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of the
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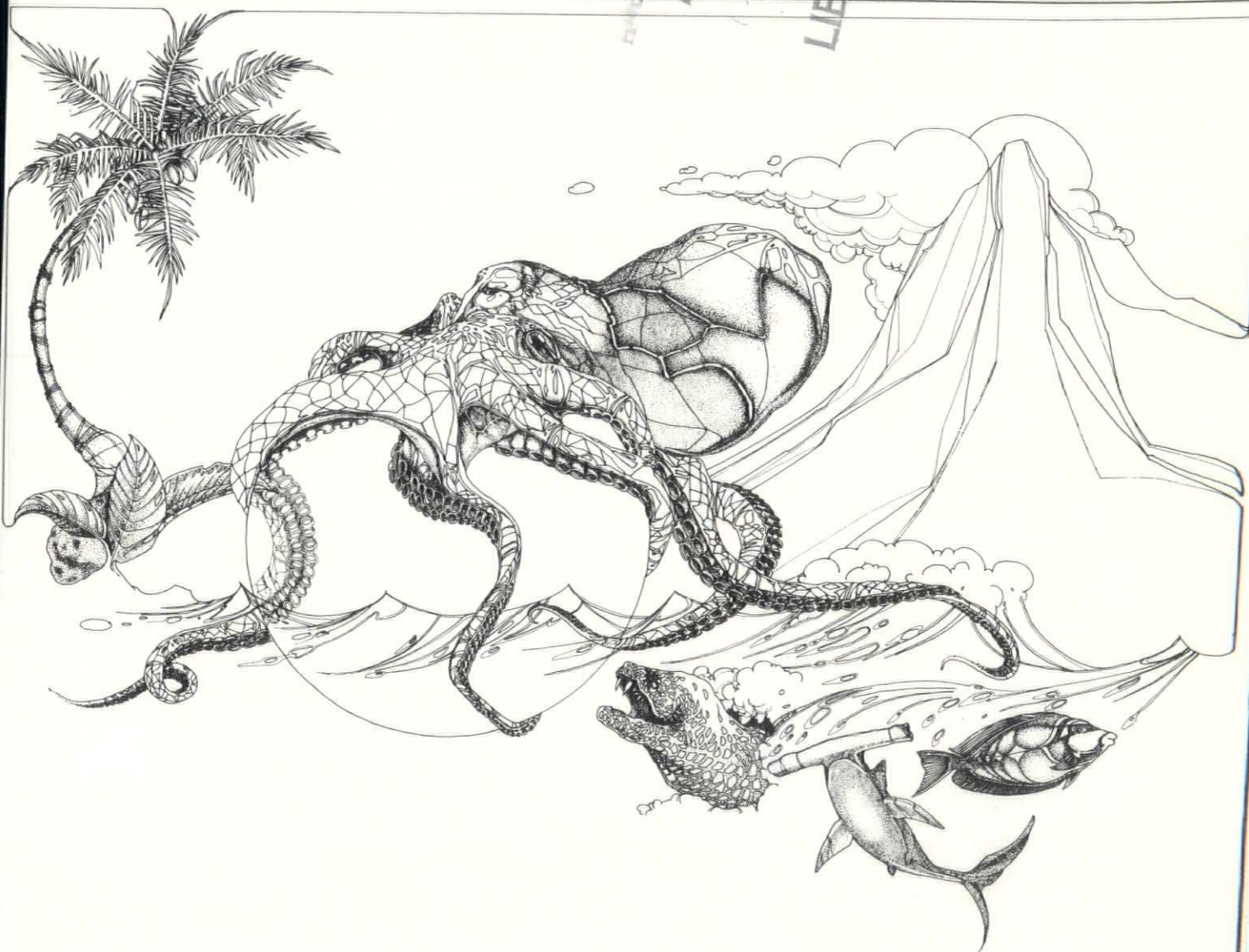
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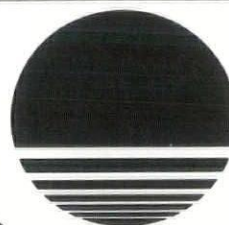
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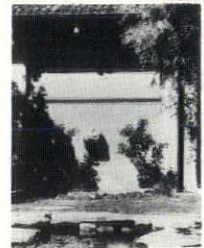
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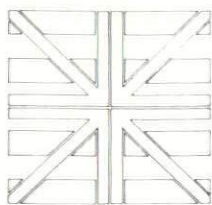
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Headlines

On Competitive Bidding and Design Professional Contract Selection

by JAMES REINHARDT, AIA

The new year has brought a new legislative session and a new stage in the ongoing Design Professional Contract Selection battle. For the sake of telling the full story, let me go back a year.

In April 1978, the U.S. Supreme Court ruled that the ethical restriction of the National Society of Professional Engineers which prohibited competitive bidding by NSPE members was a violation of Sherman Anti-Trust Law and was, therefore, in restraint of trade. It is important to note, however, that the court did not say that NSPE members must competitively bid, only that they may do so.

In October, the anti-trust branch of the Department of Attorney General of the State of Hawaii filed suit against the Hawaii Society of Professional Engineers, alleging that HSPE's ethics were in restraint of trade, as NSPE's had been, and using the Supreme Court decision as a reference, HSPE, on advice from NSPE, removed the restriction on bidding from its ethics.

At the same time the attorney general was challenging the HSPE, the AG notified the Board of Licensing for Architects, Engineers, Landscape Architects, and Land Surveyors that Rule Number 1.2J, which also prohibited bidding, was, in their opinion, in restraint of trade, and should be deleted from the rules of the board. In addition, they contended that the board had gone beyond its intended powers by adopting such a restriction. In November 1978, after a public hearing, the rule was removed from the rules of the board.

Now, back to Design Professional Contract Selection. The reason for the exemption of Design Professional Contracts from the state's competitive bidding requirements, as set forth in the state procurement regulations, has been an interpretation in the past by the AG's office that Design Professional Contracts "do not admit of competitive bidding" since design professionals were prohibited from bidding by their licensing rules. But since that rule no longer exists, a new ball game would seem to be upon us.

So why Design Professional Contract Selection? The experience of the State of Maryland, the experienced opinion of the General Accounting Office, and the strongly voiced position of all the design professional organizations is that competitive bidding for design contracts is not a cost-effective policy. The arguments are extensive:

- "The design of a building is a highly individual

process where you are very apt to get what you pay for."

- "The design requirements for a building are usually, at the start of the process, not clearly describable so as to elicit comparable scope of work and subsequent price quotes."

- "The design phase of the total cost of a building represents so small a percentage of the total building cost, and even smaller a percentage of the life-cycle cost of the building, that an attempt to save money by design at risk of producing a building more costly to construct and more costly to maintain is false economy of the worst kind."

