administration and Budget, Program Planning and Management Divisions, and the Chief of the Capital Improvements Program Branch).

One indirect benefit of delegating the authority to review allotment requests and process allotment advices for proposed capital improvement projects that are to be funded by revenue bond proceeds, special funds, and general funds would be a reduction in the amount of routine work flowing to the Director of Finance and the Governor and the refocusing of limited personnel resources within the Director's and the Governor's offices on proposed capital improvement projects that are to be funded by general obligation bond proceeds. While this delegation of authority could create two or more approval procedures for the implementation of proposed projects, these procedures would diverge within the Department after an allotment request was submitted by an agency. Consequently, an agency would not have to decide which allotment requests needed to be approved by the Director of Finance, the Director's designees, or the Governor, although this knowledge would be helpful to the agency for planning purposes.

Although the authority to review allotment requests and process allotment advices could be extended outside the Department (e.g., to the Director of Transportation, the Comptroller, or the Mayor of the City and County of Honolulu), the delegation of this authority to other agencies creates multiple points of accountability within state and county government and fragments the authority of the Director of Finance over the State's finances. While delegating this authority to other agencies could substantially reduce the amount of time needed to review an allotment request and process an allotment advice, the Department would still have to monitor the expenditure of revenue bond proceeds, special funds, and general funds, and account for any discrepancies in the implementation of proposed projects, such as incurring costs above budgeted amounts, exceeding the legislative intent of appropriations, and failing to comply with state laws regarding the expenditure of public moneys, among other things.



Extending the authority to review allotment requests and process allotment advices to other agencies would make it difficult, if not impossible, for the Director of Finance to be held accountable for the State's finances. Keeping this authority within the Department allows the Director to keep abreast of current developments (rather than learning about them after the fact through other cabinet members or executives of the counties), and makes the Director less susceptible to adverse results caused by the withholding of information.

Although the amount of time consumed in conveying allotment requests and allotment advices through the Department's chain-of-command could be reduced by reorganizing the Branch and attaching it directly to the Director of Finance as a staff office, such a reorganization would physically separate the Branch from the operating programs that the Branch is supposed to support. Capital improvement projects are not ends in themselves; rather, capital improvement projects support operating programs that are themselves designed to attain government objectives. One of the specific limitations of such a reorganization is that it would programmatically separate the functions performed by the Capital Improvements Program Branch from the functions of the Budget, Program Planning and Management Division. The proposed functional statement of the Division, which includes the functions of the Capital Improvements Program Branch, states that the Division:<sup>94</sup>

Plans, directs, and coordinates a statewide resource allocation program to facilitate and improve the executive resource allocation and utilization processes through planning, programming, budgeting, conducting analyses, and making recommendations on all phases of inter- and intra-program balance, content, and scope, and funding.

1. Conducts comprehensive and in-depth analyses of State programs, systems, operations, organizations, problems, and issues.
2. Participates in the preparation, analysis, and presentation of the State's six-year program and financial plan and the Executive Budget. Participates in the development and analysis of long- and short-range program plans.
3. Develops and maintains standards of performance within the resource allocation system and evaluates agency conformance with established standards.
4. Analyzes the program structure and participates in the development of program objectives. Formulates program evaluation methods and techniques.
5. Provides technical management services, assistance and advice to the Governor, the executive departments and agencies in making maximum use of their authorized management resources in order to achieve the State's

statutory requirements, goals, and objectives efficiently, economically, and effectively.

6. Plans, analyzes, develops, and implements management improvement projects, systems, methods, policies, etc., to better utilize money, personnel, equipment, time, and space.
7. Conducts a continuous review of programs of the State government.
8. Provides advice on and monitors compliance with budget execution policies and procedures by State agencies.
9. Reviews proposed legislation for program and budgetary impact and makes recommendations to the Director of Finance.
10. Provides advice and assistance to agencies in the areas of planning, programming, and budgeting.
11. Reviews, analyzes, evaluates, monitors, and coordinates CIP appropriations and expenditures.

**Timely and Effective Communication.** As previously discussed, the lack of timely and effective communication between the Department and some state agencies regarding the status of the agencies' expenditure and implementation plans appeared to generate more concern than the lack of expenditure limits. These state agencies appeared to be primarily concerned about the length of time that had elapsed before it became evident to them that the Department was not going to issue any expenditure limits.<sup>95</sup>

In hindsight, the Department should have informed all agencies responsible for implementing proposed capital improvement projects that the responsibility for establishing the agencies' expenditure limits was being transferred from the Budget, Program Planning and Management Division to the Financial Administration Division. The Department should have informed these agencies about the Department's decision to reassess the need for expenditure limits, and set a firm deadline for reaching a final decision on this matter and communicating this decision to the agencies. The Department should have formally communicated its decision to these agencies in a timely manner; these communiques did not have to coincide with the issuance of the Department's budget execution policies and instructions for the 1991-1992 fiscal year or other regular communiques. These communiques should have gone out as intra-agency memoranda before the budget execution policies and instructions were issued and after the decision was made not to establish agency expenditure limits for the 1991-1992 fiscal year. The Department's budget execution policies and instructions for the 1991-1992 fiscal year established a reasonable expectation that expenditure limits would be forthcoming.

**Agency Expenditure Limits.** With all due respect to the Department, the accumulation of approximately \$543,000,000 in authorized but unissued general obligation bonds<sup>96</sup> must be monitored in one way or another since the total cost of proposed capital improvement projects being implemented may have little, if any, relationship to the total number of proposed projects being implemented. Arguably, the number of proposed projects being implemented would most likely serve as a self-limiting condition in the marketplace when the proposed projects were substantially equal to one another in cost. In theory, agency expenditure limits help to ensure that initial expenditures<sup>97</sup> for proposed projects, whether for a few high-cost projects or numerous low-cost projects, will not exceed the proceeds of anticipated bonds sales, appropriations of general funds and special funds, and other means of financing.

It is unclear whether or not the expenditure tracking system being developed by the Department of Budget and Finance in consultation with the Department of Accounting and General Services will be capable of monitoring the status of more than \$500,000,000 in authorized but unissued general obligation bonds.

**The General Appropriations Acts and Supplemental Appropriations Acts.** As previously discussed, for the past six years, *i.e.*, 1987, 1988, 1989, 1990, 1991, and 1992, the Governor has signed the general appropriations acts and supplemental appropriations acts thirty-five (*i.e.*, on June 22), thirty-three (*i.e.*, on June 15), thirty-two (*i.e.*, on June 13), thirty-five (*i.e.*, on June 26), thirty-five (*i.e.*, on June 26), and forty-one (*i.e.*, on June 30) days after the Legislature has adjourned *sine die*, respectively. If the Governor plans on vetoing individual items in these acts, the Governor has a maximum of thirty-five days (excluding Saturdays, Sundays, holidays, and any days during which the Legislature is in recess prior to the Legislature's adjournment) to review these acts from the day the Legislature adjourns *sine die*.

If the Legislature were to pass the general appropriations acts and supplemental appropriations acts more than ten days prior to the adjournment of the Legislature *sine die*, the Governor would have just ten days to sign or veto the acts. Once these acts became law, the Department could begin the preparation of the administration's budget execution policies and instructions for the upcoming fiscal year. Under these circumstances, it is possible that the fiscal year could start on July 1. If presented with the opportunity to utilize thirty-five days to review these acts, it is reasonable for the Governor to utilize all of this time to analyze the acts before signing them. It would be unrealistic of the Legislature to expect the Governor to review and sign these acts in ten days if the opportunity to utilize thirty-five days presented itself.

However appealing, the abovementioned scenario does not appear to be realistic for the following reasons:

- (1) The Legislature, for the past six years, has not passed the general appropriations acts or supplemental appropriations acts more than three days before the adjournment of the Legislature *sine die*; and

- (2) The Governor, in all probability, cannot review the general appropriations acts or supplemental appropriations acts in ten days. In addition to reviewing the general appropriations acts and supplemental appropriations acts, the Governor must review all bills purporting to amend or repeal the general and permanent laws of the State, among other things.

A more realistic solution to this problem would be to amend Article III, section 16, of the Constitution of the State of Hawaii, to: (1) give the Governor thirty days (for example), after the adjournment of the Legislature *sine die*, to consider an appropriation bill presented to the Governor less than ten days before this adjournment, or presented after adjournment; and (2) make the appropriation bill law on the thirtieth day unless the Governor by proclamation gives ten days' notice to the Legislature that the Governor plans to return the appropriation bill with the Governor's objections on that day.

**Agency Implementation and Expenditure Plans.** The new procedures, which have not been formally approved by the Director of Finance or the Governor and were developed by the Branch to facilitate the implementation of proposed capital improvement projects, will probably "run" only on highly accurate and reliable cost data, not the marginally accurate and reliable data that the Branch currently receives from some agencies. In addition, agency implementation and expenditure plans will remain unchanged only if the Legislature does not add proposed projects to or delete proposed projects from the general appropriations acts and supplemental appropriations acts each year. Assuming that the Legislature is not likely to abandon the practice of adding projects of interest to its members (whether characterized as "pork barreling" or otherwise), the stability of agency implementation and expenditure plans and, consequently, agency expenditure limits, may be problematic.

**Means of Financing.** Using long-term debt to pay for repair and maintenance work has the effect of transferring these costs to future generations of users. Repair and maintenance work are typically considered to be a part of current programs and, as such, have the effect of placing these costs on the current generation of users. Ideally, repair and maintenance work should be routine matters so that each generation of users bears its fair share of these costs. Problems arise when routine repair and maintenance work are deferred in favor of new construction since the deterioration of unrepaired or poorly maintained facilities tends to accelerate (rather than increase linearly) with time, thus placing an increasingly unfair share of these costs on one generation. The use of debt to alleviate the immediate burden of paying for the cost of this work can only transfer these costs to future generations, it cannot transfer these costs back in time to those generations that did not pay their fair share.

**Educational Specifications.** Arguably, the Capital Improvements Program Branch should not have to review plans for conformance with educational specifications. This task should be left to the Department of Accounting and General Services, which is responsible for implementing proposed projects for the Department of Education, and which possesses the technical expertise needed to thoroughly and systematically inspect these plans. Even under

optimal conditions of staffing and time, the Branch's review would be superficial at best since the Branch lacks the technical expertise needed to thoroughly and systematically inspect these plans.

Proposed capital improvement projects authorized by the Legislature and approved by the Governor should conform to educational specifications, or should be sufficiently explained to justify the issuance of a variance from education specifications, in order to ensure that limited capital improvement program funds are distributed effectively, efficiently, and equitably throughout the State. In addition, operating funds to conduct routine repair and maintenance work on proposed projects should be identified in the executive budget to ensure that this routine work is not deferred in favor of new construction and, ultimately, does not come to unfairly burden one generation of users or future generations of users. Replacement equipment and supplies should not be purchased with long-term debt as they are typically considered to be a part of current programs, and the Legislature should take this fact into consideration when approving proposed projects.

Educational specifications should consider the differences between new buildings and facilities and existing buildings and facilities, and should allow for a range of acceptable values rather than one exact value, or the Department of Accounting and General Services and the Department of Education may find themselves "trying to fit square pegs into round holes" when older buildings and facilities need to be renovated and made consistent with educational specifications.

**Unrequired Balances.** While the authority to approve or disapprove the use of unrequired balances of capital improvement program funds (as supplemental allotments) rests ultimately with the Governor, the Governor's ability to utilize these balances in a systematic manner (i.e., according to some set of statewide priorities) can be effectively thwarted by incomplete reporting. By withholding knowledge of these unrequired balances from the Governor until the very last moment, these agencies (rather than the Governor) are able to select those proposed projects that will be implemented using supplemental allotments from the project adjustment fund.

In fairness to these agencies, there is no incentive to report the existence of unrequired capital improvement program balances if an agency cannot expect to benefit from the accumulation of these balances in a fair manner. If only a few agencies benefit from the accumulation of these balances, the system will be perceived as unfair and only encourage agencies to retain these balances for their own use.

## Recommendations

The Bureau recommends that the Department of Budget and Finance:

## BENDS IN THE ROAD

- (1) Clarify whether or not state law allows the Governor to delegate to the Director of Finance or the Director's designees any powers related to the allotment of general obligation bond proceeds;
- (2) Reassess the need for and, if appropriate, the priority that should be given to timely and effective interagency communication regarding the status of agency implementation and expenditure plans and agency expenditure limits;
- (3) Reassess the new expenditure tracking system that will be developed in consultation with the Department of Accounting and General Services to determine whether or not the new tracking system will be capable of monitoring the status of authorized but unissued general obligation bonds;
- (4) Reassess the new procedures, which have not been formally approved by the Director of Finance or the Governor and were developed to facilitate the implementation of proposed capital improvement projects, to determine whether or not existing cost data are sufficiently accurate and reliable for the Department's purposes, and whether or not the new procedures will be amenable to the addition of proposed projects to and the deletion of proposed projects from the general appropriations acts and supplemental appropriations acts;
- (5) Reassess the need for and, if appropriate, the priority that should be given to plan reviews intended to verify conformance with educational specifications;
- (6) Adopt procedures to ensure that unrequired balances of capital improvement program funds are promptly transferred to the project adjustment fund as required by section 218, part VII, of the General Appropriations Act of 1991, and that these unrequired balances are promptly reported to the Governor as instructed by Governor's Executive Memorandum No. 88-16; and
- (7) Consider ways to address the differences between new buildings and facilities and existing buildings and facilities, and to allow for a range of acceptable values rather than one exact value, when administering educational specifications.

The Bureau recommends that the Governor:

- (1) Consider delegating to the Director of Finance or the Director's designees the power to review allotment requests and approve allotment advices for proposed capital improvement projects that are to be funded by revenue bond proceeds, special funds, and general funds; and

- (2) Reconsider the decision to extend outside the Department of Budget and Finance (e.g., to the Director of Transportation and the Comptroller) the authority to review allotment requests;

The Bureau recommends that the Legislature:

- (1) Consider appropriating additional personnel and program resources to enable the Department of Budget and Finance to conduct a thorough review of all proposed capital improvement projects when the executive budget is being prepared for submission to the Legislature;
- (2) Consider appropriating additional personnel and program resources, including resources for in-depth and ongoing training, to enable all agencies implementing proposed projects to conduct the research needed to adequately justify a project, and to derive accurate estimates of the project's cost;
- (3) Consider requesting that the Governor approve allotment requests for plan funds and design funds even when there is no firm commitment from the Legislature or the implementing agency, or both, to construct a proposed project;
- (4) Consider deleting or excluding from the executive budget any proposed project that is not adequately justified or that lacks reasonably accurate and reliable estimates of the project's costs, by:
  - (A) Requiring the Governor to submit to the Legislature a reasonably complete *Capital Project Information and Justification Sheet* for each proposed project contained in the executive budget when the budget is transmitted to the Legislature;
  - (B) Requiring the appropriate subject matter committee or committees of the Legislature to prepare a reasonably complete *Capital Project Information and Justification Sheet* for each proposed project added by the Legislature to the executive budget;
  - (C) Requiring the appropriate subject matter committee or committees of the Legislature to revise a *Capital Project Information and Justification Sheet* for a proposed project that is substantially amended by the Legislature on its own volition or at the request of the Governor, whether the project is contained in the executive budget or added to the executive budget;
  - (D) Requiring the Committee on Conference to prepare a final and, if necessary, revised *Capital Project Information and Justification Sheet* for each proposed project added to the executive budget or substantially amended by the Legislature; and

- (E) Transmitting to the Governor upon passage of the executive budget all capital project information and justification sheets;
- (5) Consider amending Article III, section 16, of the Constitution of the State of Hawaii, to: (A) give the Governor thirty days (for example), after the adjournment of the Legislature *sine die*, to consider an appropriation bill presented to the Governor less than ten days before this adjournment, or presented after adjournment; and (B) make the appropriation bill law on the thirtieth day unless the Governor by proclamation gives ten days' notice to the Legislature that the Governor plans to return the appropriation bill with the Governor's objections on that day;
- (6) Sufficiently explain proposed projects that do not conform to educational specifications in order to justify the issuance of variances from applicable specifications;
- (7) Identify in the executive budget operating funds to conduct routine repair and maintenance work on proposed projects; and
- (8) Reconsider the practice of using long-term debt to purchase replacement equipment and supplies.

