MEMORANDUM

TO: Carolyn L. Cain
FROM: Jacquelin N. Miller
RE: Review: Resort Development and Management

May 7, 1987

In response to your request I have reviewed pages 54-56, of Chuck Gee's book on Resort Development and Management, that deal with Environmental Impact Statements. To facilitate your comparison and consideration of my comments in light of the original text, I have highlighted and cross referenced, by number, my comments with the text provided.

1. Titles other than "EIS" are used by some states to mean an equivalent document. For example, an "EIS" in California is called an "EIR" ie. Environmental Impact Report. You may wish to modify the sentence to: "Many states have also passed laws requiring EIS's, or equivalent documents, for state, local, and private projects." I note that you reference other states EIS systems, "As of early 1977...". I can not provide an adequate update from 1977 to the present with regard to other state systems. If there is insufficient time to do a thorough update, the sentence should be redrafted to avoid the outdated reference.

1a. The referenced appendix was not included in the pages provided for my review, nor were the references as numbered in the text so I can offer no comments on their appropriateness for inclusion.

2. I am unfamiliar with the concept of "compatible zone" and am not aware of any state that bases their EIS requirement (or non-requirement, as the case may be) on "compatible zone" designation. This is certainly not the case in Hawaii and to the best of my knowledge it is not the case under NEPA. I do not think it is appropriate to suggest that this designation is generally utilized, unless of course, there is strong evidence to support such a statement. I would be most interested in the references or other supporting material from which this concept/term was generated. I believe that considerable rationale could be provided that would tend to dispute the appropriateness of the "compatible zones" concept. Because the significance of impact is so interrelated between site specific conditions and the type of project proposed, the suggested lack of need for environmental impact assessment based strictly on area (ie. compatible zone) is inappropriate. It should be noted that in the state of Hawaii the type of "zone", ie. "compatible" or "incompatible" as defined in the text, is not necessarily the key issue. The environmental review procedure is
also initiated if the project will involve state or county lands or funds; regardless of the geographic area involved. That is not to say that an EIS per se must be prepared, but that the action falls under HRS Chapter 343 and if not otherwise exempted, an Environmental Assessment will be required.

3. While I recognize that the EIS content list provided in the text was probably intended to be general and not necessarily all encompassing, there are, I believe, some key ingredients missing. I would suggest that the need for a discussion of mitigative measures to reduce or eliminate the probable impacts should be recognized. Another, and perhaps even more important element of the EIS, is a discussion of the cumulative effects of the project in relation to other projects. This latter impact is perhaps one of the more controversial and significant concerns in Hawaii as the multiple resort developments, designed independently, with little thought given to evaluating their collective effects on water supplies, traffic and roadway needs, and other public services, threaten to significantly affect the living standards (quality of life) of the neighboring communities.

4. I'm not sure I can agree with the reflection that "environmental impact statements are a relatively new requirement for resort planning and development." EIS's have been developed for resorts since 1970 in the state of Hawaii.

5. There is a confusion in terminology here. Usage of the terms "approved" and "accepted" is reversed. The sentence should read, "a project cannot be constructed until the EIS has been accepted and the project approved. The rule is: EIS's are "accepted"...Projects are "approved". The following sentence is similarly incorrect. It should be changed to: However, once the EIS (not project) is accepted, the accepting agency has no legal authority to force the developer to build the specific project which was evaluated. Alternatively, it could be worded, "However, once the project is approved, the approving agency has no legal authority to force the developer to build....etc." The first alternative, changing "project" to "EIS" is probably the more correct. This deficiency was really brought to the attention of the agency regulators and the public at the time of the construction of the Barber's Point Harbor. Since then, at least in the state of Hawaii, there is a trend to require a written commitment, in the EIS, that the EIS will be made a part of any construction/development contract. If this occurs, then the approving agency, or subsequent permitting agencies are presumably bound to require such a commitment as part of their approval or permit granting procedures. I do not know if this procedure has been tested through the courts but many EIS's, since the Barber's Pt EIS fiasco, have included a written commitment to make the EIS a part of any contract let to carry out the project.