- "When price becomes one factor for selection by the designer, it invariably becomes the dominant factor."

It's a hard argument to explain to people not experienced in construction, but basically, it boils down to the fact that where bidding has been tried, it has not worked well.

On the other hand, the Brooks Bill type of selection process, as used by the majority of federal contracting agencies, has worked very well indeed. The recent GSA scandals have turned up millions, perhaps billions, of dollars in illegal purchases made under bidding requirements but none under Brooks Bill procurement. A survey of engineers made a year ago in Hawaii showed the engineers saw few or very few problems with Brooks Bill procurements as opposed to a majority who felt favoritism and political contributions played a "significant role" in contract awards by the State of Hawaii.

It is also worth noting that the City and County of Honolulu has recently adopted, by administrative procedures, a selection process very similar to that being proposed to the legislature.

It would appear that a Brooks Bill type selection process offers the most fair and cost effective process. It also appears that choice at this time is not between Brooks Bill type selection process and the same old politically influenced process we have been living with but between a Brooks Bill process and competitive bidding. Surely even those who have opposed a mini Brooks Bill for Hawaii in the past would prefer it to bidding. **HA**

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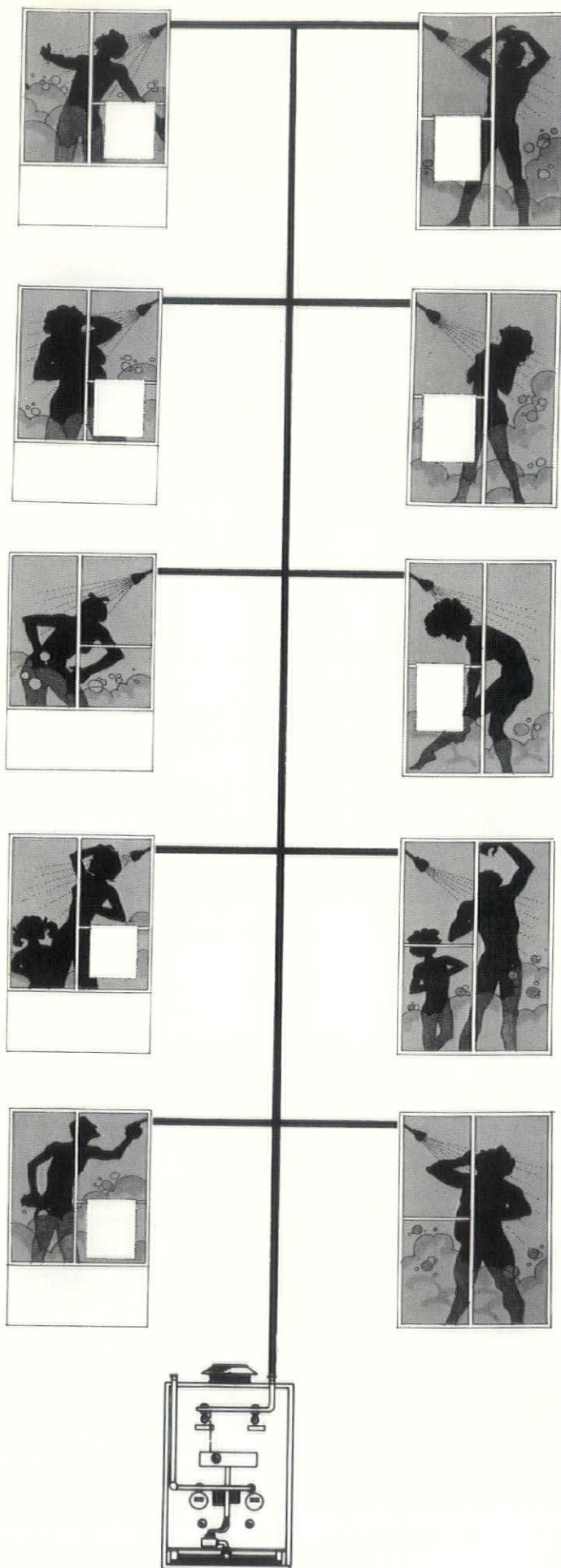
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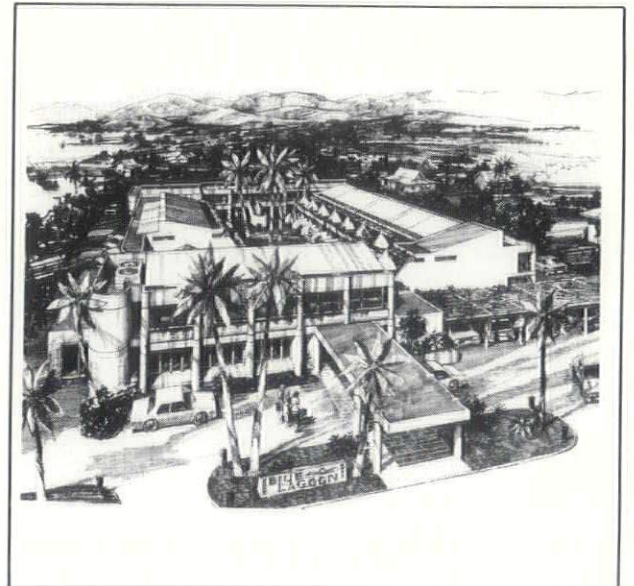
New Delineator in Honolulu



A recent arrival to Hawaii is professional architectural illustrator, Jim Hayes. The drawings shown here are representative of Hayes black and white renderings, but he works in color as well.

Hayes and his wife, Carky, a practicing designer and fiber artist, have established studios in Lanikai and say they are happy to be back in the tropics after three years in drizzly Vancouver, B.C. Prior to their stay in Canada, the Hayes had lived in Fiji for almost six years, first as art teachers with the Peace Corps, then as free-lance designer/illustrators.

Hayes has begun teaching architectural rendering and presentation techniques in the Department of Architecture at the University of Hawaii this semester.





The Developer Architect

by CHARLES LAU

The architectural profession has been under severe pressure to find better overall answers to client demands for simultaneous handling of the intricate balance of time, quality, and cost of projects. The ultimate goal is a facility that is delivered in the shortest possible time, at the lowest possible cost, with the highest possible quality and/or performance. Under such pressure, design professionals all over the United States are expanding architectural practice into a new domain—project development.

Traditionally restricted to the central part of the three-stage decision-design-delivery process, architects are breaking out of their old roles to take on new responsibilities at both ends. In the conventional development process, architects are breaking out of their old roles to take on new responsibilities at both ends. In the conventional development process, the architect is a virtual outsider, left out of the decision stage. Today many architects act as co-owning, equity-sharing partners on the development team. The architect can demand a key role in the decision stage. He helps to shape decisions that, in turn, shape his design.