## ENDNOTES

1. Hawaii, Department of Budget and Finance, "Functional Statement for the Capital Improvements Program Branch" (June 30, 1991), 2 pp.
2. Interview with Michael Lim, Acting Chief, Capital Improvements Program Branch, Department of Budget and Finance, June 25, 1992.

Hawaii, Office of the Governor, "Executive Memorandum No. 88-16: Procedures for Requesting the Implementation of Capital Improvement Projects" (July 1, 1988), 22 pp. (with attachments).

Governor's Executive Memorandum No. 88-16 allows for: (1) the simultaneous release of plan and design funds, and design and construction funds; (2) the preapproval of plans for proposed capital improvement projects that comply with previously approved statewide standards and specifications; and (3) the release of design and construction funds concurrently with the Governor's permission to advertise a proposed project for bidding, subject to certain conditions.

3. See the subsequent discussion on capital improvement project implementation and expenditure plans in this chapter.
4. Lim interview.
5. Ibid.



6. Ibid.
7. See the subsequent discussion on the loss of institutional knowledge in this chapter.
8. Lim interview.
9. Ibid.
10. The sale of general obligation bonds and revenue bonds: (1) in excess of those amounts needed to implement a proposed capital improvement project; or (2) during those times when the proceeds of these sales are not needed to implement the proposed project, constitute a form of waste since the debt created by the sale of these bonds must be serviced whether or not the proceeds are used to implement the project. Likewise, appropriating general funds and special funds under the same circumstances constitute a form of waste since these funds cannot be used to implement other projects or be put to other uses once they are committed to a specific purpose.
11. Lim interview.  
  
The Branch's rationale for recommending the deferment of an allotment request for plan and design funds when there is no firm commitment to construct a proposed capital improvement project is based on the assumption that up to two bienniums (four fiscal years) may elapse before an appropriation to construct the proposed project is made, and that the plans and designs for the project may become obsolete within that time. Since an agency's capital improvement project implementation and expenditure plan covers three bienniums (six fiscal years), the Branch's rationale would appear to be logical.
12. Ibid.
13. An allotment request is a written document from the head of an implementing expending agency to the Governor asking for the release of funds to implement a proposed capital improvement project.
14. An allotment advice is a written document from the Governor to the head of an (expending) implementing agency releasing funds to implement a proposed capital improvement project.
15. Budget analysts are organized by and proposed capital improvement projects are reviewed according to user agencies.
16. Although the Governor did not delegate to the Director of Transportation or Comptroller the authority to approve allotment advices, the lack of review by the Department of Budget and Finance makes the Governor's approval largely a matter of form.
17. Lim interview.
18. Ibid.
19. This "fast-track" authority allowed the State to take advantage of lower than normal construction bids brought about by the slowdown in building activity. It appears, however, that construction bids eventually resumed their previous levels. Ibid.
20. Lim interview.
21. The Branch's assertion appears to be consistent with section 37-43, Hawaii Revised Statutes, which states:

The department of budget and finance shall carry out the capital improvement project allotment [sic] [planning and budgeting] process, which shall consist of reviewing, prioritizing, and evaluating capital improvement project appropriation proposals submitted by state and county agencies to assure conformity with statewide planning goals and objectives and executive priorities, and report its findings and recommendations to the governor in order that such proposals may be considered for possible inclusion in the executive capital improvement project budget that is to be presented to the legislature. The department shall also review, analyze, and report on state and county capital improvement project appropriation proposals that extend over wide geographical areas of the State and that have significant impacts upon economic development, land use, environmental quality, construction employment, and executive policy directions.

Section 37-43, Hawaii Revised Statutes, refers specifically to the Department's role in matters relating to "budget preparation" rather than "budget execution". Arguably, the Department's role in matters relating to budget execution are addressed--albeit indirectly--through section 227, part VII, of the General Appropriations Act of 1991, which states:

In releasing funds for capital projects, the governor shall consider the legislative intent and the objectives of the user agency and its programs, the scope and level of the user agency's intended service, and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State. Agencies responsible for construction shall take into consideration the objectives of the user agency, its programs, the scope and level of the user agency's intended service and construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

22. Lim interview.

23. Hawaii, Office of the Governor, "Executive Memorandum No. 88-16: Procedures for Requesting the Implementation of Capital Improvement Projects", p. 2.

Governor's Executive Memorandum No. 88-16 also states that:

\* \* \*

1. For each fiscal year, all user agencies responsible for capital improvements authorized by the State must submit an Implementation and Expenditure Plan to the Department of Budget and Finance for review and processing. Projects are to be listed as a single set of agency priorities and will provide the basis for specific CIP recommendations.
2. Expending agencies shall submit requests in accordance with CIP expenditure plans of user agencies.
3. Plans may be revised, as necessary, by taking into account actual requests made or *deferred in the previous quarter*.
4. Expenditure plans are not to be construed as blanket requests for either the commitment or release of funds but as priority schedules of probable requests.

\* \* \*

24. Interview with E. Ann Nishimoto, Administrator, Financial Administration Division, Department of Budget and Finance, August 20, 1992

The functional statement of the Financial Administration Division states that the Division:

Plans, directs and coordinates the development of the State of Hawaii's short-, intermediate- and long-range financial plans and strategies, and overall financial policies including investments and financing programs. Administers the State's financial affairs including managing cash, debt and investments. Conducts the necessary research, analyzes information relating to the State's future revenues, capital and operating expenditures, and prepares financial projections to support the development of a financial plan. Coordinates with the Governor, Director of Finance, Legislature and others to ensure the financial plan and strategies address the State's priorities in terms of allocation of resources. Plans, markets, coordinates, reviews, monitors and administers the State's bond issues. Determines the investment policies and strategies for the State's funds. Receives, disburses and invests cash for the State in accordance with established policies and procedures. Serves as primary advisor in financial matters to the Governor and others.

Hawaii, Department of Budget and Finance, "Functional Statement of the Financial Administration Division" (September 26, 1991), 1 p.

With respect to the State's capital improvements program, the Financial Research, Planning and Policy Development Branch of the Financial Administration Division:

\* \* \*

4. Coordinates with other government entities, State departments, B&F divisions and branches, the private sector, and others to collect and analyze information relating to future State revenues, capital and operating expenditures, Federal and State policies, and long-term social, economic and demographic factors.

\* \* \*

Hawaii, Department of Budget and Finance, "Functional Statement of the Financial Research, Planning and Policy Development Branch" (September 26, 1991), p. 3.

With respect to the State's capital improvements program, the Bond Administration Branch of the Financial Administration Division:

\* \* \*

10. Develops short- and long-term plans for general obligation bond issuances to meet anticipated capital improvement program requirements. Analyzes and reviews supporting documentation to determine the scope and priority for the issuance of the general obligation bonds.

\* \* \*

Hawaii, Department of Budget and Finance, "Functional Statement of the Bond Administration Branch" (September 26, 1991), p. 2.

25. Although the Department only reviews implementation and expenditure plans, some state agencies interviewed by the Bureau equated this review and the establishment of expenditure limits with an approval of sorts. The Department itself made direct reference to "an approved expenditure plan" in its budget execution policies and instructions for the 1991-1992 fiscal year.

As previously discussed, the Branch does not recommend the deferment of proposed capital improvement projects to the Governor during the Branch's review of agency implementation and expenditure plans or the establishment of agency expenditure limits. The Branch makes its recommendations to the Governor regarding the deferment of a proposed project when the Branch reviews an agency's allotment request.

26. Hawaii, Department of Budget and Finance, "Memorandum from Yukio Takemoto, Director of Finance to William W. Paty, Chairperson of the Board of Land and Natural Resources regarding the updating of the CIP expenditure plan for FY 1992" (July 5, 1991), 2 pp. (without attachment).
27. As previously discussed, some state agencies interviewed by the Bureau equated the Department's review of the agencies' implementation and expenditure plans and the establishment of the agencies' expenditure limits as an approval of sorts.
28. The lack of timely and effective communication between the Department and these state agencies regarding the status of the agencies' expenditure and implementation plans appeared to generate more concern than the lack of established expenditure limits. These state agencies appeared to be mostly concerned about the length of time that had elapsed before it became evident to them that the Department was not going to establish any expenditure limits.
29. Nishimoto interview.
30. Ibid.
31. Ibid.
32. Ibid.
33. Ibid.
34. Ibid.
35. Ibid.
36. Ibid.
37. These data were extracted from the personal calendars of Jean Imamoto, Research Librarian, Legislative Reference Bureau.
38. Arguably, the Department could transmit draft budget execution policies and instructions to those agencies implementing proposed capital improvement projects before the general appropriations acts and supplemental appropriations acts become law. How beneficial these draft policies and instructions would be to these agencies would depend on how closely the final policies and instructions matched the draft policies and instructions.
39. Hawaii, Department of Budget and Finance, "Memorandum from Yukio Takemoto, Director of Finance to William W. Paty, Chairperson of the Board of Land and Natural Resources regarding the updating of the CIP expenditure plan for FY 1992".
40. Ibid.

41. Hawaii Department of Budget and Finance. "Memorandum from Yukio Takemoto, Director of Finance to All State Agencies with CIP Appropriations regarding the updating of the CIP expenditure plan for FY 1993" (October 14, 1992), 12 pp (with attachments).

42. Hawaii, Office of the Governor, "Fiscal Year 1993 Budget Execution Policies and Instructions. Memorandum No. 92-09", p. 5.

The Department of Budget and Finance's October 14, 1992, budget execution policies and instructions addressed only the updating of agency implementation and expenditure plans. Governor's Executive Memorandum No. 88-16 had not been revised.

43. Lim interview.

44. Ibid.

Hawaii, Department of Budget and Finance. "Memorandum from Yukio Takemoto, Director of Finance to All State Agencies with CIP Appropriations regarding the updating of the CIP expenditure plan for FY 1993".

45. Lim interview.

46. Ibid.

47. Ibid.

48. The term, "pork barrel" refers to a government appropriation, bill, or policy that supplies funds for local improvements designed to ingratiate legislators with their constituents. Robert Costello, ed., Random House Webster's College Dictionary (New York: Random House, Inc., 1991), p. 1051.

49. Lim interview.

50. Ibid.

51. Ibid.

52. Ibid.

53. Ibid.

54. "Nonmaterial" does not mean "unimportant".

55. Robert Costello, ed., Random House Webster's College Dictionary, p. 1045.

56. Interview with Karen Yamauchi, Program Budget Analyst, Capital Improvements Program Branch, Department of Budget and Finance, August 28, 1992.

57. Section 37-62, Hawaii Revised Statutes, defines "planning" as the process by which government objectives are formulated; measures of effectiveness in attaining the objectives are identified; alternatives for attaining the objectives are determined; the full cost, effectiveness, and benefit implications of each alternative are determined; the assumptions, risks, and uncertainties of the future are clarified; and cost and effectiveness and benefit tradeoffs of the alternatives are identified.

Section 37-63(4), Hawaii Revised Statutes, states that it is the purpose of the Executive Budget Act to establish a comprehensive system for state program and financial management that furthers the capacity of

the Governor and the Legislature to plan, program, and finance the programs of the State. The system is required to include, among other things, procedures for the evaluation of alternatives to existing objectives, policies, plans, and procedures that offer potential for more efficient and effective use of state resources.

Section 37-64(8), Hawaii Revised Statutes, requires the program and financial management system to be governed by the following general principle: systematic analysis in terms of problems, objectives, alternatives, costs, effectiveness, benefits, risks, and uncertainties are to constitute the core of program planning.

Section 37-65, Hawaii Revised Statutes, requires the Governor to direct the preparation and administration of state programs, program and financial plans, and budget. The Governor is required to, (1) evaluate the long-range program plans, requested budgets and alternatives to state objectives and programs, and (2) formulate and recommend for consideration by the Legislature, the State's long-range plans, a proposed six-year state program and financial plan, and a proposed state budget.

Section 37-66(1), Hawaii Revised Statutes, requires the Legislature to consider the long-range plans, including the proposed objectives and policies, the six-year state program and financial plan, and the budget and revenue proposals recommended by the Governor and any alternatives thereto.

Section 37-70(a)(3), Hawaii Revised Statutes, requires the Governor to submit to the Legislature, a program memorandum that discusses emerging conditions, trends, and issues including: (1) actual or potential impact on the State and the State's programs; (2) possible alternatives for dealing with the specific problems occasioned by the emerging conditions, trends, and issues; and (3) suggestions for a program of analyses to resolve the most urgent of the problems.

Section 37-73, Hawaii Revised Statutes, requires the Legislature to: (1) consider the Governor's proposed program and financial plan and budget; (2) evaluate alternatives to the Governor's recommendations; and (3) adopt programs and determine the State budget.

58. Because of staff shortages and the lack of sufficient time to thoroughly review all proposed capital improvement projects when the executive budget is being prepared for submission to the Legislature, the Branch is unable to return to the implementing agency for additional information a proposed project that lacks an assessment of alternatives. Yamauchi interview.
59. The Branch prefers returning an allotment request to an implementing agency for additional information rather than recommending to the Governor that the allotment request be deferred because of insufficient data. Ibid.
60. Ibid.
61. "Needed" does not mean "required." An agency may determine what is "needed", but the Department determines what is "required".

Whether or not an agency should be required to assess the alternatives to a proposed capital improvement project that has been authorized by the Legislature and approved by the Governor is strictly a policy question. Arguably, the fact that a proposed project has been authorized by the Legislature and approved by the Governor does not make the proposed project the best alternative for attaining a government objective

62. Yamauchi interview.
63. Hawaii, Office of the Governor, "Executive Memorandum No. 88-16: Procedures for Requesting the Implementation of Capital Improvement Projects", p. 2 of Appendix I.

64. Lim interview.
65. See also part VI, section 188 of Act 296, Session Laws of Hawaii 1991 (issuance of bonds; Governor's discretionary powers; General Appropriations Act of 1991).

The Governor is also authorized to replace general obligation bond funds appropriated for proposed capital improvement projects with general obligation reimbursable bond funds, when the expenditure of these general obligation reimbursable bond funds is deemed appropriate for the proposed projects. 1991 Haw. Sess. Laws, Act 296, part VI, section 188.
66. Hawaii, "Memorandum of Agreement Between Department of Education and Department of Accounting and General Services Relating to All Phases of the Capital Improvement Program" (June 3, 1984), pp. I-6 - I-7.
67. Ibid., p. I-4.
68. Hawaii, Department of Education, Educational Specifications and Standards for Facilities, RS 80-9880 (September 1980), approximately 900 pp.
69. Hawaii, Legislative Auditor, Audit of the School Construction Program of the State of Hawaii, Audit Report No. 72-5 (February 1972), p. 126.
70. Hawaii, Journal of the House of Representatives of the Third Legislature, Budget Session of 1966, p. 319.
71. Hawaii, Journal of the House of Representatives of the Fourth Legislature, General Session of 1967, p. 515.
72. Hawaii, "Memorandum of Agreement Between Department of Education and Department of Accounting and General Services Relating to All Phases of the Capital Improvement Program", p. I-2
73. Yamauchi interview.
74. Ibid.
75. See U.S., General Accounting Office, Effective Planning and Budgeting Practices Can Help Arrest the Nation's Deteriorating Public Infrastructure. A Report to the Committee On Environment and Public Works, United States Senate, by the Comptroller General of the United States, GAO/PAD-83-2 (November 18, 1982), 86 pp., for an in-depth discussion of the deterioration of the nation's infrastructure due to lack of repair and maintenance.
76. The task of reviewing amendments to and, presumably, variances from educational specifications was delegated by the Governor to the Department of Budget and Finance. Hawaii, Office of the Governor, "Memorandum to Charles Toguchi, Superintendent of Education Regarding Educational Specifications and Standards for Facilities" (November 10, 1987), 1 p.
77. Non-allowable equipment purchases include: (1) equipment generally provided for personnel and positions authorized in the operating budget; (2) equipment and furnishings for existing buildings; (3) books; (4) supplies and expendable materials; (5) maintenance equipment; and (6) motor vehicles. Hawaii, Office of the Governor, "Executive Memorandum No. 88-16: Procedures for Requesting the Implementation of Capital Improvement Projects", p. 2 of Appendix I.
78. Yamauchi interview.
79. Ibid.