6. The sequence of events in the description of the Hawaii EIS process is correct however, the procedure does not include reference, by name, to the Environmental Assessment document that is the foundation for the
EIS/Negative Determination decision making. Because there is so much confusion, even within state agencies, not to mention the public, between the purpose and meaning of the two terms, Environmental Assessment and Environmental Impact Statement, I believe that the EA term should be used in your discussion. Perhaps another paragraph could be added between paragraphs 2 and 3 that would cover the preparation of EA's and the decision as to "potential" significant effects on the environment. Note in the EA, the emphasis is on "potential" effects, not "probable" as is the case in the EIS.

7. After an Environmental Assessment is prepared, a Negative Determination is issued for projects that are judged unlikely to have significant effects. Notice of this Negative Determination is called a Negative Declaration and it is published in the OEQC (Office of Environmental Quality Control) Bulletin twice a month. The public may review the supporting documents, i.e. Environmental Assessment, Negative Determination, at the OEQC office.

8. The text for paragraph 4 suggests that in the case of Negative Determinations that are judged inappropriate by the public, i.e. an EIS is not required, the primary recourse is to provide additional information and that the agency may then decide to change its determination and require an EIS. Hawaii Revised Statutes, Chapter 343-7 (b), provides that judicial proceedings may be initiated within sixty days after the public has been informed of a determination that an EIS is or is not required. The Environmental Council or the applicant are adjudged aggrieved parties for the purpose of bringing suit, and others, by court action, may be adjudged aggrieved.

9. The primary information submitted at the Preparation stage is generally the Environmental Assessment that was prepared at the earlier review stage when the Negative Determination was sought. A Negative Declaration merely announces the decision that no EIS will be required, and while the decision may have the EA or other supporting documents attached, I believe it would be more correct to state that the EIS Preparation notice generally includes the Environmental Assessment and supporting information submitted during the initial environmental determination stage.

10. A slight difference of wording is suggested for paragraph 6. During the consultative stage, interested agencies, citizen groups, etc. are requested to provide input and identify issues and concerns that need to be discussed in the EIS. This is to assure that the Draft EIS, when prepared, will be an essentially complete document and clearly identify the key environmental issues and concerns.

11. After the EIS is prepared, it is filed with the Office of Environmental Quality Control (OEQC), not the Environmental Quality Commission. The Environmental Quality Commission was eliminated by legislative action in 1983 and its duties and responsibilities transferred to the OEQC and Environmental Council.
12. Please note, most of this paragraph (#8) is incorrect.

The amended EIS is now officially called a "final" not "revised" EIS. (EIS Rules, 1985) This is in keeping with the terminology used for federal documents prepared under the National Environmental Policy Act. The EIS is filed with the Office of Environmental Quality Control (see my paragraph 11). In the case of applicant actions, the agency first receiving the request for a permit becomes the "lead" agency and is the accepting authority for the EIS. For actions proposed by agencies that involve state funds or lands, the governor or an authorized representative is the accepting authority. In cases involving only county funds or lands, the mayor of the respective county or an authorized representative is the accepting authority. In the event that an action involves both state and county funds or lands, the governor or an authorized representative has final authority to accept the EIS. If the EIS is accepted, then approval of the project can be considered. Acceptance of the EIS is required prior to project approval but acceptance of the EIS does not assure project approval. Acceptance or non-acceptance of the EIS by an agency, the governor or mayor, must be made within 60 days after filing of the Draft EIS.