Besides ethical problems, as the professional firm moves beyond its traditional role, liability problems confronting the architect-developer are more complex. Historically, any physical deficiency in a project would have to be corrected—which can be very expensive—and the responsibility for such corrections depends on whether there has been design or construction negligence.

Normally, the architect's insurance provides protection against the former, and the contractor's bond against the latter. When the lines get blurred, questions of professional liability

coverage arise.

As co-owner of the project, one of the architect-developer's chief legal problem concerns the problems with his professional liability insurance coverage. Despite the steeply rising cost of the basic premium, the vast majority of architects retain this errors and omissions coverage because the financial risk resulting from malpractice lawsuits is too great for most architects to assume on their own.

But many problems are created for the insurer by an architect's participation in development work. Suppose, for example, that the insurer wants to counter a lawsuit brought against its insured architect by suing the contractor. An architect in a traditional arms-length relationship with a contractor has a very different position in such a lawsuit than an architect who is in partnership with the contractor. In fact, any building project that eliminates the traditional adversary relationship between architect and contractor probably will nullify the architect's professional liability coverage.

Integration of design-build functions sometimes makes technical sense, but, by involving the architect in the contractor's errors, it heightens his vulnerability to liability. In my opinion, the architect should check with his insurance carrier before committing himself contractually.

A further complication for an architect-developer's professional liability insurance is his dual role as designer and co-owner. In some cases, the architect (as owner) would theoretically be suing himself (as architect). Since owners constitute the largest groups of claimants against architects, the insurance carriers have, of course, eliminated this bizarre possibility. Incorporated in the typical architects and engineers profes-

sional liability insurance policy is the following exclusion:

"This insurance shall not apply . . . to claims made against the insured and claims expenses arising therefrom:

- a) by a business enterprise that is wholly or partly owned, operated or managed by the insured or in which the insured is an officer; or
- b) by an employee, his executor, administrator or next of kin of such business enterprise."

Though the foregoing clause nullifies the architect-developer's coverage for a lawsuit brought by the owner, it may not exclude other kinds of lawsuits. The architect may retain his protection against the contractor's claims, the second largest class of lawsuits, and also against workmen's claims of property damage claims by others not party to the development team or construction contract. But even in these cases, the architect suffers at least a potential loss in his protection.

A notable instance concerns the contractor-to-owner-to-architect triple play. A contractor, for example, may sue an owner for compensation for extra work, and the owner, in turn, may sue the architect as the ultimately responsible party. Under the exclusion, an owner or co-owner architect-developer has no coverage against such claims.

The architect-developer runs heightened liability risks as an equity-sharing joint venturer. As a professional designer associated in a joint venture with lawyers, real estate brokers and others who, viewed in a construction industry context, are non-professionals, the architect-developer becomes more of a legal magnet than the architect engaged in conventional architectural practice.

As an independent professional agent offering professional services only, the architect is less

Charles Lau is a student
at the University of Hawaii.

able to be burdened with the errors of the owner and the contractor than when they are his joint-venture partners. The cost of rectifying the defects in a building, in the case of joint-venture with other non-professional parties, would be tremendously more as determined under the concept of sole liability than joint negligence.

An architect-developer's professional liability insurance coverage differs in another respect from his coverage on conventional projects in which he holds no equity interest. On any project in which he is a joint venturer, the architect must take out a separate policy limited exclusively to that project. This separate joint venture is totally divorced from his continuing basic professional liability policy which covers his conventional works.

Architect members of joint-venture design teams comprising several independent professional firms allied on large projects are similarly required to take out a separate professional liability policy.

The insurer has several reasons for isolating liability coverage for joint ventures on design teams as well as development teams. Most important is the possibility that the insured architect may be the only insured member of the team. Regardless of the merits of a case, insurers tend to draw lawsuits more than non-insureds.

Joint ventures thus compound the insurer's risks: the insured professional retains total responsibilities for his own acts, plus whatever may rub off from joint venturers who allow their liability coverage to lapse or otherwise fail to insure themselves.

Another reason for separating joint-venture projects is to isolate their more complex liability problems from the simpler problems arising in the course of the conventional work. Anything

that can happen on a conventional project can also happen on a joint venture project. But the converse is not true. The often tangled lines of responsibilities in a joint-venture project create a whole class of problems that cannot occur on simpler projects with fewer professional or entrepreneurial associations.

Isolation of joint-venture liability contracts offers several advantages to the insured architect as well as the insurer. With each joint-venture, the architect starts with a clean slate. His liability record exists apart from his overall liability track record. A poor track record can, of course, raise his insurance premium.

As a second advantage, a joint-venture liability insurance policy continues the coverage through a post-construction "discovery period," designed to protect the architect for a time interval exceeding the statute of limitations in the state where a claim may be made, the state in which the architect's home office is isolated or any other state where jurisdiction over the architect may be obtained. These statute of limitation periods range from four to 20 years in the various states that have enacted them.

Two discovery periods—one for six, the other for 12 years—have been provided to continue joint-venture coverage beyond the project's completion date without requiring additional annual premiums. At the end of the discovery period, coverage can be provided by endorsement to the architect's master policy but limited to his percentage of ownership in the joint venture.

Associated with professional liability are several other legal problems, concerned chiefly with organizational structure. This choice is based on legal as well as

Continued on Page 17

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Landscape Architecture in Hawaii, Yesterday and Today

Interest in Hawaii about landscape architecture began shortly after the turn of the century. In 1905, the newly created board of supervisors of the County of Oahu, spurred on by the Civic Federation of Honolulu, financed the bringing of Charles Mulford Robinson to Hawaii from Rochester, N.Y. He arrived in February 1906.

This man Robinson was no ordinary man. He was a missionary in the field of civic betterment. He was a prolific writer on civic improvement. His success was so great in a series of articles in the *Atlantic Monthly* that Harper's Magazine sent him to Europe to prepare articles about the cities in Europe. All of this background stirred the Civic Federation of Honolulu and the county board of supervisors to bring him to Honolulu to satisfy the need for a well considered plan for beautification of the city.

Robinson began his report on Honolulu by saying, "I understand that in making recommendations which may be called practicable, I am not restricted to the immediately possible, but am asked to lay down a plan for the county to work toward in the years to come." His report covered the street system (including "the poles ought to come down"—all underground wiring), focal points, parks, boulevards, and drives.

This report, which became something of a guidebook for the Outdoor Circle, has many valid recommendations today. It began a stream of consciousness in the city of Honolulu which has been continuous since that day, and has been exemplified in countless landscape architectural projects.

Robinson's report on Honolulu was displayed at the first National Conference on City Planning held in Washington, D.C., in 1909, where it was included in an exhibit of American city planning thinking "From Honolulu to Boston." City

planning and civic design were totally intertwined at that point with the "architecture of the landscape" as the underlying consideration. It was the era of the city beautiful and Honolulu was represented in this national thinking from the beginning, due to Robinson's study.