80. Ibid.
81. Lim interview.
82. Hawaii, Office of the Governor, "Executive Memorandum No. 88-16: Procedures for Requesting the Implementation of Capital Improvement Projects", p. 7.
- This requirement does not apply to proposed projects that have been cancelled or abandoned.
- 1991 Haw. Sess. Laws, Act 296, section 218, part VII.
83. Lim interview.
84. Supplemental allotments from the project adjustment fund cannot be used to increase the scope of a proposed project. 1991 Haw. Sess. Laws, Act 296, section 219, part VII.
85. The use of these unrequired balances as contingency funds is authorized under section 219, part VII, of the General Appropriations Act of 1991.
86. 1991 Haw. Sess. Laws, Act 296, section 220, part VII.
87. Yamauchi interview.
88. This is not to say that existing personnel and program resources are inadequate; rather, the Bureau merely recommends that the Legislature consider appropriating additional personnel and program resources to enable the Branch to conduct a thorough review of all proposed capital improvement projects when the executive budget is being prepared for submission to the Legislature.
89. This is not to say that existing personnel and program resources are inadequate; rather, the Bureau merely recommends that the Legislature consider appropriating additional personnel and program resources to enable these agencies to conduct the research needed to adequately justify a project, and to derive accurate estimates of the project's costs.
90. Most agencies submit their capital project information and justification sheets directly to the Senate Committee on Ways and Means and the House Committee on Finance, anyway; the Bureau merely recommends that the Governor take official responsibility for ensuring the accuracy and reliability of these data.
91. Cost elements are the major subdivisions of a cost category. The major types of cost categories include "research and development", "capital investment", and "operating". For the cost category "capital investment", the major subdivisions include "plans", "land acquisition", "design", "construction", and "equipment and furnishings". Hawaii, Office of the Governor, The Multi-Year Program and Financial Plan and Executive Budget For the Period 1989-1995 (Budget Period: 1989-91), Volume 1 (December 1988), p. 48.
92. Means of financing refers to the various sources from which funds are available. These sources include the general fund, special fund, revolving fund, general obligation bonds, reimbursable general obligation bonds, revenue bonds, federal interstate highway fund, federal aid primary road fund, federal aid secondary road fund, federal aid urban fund, other federal funds, private contributions, county funds, trust funds, interdepartmental transfers, and other funds. Ibid., p. 50.
93. A reduction in the personnel and program resources needed to administer the State's capital improvements program could result in lower program costs for the Branch. More importantly, however, such a reduction could give the Branch the resources needed to conduct a thorough review of all proposed capital improvement projects when the executive budget is being prepared for submission to the Legislature.



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94. Hawaii. Department of Budget and Finance. "Proposed Functional Statement for the Budget Program Planning and Management Division" (September 26, 1991). 1 p.
95. Since no benefit would be derived from a concerted effort to affix the blame for this oversight to any one agency or person, no indictment of any agency or person should be inferred from the following discussion.
96. Hawaii. Office of the Governor. The Multi-Year Program and Financial Plan and Executive Budget For the Period 1991-1997 (Budget Period: 1991-93), Volume 1 (December 1990). p. 79.
97. The magnitude of cost overruns, much less their occurrence, are difficult for any agency to predict with precision and accuracy.

## Chapter 6

### PERMITTING

#### The Role of Permits and Approvals

Permits and approvals may be considered as tools that enable state and county executive branch agencies to attain the goals and objectives established by the Legislature and the county councils. The goals and objectives of the Legislature and the councils with respect to land use and development are included in, but not limited to, those laws relating to: the management and disposition of public lands (chapter 171, *Hawaii Revised Statutes*); the water code (chapter 174C, *Hawaii Revised Statutes*); conservation districts (chapter 183, *Hawaii Revised Statutes*); ocean and submerged lands leasing (chapter 190D, *Hawaii Revised Statutes*); ocean recreation and coastal areas programs (chapter 200, *Hawaii Revised Statutes*); the land use commission (chapter 205, *Hawaii Revised Statutes*); coastal zone management (chapter 205A, *Hawaii Revised Statutes*); the Hawaii Community Development Authority (chapter 206E, *Hawaii Revised Statutes*); the Aloha Tower Development Corporation (chapter 206J, *Hawaii Revised Statutes*); the Convention Center Authority (chapter 206X, *Hawaii Revised Statutes*); the Hawaii State Planning Act (chapter 226, *Hawaii Revised Statutes*); the county general plans and development plans; and land use ordinances.

#### Scope of the Chapter

This chapter does not delve into the issue of whether or not state and county agencies: (1) should be regulating specific land use and development activities; (2) have imposed unreasonably burdensome requirements on applicants for permits and approvals; or (3) are justified in denying (*i.e.*, exercising discretionary rather than ministerial authority over) particular permits and approvals, when it comes to proposed capital improvement projects.

##### Generally:

- (1) Decisions to regulate specific land use or development activities are policy decisions that should be addressed by the Legislature, or the county councils, or both;<sup>1</sup>
- (2) In disputed cases, the reasonableness of the requirements imposed on a particular applicant for a particular permit or approval should be decided by a court in light of such factors as legislative intent, due process, equal protection, rational nexus, and legitimate government interests;<sup>2</sup> and

- (3) The inability of an applicant to obtain a permit or approval to implement a proposed project may have little or nothing to do with the permitting process itself, i.e., the project may simply be inappropriate given its surroundings.<sup>3</sup>

Accordingly, this chapter does not address the permitting and approval process in totality. This chapter, instead, addresses the issue and origin of repetitive, duplicative, and uncoordinated permits and approvals.

### The Permit "Explosion"

In 1976, the Urban Land Institute,<sup>4</sup> with support from the National Science Foundation's Research for National Needs program, undertook a study "to investigate methods by which existing systems of land use and environmental controls can be coordinated."<sup>5</sup> The prevailing mood at the time, which undoubtedly provided some of the impetus for this study and the title for that book--*The Permit Explosion*, was perhaps best summed up by Donald Priest, Director of Research for the Institute, who wrote:<sup>6</sup>

A major barrier to the sensible administration of growth controls lies in the very complexity of the system of controls that has evolved in recent years, or--as expressed in the title of this book--the Permit Explosion. Lack of coordination between the increasing number of agencies and jurisdictions with permitting authority over development leads to inordinate delays and consequent development cost increases. This situation also makes it extremely difficult to achieve the public policy objectives of any individual agency, since the objectives are often in conflict and there are few areas with institutional mechanisms for resolving these conflicts.

According to the Institute,<sup>7</sup> which met in Honolulu<sup>8</sup> with representatives from such agencies and organizations as Life of the Land; the Waikiki Improvement Association; the University of Hawaii Environmental Center; the Department of Agriculture; the Land Use Commission; the Oahu Development Conference; the architectural firm of Haines, Jones, Farrell, White and Gima; the Office of Environmental Quality Control; the Windward Regional Council; the City and County of Honolulu Departments of Land Utilization, Housing and Community Development, and General Planning; the Office of the Managing Director of the City and County of Honolulu; the Department of Land and Natural Resources; the Environmental Quality Commission; the Estate of James Campbell; and the League of Women Voters of Honolulu:

Implementation of any of the coordination mechanisms described in this report would disturb the inertia of numerous state and local decisionmaking processes. Empires would be put in jeopardy; job security would be threatened; cozy relationships would be disturbed. Whatever the potential benefits of coordination, it

must be recognized that very real problems, including those described below, stand in the way.

- . **Agency Parochialism.** Sadly enough, few government administrators find it in their self-interest to take a catholic [i.e., universal] point of view. Agencies are evaluated on their success in achieving specific program objectives, whether explicit or implicit. They are watched closely by legislative committees and private interest groups concerned with those objectives. While many administrators sincerely try to be statesmen, none of them would trust the administrators of another functional agency to give proper weight to the program objectives of their agency.
- . **Data Collection.** Meaningful coordination requires that a vast amount of information be available to the planning agency and permit decisionmaker. Such information might include data concerning soils, hydrology, land values, population projections, available physical resources, vegetation, housing, wildlife, transportation and recreation needs, fiscal impacts of proposed development, economic projections, and a myriad of other kinds of impact that a development may have, as well as on the quality of development a particular area may absorb without violating policies to protect the environment. Assembling all such data at one time and place, and in an intelligible format, is an expensive, difficult, and time-consuming matter.
- . **Data Analysis.** The problem is not simply one of gathering more information. Given the large number of land use and environmental control agencies, substantial amounts of information are amassed at different points. Many respondents interviewed in the course of the study suggested that, in fact, more information is available than can readily be used in the time available for decisionmaking. Furthermore, concern was expressed that much of the information that may be available is not in a form which is readily intelligible by planners or decisionmakers. In addition, although it is known that certain information is available, it is often difficult to locate it.
- . **Fears of Centralization.** Effective coordination will reduce the power of individual agencies to make arbitrary decisions. Agencies often try to resist such changes by suggesting that coordination will bring about strong centralized control. There is real and strong opposition to the imposition of planning controls from higher levels of government. Many people feel that the free enterprise system is threatened by centralized government planning mechanisms of the type that can bring about more effective coordination of environmental and land use controls.

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Given these handicaps, there are those who would argue that the achievement of coordination is not worth the effort required. Some would even suggest that the present system is advantageous: it allows small groups to stop development that affects their interests adversely, while a coordinated system might submerge such interests in the general public good advanced by the development.

If society concludes that growth and development are inherently undesirable, the present system will be said to make good sense. But, at the present time, the advocates of a growthless society have a long way to go in proving their case. If growth is needed, it must be regulated as sensibly and rationally as possible.

While the bluntness of the Institute's prose might have been--and may still be--quite offensive to some persons, it underscores three important points that do not appear to have changed much in the past seventeen years. The three points are that: (1) efforts to coordinate the proliferation of permits must be driven by a sincere desire to promote change; (2) government agencies and staffs must provide some of the driving force to promote change; and (3) it is not necessarily in the best interest of government agencies and staffs to promote change.

Arguably, some government agencies and staffs, and members of the regulated community, have little incentive to coordinate the proliferation of permits. First, intergovernmental and interagency jurisdictional disputes, *i.e.*, "turf wars", which could develop in the wake of efforts to improve coordination, are potentially damaging to all combatants--both weak and strong, victor and vanquished.<sup>9</sup> Second, intragovernmental and intra-agency reorganizations, *i.e.*, "down-sizing", "right-sizing", *etc.*, create potential collective bargaining and administrative (leadership) problems. Third, intergovernmental and interagency jurisdictional disputes and reorganizations expose all combatants to potentially troublesome meddling by interlopers. Fourth, some government agencies and staffs will not want to be accountable for programs that are not entirely under their immediate control and supervision. Fifth, some government agencies and staffs will not want to assume additional duties and responsibilities without additional personnel and program resources. Sixth, some government agencies and staffs will not want to spend time sorting through potentially extraneous information to find data that may be marginally relevant to their interests. Seventh, centralized decisionmaking on the part of government agencies and staffs would make it difficult for some members of the regulated community to use the argument that work on a project has proceeded too far and consumed too much time and money to be denied a permit, *i.e.*, has become "too big to kill".

Eight years after the publication of the Institute's study, University of Hawaii law professor David Callies, author of *Regulating Paradise: Land Use Controls in Hawaii*, wrote:<sup>10</sup>

The use of land in Hawaii is intensely regulated. A partial listing of major permits required for residential and resort development alone, compiled in 1977 under the state Coastal Zone Management Program, runs to some seventy-five pages. An overlapping environmental permit index, attached as an appendix, contains literally hundreds of entries. These regulations are applied at both the county and state level, often with substantial federal encouragement. They apply to every aspect of the land use and development process, on virtually every square foot of beach, mountain, plateau, and valley, whether public or private, whether resort or residential, agricultural or urban. Commenced in order to bring order and sense to the use and development of that most precious of island commodities--land--the regulation of land use has become an enormously complex process, often equally frustrating to the public and private sectors alike.

Callies further wrote that:<sup>11</sup>

. . . According to one study, at least thirty sets of development regulations may apply to a modest shoreland development, even if it is properly classified under the state land use law and zoned for development under county zoning. [citation deleted] The time and effort necessary to obtain development permission is enormous, stifling development both good and bad. Attempts at simplification of the process have been both sporadic and ineffective. [citation deleted]

While the problem is not uniquely Hawaiian, Hawaii does appear to have one of the country's worst cases of "permit explosion." [citation deleted] . . .

\* \* \*

Simplifying the permit process is a . . . difficult problem, one that may initially be approachable by one governmental level at a time. A "master permit" might well serve to unite zoning, subdivision, and SMA [special management area] permits, for example. At the state level, it is worth considering whether, from a permit simplification perspective, drastically reducing or changing the role of the Land Use Commission so that it only considers petitions in which the state has a vital land use interest, would be helpful. [citation deleted] For some projects, especially those jointly commenced by both public and private sector, negotiated development should perhaps replace existing planning and land use controls altogether.

Whatever is ultimately done, no permit simplification, coordination, or streamlining will be effective unless the multitude of plans under which land use labors is also both coordinated and simplified. The international author and land expert Sir Desmond Heap, for a time visiting professor of both law

and planning at the University of Hawaii, took Hawaii to task for its many plans in 1981. [citation deleted] As previously noted, Hawaii's plans at both the state and local level have the force of law and often supersede inconsistent land use regulation of the more traditional sort (such as zoning and subdivision codes). It is therefore critical that any attempt at simplifying Hawaii's land use regulatory process specifically include state and local plans.

Thirteen years after the publication of *The Permit Explosion* and five years after the publication of *Regulating Paradise*, the permit register published by the City and County of Honolulu Department of Land Utilization (September 1989)<sup>12</sup> indicated that there were more than ninety government permits and approvals relating to land development projects on the island of Oahu. These permits and approvals were administered by four federal,<sup>13</sup> seven state, and eight county agencies, and addressed such diverse subjects as land use, infrastructure development, building, environment, shoreline and waterways, geothermal resources, and intergovernmental cooperation.

### The Consolidated Application Process

In a June 6, 1980, memorandum to Susumu Ono, Director of the Department of Land and Natural Resources, Governor George Ariyoshi wrote:<sup>14</sup>

As you are aware, this Administration has been deeply concerned over the proliferation of governmental permits and approvals required for land development in Hawaii. The costs and complexity of governmental approvals, while serving very important social values, indiscriminately inhibit land development projects. It is important for the State of Hawaii to make an earnest effort to simplify the permitting process without compromising our environment, health, or safety.

The Department of Planning and Economic Development, through the Hawaii Coastal Zone Management Program, has over the past year, extensively studied the problems associated with the permitting process. The study focused mainly on identifying strategies for minimizing procedural impacts of State permitting processes. After a careful review of the study, I am establishing an Inter-Agency Task Force for Implementing State Permit Simplification.

The purposes of this unit will be to develop and implement procedures which will result in the simplification of the permitting process at the State level, to improve communications among State agencies over land development processes, and to serve as the focal point for coordination with other Federal and County agencies relative to permit administration concerns.

## BENDS IN THE ROAD

Since your department has substantial authority and interest in the land development process, I hereby appoint you to serve on the Policy Committee of this most important Task Force.

The consolidated application process was initially established pursuant to Act 237, Session Laws of Hawaii 1985.<sup>15</sup> In the "Findings" section of Act 237, the Legislature stated that:

A large number of federal, state, and county agencies and authorities have jurisdiction and may grant or deny their approval and issue or withhold permits for projects in the State. Agencies may disagree as to the requirements to be imposed on each applicant; hearings and data requirements may overlap or duplicate each other; and some agencies may prefer not to act until others take action first.