13. The EIS process can take several months as is indicated. However, it can take as little as 90 days if the preparer so desires: 30 days for comments at the preparation stage, and 60 days from the date of filing of the Draft EIS to acceptance or non acceptance. In general, there are many activities that can proceed simultaneously with the preparation and review of the EIS so that attributing delays in resort planning and development to the EIS system per se is incorrect. To clarify the time scales, you may want to include recognition of the mandatory 14 day response to comments period after the 30 day review of the Draft EIS and the remaining approximately 2 weeks (within 60 days of date of filing) for the acceptance or non acceptance determination in the flow chart (Exhibit 4. and EIS Regulations, 1985) It has consistently been my observation that most delays attributable to environmental issues, with only a few exceptions, are the result of developers, either knowingly or unknowingly, attempting to circumvent environmental review procedures. While I realize that this chapter deals specifically with Environmental Impact Statements, you may wish to include, in some section of your book, a discussion of other environmentally related permit systems such as Shoreline Management Area permits, Conservation District Use Applications, Coastal Zone Management consistency permits, and various discharge permits that are pertinent to most coastal resort developments.

I hope you will find my comments useful. If you have any questions be sure and give me a call at ext.7362.
and local building codes for fire and other safety.
- Safety and health standards adopted for construction and operation of the resort, such as fire protection, sewage and waste disposal, water rights, traffic rights, etc.
- Other planning and operational decisions which may have an impact on pollution, noise, and litter levels on the resort property and within the surrounding community.

In a broader sense, restrictions can be placed on the developer's right to develop the resort property. Restrictions on development rights, either on the state, regional, or local level, can limit future expansion of present and proposed projects, control the types of development on the resort property, or preclude the use of privately owned land for resort development purposes. Use of the land for resort development can be restricted on economic, social, or community interest grounds. For example, governments in some countries have forbidden the construction of golf courses on the basis that land is too scarce and public interests would not be promoted. In some areas of the United States, counties have refused to issue building permits for resort hotels on the social grounds that the developer could not adequately provide land for employee housing during the early years of resort operation. And restrictions based on community interest have occurred where counties have forbidden development of commercial projects which would encroach upon space needed for public recreation.

Environmental impact statements

The environmental impact statement (EIS) was created by the U.S. Congress in the National Environmental Policy Act (NEPA) of 1969. An EIS must be written for any "major federal action" which may significantly affect the human environment. Since NEPA was adopted, thousands of federal EISs have been published. Many states have also passed laws requiring EISs for state, local, and private projects. As of early 1977, eighteen states and the commonwealth of Puerto Rico had adopted, through legislation or executive directive, state environmental policy acts (SEPPAs) aimed, like NEPA, at creating and maintaining conditions under which man and nature can exist in ecological harmony.

An environmental impact statement is generally defined as a written report which describes what may happen to the environment if a specific project is carried out. For example, an EIS for a beach resort would discuss air and water pollution, effects on marine life, impact on population growth, impact on community noise levels, extent of projected increase in traffic congestion, economic and social benefits and costs, and long-range effects on land use in the surrounding area. (The appendix to this chapter contains an example of an EIS written for a project in Hawaii.)

In general, if the development project will be located in areas which have been defined as compatible zones, then no EIS is required. Compatible zones are areas which have been specified as suitable for particular types and densities of development, such as residential, commercial, or industrial zones. However, if developers desire to build in areas which have been designated as incompatible with extensive development (i.e., historic sites, conservation areas, coastal zones, or other areas identified as requiring special protection), then an EIS must be prepared. The specific conditions requiring an EIS vary from state to state.

In most of the states which have EIS requirements, these impact statements must include the following information:
- all probable environmental impacts of the proposed action;
- any adverse environmental effects which cannot be avoided should the proposal be implemented;
- alternatives to the proposed action and their probable environmental effects;
- an assessment of the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term environmental productivity, and
- any irreversible and irretrievable commitments of resources which would be required in the implementation of the proposed action. ²

Some states have added even more stringent requirements. For example, a planning team for a resort project located in the forest wilderness of the state of Washington would probably have to include an identification of both primary and secondary impacts on the area's ecological systems. Secondary impacts would include changes in the patterns of
social and economic activities as a result of the planned operations of the resort and the probable impacts of these activities on the local environment. A planning team for a resort project located in a historic area of Massachusetts or Connecticut might have to include not only an identification of the alternatives to the proposed project but a cost-benefit analysis of each of these alternatives. The state environmental policy act for Massachusetts requires that the major costs and benefits of each of the alternatives be identified. Connecticut's is even more strict, requiring that costs and benefits of alternatives be identified in terms of both the short- and long-term impacts. In order to make such a cost-benefit analysis, the planning team would not only have to evaluate current market demand for the resort, but project future demand and identify probable expansions and additions in light of that future demand.