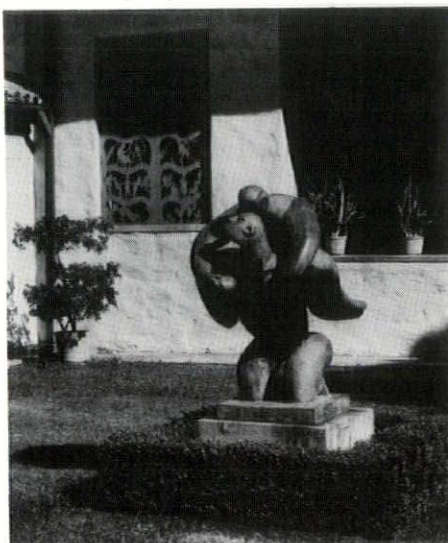
Shortly after the founding of the College of Hawaii in 1907, the famous landscape architect Ralph D. Cornell was brought to Hawaii from the Mainland to prepare the campus plan for the newly created college in Manoa valley. The original quadrangle, with Hawaii Hall, reflects that plan.

Kamaainas were later to become very active in the field of landscape architecture. One man, seven years old at the time of Robinson's visit, has had a particularly prestigious career. Richard Tongg, a current Fellow in the American Society of Landscape Architects, and graduate of the University of Hawaii, had an interest in plants and design at an early age. His books on Hawaiian gardens and plants are standard reference works. For many years beginning in 1934 he was the landscape architect for the territorial highways federal aid road beautification program. He planned the

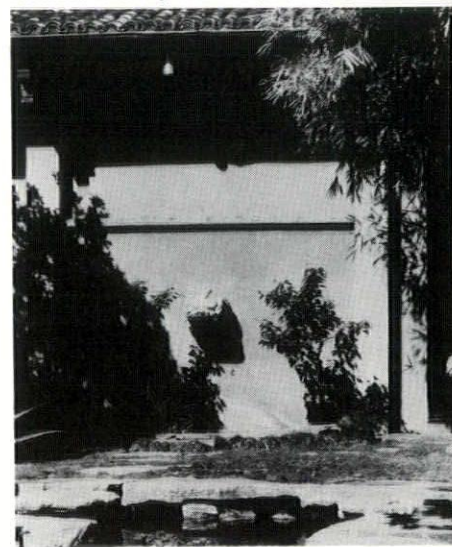
first roadside beautification projects in Hawaii. For example, the Kula road on Maui with its Jacaranda and Silk Oak were planned by Richard Tongg.

Tongg has done many hundreds of residences in Hawaii over the many years including the McInerney, Wm. Wachter, John Waterhouse, and John Galt residences. One of his early design works stands today at the U.S. Immigration Station and he did the planting and site design for the City Hall, the Dillingham Transportation Building, and Hawaiian Electric stations. His moving of large scale coconuts at Alexander & Baldwin downtown was the first time large coconuts had been moved in Hawaii. His professional practice continues on a very large scale.

Another early landscape architect in Hawaii was kamaaina Catherine Jones. After graduating from Smith College in 1919, she went back to the East and studied landscape architecture. She returned to Hawaii in 1926 and was so besieged with work opportunities that in 1927 she wrote back to the Department of Landscape Architecture at Harvard University and asked if they had a young graduate



Academy of Art Courts



by Donald Wolbrink

Fellow American Society of Landscape Architects, Fellow American Society of Civil Engineers

they could recommend who could come out and give her some assistance. They sent a young man named Robert Oliver Thompson who came to assist her in 1928. They were married in 1934 and created the firm of Thompson & Thompson.

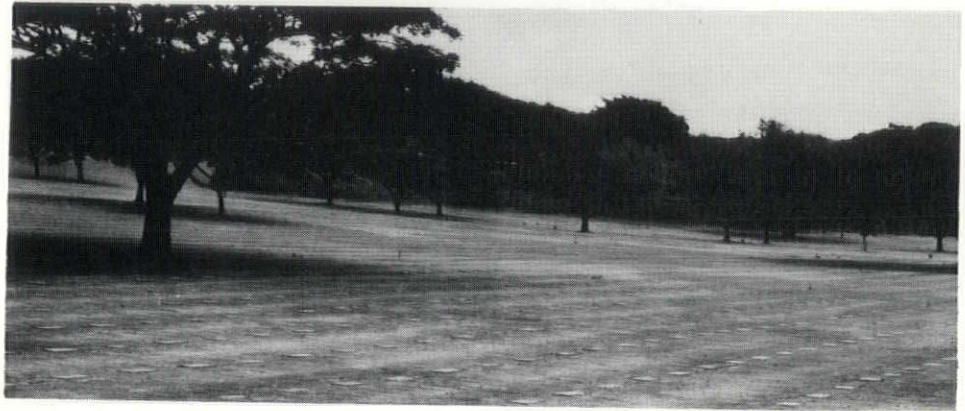
Early works of Thompson & Thompson included the Makiki pumping station for the Board of Water Supply, after which they continued to do all the pumping stations for the Board of Water Supply for the next 35 years.

Another early project by Thompson & Thompson was the master plan for Thomas Square. The Banyan trees were there, having been planted by A.S. Cleghorn, the father of Princess Kaiulani. They designed the fountain, removed a lot of over-planting, clarified the design, and created what one mainland landscape architect many years ago called the most dramatic simple landscape architectural design he had ever seen, anywhere in the world.

The terrace on Beretania Street was designed by the late George Walters, another famous Hawaii landscape architect.

Thompson & Thompson did the landscape architectural design for the new buildings at Ewa Plantation built in the early 1930s. Catherine Jones Thompson did the Art Academy planting design, including the courtyards. Now retired, she is one of only 156 Fellows in the American Society of Landscape Architects.

The scale of landscape architecture extends from a small garden to an entire region. City planning itself in its earliest day began as an offshoot from landscape architecture. In fact, Charles Mulford Robinson defined the needs for a new profession (city planning) that would include landscape architecture, architecture, sculpture, engineering, with a special concern for the general science and art of city building. He made this statement six years



before Harvard University offered the first city planning course in the United States. It was offered, of course, in its Department of Landscape Architecture. From that day to this, landscape architecture and city planning have been inexplicably intertwined both nationally and in Hawaii.

The total Waialae-Kahala plan, from the ocean to the mountains, beginning with its concept of retaining the golf course, of having an elegant hotel on the beach, of retaining the single-family usage, and the development of neighborhoods, all was the product of landscape architects. The new town of Kahului on Maui, called the "Dream City" when it was announced, with its curving streets, neighborhood schools, central business district, all was planned and designed by landscape architects. The total Kaanapali resort was conceived, designed, and set forth by landscape architects.