In 1977, central coordinating agencies were established in each of the four counties. Their operation improved the permit and approval process by providing a central source of information on county permit and approval requirements. Based on the county experience, improvements can be made in state permit and approval processes. There are also opportunities to further facilitate the regulatory process for projects that require permits and approvals from different levels of government. The legislature finds that it would be beneficial to designate a lead agency for permit process facilitation and the development of opportunities for streamlining the permit process.

Perhaps mindful of federal preemption and county "home rule" issues, the Legislature also stated:<sup>16</sup>

The purpose of this Act is to authorize the department of planning and economic development to facilitate, expedite, and coordinate state agency and inter-governmental permit processes. The agency may facilitate the permit process through a consolidated application procedure, through information services, and through efforts to streamline the permit process. It is the further purpose of this Act to authorize and establish procedures by which federal, state, and county agencies and authorities may consolidate their review and action on permit applications for projects in the State. These procedures for state agencies and authorities are mandatory, and for federal and county agencies voluntary.

Act 87, Session Laws of Hawaii 1987, subsequently repealed the June 30, 1987, repeal date of Act 237, Session Laws of Hawaii 1985, thereby making the consolidated application process permanent law. At the same time, Act 336, Session Laws of Hawaii 1987,



changed the name of the "Department of Planning and Economic Development" to the "Department of Business and Economic Development" to reflect the creation of a new Office of State Planning within the Office of the Governor. Act 352, Session Laws of Hawaii 1988, subsequently transferred the Hawaii Coastal Zone Management Program and the responsibility for implementing the coastal zone management law (chapter 205A, *Hawaii Revised Statutes*) from the Department of Business and Economic Development to the Office of State Planning. The Consolidated Application Process, which was being administered by the Department of Business and Economic Development through the Hawaii Coastal Zone Management Program,<sup>17</sup> was apparently not transferred to the Office of State Planning with the Coastal Zone Management Program,<sup>18</sup> and remains codified among the responsibilities of the Department of Business, Economic Development, and Tourism.

### **Facilitation of Permit Processing**

Section 201-62, *Hawaii Revised Statutes*, requires state agencies, and authorizes and encourages county agencies, to participate in the consolidated application process set forth in part IV of chapter 201, *Hawaii Revised Statutes*, relating to the Department of Business, Economic Development, and Tourism. The Department of Business, Economic Development, and Tourism is required to serve as a lead agency for the consolidated application procedure.

Section 201-62, *Hawaii Revised Statutes*, allows an applicant for two or more state permits<sup>19</sup> to apply in writing to the Department to request a consolidated application process for the permits. The request must include sufficient data about a proposed project for the Department to determine which other agencies or authorities may have jurisdiction.

Upon receiving a written request for a consolidated application process, the Department is required to: (1) notify all federal, state, and county agencies or authorities that the Department determines may have jurisdiction over part or all of a proposed project, of the request; and (2) require those state agencies or authorities, and invite those county and federal agencies or authorities, to participate in the consolidated application process.

The applicant and each agency or authority required or agreeing to participate in a consolidated application process designate representatives to serve on the consolidated application review team. State agencies or authorities designated by the Department as a party to an application review that are not able to participate are required to explain to the Department in writing the reasons and circumstances for the agency's or authority's noncompliance.

The representatives of any agencies, authorities, and the applicant, are authorized to develop and sign a joint agreement among themselves: (1) identifying the members of the consolidated application review team; (2) specifying the regulatory and review responsibilities of each government agency and setting forth the responsibilities of the applicant; and (3) establishing a timetable for regulatory review, the conduct of necessary hearings,

preparation of an environmental impact statement, if necessary, and other actions required to minimize duplication and coordinate the activities of the applicant, agencies, and authorities.

All participating agencies and authorities are still required to issue their own permits or approvals based upon their own jurisdictions, and the law prohibits the consolidated application process from affecting or invalidating the jurisdiction or authority of any agency under existing law. Applicants must apply directly to each federal or county agency that does not participate in the consolidated application process.

Section 201-63, *Hawaii Revised Statutes*, requires the Department to: (1) operate a permit information and coordination center for public use during normal working hours, which provides guidance in regard to the permits and procedures that may apply to specific projects; and (2) maintain and update a repository of the laws, rules, procedures, permit requirements, and criteria of federal, state, and county agencies having control or regulatory power over land and water use for development or the control or regulatory power over natural, cultural, or environmental resources.

Under section 201-64, *Hawaii Revised Statutes*, the Department is also required to: (1) monitor permits on an ongoing basis to determine the source of inefficiencies, delays, and duplications, and the status of permits in progress; (2) pursue the implementation of streamlining measures including, but not limited to, those measures defined in consultation with affected state agencies, county central coordinating agencies, and members of the public; and (3) design applications, checklists, and other forms essential to the implementation of approved streamlining measures in coordination with involved state and county regulatory agencies, and members of the public.

Section 201-65, *Hawaii Revised Statutes*, requires the Department to report biennially to the Legislature on actions taken, problems encountered, and legislative actions that may be needed to further implement the intent of part IV, chapter 201, *Hawaii Revised Statutes*.

Mr. Douglas Tom<sup>20</sup> is Chief of the Hawaii Coastal Zone Management Program in the Office of State Planning and the individual who was most responsible for carrying out the consolidated application process while the Coastal Zone Management Program was under the Department of Business and Economic Development. According to Tom,<sup>21</sup> only one state agency--the Aloha Tower Development Corporation--ever requested a consolidated application processing pursuant to state law. Further,<sup>22</sup> no county or federal agencies made use of the consolidated application process while the Hawaii Coastal Zone Management Program was under the Department of Business and Economic Development, despite "sufficient evidence of its potential value to both developers and regulatory agencies" and a "strong" recommendation "that the provisions of Act 237 be continued on a permanent basis".<sup>23</sup>

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According to a 1987 report on the implementation of the consolidated application process submitted to the Legislature by the Department of Planning and Economic Development:<sup>24</sup>

Although there has not been extensive use of the CAP [Consolidated Application Process] to date, it has been very helpful from the standpoint of those who have used it. The meeting and follow-up summary give users a better understanding of the various regulatory programs and how best to plan and organize to satisfy the various regulatory requirements and processes. Equally important, the information helps them to better assess the project's feasibility and approvability at an early stage.

\* \* \*

A review of the CAP experiences suggests that it may be particularly useful to two groups or types of development: 1) Unusual or unique projects where new uses of land and water are proposed or where new techniques and products are involved; and 2) out of State or new organizations that are not familiar with the State's regulatory processes. Conversely, we recognize that established development organizations in the State, such as those associated with major land owners, are familiar with permit and approval requirements. They traditionally rely on professional organizations [i.e., consultants] for the necessary technical services to comply with the various permit requirements.

We believe that use of the CAP will increase commensurate with the increased use of the State Permit Information Counter. Awareness of the process would also be increased if State permit agencies that are the first point of contact for significant development proposals would introduce the CAP program to the applicant. New businesses could be introduced to the process in future promotional efforts to attract interest in Hawaii as a place to do business.

While the development of the consolidated application process established in part IV, chapter 201, *Hawaii Revised Statutes*, appears to have lost momentum in recent years--in part because of the reorganization of the Department of Planning and Economic Development, the concept and value of consolidated application processing was reaffirmed by the Legislature through the Geothermal and Cable System Development Permitting Act of 1988 (codified as chapter 196D, *Hawaii Revised Statutes*). The Legislature, upon passing the Geothermal and Cable System Development Permitting Act of 1988, found and declared that:<sup>25</sup>

\* \* \*

- (8) A major and fundamental difficulty in the development of both geothermal resources and a cable system is the diverse array of federal, state, and county land use, planning,

- environmental, and other related laws and regulations that currently control the undertaking of all commercial projects in the State;
- (9) These controls attempt to ensure that commercial development projects in general are undertaken in a manner consistent with land use, planning, environmental, and other public policies, except that some of these specific laws, regulations, and controls may be repetitive, duplicative, and uncoordinated;
  - (10) To a limited extent, the State and counties have sought to ameliorate this difficulty through the enactment or adoption of measures to improve the coordination and efficiency of land use and planning controls and specifically to facilitate the development of geothermal resources;
  - (11) Notwithstanding these efforts, the complexities, the magnitude in scope and cost, the fundamental interrelationship between the development of geothermal resources and a cable system, the inherent requirement for the coordinated development of the geothermal resources and a cable system, the substantial length of time required to undertake and complete both developments, and the desirability of private funding for both developments require that affected state and county agencies be directed to pursue and develop to the maximum extent under existing law the coordination and consolidation of regulations and controls pertinent to the development of geothermal resources and a cable system;
  - (12) The development of geothermal resources and a cable system, both individually and collectively, would represent the largest and most complex development ever undertaken in the State;
  - (13) Because of the complexities of both projects, there is a need to develop a consolidated permit application and review process to provide for and facilitate the firm assurances that companies will require before committing the substantial amounts of funds, time, and effort necessary to undertake these developments, while at the same time ensuring the fulfillment of fundamental state and county land use and planning policies;

\* \* \*

#### County Central Coordinating Agencies

Section 46-18(a), *Hawaii Revised Statutes*, requires each county, by ordinance, to designate an existing county agency as the central coordinating agency for that county. In addition to performing its existing functions, the county agency designated as the central coordinating agency for a county is required to:

## PERMITTING

- (1) Maintain and continuously update a repository of all the laws, rules, procedures, permit requirements, and review criteria of all the federal, state, and county agencies having any control or regulatory powers over land development projects within the county, and to make this repository and knowledgeable personnel available to inform any person requesting information as to the applicability of these laws, rules, procedures, permit requirements, and review criteria to a particular proposed project within the county;
- (2) Study the feasibility and advisability of utilizing a master application form to concurrently file applications for an amendment to a county general plan and development plan, a change in zoning, a special management area permit, and other permits and procedures required for land development projects in the county, to the extent practicable;
- (3) Maintain and continuously update a master file for the respective county of all applications for building permits, subdivision maps, and land use designations of the State and county; and
- (4) Endeavor to schedule or coordinate, to the extent practicable, any referrals, and any public informational meetings or public hearings held by other federal, state, or county commissions or agencies pursuant to existing laws pertaining to the respective county, when requested by an applicant.

Section 46-18(b), *Hawaii Revised Statutes*, requires all state and county departments, divisions, agencies, and commissions, with control or regulatory powers over land development projects in any county of the State, to cooperate with the designated central coordinating agency of each county in making available and updating information regarding the laws, rules, procedures, permit requirements, and review criteria that these state and county entities enforce upon land development projects.

According to the Department of Land Utilization,<sup>26</sup> which serves as the central coordinating agency for the City and County of Honolulu, no state agencies have asked the Department to schedule or coordinate any public informational meetings or public hearings held by other federal, state, or county commissions or agencies, to expedite the review and processing of permit applications and approvals for proposed capital improvement projects. According to the Department,<sup>27</sup> coordinating the referral of permit applications and approvals within and between county departments has become a matter of standard operating procedure because of the complexity of the City's permitting process; however, actually coordinating the permits and approvals themselves (as opposed to their referral) is still a difficult matter. According to the Department,<sup>28</sup> the issuance of some permits and approvals are now dependent on the issuance of other permits and approvals, and some applicants have found the "piecemeal-approach" to obtaining permits and approvals easier to use.<sup>29</sup>

According to the Department of Land Utilization,<sup>30</sup> several state agencies ask the Department for assistance in identifying all the county permits and approvals needed to implement a proposed capital improvement project. Although not all state agencies have reacted enthusiastically to the Department's assistance in these matters (*i.e.*, the agencies did not always like what they heard), the City still provides this assistance upon request, using existing personnel and program resources.<sup>31</sup>

Although the Department of Land Utilization<sup>32</sup> suggested that it could:

- (1) Take a proactive (rather than reactive) approach to familiarizing state capital improvement program managers with the City's permitting process;
- (2) Actively encourage state agencies to request the Department's assistance in identifying all the county permits and approvals needed to implement a proposed capital improvement project; and
- (3) Openly publicize the fact that state agencies can request the Department's assistance in scheduling and coordinating any public informational meetings or public hearings held by other federal, state, or county commissions or agencies;

the Department acknowledged that it did not have the personnel and program resources needed to undertake these activities and accommodate the additional work that these activities might produce.<sup>33</sup> The Department,<sup>34</sup> also stated that existing rules with conflicting time frames for public hearings and other time frame requirements, make it difficult to coordinate activities across three layers of government.

#### **Amendments to district boundaries**

Section 205-3.1(b), *Hawaii Revised Statutes*, allows any department or agency of the State, and department or agency of the county in which land is situated, or any person with a property interest in land sought to be reclassified, to petition the appropriate county land use decision-making authority for a change in the boundary of a district involving lands less than fifteen acres presently in the agricultural, rural, and urban districts.

Section 205-3.1(c), *Hawaii Revised Statutes*, requires district boundary amendments involving land areas of fifteen acres or less, except in conservation districts, to be determined by the appropriate county land use decision-making authority without consideration by the Land Use Commission. The appropriate county land use decision-making authority is allowed to consolidate proceedings to amend state land use district boundaries with county proceedings to amend the general plan, development plan, zoning of the affected land or such other proceedings. Appropriate ordinances and rules to allow consolidation of such proceedings may be developed by the county land use decision-making authority.

**Act 227, Session Laws of Hawaii 1992**

Act 227, Session Laws of Hawaii 1992, requires each county to enact by December 31, 1993:

- (1) Such ordinances as may be necessary to decrease, to not more than twelve months, the total time required by the county to review and, if appropriate, grant all general plan, development plan, community plan, zone change, and discretionary permit approvals to construct housing in that county; and
- (2) Such ordinances as may be necessary to decrease, to not more than six months, the total time to process and approve subdivision, grading, building, and other ministerial development permits.

State agencies are similarly required to adopt by December 31, 1993:

- (1) Such rules as may be necessary to decrease, to not more than six months, the total time required by all state agencies to review and, if appropriate, grant approvals to construct housing in this State;
- (2) Rules allowing no more than six months to process and approve other state permits required in connection with housing projects, subject to the condition that this six month time period is required to run concurrently with, not in addition to, county processing time for ministerial permits.

The mayor of each county and the Governor are required to convene respective task forces by December 31, 1992, to recommend specific time limits for each county agency and each state agency to review and, if appropriate, approve requests to construct housing in that county and the State.

The composition and size of each county's task force is required to include members of the county council and any agency responsible for policy and technical issues regarding housing development permits. Each county's task force is required to consider, among other matters, the issue of how to accommodate the time taken by applicants to comply with all application requirements in the six month time period for processing all ministerial development permits. The Governor's task force is required to include state government agencies, boards, commissions, or entities responsible for policy or technical issues regarding housing development permits.

The mayor of each county and the Governor are required to submit to the Legislature by January 1, 1993, and January 1, 1994, status reports on the progress made by that county and the State, respectively, to implement the applicable provisions of Act 227.

**Act 300, Session Laws of Hawaii 1992**

Section 164 of Act 300, Session Laws of Hawaii 1992 (amending Act 296, Session Laws of Hawaii 1991), appropriates \$150,000 in fiscal year 1992-1993 for the Office of State Planning to conduct a comprehensive study and evaluation of land use regulation and management at the state and county levels, including, but not limited to: applicable provisions of the State constitution, *Hawaii Revised Statutes*, county charters, the land use decision-making process, jurisdictional issues, land use classification, organizational structure and function of government agencies, and public input in the land use decision-making and classification process. The Office is required to incorporate, where applicable, the findings and recommendations of this study and evaluation into its first official report to the Land Use Commission required by section 205-18 (periodic review of districts), *Hawaii Revised Statutes*. The Office is also required to submit a preliminary report and final report on its findings and recommendations to the Legislature no later than twenty days prior to the convening of the 1993 and 1994 regular sessions, respectively.