It should be kept in mind that environmental impact statements are a relatively new requirement for resort planning and development. Interpretation of state environmental policy acts in relation to resort projects is not yet well established. EIS preparation requirements for federal projects, such as resort-supporting infrastructure, are the most established; private projects, such as hotels, are the least established.

An EIS is a planning document rather than a binding, legal document. In the states in which these statements are required, a project cannot be constructed until the EIS has been approved and the project accepted. However, once the project is accepted, the accepting agency has no legal authority to force the developer to build the specific project which was evaluated. Legal regulation of resort construction still depends on the permit system, which was described in the section on local government regulation.

The primary intent of an EIS is to improve decision making during the planning process for resort and other forms of development. By forcing the planning team to identify all probable environmental impacts of the proposed project, the intent is to reduce or prevent the occurrence of adverse environmental effects. Environmental impact statements, therefore, are primarily viewed as informational documents and planning tools, explicitly identifying effects of development which might not otherwise be considered, for governmental agencies and communities.

To illustrate how a well-experienced and stringent EIS process operates, a general flow chart of the EIS process in Hawaii is provided in Exhibit I.

In Hawaii, the state EIS process involves several steps:

1. A project proposal is prepared by a private developer or by a state or county agency, describing the nature and location of the planned project.
2. This proposed action is then tested by the approving agency to see whether it is subject to the state EIS law (Chapter 343 of the Hawaii Revised Statutes), if so, the agency must determine whether it falls under the exempt classes of actions specified within the law; if not, the agency must determine whether it may have significant effects on the environment.
3. If the proposed project will not have significant environmental effects, the agency issues a notice called a Negative Declaration which is placed on public review. This notice contains a short description of the project and affected environment, a summary of expected impacts on the environment, and alternatives which have been considered.
4. During the next 60 days, the general public can challenge the agency's decision by offering additional information. As a result of these additional inputs, the agency may decide to change its determination and require an EIS.
5. If the proposed project will have significant effects on the environment, then the agency issues a notice called an EIS Preparation Notice. This notice, which contains essentially the same information as the Negative Declaration, simply announces that an EIS will be prepared.
6. For the next 30 days, the project proposer must consult with agencies, citizen groups, and interested persons to determine all issues and impacts which will be discussed in the environmental impact statement.
7. After the EIS is prepared and filed with the Environmental Quality Commission, it is placed on public review for an additional 30 days. During this period, the general public can comment on the issues addressed in the EIS and suggest additional impacts which should be considered.
Exhibit 4. General EIS process for the state of Hawaii (Source: Office of Environmental Quality Control, Hawaii)

8. A revised EIS is filed and the Environmental Quality Commission decides whether the EIS is an adequate information document. If so, then the EIS is approved and sent to the appropriate agency for project acceptance. The agency then has 60 days to decide whether to accept the project and allow the developer to proceed with construction.

As the flow chart demonstrates, preparing environmental impact statements and obtaining project acceptance can take several months. The process in most states constitutes a significant hurdle in the resort planning and development process. This fact must be considered in calculating the project budget and drafting the development schedule.

A sample Table of Contents from an actual environmental impact statement is included in the appendix of this chapter to illustrate the scope and depth of an average EIS. Aside from the inclusion of certain required general information areas which were identified earlier, environmental impact statements do not have a standard format. The characteristics of each project and its environment would determine the specific content of the EIS.

Architectural design and layout

During the latter stages of the planning process, architectural designs and physical layouts of the resort are conceptualized and roughed out. Based upon an extensive analysis of site characteristics and an accompanying analysis of the suitability of various portions of the land for particular uses, gross space allocations for each element of the resort are made. Resort landscaping and land management are of the greatest importance in the layout, as the physical structures usually occupy no more than 10% of the total land space, depending upon the specific recreation provided—golf, boating (marina), skiing, or other land intensive sports.