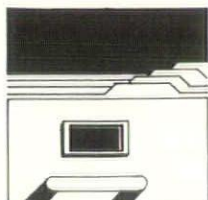
One of the Thompsons' early and most famous landscape design projects was the master plan for Punchbowl National Cemetery. Only recently the new master plan for Punchbowl, retaining all of the grand characteristics of the original plan, but expanding the burial capacity by the introduction of mausoleums and columbariums, including a ten-million-dollar program for more appropriately handling the huge influx of tourists,

was developed, planned and designed totally by landscape architects.

Landscape architecture is often thought of mistakenly as the last design element to be considered in a project. The reverse is often true. Major construction projects often begin with the landscape architect.

The site planning for many thousands of dwelling units are within projects done by landscape architects. Radford Terrace, a Navy project has received national acclaim for its site design. Both Queen Emma Gardens and Kukui Plaza gardens were planned by landscape architects.

The state has registered and licensed more than 80 professional landscape architects to practice in Hawaii. Quite a number of these are from the Mainland. However there are at least 50 professional landscape architects in Hawaii today, all of whom are concerned with the planning and design of the physical environment, ranging from the protection of the wilds of a National Park to the most intensively used open space area, to the planning of major housing projects, to the planning of total resorts, to developing urban design plans. In Hawaii the landscape architect today, as in 1905 when Robinson advised the Oahu board of supervisors, is totally concerned with the environment; planning, protecting, and enhancing it. **HA**



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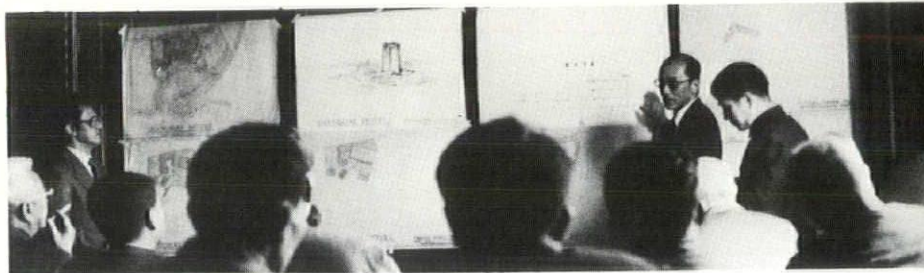
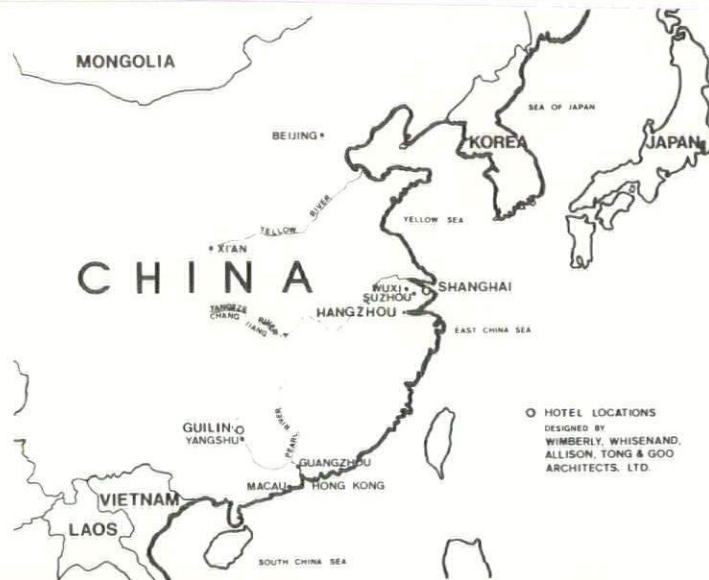
One of Our Own Was One of the First

The news of the establishment of formal diplomatic ties with the People's Republic of China of course prompted immediate, intense and widespread discussions of the possible ramifications of this recognition. In one area, that of trade, the move clearly held great promise for both countries. Major questions as to the manner of, and how much, trade will be involved, and how soon, still cloud this discussion. For one local firm however, the answers came with exciting and positive impact shortly after President Carter's announcement of normalization.

Wimberly, Whisenand, Allison, Tong & Goo became the first U.S. architectural firm to receive official authorization from China Travel Service and the first with approved sites and designs to do work in the People's Republic of China. Negotiations and design work have been in progress since September of 1978 with the joint venture client of China Travel Service, a China tourism development and construction agency, and the Kuok Travel Service, a Hong Kong entity of the widespread Robert Kuok organization in Southeast Asia.

The two projects are the Huashan Hotel in Shanghai and a hotel in Kweilin (now spelled Guilin). The first hotel is a 1,250 room, 38-story urban hotel on the Shanghai waterfront. Sitting on a 7.25 acre site, 50 percent of which is to be landscaped, it includes such features as a six-story lobby, 2,000-person capacity main ballroom, coffee shop, specialty restaurants, 20 function rooms, a garden terrace, cocktail lounge, barber and beauty shops, and athletic facilities. It also has a few facilities normally not included in typical western hotels: an air raid shelter, parking for 400 bicycles and living quarters for 400 staff.

The existing skyline of central Shanghai is generally 18 to 20 stories high. As George Whisenand



Architectural presentation in Shanghai: Gregory Tong of WWAT&G (standing left) and Geh Ik Cheong of Kuok Travel Service (standing right wearing glasses) making hotel design presentation to Shanghai authorities and planners.

explained:

"We first considered maintaining this height for the new hotel. The required density, however, would have produced a massive, squat, bulky building. Instead, we proposed a tall, slender building of 38 stories.

Very quickly the Shanghai planning officials understood the logic of the increased open space which the taller building affords. After three days of intensive meetings, we came away with approval of a design concept which will radically change the cityscape of Shanghai."

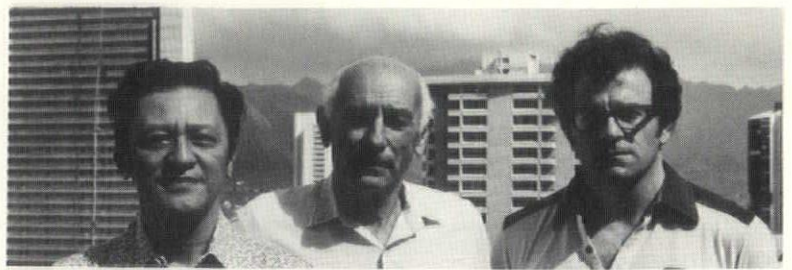
Gregory Tong, who initiated contact with the Kuok organization,

points out that China is capable of building highrise and is planning to use the Huashan as a model for succeeding projects and as a teaching laboratory for modern design and construction techniques.