**Analyses**

*Deja vu.* Despite nearly two decades of in-depth analyses by seemingly knowledgeable and well-intentioned individuals from state and county governments, public interest and special interest groups, and the regulated community, neither regulatory agencies nor the regulated community appear to be very happy with Hawaii's permitting process.<sup>35</sup> Generally speaking, regulatory agencies feel they are being unfairly blamed for the woes of agencies in the regulated community and agencies in the regulated community feel they are being unreasonably burdened by the requirements imposed on permits and approvals by regulatory agencies. Some individuals<sup>36</sup> interviewed by the Bureau during the course of this study appeared to be suggesting that the permitting process had changed very little since the publication of *The Permit Explosion* and *Regulating Paradise*, and that the Bureau was simply recycling recycled information.

**Plans--Who Needs Them?** Plans provide the basis for orderly change, and state and county governments are forever changing to accommodate the needs and wants of the populace. State and county governments need plans to ensure that the changing needs and wants of the populace are accommodated in a orderly manner.

Assuming that:

- (1) The goals and objectives of the Legislature and the county councils with respect to land use and development are included in laws, county general plans and development plans, and land use ordinances; and



- (2) Permits and approvals are tools that enable state and county executive branch agencies to implement these laws, plans, and ordinances and, ultimately, to attain the goals and objectives established by the Legislature and the county councils;

it could be argued that the repetitive, duplicative, and uncoordinated nature of some permits and approvals stem, at least in part, from the nature of the laws, plans, and ordinances that are being implemented by these permits and approvals.<sup>37</sup> (For the purposes of this chapter, the term "laws, plans, and ordinances" refers to land use and development laws, plans, and ordinances.)

Assuming that the repetitive, duplicative, and uncoordinated nature of some permits and approvals stem, at least in part, from the nature of the laws, plans, and ordinances that are being implemented by these permits and approvals, there are at least five activities that the Legislature could undertake to gradually reduce delays in the timely and orderly implementation of proposed capital improvement projects.

**Short-term solutions.** The first activity is to reduce, through consolidation, elimination, or modification, the number or scope of individual state and county laws, plans, and ordinances. As pointed out by Callies, Hawaii's plans at both the state and county level have the force of law and often supersede inconsistent land use regulation of the more traditional sort, such as zoning and subdivision codes. This activity is in keeping with Callies' suggestion that any attempt at simplifying Hawaii's land use regulatory process specifically include state and local plans.

Arguably, the likelihood of particular laws, plans, and ordinances becoming repetitive, duplicative, or uncoordinated increases as the number of laws, plans, and ordinances increase. Since the focus of this study is the timely and orderly implementation of proposed capital improvement projects rather than Hawaii's land use laws, this study does not attempt to determine whether a particular law, plan, or ordinance is unnecessary or overly broad. To the extent that concern exists over the length of time that it takes to implement proposed projects, it behooves the State, whenever possible, to minimize the likelihood of these laws, plans, and ordinances becoming repetitive, duplicative, or uncoordinated.

While it could be argued that it takes equal amounts of effort to coordinate proposed capital improvement projects under six 50-page plans as compared to two 150-page plans, the number of unique (unduplicated) interactions between two plans and six plans increases exponentially rather than linearly as the number of plans increase, *i.e.*, two plans create one unduplicated interaction, while six plans create fifteen unduplicated interactions.<sup>38</sup>

The second activity is to encourage state agencies implementing proposed capital improvement projects to utilize the consolidated application processes established in part IV, chapter 201, *Hawaii Revised Statutes*, section 46-18, *Hawaii Revised Statutes*, and section 205-3.1(c), *Hawaii Revised Statutes*. The mechanisms for consolidated application

processing, including the scheduling and coordination of public informational meetings and public hearings, have been in existence for several years now, and state agencies should be encouraged to make use of these mechanisms whenever possible. As previously discussed, state agencies have apparently made limited use of the consolidated application process, much less the opportunity to schedule and coordinate public informational meetings and public hearings.

State agencies implementing proposed capital improvement projects should be encouraged to utilize consolidated application processing for at least three years. A minimum three-year trial period would: (1) permit the development, testing, and evaluation of different consolidation processes; (2) link the consolidated application process to the three-year authorization period for general obligation bonds; and (3) place an emphasis on the realization of long-term improvements rather than the search for short-term solutions. Mandatory consolidated application processing should be limited, at least initially, to proposed projects that would require the preparation of an environmental impact statement to avoid inundating the lead agencies responsible for implementing the consolidated application processes.

The third activity is to encourage county agencies implementing proposed capital improvement projects with state funds to utilize the consolidated application process established in part IV, chapter 201, *Hawaii Revised Statutes*. The mechanism for consolidated application processing, including the scheduling and coordination of public informational meetings and public hearings, was in existence for several years while the Coastal Zone Management Program was under the Department of Business and Economic Development, and county agencies should be encouraged to make use of this mechanism whenever possible. As previously discussed, county agencies have apparently made no use of the consolidated application process, much less the opportunity to schedule and coordinate public informational meetings and public hearings.

The appropriation of capital improvement program funds to the counties by the Legislature through the general appropriations acts and supplemental appropriations acts could be made subject to the condition that the counties utilize the consolidated application process. The appropriations could also be deemed to satisfy section 5, Article VIII of the Constitution of the State of Hawaii, should this condition be misconstrued as a mandate to the counties.

The fourth activity is for the Department of Business, Economic Development, and Tourism to reassess the need for and, if appropriate, the priority that should be given to the consolidated application process established in part IV, chapter 201, *Hawaii Revised Statutes*, to facilitate the implementation of proposed capital improvement projects. As previously discussed, the development of the consolidated application process appears to have lost momentum in recent years--in part because of the reorganization of the Department and the transfer of functions to the Office of State Planning.

**Long-term improvements.** To place an emphasis on the realization of long-term improvements rather than the search for short-term solutions, the Office of State Planning, in consultation with affected state and county agencies, should review all existing state and county laws, plans, and ordinances to determine, among other things:

- (1) Whether or not the laws, plans, and ordinances are consistent with and, if not, can be made consistent with, the objectives and policies, functional plan components (i.e., implementing actions), and priority guidelines of the Hawaii State Planning Act;
- (2) Whether or not any laws, plans, or ordinances should be amended in part, consolidated with other laws, plans, or ordinances, or eliminated entirely; and
- (3) What amendments, if any, should be made to those laws, plans, and ordinances that implement the goals and objectives of the Legislature and the county councils with respect to land use and development.

In addition to reducing the number or scope of individual laws, plans, and ordinances, steps should be taken to ensure that the individual laws, plans, and ordinances are consistent with a single master plan--in this case the Hawaii State Planning Act. In enacting the Hawaii State Planning Act, the Legislature found that:<sup>39</sup>

. . . [T]here is a need to improve the planning process in this State, to increase the effectiveness of government and private actions, to improve coordination among different agencies and levels of government, to provide for wise use of Hawaii's resources and to guide the future development of the State.

The purpose of this chapter is to set forth the Hawaii state plan that shall serve as a guide for the future long-range development of the State; identify the goals, objectives, policies, and priorities for the State; provide a basis for determining priorities and allocating limited resources, such as public funds, services, human resources, land, energy, water, and other resources; improve coordination of federal, state, and county plans, policies, programs, projects, and regulatory activities; and to establish a system for plan formulation and program coordination to provide for an integration of all major state, and county activities.

Arguably, the likelihood that aspects of a particular law, plan, or ordinance will become repetitive, duplicative, or uncoordinated with other laws, plans, and ordinances increases if that law, plan, or ordinance becomes inconsistent with the objectives and policies, functional plan components, and priority guidelines of the Hawaii State Planning Act.

While it could be argued that conflicting laws, plans, and ordinances (or broadly-worded general plans--from which conflicting policies may emanate) are not intrinsically undesirable, there are few, if any, effective and efficient institutional mechanisms for resolving conflicts between different laws, plans, and ordinances.

New statutorily authorized land use and development plans, and the permits and approvals that implement these plans, should be made consistent with the objectives and policies, functional plan components, and priority guidelines of the Hawaii State Planning Act. Potential conflicts within and between respective land use and development plans, and the permits and approvals that implement these plans, should be addressed through the creation of additional priority guidelines or, where the counties are primarily concerned, comity (*i.e.*, a willingness to grant a privilege, not as a matter of right, but out of deference and goodwill).<sup>40</sup>

The substantive provisions of new land use and development plans, and the permits and approvals that implement these plans, should cite: (1) the statutory authority under which the provisions of these plans, and the permits and approvals, are being established; and (2) the objectives and policies, functional plan components, and priority guidelines that are being implemented, to ensure maximum consistency with the Hawaii State Planning Act. State and county agencies should be required to explain, at the very minimum, how a particular provision of a plan, or a permit or approval, implements a law or an objective or policy, functional plan component, or priority guideline of the Hawaii State Planning Act, to ensure that this procedure does not become "just another paper exercise for planners". State and county agencies should also be required to identify any provision of any plan, or any permit or approval, that is inconsistent with the objectives and policies, functional plan components, and priority guidelines of the Hawaii State Planning Act, to alert the Legislature, the county councils, and other state and county agencies to these inconsistencies.

Potential and actual conflicts between the priority guidelines for economic development, population growth and land resource management, affordable housing, crime and criminal justice, and quality education, should be resolved, or an effective and efficient institutional mechanism for resolving these conflicts should be developed at least. While the priority guidelines discuss precedence within the areas of economic development, population growth and land resource management, affordable housing, crime and criminal justice, and quality education, the Hawaii State Planning Act does not discuss which priority guideline takes precedence over another priority guideline when the guidelines conflict with one another. Ironically, one of the priority guidelines "to stimulate economic growth and encourage business expansion and development to provide needed jobs for Hawaii's people and achieve a stable and diversified economy" is to "[s]treamline the building and development permit and review process, and eliminate or consolidate other burdensome or duplicative governmental requirements imposed on business, where public health, safety and welfare would not be adversely affected".<sup>41</sup>

## Recommendations

The Bureau recommends that the Legislature:

- (1) Reduce, through consolidation, elimination, or modification, the number or scope of individual state and county land use and development laws, plans, and ordinances;
- (2) Encourage state agencies implementing proposed capital improvement projects to utilize the consolidated application processes established in part IV, chapter 201, *Hawaii Revised Statutes*, section 46-18, *Hawaii Revised Statutes*, and section 205-3.1(c), *Hawaii Revised Statutes*.

If the Legislature decides to implement this recommendation, the Bureau suggests: (A) establishing a minimum three-year trial period to permit the development, testing, and evaluation of different consolidation processes; and (B) limiting mandatory consolidated application processing, at least initially, to proposed projects that would require the preparation of an environmental impact statement; and

- (3) Encourage county agencies implementing proposed capital improvement projects with state funds to utilize the consolidated application process established in part IV, chapter 201, *Hawaii Revised Statutes*.

If the Legislature decides to implement this recommendation, the Bureau suggests that the appropriation of capital improvement program funds to the counties by the Legislature through the general appropriations acts and supplemental appropriations acts be made subject to the condition that the counties utilize the consolidated application process. The appropriations should also be deemed to satisfy section 5, Article VIII of the Constitution of the State of Hawaii, in the event this condition is misconstrued as a mandate to the counties.

Depending on the findings and recommendations of the preliminary report submitted to the 1993 Legislature by the Office of State Planning, pursuant to section 164 of Act 300, Session Laws of Hawaii 1992, the Bureau recommends that the Legislature coordinate the implementation of the three abovementioned recommendations with the Governor.

The Bureau recommends that the Department of Business, Economic Development, and Tourism reassess the need for and, if appropriate, the priority that should be given to the consolidated application process established in part IV, chapter 201, *Hawaii Revised Statutes*, to facilitate the implementation of proposed capital improvement projects.

## ENDNOTES

1. For example, according to Sumner La Croix:

... [I]t [the government] has enacted regulations significantly increasing the cost of building new housing. For example, Honolulu's development plan, comprehensive zoning code, subdivision code, grading code and building code all impose heavy costs on developers. The existence of these rules and regulations means that developers must incur the cost of multiple studies, infrastructure to meet subdivision ordinances and project-design changes as mandated by government. In addition, the cost of resulting project delays--and there tend to be many--are considerable. Developers expect to take at least four to six years just to get the necessary approvals.

Why has government done this? Wouldn't approving more projects be politically popular? Defenders of the status quo argue that a heavy hand has been necessary to preserve Honolulu's pristine environment and relatively high quality of life. Certainly this is a partial explanation, but one that, frankly, rings hollow.

For a full explanation, one must consider who has benefitted. Besides reading Cooper and Daws' Land and Power in Hawaii, note that homeowners gain from high housing prices. Any policy action to reduce housing prices would impose capital losses on current owners . . . .

Sumner La Croix, "Cost of Housing". The Price of Paradise: Lucky We Live Hawaii?, ed., Randall Roth (Hawaii: Mutual Publishing: 1992), p. 169.

Although La Croix's opinions are subject to debate, the siting of objectionable (but essential) capital improvement projects (e.g., power plants and transmission lines, sewage treatment plants and ocean outfalls, sanitary landfills and incinerators, etc.) near residential areas does periodically spawn the reemergence of "NIMBY-ism", which stands for "Not In My Back Yard"--but inevitably means "put it in my neighbor's back yard".

The point of this discussion is that the underlying reasons for regulating specific land use and development activities are not always what they seem to be or, for that matter, what others purport them to be. Any attempt to delve into the issue of whether or not state and county agencies should be regulating specific land use and development activities would have to discern these reasons before coming to any useful conclusions about the regulation of specific activities.

2. For example, section 103-39.5, Hawaii Revised Statutes, exempts from any requirement of a county that related off-site improvements be made by the contracting government agency as a condition to the issuance of any permit, any contracts under the law relating to the expenditure of public money and public contracts (chapter 103, Hawaii Revised Statutes) for the construction, renovation, or repair of public school facilities.

According to House Standing Committee Report No. 197-92, regarding H.B. No. 2784, H.D. 1:

Under present law the department of education is required to construct off-site improvements as a condition to the issuance of any county permit relating to the construction, renovation and repair of its school facilities. This requirement imposed by the counties have hampered the department of education's efforts in making very critically needed repairs to its school facilities in a timely and cost efficient manner.

House Standing Committee Report No. 197-92, on House Bill No. 2784, Sixteenth Legislature, 1992, State of Hawaii.

Ironically, state and county governments have imposed similar requirements on private developers for many years. These requirements, according to some sources, have similarly hampered private developers' abilities to construct housing in a timely and cost efficient manner. The issue of whether or not it is proper for state and county governments to link the issuance of permits and approvals to impact fees and housing exactions (off-site improvements) is beyond the scope of this study, however, factors such as legislative intent, due process, equal protection, rational nexus, and legitimate government interests would appear to apply equally to the off-site improvements required of private developers and the Department of Education.

See: (1) Dan Davidson and Ann Usagawa, eds., Paying for Growth in Hawaii: An Analysis of Impact Fees and Housing Exactions Programs (Land Use Research Foundation of Hawaii, 1988), 200 pp.; (2) George Cooper and Gavan Daws, Land and Power in Hawaii: The Democratic Years (Hawaii: Benchmark Books, 1985), 528 pp.; and (3) Randall Roth, ed., The Price of Paradise: Lucky We Live Hawaii? (Hawaii: Mutual Publishing, 1992), 272 pp., for more detailed accounts of and discussions on state and county impact fees and housing exactions programs.

The point of this discussion is that state and county governments have required private developers to make off-site improvements for many years. Any attempt to delve into the issue of whether or not state and county governments have imposed unreasonably burdensome permit and approval requirements on county and state applicants, respectively, would have to consider the reasonableness of the requirements imposed on private developers in light of such factors as legislative intent, due process, equal protection, rational nexus, and legitimate government interests.

3. For example, section 18-3.1(b)(12), Revised Ordinances of Honolulu 1990, exempts from having to obtain a "building permit" (which consolidates permits for the building, electrical, plumbing, and sidewalk codes), work performed for any state government agency, except where the permit is specifically requested by the agency. Although state agencies could consider themselves exempt from having to obtain a permit or decide not to request a permit, questions of liability and adequate public services need to be carefully weighed against the benefits of being free from all permits and approvals.