Zoning codes and building ordinances are potent forces in determining how the land can be used, where the elements will be located in terms of access routes to the resort, and positions of buildings in terms of setback regulations. Gross space allocations are determined for the hotel, restaurants, shops, storage, recreation areas and facilities, transport systems, parking areas, energy systems, security and maintenance systems, receiving and delivery systems for goods and services, waste disposal systems, and projected expansions and additions of facilities, storage, and support systems. Subsurface space allocations are also determined for all areas of the resort for such systems as sanitary sewers, storm drainage lines, steam lines, water supply lines (domestic and fire), electric conduits, gas lines, and telephone cables.

Within the hotel, gross allocations of space are made. Typically, the allocation will be defined in terms of income-producing space versus overhead, or nonrevenue-producing, space. Overhead space tends to comprise a higher percentage of total space for a resort hotel than for a transient hotel, since spacious lobbies, vestibules, high ceilings or similar uses of space are required to create ambience. The percentages for income-producing space and overhead space vary from area to area and from property to property, depending upon local conditions. Exhibit 5 shows how these percentages vary in two different properties.
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Some states have added even more stringent requirements. For example, a planning team for a resort project located in the forest wilderness of the state of Washington would probably have to include an identification of both primary and secondary impacts on the area's ecological systems. Secondary impacts would include changes in the patterns of
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It should be kept in mind that environmental impact statements are a relatively new requirement for resort planning and development. Interpretation of state environmental policy acts in relation to resort projects is not yet well established. EIS preparation requirements for federal projects, such as resort-supporting infrastructure, are the most established; private projects, such as hotels, are the least established.

An EIS is a planning document rather than a binding, legal document. In the states in which these statements are required, a project cannot be constructed until the EIS has been approved and the project accepted. However, once the project is accepted, the accepting agency has no legal authority to force the developer to build the specific project which was evaluated. Legal regulation of resort construction still depends on the permit system, which was described in the section on local government regulation.

The primary intent of an EIS is to improve decision making during the planning process for resort and other forms of development. By forcing the planning team to identify all probable environmental impacts of the proposed project, the intent is to reduce or prevent the occurrence of adverse environmental effects. Environmental impact statements, therefore, are primarily viewed as informational documents and planning tools, explicitly identifying effects of development which might not otherwise be considered, for governmental agencies and communities.

To illustrate how a well-experienced and stringent EIS process operates, a general flow chart of the EIS process in Hawaii is provided in exhibit 4.

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3. If the proposed project will not have significant environmental effects, the agency issues a notice called a Negative Declaration which is placed on public review. This notice contains a short description of the project and affected environment, a summary of expected impacts on the environment, and alternatives which have been considered.

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5. If the proposed project will have significant effects on the environment, then the agency issues a notice called an EIS Preparation Notice. This notice, which contains essentially the same information as the Negative Declaration, simply announces that an EIS will be prepared.

6. For the next 30 days, the project proposer must consult with agencies, citizen groups, and interested persons to determine all issues and impacts which will be discussed in the environmental impact statement.

7. After the EIS is prepared and filed with the Environmental Quality Commission, it is placed on public review for an additional 30 days. During this period, the general public can comment on the issues addressed in the EIS and suggest additional impacts which should be considered.
Exhibit 4. General EIS process for the state of Hawaii (Source: Office of Environmental Quality Control, Hawaii)

8. A revised EIS is filed and the Environmental Quality Commission decides whether the EIS is an adequate information document. If so, then the EIS is approved and sent to the appropriate agency for project acceptance. The agency then has 60 days to decide whether to accept the project and allow the developer to proceed with construction.³

As the flow chart demonstrates, preparing environmental impact statements and obtaining project acceptance can take several months. The process in most states constitutes a significant hurdle in the resort planning and development process. This fact must be considered in calculating the project budget and drafting the development schedule.

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The planned sources of energy and their