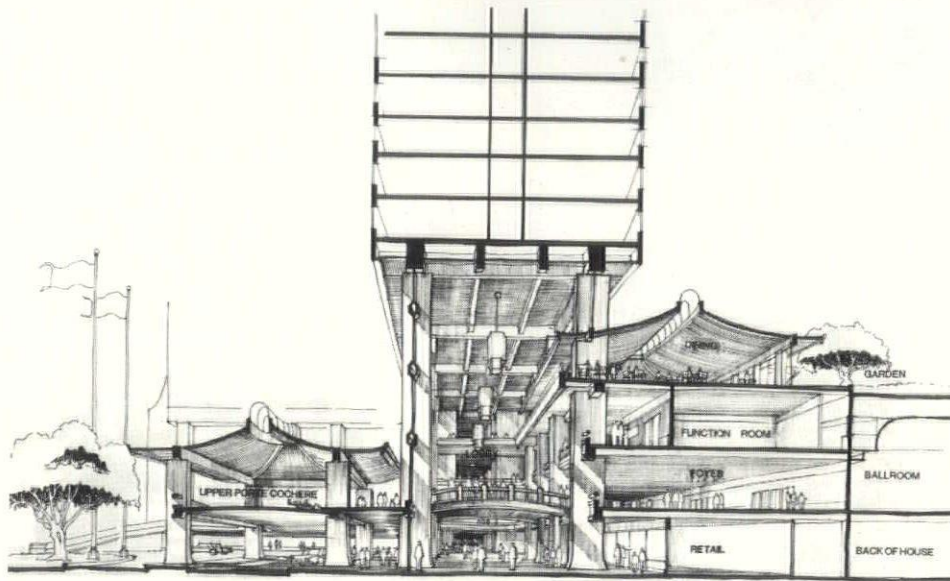
Construction of the Shanghai hotel is to begin in July of this year, with completion scheduled during the summer of 1981.

The Guilin project is for the first of two phases of a 12-story rural resort hotel on the outskirts of Guilin in South China. Each phase will consist of 600 rooms on an overall site of 60 acres. It is scheduled to start within a few months of the Huashan Hotel start. **HA**

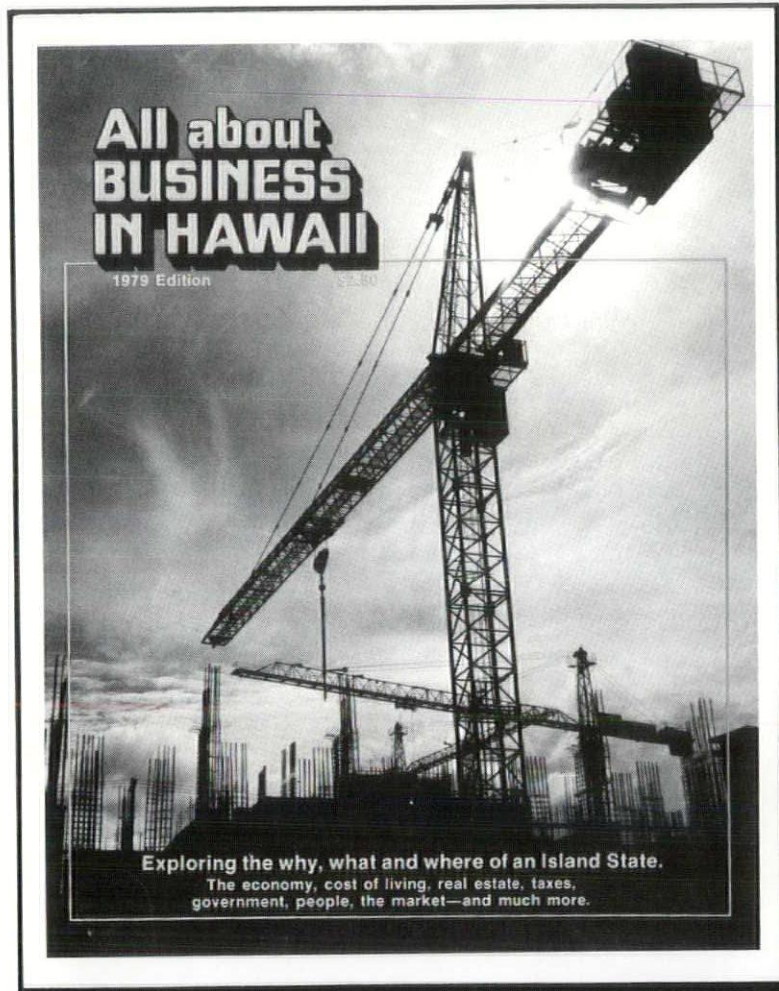
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To China: (from left) Tong, Whisenand, and Berean.



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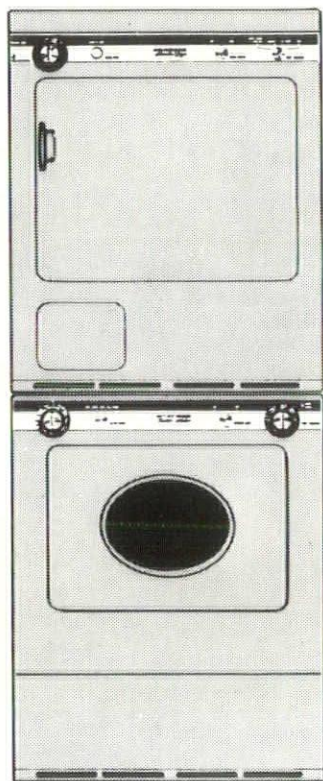
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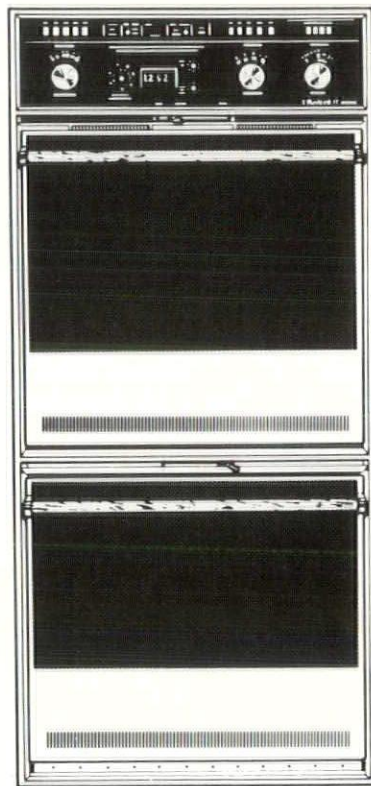
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Hawaii Architect was informed by Jerry Tune, columnist for the Honolulu Advertiser, that he is interested in gathering information about current work that architects are doing with the thought of doing an article about that work. We have all seen what he has done in the editions of the Sunday Star-Bulletin & Advertiser. Let's give him a little more ammunition. **HA**

The Developer Architect

Continued from Page 9

on financial considerations. Should the architect form a separate corporation, legally distinct from his architectural firm, for his role as developer? Should he participate on development teams as an individual or as a corporation? Should the development team be a joint venture partnership or a corporation?