With respect to the question of liability, do state agencies and their consultants have the technical expertise needed to ensure that the plans and specifications for a proposed project meet the requirements established by the building, electrical, plumbing, and sidewalk codes? Do state agencies have the technical expertise needed to certify that a completed building or facility meets the requirements established by these codes? What, if any, are the risks to public health and safety?

With respect to the question of adequate public services, should state agencies be allowed to build in areas that are not adequately sewered or, for that matter, currently unsewered? Should state agencies be allowed to build in areas that are not currently serviced by the Honolulu Board of Water Supply or other supplier of water? What, if any, are the risks to public health and safety, and the environment?

The point of this discussion is that state agencies can consider themselves exempt from having to obtain a building permit or decide not to request a permit if they so desire. Any attempt to delve into the issue of whether or not state and county agencies are justified in denying particular permits and approvals must discern the reasons why most state agencies still continue to request building permits, and whether or not there are actual (as opposed to perceived) risks to public health and safety, and the environment.

Subject to specific limitations, section 21-3.150, Revised Ordinances of Honolulu, allows the director of land utilization to waive the strict application of the development or design standards of the Land Use Ordinance for public uses and utility installations, except where the uses require a plan review use (PRU) approval.

4. The Urban Land Institute is an independent, nonprofit research and educational organization incorporated in 1936 to improve the quality and standards of land use and development. The Institute is committed to:

conducting practical research in the various fields of real estate knowledge: identifying and interpreting land use trends in relation to the changing economic, social, and civic needs of the people, and disseminating pertinent information leading to the orderly and more efficient use and development of land. The Institute receives its financial support from membership dues, sale of publications, and contributions for research and panel services. Fred Bosselman, Duane Feurer, and Charles Siemon, The Permit Explosion: Coordination of the Proliferation (Washington, D.C.: Urban Land Institute, 1976), p. ii.

5. Ibid., p. vii.
6. Ibid., p. vi.
7. Fred Bosselman, Duane Feurer, and Charles Siemon, The Permit Explosion: Coordination of the Proliferation, pp. 81 and 85.
8. The Institute also met with representatives from the following United States standard metropolitan statistical areas: Philadelphia, Pennsylvania-Camden, New Jersey; Minneapolis-Saint Paul, Minnesota; San Antonio, Texas; and Salinas-Seaside-Monterey, California.
9. Arguably, it is safer for government agencies to let members of the regulated community sort through and reconcile conflicting permit requirements than it is for government agencies to sort through and reconcile conflicting permit requirements for members of the regulated community.
10. David Callies, Regulating Paradise (University of Hawaii Press, 1984), p. 1.
11. Ibid., pp. 170 - 171.
12. City and County of Honolulu, Department of Land Utilization, Permit Register (September 1989), 218 pp.

Because of time constraints, the Bureau limited its discussion of this particular topic to the City and County of Honolulu and the Department of Land Utilization. The ensuing discussion should not be construed as a criticism of the City and County of Honolulu or the Department of Land Utilization.

13. According to Callies:

There are some land use regulations about which neither the state nor Hawaii's four counties can do very much. These are the land use management and control programs imposed as a result of participation in federal programs. Either required by federal law or promulgated in response to a federal grant program, these "federalized" state and local land use controls touch virtually every aspect of state and local land use regulation in Hawaii. [citation deleted] . . .

While there is some flexibility in drafting these land use controls, the state has little choice but to adopt something responsive to standards and criteria in these federal laws. Well-intentioned as they are, they add yet another series of land use regulations that restrict the use of land, a series of regulations that is difficult to coordinate, much less prune or delete.

David Callies, Regulating Paradise, pp. 171 - 172.

14. Hawaii, Inter-Agency Task Force for State Permit Simplification, "Preliminary Report of Findings and Recommendations" (March 1981), Attachment A.
15. Act 237, Session Laws of Hawaii 1985, was supposed to be repealed on June 30, 1987.



## PERMITTING

16. Act 237, Session Laws of Hawaii 1985.
17. Interview with Douglas Tom, Chief, Hawaii Coastal Zone Management Program, Office of State Planning, October 12, 1992. Tom was responsible for carrying out the consolidated application process while the Hawaii Coastal Zone Management Program was under the Department of Business and Economic Development.
18. This conclusion is further bolstered by the fact that Act 293, Session Laws of Hawaii 1990, amended section 201-61 (definitions), Hawaii Revised Statutes, by changing the term "Department of Business and Economic Development" to "Department of Business, Economic Development, and Tourism". This amendment places the consolidated application process statutorily within the Department of Business, Economic Development, and Tourism, rather than the Office of State Planning.
19. A "permit" is any license, permit, certificate, certification, approval, compliance schedule, or other similar document or decision pertaining to any regulatory or management program, which is: (1) related to the protection, conservation, use of, or interference with, the natural resources of land, air, or water, in the State; and (2) required prior to constructing or operating a project. A "project" is any land or water use activity or any construction or operation that requires permits from: (1) one or more state agencies; or (2) a state agency and a county or federal agency. Construction or operation of an activity includes, but is not limited to, housing, industrial, and commercial operations and developments. Hawaii Rev. Stat., sec. 201-61 (see definitions of "permit" and "project").
20. Tom interview.
21. Ibid.
22. Ibid.
23. Hawaii, Department of Planning and Economic Development, "A Report on the Implementation of Act 237, SLH 1985" (1987), p. 3 (without attachment).
24. Ibid.
25. Hawaii Rev. Stat., sec. 196D-2.
26. Interview with Kathy Sokugawa, Chief, Regulations Branch; Calvin Ching, Head, Zoning Division; and Loretta Chee, Deputy Director, Department of Land Utilization, City and County of Honolulu, October 16, 1992.
27. Ibid.
28. Ibid.
29. This is also referred to as using the "too big to kill" approach to obtain permits and approvals. The typical modus operandi of an applicant who uses this approach on a project is to obtain one permit or approval at a time from different state and county agencies--never revealing the entire scope of the project to any one agency--and to claim that the project has become "too big to kill" (because of the large amount of time and money invested on the project to date) if and when a subsequent agency refuses to issue a needed permit or approval.
30. Sokugawa, Ching, and Chee, interview.
31. Ibid.

Act 74, Session Laws of Hawaii 1977, which is codified as section 46-18, Hawaii Revised Statutes, was not subject to the requirements of section 5 of Article VIII of the Constitution of the State of Hawaii, which was ratified on November 7, 1978.

32. Ibid.
33. See Therese Freeman and James Gollub, "Honolulu's Land Use Management System: A Strategy for Improvement", prepared for the Honolulu City Council (Final Report)(California: SRI International, 1985), pp. 90, for a summary and comparison of the various roles that have been recommended for the Department of Land Utilization in its capacity as the City's central coordinating agency.
34. Sokugawa, Ching, and Chee, interview.
35. A "process" is defined as a systematic series of actions directed to some end. Robert Costello, ed., Random House Webster's College Dictionary (New York: Random House, Inc., 1991), p. 1075.
36. The identities of these individuals are not relevant to this study and have been intentionally left out of this report.
37. Conversely, it could be argued that the repetitive, duplicative, and uncoordinated nature of some permits and approvals stem, at least in part, from the manner in which state and county agencies choose to implement land use and development laws, plans, and ordinances. For the purposes of this study, however, the Bureau assumed that problems stemming from the implementation of these laws, plans, and ordinances were subordinate to problems stemming from their enactment.
38. With two plans, "a" and "b", there is one unduplicated interaction--"a x b". The reverse interaction, "b x a", is a duplication of "a x b".  
  
With six plans, "a", "b", "c", "d", "e", and "f", there are fifteen unique interactions--"a x b", "a x c", "a x d", "a x e", "a x f", "b x c", "b x d", "b x e", "b x f", "c x d", "c x e", "c x f", "d x e", "d x f", and "e x f".  
  
With three plans, there are three unduplicated interactions. With four plans, there are six unduplicated interactions. With five plans, there are ten unduplicated interactions.  
  
The number of ways of ordering "n" distinct (different) objects taken "r" at a time is designated by the symbol  $P_r^n$ .  
  
$$P_r^n = (n!)/(r![n - r]!)$$
39. Hawaii Rev. Stat., sec. 226-1.
40. Henry Black, Black's Law Dictionary, Abridged 5th ed. (Minnesota: West Publishing Co., 1983), p. 139 (see definition of "comity").
41. Hawaii Rev. Stat., sec. 226-103(a)(5).

## **Chapter 7**

### **SUMMARY**

This chapter recaps in summary form some of the problems and relevant developments that affect the orderly and timely implementation of proposed capital improvement projects by state and county agencies that will be the principal users of the proposed projects when the projects are completed. Readers are cautioned that the statements in this chapter have been highly generalized, greatly reduced and, to some extent, overly simplified in the interest of brevity. The statements do not contain the prefatory explanations or background information that have been discussed in preceding chapters. Because of the technical nature of the capital improvements program and proposed capital improvement projects, the use of idiomatic expressions to describe key concepts and principles could not be avoided.

**Chapter 3: Designing Buildings and Facilities to Accommodate Persons with Physical Disabilities - the Commission on Persons with Disabilities** (for related recommendations, see pages 31 to 32)

- (1) Some architects are not submitting building and facility plans to the Commission for a preliminary review early in the design phase of a proposed project or when the plans are not more than sixty to eighty percent complete.
- (2) The backlog of plans and specifications awaiting review by the Commission during June 1992 delayed the review of documents by approximately eight to ten weeks, compared to a typical document review time of approximately two weeks.
- (3) Some contractors are not adhering to the plans and specifications for buildings and facilities, and some architects and project managers are not conducting adequate field inspections to ensure adherence to these plans and specifications.
- (4) Site surveys to determine the scope and cost of proposed projects intended to renovate existing buildings or facilities, and to remove architectural barriers to persons with physical disabilities, are no longer conducted by the Commission.

**Chapter 4: The Hawaii State Environmental Impact Statements Law - the Office of Environmental Quality Control (OEQC)** (for related recommendations, see pages 48 to 49)

- (5) The implementation of some environmentally-adverse projects are challenged on procedural grounds even though the underlying issue is one of aesthetics and the decision to proceed or not to proceed one of executive privilege.

- (6) Delays involving a state or county agency's failure to prepare an environmental assessment (EA) usually stem from the agency's failure to consult with the OEQC on the matter of whether an EA should be prepared for a proposed project.
- (7) Delays involving a state or county agency's issuance of a negative declaration usually stem from the lack of early consultation with appropriate agencies and concerned citizens and groups during the preparation of the EA.
- (8) Delays involving the Governor's or a mayor's acceptance of a final environmental impact statement (EIS) stem partly from an agency's failure to consult with appropriate agencies and concerned citizens and groups prior to filing the draft EIS.
- (9) On the advice of the Department of the Attorney General the OEQC recently reversed an earlier decision not to publish in the *OEQC Bulletin* environmental assessments that did not meet the requirement for early consultation.
- (10) In some instances a final EIS for a proposed project is used by a state or county agency to rationalize or defend the agency's decision to proceed with the implementation of the project in a predetermined manner.
- (11) The State's reliance on private consultants makes it difficult for state and county agencies to develop the in-house expertise needed to prepare an adequate EA and draft EIS, and to respond to public comments and concerns during the preparation of a final EIS.
- (12) Negative declarations are sometimes issued by state and county agencies, without regard to environmental effects, to save time and keep proposed projects on schedule.
- (13) Some state and county agencies are preparing environmental assessments and issuing negative declarations for proposed projects that could be declared exempt from the preparation of an EA pursuant to section 343-6(7), *Hawaii Revised Statutes*.

**Chapter 5: Executive Memorandum No. 88-16 - The Department of Budget and Finance Capital Improvements Program (CIP) Branch** (for related recommendations, see pages 79 to 82)

- (14) Staff shortages and the lack of sufficient time to thoroughly review all proposed projects when the executive budget is being prepared for submission to the Legislature delay the timely and orderly implementation of these projects.

## SUMMARY

- (15) Recommendations for the Director of Finance regarding the deferment of proposed projects are developed by the CIP Branch after the Branch has reviewed an agency's implementation and expenditure plan and established the agency's expenditure ceiling.
- (16) Allotment requests for plan funds or design funds are usually not recommended for the Governor's approval unless there is a firm commitment--usually in the form of a future appropriation--from the Legislature or the implementing agency to construct the project.
- (17) The amount of time needed to review an allotment request and process an allotment advice increases as the complexity of a proposed project increases.
- (18) The Governor recently allowed the Director of Transportation and the Comptroller to submit their respective allotment advices for the Governor's approval without the normal review by the Department of Budget and Finance.
- (19) Some of the perceived "delays" in the implementation of proposed projects stem from the CIP Branch's recommendation to the Director of Finance that the implementation of a project be deferred until a later date.
- (20) If an agency does not list a proposed project in its expenditure plan, the project may be deferred on the recommendation of the CIP Branch to the Director of Finance.
- (21) Conditions within the marketplace determine the number of proposed projects that can be implemented. Few, if any, agencies have exceeded or come close to exceeding their expenditure limits. Agency expenditures have been one-third to one-half of established limits.
- (22) The Department of Budget and Finance will be consulting with the Department of Accounting and General Services on the development of an expenditure tracking system that is not based on agency expenditure limits.
- (23) The Department of Budget and Finance has developed new procedures for the 1992-1993 fiscal year to facilitate the implementation of proposed projects. The new procedures, which have not been formally approved by the Director of Finance or the Governor, are intended to do away with the need to establish new agency expenditure limits each year.

- (24) The continual loss of institutional knowledge through retirements, resignations, and other forms of attrition has created experience gaps in some agencies that implement proposed projects. These gaps impede the timely and orderly implementation of projects.
- (25) "Pork barrel" projects impact the implementation of all proposed projects since "pork" competes with other projects for the same resources, and the executive branch's capital improvements program must be reprioritized to allow the implementation of "pork".
- (26) It takes the CIP Branch approximately one week to review a typical allotment request for a proposed project. It can take as few as three days or more than three months to review an allotment request and process an allotment advice for a proposed project.
- (27) Although assessments of alternatives to proposed capital improvement projects form an integral part of the State's planning, programming, and budgeting system, some agencies spend little or no time assessing these alternatives.
- (28) Allotment requests for proposed projects that are not consistent with Memorandum No. 88-16 are recommended for deferment unless general fund savings or balances are available to finance the projects, where the means of financing is the general obligation bond fund.
- (29) Some proposed projects authorized by the Legislature and approved by the Governor, and implemented by the Department of Accounting and General Services on behalf of the Department of Education, do not conform to educational specifications.
- (30) Deviations from educational specifications typically, but not always, involve the implementation of pork barrel projects or projects that are considered "significant".
- (31) Other deviations from educational specifications involve the submittal of plans that do not conform to specifications, the lack of funds to conduct repair and maintenance work, the lack of necessary variances, and the purchase of non-allowable equipment.
- (32) Some agencies are not reporting the existence of unrequired capital improvement program balances after the objectives of appropriations for proposed projects from the general obligation bond fund and the general fund have been met.

## SUMMARY

- (33) The Governor is sometimes not made aware of the existence of unrequired balances of capital improvement program funds until an agency requests the Governor's permission to use these balances to supplement a project of the agency's choosing.

### Chapter 6 - Permitting (for related recommendations, see page 111)

- (34) The Consolidated Application Process, which was being administered by the Hawaii Coastal Zone Management Program, remains codified among the responsibilities of the Department of Business, Economic Development, and Tourism.
- (35) Only one state agency--the Aloha Tower Development Corporation--ever requested a consolidated application processing pursuant to state law. No county or federal agencies made use of the consolidated application process.
- (36) No state agencies have asked the City and County of Honolulu Department of Land Utilization to schedule or coordinate any public informational meetings or public hearings held by other federal, state, or county commissions or agencies.
- (37) Coordinating the referral of permit applications and approvals within and between county departments has become a matter of standard operating procedure; however, actually coordinating the permits and approvals themselves is still a difficult matter.
- (38) The issuance of some permits and approvals are now dependent on the issuance of other permits and approvals, and some applicants have found the "piecemeal-approach" to obtaining permits and approvals easier to use.

