Environmentalist practices what he preaches

By Jim Borg
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For the past four months, several days a week, an unassuming figure with a distinguished head of gray hair has been bicycling between Hawaii Kai and the University of Hawaii’s William S. Richardson School of Law.

David Sive doesn’t fight the traffic.

At 66, Sive, who has been called the “father of environmental law,” bikes for the fresh air and exercise. But at rush hour, mired motorists watching him whiz by might suspect other motivations.

In fact, Sive’s routine seems to represent the current state of environmental policy in itself. An emphasis on useful compromise rather than the direct confrontation typical of the 1970s. While some protests still involve handcuffs and a chain-link fence, the twilight of the ‘80s finds more and more environmental disputes resolved in Sive’s professional arena.

“The environmentalists, I think, accept the fact that you can’t just sock it to General Motors, or DuPont, or the utility company, because what you are going to give up affects you, too,” said Sive, who as a visiting professor taught UH courses in environmental law and administrative law this fall. “There isn’t a simple solution of blaming the bad guys.”

A Manhattan lawyer who has been on the front lines of some of the classic environmental clashes of the last 25 years, Sive says environmental protection today is “universally recognized” as one of the top two or three public policy issues at every level of government.

And while environmental policy got off to a shaky start with President Reagan’s early appointments of Interior Secretary James Watt and EPA chief Anne Gorsuch, Reagan “learned his lesson,” Sive said. “Actually, the greatest thing that ever happened to the membership of the Sierra Club and the Wilderness Society was James Watt.”

In an interview last week, Sive praised President-elect Bush’s surprise appointment of World Wildlife Fund President William Reilly as EPA director. “He has been just a great environmental leader and I think Bush did really well on that,” he said.

Although there remains a “tremendous difference of views” among environmental advocacy groups, Sive said the movement today rests on a common, enduring foundation of federal laws enacted in the late 1960s and early 1970s, including the Clean Water Act and the National Environmental Policy Act.

And there’s a growing consensus on the threats to mankind from the atmospheric “greenhouse” effects of burning fossil fuels, from nuclear and chemical waste and non-biodegradable plastics — the wholesale killer of sea life, from the destruction of air-cleansing and biologically unique tropical forests, and from the depletion of the earth’s protective ozone layer by man-made chemicals called chlorofluorocarbons.

“Environmental law really began in the early and mid-1960s, as part of the environmental movement, which I always date as beginning with Rachel Carson’s ‘Silent Spring’ book and then starting with two or three great causes celebres,” said Sive, a founding partner of the Park Avenue firm of Sive, Paget and Riesel. Carson’s 1962 blockbuster detailed the environmental damage of pesticides, particularly DDT.

Among Sive’s important early cases were legal challenges to a planned underground nuclear test at Amchitka Island in the Aleutians and the proposed Trident submarine base near Seattle.

Sive, representing the Committee for Nuclear Responsibility, argued the Amchitka case in 1971 before a special session of the U.S. Supreme Court.

While the justices by a vote of 4–3 refused to stop the 5-megaton test, the case established the requirement that environmental impact statements accommodate opposing viewpoints.

The Trident base was built with some modifications, but the legal challenge strengthened environmental reporting requirements for military projects, Sive said.

Sive, a part-time professor of law at Columbia University, over the years has been associated with the Sierra Club, the Friends of the Earth Foundation, the Natural Resources Defense Council and the Environmental Defense Institute. But his current firm represents not only the resources council and the Sierra Club, but also a waste disposal firm and developer Donald Trump.

In Hawaii as elsewhere, land use questions occupy center stage among environmental law issues, said Sive. The Sandy Beach controversy is typical.

“I favor some way of preserving the beach and the lands around it,” said Sive. “I don’t think that the state can simply forbid development on a piece of property and in effect make private land a public park. That an effect constitutes a ‘taking.’”

Taking of property by the government without just compensation is a violation of constitutional guarantees of due process, Sive observed.

While a majority of Oahu voters on election day favored keeping Sandy Beach free of development, the case is under review by the Hawaii Supreme Court.