The answers to such questions will vary, depending on firm size, state laws, extent of the architect's participation in development work, the firm's income, and even the architect's personal financial burdens and lifestyle. For all his legal problems, including professional liability, the essential advice to the architect-developer is to retain an attorney familiar with these problems. **HA**

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2. Architect's Handbook of Professional Practice, Vol. 1, 2.
3. Joint ventures for Architects and Engineers, Dibner.
4. Current Techniques in Architectural Practice, Robert Allan Class, Robert E. Koehler.

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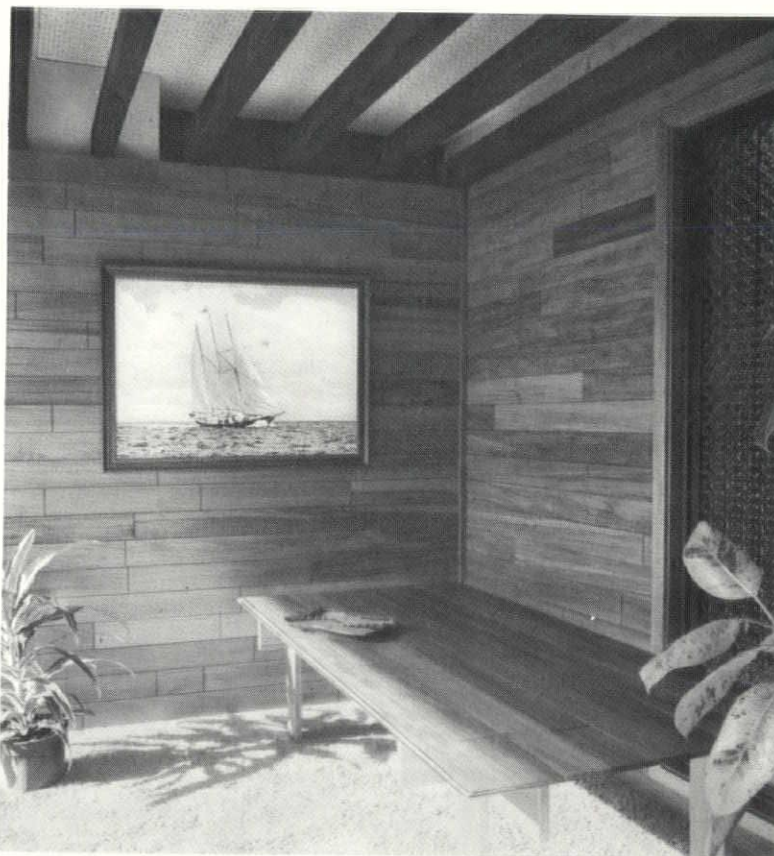
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Abuse of Process

by JUDITH JONES

In recent years, an alarming increase in the number of lawsuits brought against design professionals has occurred, and an expansion in the amount of monetary damages awarded. This is attributed to a number of factors. These include increased popularity of lawsuits in general, as legal remedies become available to a greater number of people; the desire of legal professionals to be profitably employed; and increased willingness of the courts to award large penalties against ostensibly high-paid professionals when errors occur.

But the most significant and disturbing of all these catalysts is the so-called Deep Pocket theory. The Deep Pocket theory assumes that the best person to "go after" in any dispute is the person most able to pay damages. In recent times, the use of liability insurance has cast most design professionals into this category.

Defense against a lawsuit is an expensive task, and it is unusual to recover legal fees. This has given rise to a form of legal extortion whereby a defendant finds himself the victim of a lawsuit which has little or no factual basis, and the plaintiff is quite willing to settle out of court for a few thousand dollars. Although the defendant may feel angry and wronged, he or she may accept the settlement rather than disrupt the firm's activities by spending the time, money, and energy to be involved in a defense.

HISTORY

"Early in the 20th century, in order for one party to collect damages from another party in tort, there had to be a privity. Privity means the parties had to deal face to face. Therefore, others who had not dealt face-to-face but who were injured, were unable to collect for damages."¹

The privity requirement started

to dissolve in 1916 with the case of *McPherson vs. Buick Motor Company*,² making it more and more possible to include almost any remotely involved party in a suit.

The absence of a privity requirement has led to a particularly large number of nuisance claims due to the nature of Employee Compensation Laws³ which preclude additional action by an employee against an employer, causing a damaged employee to look to the design professional or other source for additional compensation.

"Consolidation of Arbitration Laws" have permitted arbitration procedures to include all remotely involved participants of a project,⁴ and not all states honor contract clauses which waive a client's right to consolidated arbitration or joinder.⁵

The almost infinite possibility for a design professional to be the victim of nuisance suits has led to research for laws in existence which protect against or give compensation for such "extortion."

ABUSE OF PROCESS DEFINED

A modicum of relief may be provided under abuse of process laws, although such a defense has not shown to be useful very often.

"Abuse of Process consists in the malicious misuse or misapplication of that process to accomplish some purpose not warranted or commanded by the writ.

"In brief, it is the malicious perversion of a regularly issued civil or criminal process for a purpose and to obtain a result not lawfully warranted or properly attainable thereby and for a purpose and to obtain a result not lawfully warranted or properly attainable thereby, and for which perversion an action will lie to recover the pecuniary loss sustained."⁶

Another source says: "If one sues another without having suf-

ficient grounds to do so, but for the primary purpose of coercing payment of a disputed debt, it is the Abuse of Process. The action of Abuse of Process requires the showing of an improper motive and a willful act aimed at some objective other than the legitimate interest of the suit brought."⁷

Unfortunately for the design professional, such action has not proved to be very successful, and test cases have shown the courts to be protective of one's right to "a day in court," even when such suits are shown to be frivolous; for fear that any ruling will be interpreted as abridging the "common man's" right to legal action. In general, such suits are difficult to prove for the following reasons:

1—Coercion and/or extortion are difficult to substantiate.

2—Actual damages must be shown, as no damages will be presumed.⁸

3—The abuse must be willful or intentional, although it is not necessary to prove malice.⁹

There are circumstances, however, where such a suit is helpful, as in the case of totally unsubstantiated claims, or repeated frivolous suits by the same party against another.¹⁰

CONCLUSION

The lack of test cases which apply directly to the cause of the design professional is a deterrent, since most design firms are not large enough to invest in aggressive legal action to establish test cases. It would pass to the professional associations to pursue such cases on behalf of their members when ideal situations arise. An opportunity exists for attorneys defending such clients to establish a reputation as pioneers in abuse of process actions.