HOUSE OF REPRESENTATIVES  
SIXTEENTH LEGISLATURE, 1992  
STATE OF HAWAII

H.C.R. NO.

187  
H.D. 1

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## HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO STUDY THE CURRENT CIP IMPLEMENTATION PROCESS AND IDENTIFY PROBLEMS THAT ADVERSELY AFFECT THE TIMELY IMPELEMENTATION AND COMPLETION OF PROJECTS.

WHEREAS, capital improvements typically refer to the land, physical facilities, and initial equipment and furnishings for newly constructed physical facilities; and

WHEREAS, capital improvement projects (CIPs) regularly constitute a major portion of the biennial and supplemental budgets approved by the Legislature; and

WHEREAS, in 1991, the Legislature adopted a biennium budget that authorized over \$2.3 billion in CIPs ranging from major projects such as the construction of a portion of the H-3 Freeway (\$443 million) to small projects such as the design of a microwave tower and generator enclosure on Molokai (\$19,000); and

WHEREAS, the Department of Transportation, the Department of Land and Natural Resources, Hawaii Housing Authority, Hawaii Community Development Authority and the Housing Finance Development Corporation, the Department of Education, and the University of Hawaii are among the major user and expending agencies of CIP appropriations; and

WHEREAS, the Public Works Division of the Department of Accounting and General Services, as the expending agency, provides both analytic and technical assistance to user agencies before and after capital appropriations are authorized; and

WHEREAS, recently, some have questioned whether the current CIP implementation process can be improved; and

WHEREAS, because of the importance that government construction plays in implementing State policy, it is appropriate that the State review the adequacy of the existing CIP implementation process and determine whether or not the current system represents the most efficient, effective, and prudent way by which CIPs should be implemented; now, therefore,



BE IT RESOLVED by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, the Senate concurring, that the Legislative Reference Bureau is requested to study the current CIP implementation process; and

BE IT FURTHER RESOLVED that the study include, but not be limited to, the following:

- (1) The identification of problems that affect the orderly and timely implementation of projects by the user agencies;
- (2) The identification of problems and delays caused by the permitting process; and
- (3) The identification of problems that adversely affect the orderly and timely completion of CIP projects;

and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau submit a report of findings and recommendations to the Legislature no later than twenty days prior to the convening of the regular session of 1993; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Director of the Legislative Reference Bureau, the Director of Transportation, Chair of the Board of Land and Natural Resources, Director of the Hawaii Housing Authority, Director of the Hawaii Community Development Authority, Director of the Housing Finance Development Corporation, the Superintendent of Education, the President of the University of Hawaii, and Comptroller of the Department of Accounting and General Services.

## Appendix B

### EXPENDITURE PLAN/ALLOTMENT ADVICE PROCESS

- I. The objectives of the Expenditure Plan process are to:
  - A. Prioritize all projects receiving CIP funding for:
    1. Planning.
    2. Land acquisition.
    3. Design.
    4. Construction.
    5. Equipment.
  - B. Develop departmental spending ceiling based on the priority list for B & F review and approval of:
    1. Total spending for the fiscal year.
    2. Incremental spending by quarter of the fiscal year.
  - C. Provide B. & F with basis for release of CIP allotment advice that are:
    1. On departmental priority list.
    2. Within spending ceilings.
  - D. Provide B & F with basis for evaluation, review and approval of the overall state budget. The state budget will incorporate:
    1. Administrative policy from the Governor's office.
    2. Compilation of all State departmental Expenditure plans.
    3. The State's financial condition for:
      - a. Available cash balance.
      - b. Special funds.
      - c. Bonding capacity or credit rating.
- II. The objectives of the Allotment Advice process are to:
  - A. Provide departments with the mechanism to request the release of CIP funds appropriates by the legislature.
  - B. Provide B & F with the mechanism to monitor and control release of CIP funds. B & F is responsible for:
    1. Evaluation of departmental requests for:
      - a. Appropriateness of submittal request.
      - b. Compliance with:
        - (1) The intent or language of the CIP appropriation (Table R).
        - (2) Departmental Expenditure plan.
    2. Maintenance of the overall State budget.
    3. Maintenance of the Stat's [sic] available cash balance and bonding capacity or credit rating.
    4. Issuance of Allotment Advice signed by the Governor with identification numbers.
  - C. Therefore, B & F will not process Allotment Advice if:
    1. The project requesting release of CIP funding is not:
      - a. In compliance with the intent or language of the CIP appropriation.
      - b. On the approved departmental Expenditure plan.
    2. The department exceeds its spending ceiling.
    3. The State budget, available cash balance, bonding capacity or credit rating will be jeopardized.

Source: Hawaii, Department of Accounting and General Services, Public Works Division, Planning Branch, Education Section (August 10, 1992).

### PROJECT DEVELOPMENT REPORT (PDR)

- I. The objectives of a PDR are to:
  - A. Determine and compile the following user requirements:
    1. On-site space needs for:
      - a. Staff areas (including office circulation).
      - b. Program functions, such as:
        - (1) Reception area.
        - (2) Conference / work / interview rooms.
        - (3) Library / reference areas.
        - (4) Storage (for office supplies).
        - (5) Other areas (as required), such as:
          - i. Work tables.
          - ii. Computer stations.
          - iii. Filing system.
          - iv. Unique project requirements.
      - c. Equipment, such as:
        - (1) Xerox copiers (including storage for equipment supplies).
        - (2) Computer networking system.
        - (3) Intercom system, etc.
      - d. General building features, such as:
        - (1) Building circulation (corridors and lobbies).
        - (2) Electrical power supply system.
        - (3) Air conditioning system.
        - (4) Water systems:
          - i. Drinking water.
          - ii. Fire flow.
        - (5) Telephone system.
        - (6) Other areas (as required), such as:
          - i. Restrooms.
          - ii. Janitor rooms.
          - iii. Elevator/stairwell shafts.
          - iv. Unique project requirements.
      - e. General site features (estimated), such as:
        - (1) Parking stalls.
        - (2) Access roads.
        - (3) Open/landscaped areas.
        - (4) Other areas (as required), such as:
          - i. Power transformer pad.
          - ii. Potable water pump station.
          - iii. On-site sewage disposal system.
          - iv. On-site drainage system.
          - v. Unique project requirements.
    2. Off-site infrastructure capacity for:
      - a. Electrical power supply.
      - b. Water supply:
        - (1) Drinking water.
        - (2) Fire flow.
      - c. Sewage system.
      - d. Drainage system.

- e. Other systems (as required), such as:
    - (1) Arterial roadways.
    - (2) Telephone system.
    - (3) Computer system.
    - (4) Unique project requirements.
  - B. Develop "bubble" diagrams of functional relationships (as required) between:
    - 1. Programs / operations.
    - 2. Offices.
    - 3. Staff.
    - 4. Specific areas.
  - C. Develop "single-line" schematic drawings (as required) based on:
    - 1. Space needs (refer to "A").
    - 2. Functional relationships (refer to "B").
  - D. Develop preliminary project cost estimates for anticipated on-site/off-site work.
- II. The PDR will be used as design guidelines for subsequent construction plans and specifications to be used in the DAGS bidding process.

Source: Hawaii, Department of Accounting and General Services, Public Works Division, Planning Branch, Education Section (August 10, 1992).

## **Appendix D**

### **SITE SELECTION STUDY (SS)**

- I. The objectives of a SS are to:
  - A. Identify potential project sites to be considered based on:
    1. General sizing of lot as determined by PDR or any other DAGS/user criteria.
    2. General vicinity as established by DAGS/user agency.
  - B. Compare and evaluate each site under consideration based on:
    1. Criteria approved by DAGS/user agency, such as:
      - a. General shape (length vs. width).
      - b. General slope of terrain (less than 10%).
      - c. General proximity to existing roads and utilities (electrical, water, sewage, drainage, telephone systems, etc.).
      - d. Existing zoning and/or usage.
      - e. Existing ownership.
      - f. Other factors (as required), such as:
        - (1) General proximity to DAGS/user specified location.
        - (2) Land acquisition cost estimate.
        - (3) On-site/off-site development cost estimate.
        - (4) Other factors unique to the project.
    2. Methodology approved by DAGS/user agency for "rating" each site under consideration.
  - C. Summarize and compile all determinations for user selection of project site.
- II. Based on the SS, the user agency is to:
  - A. Recommend site selection for governor's approval.  
and
  - B. Authorize DAGS/DLNR to proceed with land acquisition process for site approved by Governor.

Source: Hawaii. Department of Accounting and General Services, Public Works Division, Planning Branch, Education Section (August 10, 1992).

**ENVIRONMENTAL IMPACT STATEMENT (EIS)**

- I. The objectives of an EIS are to:
  - A. Provide the general public with documents for all proposed projects using State funds. These documents will include general information (but not be limited to) the following topics:
    1. Project justification (reasons for needing the proposed project).
    2. Project site information, such as:
      - a. Tax map key (TMK) and lot size.
      - b. Current zoning and lot usage.
      - c. Current lot ownership.
    3. Project description or scope for:
      - a. On-site work, such as:
        - (1) Buildings.
        - (2) Roads.
        - (3) Utilities.
        - (4) Other.
      - b. Off-site work, such as:
        - (1) Roads.
        - (2) Utilities.
        - (3) Other.
    4. Identification of anticipated impacts, both short and long term, resulting from the proposed project on:
      - a. The surrounding environment, such as:
        - (1) Flora/fauna.
        - (2) Ambient air quality.
        - (3) Ambient water quality.
      - b. Items of archaeological or historic significance found on or near the project site.
      - c. The local economy, such as:
        - (1) Employment.
        - (2) Income level.
      - d. The local community, such as:
        - (1) Social issues, such as:
          - i. Standard of living.
          - ii. Family/welfare concerns.
          - iii. Housing.
          - iv. Other.
        - (2) Population growth.
        - (3) Traffic growth.
    5. Estimated project development costs and completion schedules for:
      - a. Land acquisition.
      - b. On-site work.
      - c. Off-site work.
    6. Discussions on the proposed project that:
      - a. Evaluate the impacts of alternatives for the proposed project.
      - b. Justify development of the proposed project.

- B. Solicit public comments on the proposed projects during:
  - 1. Environmental Assessment (EA) preparation notice / consultation phase.  
(NOTE: initial publication where comments are solicited from list of interested parties; list developed by DAGS/user agency/OEQC)
  - 2. DAGS/user agency decision to pursue either:
    - a. Negative declaration (ND) for proposed projects assessed to have "no significant impact" and therefore, require no further public comments.
    - b. Draft EIS (DEIS) for proposed projects assessed to have "significant impacts" and therefore, require additional public comments.
  - 3. Final EIS (as required, if DEIS is pursued).
- C. As required, respond to public comments on proposed projects in the Final EIS (FEIS) by:
  - 1. Incorporation of the comments into the proposed projects and revising the DEIS or FEIS accordingly.
  - 2. Explaining or justifying why comments will not be incorporated into the proposed projects.
  - 3. Compiling all comments and responses in the FEIS.
- II. The Department of Health's (DOH) Office of Environmental Quality Control (OEQC) is responsible for processing all EIS documents for the State of Hawaii. The following comments are also provided on this matter:
  - A. State statutes provide the guidelines for OEQC operations related to EIS documents.
  - B. All EIS documents need to be filed through OEQC for public announcements.
  - C. OEQC has developed a listing of minor projects that are "exempt" from having to file an EIS document. See OEQC Exemption list dated 25 May 1978 (updated 05 May 1992).

Source: Hawaii, Department of Accounting and General Services, Public Works Division, Planning Branch, Education Section (August 10, 1992).

## Appendix F

### LAND ACQUISITION (LA) PROCESS

- I. The objectives of the LA process are to:
  - A. Identify property information for a specific parcel of land identified by SS / EIS documents or other means. This includes:
    1. Metes and bounds.
    2. Current property ownerships.
    3. Current zonings.
    4. Current appraisal values.
  - B. Develop justifications for the LA process.
  - C. Propose method for acquisition, such as:
    1. Purchase.
    2. Condemnation.
    3. Property exchange.
    4. Donations.
  - D. Provide DAGS / user agency with enough information needed to request the Department of Land and Natural Resources (DLNR) to:
    1. Process approval for the proposed LA process from Board of Land and Natural Resources (BLNR).
    2. Initiate the proposed LA process by either:
      - a. Making a written offer to purchase the property at the State's appraisal value.
      - b. Issuing condemnation procedures (based on the State's appraisal value).
      - c. Making a written offer for exchange of properties of equivalent appraisal values.
      - d. Making a written request for property donation to the State.
    3. Complete the LA process by either:
      - a. Executing the land purchase agreement.
      - b. Executing the condemnation procedures.
      - c. Executing the property exchange agreement.
      - d. Executing land donation to the state.
    4. Process Executive Order (EO) for the acquired property to DAGS/user agency for further developments.
- II. DLNR is responsible for processing all land transactions for the State of Hawaii. The following comments are also provided on the matter.
  - A. DLNR retains ownership of all State lands.
  - B. EOs are issued for control and/or maintenance of State lands by other designated State agencies.
  - C. EOs need to be:
    1. Approved by BLNR.
    2. Signed by the Governor.
  - D. EOs can take years to process so most times BLNR approval is sufficient authorization to proceed with project developments on acquired property.

Source: Hawaii. Department of Accounting and General Services, Public Works Division, Planning Branch, Education Section (August 10, 1992).



### MASTER PLANNING (MP) PROCESS

- I. The objectives of the MP process are to:
  - A. Develop alternative Site Utilization plans that identify potential areas of "designated" developments for DAGS/user agency review and comments. The site Utilization plans incorporate preliminary considerations for:
    1. PDR on-site requirements, such as:
      - a. Space for new construction items, such as:
        - (1) Buildings.
        - (2) Roadways and parking.
        - (3) Open areas.
          - (a) Playing fields.
          - (b) Parks.
          - (c) Setbacks, clearance and "buffer" zones.
          - (d) General landscaping.
        - (4) Other structures (as required) for:
          - (a) Electrical transformer pad.
          - (b) Sewage treatment system and leach field.
          - (c) Drainage system.
          - (d) Water systems for:
            - i. Domestic water.
            - ii. Fire flow.
          - (e) Other (i.e. telephone and data systems).
        - b. Infrastructure alignments and tie-ins with off site systems, such as:
          - (1) Electrical power.
          - (2) Sewage.
          - (3) Drainage.
          - (4) Water.
          - (5) Roadways.
          - (6) Other (telephone, data, etc).
        - c. Functional relationships.
      3. Phasing of project development.
      4. Federal, State and County or DAGS/user agency design criteria.
    - B. Develop alternative Ultimate Site plans based on the Site Utilization plan selected by DAGS/user agency. The Ultimate Site plans incorporate detailed "footprints" for DAGS/user agency review and comments based on Site Utilization plan, PDR, SS and EIS determinations, such as:
      1. Site Utilization plan considerations for:
        - a. Initial areas of "designated" developments.
        - b. Phasing of project development.
        - c. Federal, State, County or DAGS/user agency design criteria.

\*NOTE: as required, the Site Utilization plan can be modified during development of the Ultimate Site plan.

  2. PDR space requirements for new construction items, such as:
    - a. Buildings.
    - b. Roadways and parking.
    - c. Open areas.
    - d. Other structures.