However, there appears to be an

Jones is a student
at the University of Hawaii.

unwillingness in the legal profes-
sion to follow such a route. It would,
however, be to the benefit of legal
societies which monitor legal
ethics, to participate in such a pur-
suit as a means of improving the
public image of the legal profession
in general.

The status quo locally is that this
topic has not been given priority as
an area of concern. The local AIA is
involved in legal research in other
areas benefiting architects, but
Abuse of Process claims have as
yet not been tested locally. **HA**

Footnotes

¹ Design Professionals Insurance Com-
pany. *Legislative Action*, Lin Litho, Inc., p.
30.

² 217 N.Y. 832, 111 N.E. 1050 (1916)

³ Architectural Record, July 1972, p. 53,
"New Approaches to liability and legal Ser-
vice Costs," Justin Sweet.

⁴ Progressive Architecture, Jan. 1, 1978,
p. 116, "Consolidated Arbitration Involves
Risks to Architects," Bernard Tonson and
Norman Coplan.

⁵ Ibid. Massachusetts Statutes "No provi-
sion in any arbitration agreement shall bar
or prevent action by the court on consolida-
tion."

⁶ American Jurisprudence, second ed.,
Vol. 1, The Lawyers Cooperative Publishing
Co., Rochester, N.Y., 1962 "Abuse of
Process."

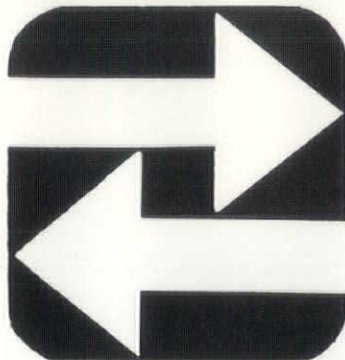
⁷ Ibid, no. 1.

⁸ Ibid, no. 6

⁹ Abuse of Process must be distinguished
from action and for malicious prosecution.
The latter is the employment of a process in
a manner not contemplated by law or to ob-
tain an object which such a process is not in-
tended by law to effect.

¹⁰ See malicious use of process.

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Energy

by RALPH PORTMORE

Legislative analyst/planner,
Office of Council Services

One area of planning that is receiving increasing attention in Hawaii is energy. It started in earnest in 1974, following the Middle East oil embargo. Few if any of us have forgotten the long lines and the big jump in the price of gasoline.

Things may seem pretty good now, but it could easily happen again. The state and county governments realize this and, after a few years of laying the groundwork, are now moving quickly on setting up energy conservation programs and developing alternative energy sources. Total statewide expenditures for alternative energy programs increased from \$1.7 million in 1974 to \$14.1 million in 1977. And the latter figure is minute compared to what is anticipated three or four years from now.

Just how serious is the problem? In Hawaii: very serious. Petroleum was the source of 95 percent of our energy in 1976, and 90 percent of that oil came from foreign countries. The comparable figures for the mainland are both a little under 50 percent. Obviously, Hawaii is extremely vulnerable to any future dislocations in the global oil market.

But it need not remain this way, for the state is also endowed with a great variety and abundance of natural energy resources. The most significant possibilities for economically replacing oil are:

Solar—Solar units are increasingly being used throughout the state for home water and pool heating. Various demonstration programs are also under way to evaluate the feasibility of large systems for apartment buildings and institutional users. Photovoltaic conversion (the use of solar cells for direct production of electricity) has the advantage of much broader applicability, but cost effective systems still lie in the future and require more research.

Wind—This is currently one of the fastest moving areas in terms of progress toward the economical generation of large amounts of electricity. Hawaii's strong and steady tradewinds make it close to if not the best place in the country to exploit this energy source. As a result of a recent federal grant, Hawaiian Electric will soon begin construction of a 200 kilowatt wind-powered turbine which will feed directly into its electric grid.

The main problem with this source is the variability of the wind and difficulties with storing large amounts of electricity in order to even off the peaks and valleys.

Biomass—The burning of bagasse (sugar cane waste) is currently the second leading source of energy in Hawaii. Nearly one-half of the Big Island's (and 8 percent of the state's) energy supply comes from bagasse. This contribution could be doubled if all field trash was processed for fuel.

Biomass conversion offers great promise for helping in a major way to meet future energy needs. This is because it has equal potential on all the islands and can be used to produce liquid fuels as well as electricity. Work is under way to reopen and convert a shut-down rum plant on Maui to produce fuel alcohol.

Honolulu is in the midst of planning for a large plant to recover energy from solid wastes. Present projections anticipate that biomass conversion will be the source of as much as 30 percent of the State's energy by the year 2000.

Geothermal and Ocean Thermal—Extensive research and development projects are in progress on the Big Island for both of these areas. A wellhead generator for the University of Hawaii's Puna well will soon be installed, making Hawaii the second state in the nation to have on-line electricity from a geo-

HAWAII ARCHITECT

thermal source.

More than \$50 million has been committed to building and testing of ocean thermal energy conversion (OTEC) facilities at Ke-ahole Point.

Conservation—While not "replacing" oil in a true sense, conservation can nevertheless significantly reduce the amount of oil we consume. And unlike most of the alternative sources, major reductions can be realized almost immediately at little or no expense. For example, a concerted effort by the City and County of Honolulu has reduced energy consumption by 22 percent in the Honolulu Municipal Office Building.

All together, the state is aiming toward meeting 55 percent of its energy needs through conservation and alternative sources by the year 2000. In addition to the 30 percent share allocated to biomass conversion, geothermal and ocean thermal would each contribute between 5 percent and 7 percent. Solar, wind, and hydro-electric combined would have an estimated 6 percent share. About 45 percent of our energy will still come from oil imports.

What are the implications for architects? The efficient accommodation of solar units will have a definite impact on siting and roof design, but probably even more significant will be efforts to reduce energy consumption through what is often called "passive design." For example, this would involve making better use of natural ventilation and minimizing the solar heat load in summer.

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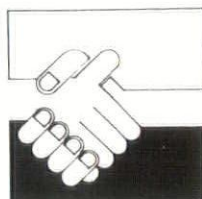
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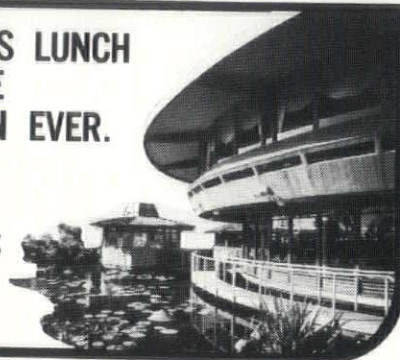
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