3. PDR infrastructure requirements for on-site construction (as required), such as:
  - a. Electrical power system.
  - b. Sewage system (including leach field).
  - c. Drainage system.
  - d. Water systems for:
    - (1) Domestic water.
    - (2) Fire flow.
  - e. Traffic flow.
  - f. Other systems (telephone, data, etc.)
4. PDR functional relationships.
5. SS information for existing site specific features.
6. Public comments from EIS process.
- C. Develop Site Utility Master plan, Site Landscape plan and Site Incremental Master plan based on the Ultimate Site plan selected by DAGS/user agency. These Master plans are integrated with the Ultimate site plan or DAGS/user agency approval of the total project development.
  1. The Site Utility Master plan provides design guidelines for:
    - a. Sizing and alignments for on-site construction items (as required), such as:
      - (1) Electrical power lines and structures.
      - (2) Sewage line and systems.
      - (3) Drainage systems.
      - (4) Water systems.
      - (5) Other systems (telephone, data, etc).
    - b. Sizing and alignments for tie-ins with off-site systems (as required), such as:
      - (1) Electrical power.
      - (2) Sewage.
      - (3) Drainage.
      - (4) Water.
      - (5) Roadways.
      - (6) Other (telephone, data, etc).
  2. The Site Landscape Mater [sic] plan provides design guidelines for:
    - a. Designated landscaped areas.
    - b. Specific flora/fauna for designated areas.
  3. The Site Incremental Master plan provides design guidelines for:
    - a. Phasing of project development.
    - b. Temporary construction or accommodations (as required).
- II. The MP process can also be expanded to include developments for more that one site. This expanded MP process will (but not be limited to):
  - A. Establish functional relationships that:
    1. Integrate programs at each site.
    2. Integrate programs between each site.
  - B. Phase developments at each site.
  - C. Develop guidelines for site specific MP process (refer to comment I).

Source: Hawaii, Department of Accounting and General Services, Public Works Division, Planning Branch, Education Section (August 10, 1992).

## Appendix H

Samuel B. K. Chang  
Director

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LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

December 1, 1992

4781A

Mr. Donald Clegg  
Director  
Department of Land Utilization  
Honolulu Municipal Building  
650 South King Street  
Honolulu, HI 96813

Dear Mr. Clegg:

Enclosed for your review are chapters 1, 2, and 6 from a confidential and preliminary draft of a report on problems affecting the implementation of capital improvement projects prepared by this office at the request of the Legislature. Since the draft is subject to change, we ask that you not circulate it until a final report is released. Please feel free to make any comments, cite any errors, state any objections, or suggest any revisions to these confidential drafts. Your comments and suggestions are important to us and revisions will be made if deemed appropriate.

Please mark your comments directly upon the enclosed draft and return it to us by December 18, 1992. It is not necessary to submit a formal reply.

If you have any questions or concerns regarding the drafts of these chapters, please feel free to call Keith Fukumoto at 587-0661.

Sincerely,

A handwritten signature in cursive script that reads 'Samuel B. K. Chang'. Below the signature, the name and title are printed.  
Samuel B. K. Chang  
Director

SBKC:mtb  
Enclosure

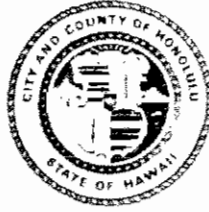
cc: Loretta Chee  
Calvin Ching  
Kathy Sokugawa

DEPARTMENT OF LAND UTILIZATION  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET  
HONOLULU, HAWAII 96813 • (808) 523-4432

DEC 24 1992

FRANK F. FASI  
MAYOR



DONALD A. CLEGG  
DIRECTOR

LORETTA K. C. CHEE  
DEPUTY DIRECTOR

92-05132 (KS)

December 23, 1992

Mr. Samuel B. K. Chang  
Director  
Legislative Reference Bureau  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Dear Mr. Chang:

This is in response to your letter dated December 1, 1992, transmitting portions of your report on problems affecting the implementation of capital improvement projects.

Our comments are as follows:

1. Unfortunately, we must agree with the observation that the existing permitting regimes have not hastened the development of land, whether the purpose is to construct capital improvement projects, affordable housing, or resorts. However, that portion of the report which we reviewed does not give sufficient attention to the fact that it is the legislative bodies that establish these permitting regimes. In particular, it is the State Legislature that mandates the counties to abide by, and/or administer a myriad of permits, many of which the counties did not support. This is usually in response to a particular special interest. While we do not disagree necessarily with the special interests, it is the continuous imposition of a new permit or review process atop the existing arcane "permit explosion" that contributes to a drawn-out project development schedule. Accordingly, we heartily agree with your recommendation that the number of individual State and County land use and development regulations be reduced.
2. Under Chapter 6, Permitting, page 18, we cannot support another study by the Office of State Planning to delve into an evaluation of County land use regulations. Act 227, SLH 1992 already addresses this concern, and with a difference: it allows the counties to review their own respective permitting processes. A natural extension of this law is that

Mr. Samuel B.K. Chang  
Page 2

mandated State Task Force findings will have to be coordinated with those of the counties, thereby assuring meaningful permit streamlining improvements.

3. It may be useful to do a few case studies. Under our permit streamlining study currently under way, we conducted a few case studies involving the development of housing projects, and came to some interesting conclusions. One of them was that if permits were applied for in a "piggy-back" fashion, rather than in a consecutive order, a substantial amount of time could be saved.

4. Some minor editing comments are:

a. Chapter 2, Page 8

Section IX should also reference State Special Use Permits.

b. Chapter 2, Page 11

Section XV.C: The word "variances" should be substituted with the word "waivers." All public uses and structures can apply for a waiver from zoning standards. This is not the same process for private projects, which must seek a variance from zoning standards. Also, under Paragraph D, easements may also need to be filed with this department, in addition to the State Department of Land and Natural Resources.

c. Chapter 2, Page 13

Section XVIII.B. Certain types of projects will require a Certificate of Occupancy, issued by the Building Department.

Thank you for this opportunity to comment. We look forward to the final report.

Should you have any questions, please call Kathy Sokugawa of our staff at 523-4133.

Very truly yours,



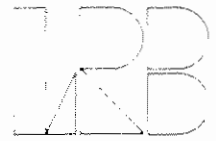
DONALD A. CLEGG  
Director of Land Utilization

DAC:ra  
cip.kks

## Appendix I

Samuel B. K. Chang  
Director

Research (808) 587-0666  
Revisor (808) 587-0670  
Fax (808) 587-0720



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

December 1, 1992

4781A

Mr. Yukio Takemoto  
Director  
Department of Budget and Finance  
P.O. Box 150  
Honolulu, HI 96810

Dear Mr. Takemoto:

Enclosed for your review are chapters 1, 2, and 5 from a confidential and preliminary draft of a report on problems affecting the implementation of capital improvement projects prepared by this office at the request of the Legislature. Since the draft is subject to change, we ask that you not circulate it until a final report is released. Please feel free to make any comments, cite any errors, state any objections, or suggest any revisions to these confidential drafts. Your comments and suggestions are important to us and revisions will be made if deemed appropriate.

Please mark your comments directly upon the enclosed draft and return it to us by December 18, 1992. It is not necessary to submit a formal reply.

If you have any questions or concerns regarding the drafts of these chapters, please feel free to call Keith Fukumoto at 587-0661.

Sincerely,

Samuel B. K. Chang  
Director

SBKC:mtb  
Enclosure

cc: James Nakamura  
E. Ann Nishimoto  
Michael Lim  
Karen Yamauchi

DEC 24 1992

JOHN WAIHEE  
GOVERNOR



YUKIO TAKEMOTO  
DIRECTOR

EUGENE S. IMAI  
DEPUTY DIRECTOR

THOMAS I. YAMASHIRO  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII INC.  
HAWAII PUBLIC EMPLOYEES HEALTH FUND  
HOUSING FINANCE AND DEVELOPMENT  
CORPORATION  
OFFICE OF THE PUBLIC DEFENDER  
PUBLIC UTILITIES COMMISSION

STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE  
STATE CAPITOL  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL PLANNING AND POLICY  
DEVELOPMENT DIVISION  
INFORMATION AND COMMUNICATION  
SERVICES DIVISION  
TREASURY OPERATIONS DIVISION

December 23, 1993

Mr. Samuel B.K. Chang, Director  
Legislative Reference Bureau  
1177 Alakea Street, 6th Floor  
Honolulu, Hawaii 96813

Dear Mr. Chang:

Thank you for transmitting the draft report of capital improvement project (CIP) implementation for my review. My comments and recommendations are in regard to Chapter 5 and are noted below, with the item numbers referencing the numbers noted in the margins of the report.

1. (Page 3) - The Department of Budget and Finance is responsible for reviewing CIP budget requests submitted by departments during the budget formulation process and in the implementation process (based on legislative authorization). This office does not "oversee" projects; rather, this function is the responsibility of user and expending agencies such as the Department of Accounting and General Services (DAGS).
2. (Page 4) - The loss of institutional knowledge is a continuing and integral part of government; i.e., it is a "fact of life" that we must all recognize and contend with. It should not, however, be a factor in influencing the CIP process.
3. (Page 5) - It is recommended that item (4) be deleted. The length of time that a CIP allotment request takes to "flow through the department's chain of command to the Governor's Office . . ." is minimal (usually one or two days) and, therefore, is not a significant factor in the process.

4. (Page 6) - The parenthetical statement is recommended for deletion, as it may erroneously lead the reader to think that the allotment of general obligation bonds was authorized without the Governor's prior approval. It should be made clear that the "fast-track" policy was implemented using the normal CIP process, i.e., requests were submitted through this office and subsequently to the Governor for his review and action.
5. (Page 6) - This paragraph should be deleted since it represents a legal interpretation which is inappropriate for this office to make.
6. (Page 6) - The phrase ". . . from the Branch's recommendation . . . be deferred until a later date" should be replaced with ". . . from the deferral of certain requests for CIP implementation." Accordingly, the paragraph's last sentence, beginning with "In other words . . ." is recommended for deletion.
7. (Page 8) - The exact date of the reorganization is September 27, 1991.
8. (Page 8) - The reference to the cash management study should be deleted since it has no relevance to the CIP process. The study is intended to track the cash flow (i.e., investment) of various funds and does not impact on the CIP expenditure limits, as noted.
9. (Page 10) - It should be clarified that the procedures are still in the process of being developed and therefore have not been issued or implemented.
10. (Page 11) - This paragraph is recommended for deletion. Please see item 2 above.
11. (Pages 11-12) - It is recommended that the section regarding "pork barrel projects" be deleted. In the realm of the overall CIP process, beginning from the formulation of a request from an agency's program level, leading to legislative authorization, and culminating in the implementation and completion of a project, the Legislature's key role and prerogative in authorizing appropriations as they deem appropriate is keenly recognized. The projects which are included and authorized by the Legislature are considered, reviewed and implemented in the same manner as any other authorized project. Hence, it is believed that there is no need to discuss separately those projects that are initiated and authorized by the Legislature.

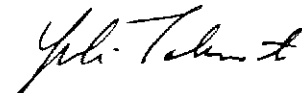


12. (Page 13) - While the expenditures of any public funds call for the need to look at alternatives to making such expenditure, identifying alternatives to a CIP is not readily conducive in that the scope and level of program operations (e.g., school enrollment) generally dictate whether a CIP is needed or not. If such data supports the need for a CIP, there is no alternative (although the level of available funding will impact upon the ability to implement such a CIP). Therefore, it is believed that the paragraph on Assessment of Alternatives should be deleted.
13. (Page 15) - The first sentence should be clarified to indicate that the Governor can waive, on an exception basis, the educational specifications based on extenuating circumstances. The second sentence, beginning with "According to the Branch, . . ." is recommended for deletion based on discussion in item 9 above.
14. (Page 16) - The second sentence, beginning with "According to the Branch, some agencies are retaining . . ." is recommended for deletion as the statement is speculative.
15. (Page 17) - While your agency's recommendation regarding additional staffing to expedite the processing of CIP requests is recognized, it is believed that the mere augmentation of additional personnel will not in itself improve the process. As noted earlier, the process starts at an agency's program level, and unless actions and decisions can be expeditiously made at that level and eventually reaching the CIP staff level, the process will not be improved with more staff.
16. (Page 17) - The last sentence, beginning with "These funds could be used by agencies . . ." should be clarified. Most agencies have in-house staff (or if not, rely on the DAGS) to conduct preliminary planning, from which a CIP request is developed and submitted to the Governor for consideration by the Legislature. The authorization requested of the Legislature would include funding for the formal planning, design, and (based on the implementation schedule) construction of the project.
17. (Page 19) - As noted earlier, the processing of CIP allotments through this department's chain of command is not a time-consuming process; hence, the delegation of authority will not have a significant impact. The sentence regarding saving time should therefore be deleted.

18. (Page 19) - It should be noted that the staff is not involved in all of the numerous and complex issues and policies that may impact upon the decision-making process involving allotment requests. Therefore, the purported benefit of delegation may be misleading or erroneous.
19. (Page 23) - As noted earlier, the new procedures are still in the process of development, and the statement should therefore be clarified.
20. (Page 25) - Please see the earlier comment (7) regarding the cash management study.
21. (Page 25) - The identification of unrequired balances is the current responsibility of expending agencies (such as the DAGS) since they monitor the expenditures and progress of their respective projects.
22. (Page 25) - The term "Reconsideration" should be clarified. As noted earlier, even the fast track system required all allotment requests (e.g., those of the Departments of Transportation and Accounting and General Services) to follow the established process of review by this office and transmittal of such requests to the Governor for his action.
23. (Page 26) - It is suggested that items (1) and (2) be deleted. Neither this office nor other agencies have made a request for additional staffing. In addition, as noted earlier, it is not believed that more staff will necessarily enhance the overall CIP process.
24. (Page 28) - The second sentence in end note (19) regarding construction bids is conjecture and is difficult to substantiate; therefore, it should be deleted.

Again, the opportunity and time to review and comment on the draft are appreciated. I look forward to your final report regarding this subject.

Sincerely,



YUKIO TAKEMOTO  
Director of Finance

## Appendix J

Samuel B. K. Chang  
Director

Research (808) 587-0666  
Revisor (808) 587-0670  
Fax (808) 587-0720



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

December 1, 1992

4781A

Ms. Norma Wong  
Acting Director  
Office of State Planning  
No. 1 Capitol District  
250 South Hotel Street  
Honolulu, HI 96813

Dear Ms. Wong:

Enclosed for your review are chapters 1, 2, and 6 from a confidential and preliminary draft of a report on problems affecting the implementation of capital improvement projects prepared by this office at the request of the Legislature. Since the draft is subject to change, we ask that you not circulate it until a final report is released. Please feel free to make any comments, cite any errors, state any objections, or suggest any revisions to these confidential drafts. Your comments and suggestions are important to us and revisions will be made if deemed appropriate.

Please mark your comments directly upon the enclosed draft and return it to us by December 18, 1992. It is not necessary to submit a formal reply.

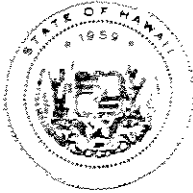
If you have any questions or concerns regarding the drafts of these chapters, please feel free to call Keith Fukumoto at 587-0661.

Sincerely,

A handwritten signature in cursive script that reads 'Samuel B. K. Chang'. Below the signature, the name and title are printed.  
Samuel B. K. Chang  
Director

SBKC:mtb  
Enclosure

cc: James Yamamoto  
Douglas Tom



# OFFICE OF STATE PLANNING

Office of the Governor

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STREET ADDRESS: 250 SOUTH HOTEL STREET, 4TH FLOOR  
TELEPHONE: (808) 587-2846, 587-2800

FAX: Director's Office 587-2848  
Planning Division 587-2824

Ref. No. P-3880

DEC 21 1992

December 16, 1992

## MEMORANDUM

TO: Mr. Samuel B.K. Chang, Director  
Legislative Reference Bureau

SUBJECT: Preliminary Draft Report in Response to HCR No. 187, HD 1, 1992

Thank you for providing us the opportunity to comment on Chapters 1, 2 and 6 of the preliminary draft report. Our primary concern is that the report does not appear to address the subject of the resolution, that is, improvements to the CIP implementation process. It focuses on the land development permitting process rather than the CIP process itself. We hope that the remaining chapters which were not provided to us address the main focus of the concurrent resolution.

In addition, the report identifies several recommendations which are directed at the Office of State Planning and are intended to streamline the permitting process. The Office of State Planning is currently conducting an evaluation of the land use management and regulatory system pursuant to Act 300, SLH 1992. The recommendations which evolve from this study may be very different than those outlined in the LRB report. Therefore, we cannot endorse the LRB recommendations at this time.

Harold S. Masumoto  
Director