

# UH EIS Study

## *Legislative Briefing*

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Department of Urban & Regional Planning

William S. Richardson School of Law

Sea Grant College – Environmental Center



# Purpose

Prepared pursuant to Act 1, 2008

- Examine effectiveness
- Assess issues unique to Hawaii
- Larger concerns related to sustainability
- Develop recommendations

# Overview

- Project Team
- Summary of Research Methods
- Background
- *Key Findings: Issues*
- *Recommendations*

# Project Team

- **Karl Kim**
- **Denise Antolini**
- **Peter Rappa**
- **Scott Glenn**
- **Nicole Lowen**



Gary Gill, John Harrison, Makena Coffman, Klouldil Hubbard, Lauren Wilcoxon, Greg Shimokawa, Everett Ohta, Anna Gonzalez, Cari Hawthorne and the UH Program on Conflict Resolution



# Research Methods

- Stakeholder Interviews / Workshop
- Literature Review
- Legal Analysis
- International Survey of Best Practices
- Comparative Review of Other States



# Stakeholders Interviews/Workshops

100 Interviews = 400 hours

Transcribing Interviews= 600 hours

Summarizing Interviews= 100 hours

Load into the data base for analysis = 200 hours

Prepare the data for the Workshop (May –June 2009) = 240 hours

Workshop = ~100 hours

Post Workshop Data organizing = 320 hours

Analysis of Data= 120 hours

Briefing Book for October 2009 Meeting = 100 hours

October meeting (Hosted by Group 70) – 20 hours

Collating Information after meeting (50 letters and emails) = 100 hour

Analysis of all the data for inclusion into draft report to the Legislature= 180 hours

**Total = 2400 hours**

# Issue Groupings

## 17 Questions

1. Applicability/Triggers
2. Exemptions
3. Public Notice
4. EA/Determinations
5. EIS Preparation
6. Review
7. Acceptability
8. Mitigation
9. Shelf Life
10. Administration
11. Cumulative Impacts
12. Cultural Impacts
13. Best Practices
14. Climate Change
15. Disaster Management
16. Business Concerns
17. Other Issues



## 5 Areas of Concern

1. Applicability
2. Governance
3. Participation
4. Content
5. Process



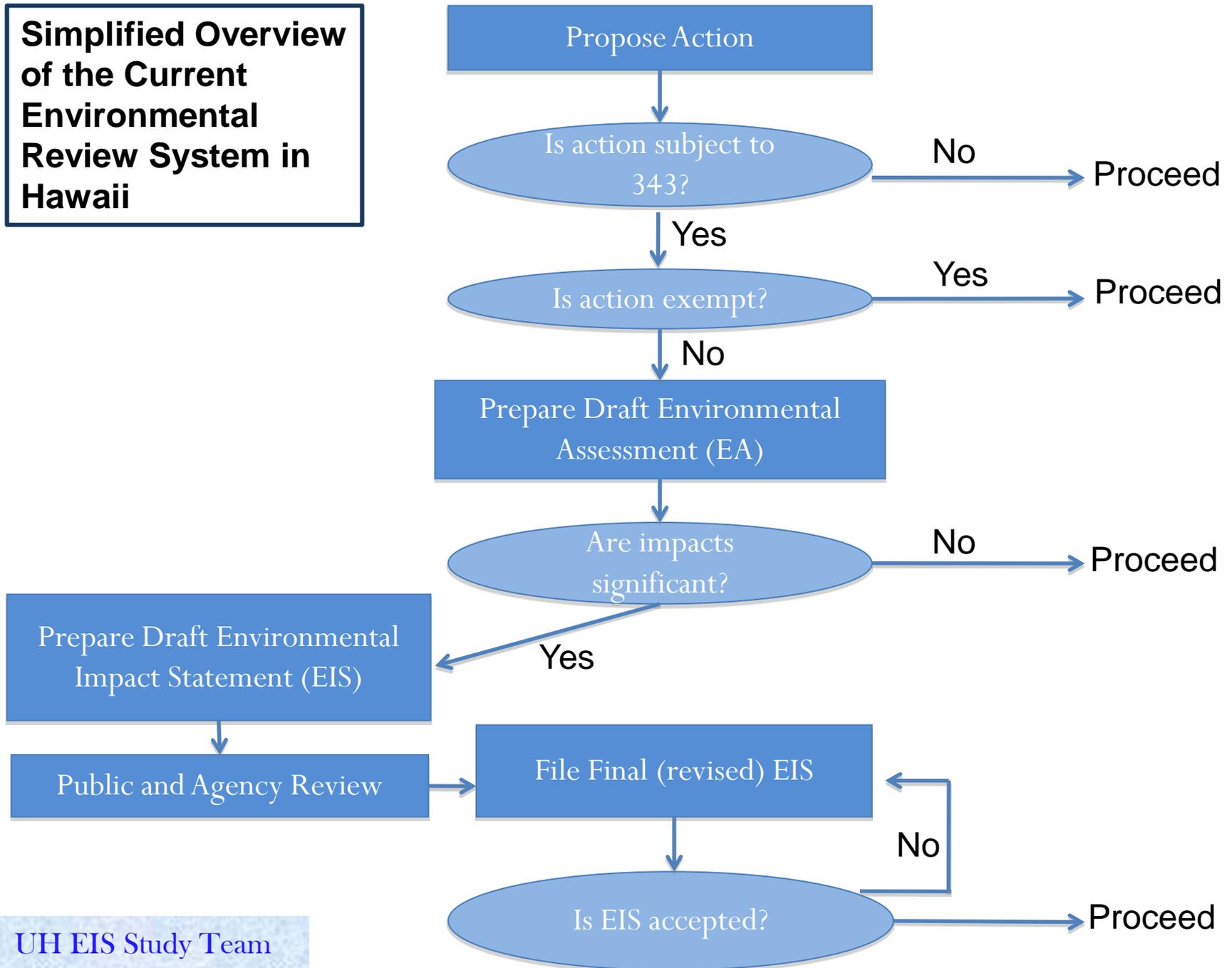
1. Problems
2. Fixes



# Background

- Overview of current system

**Simplified Overview  
of the Current  
Environmental  
Review System in  
Hawaii**

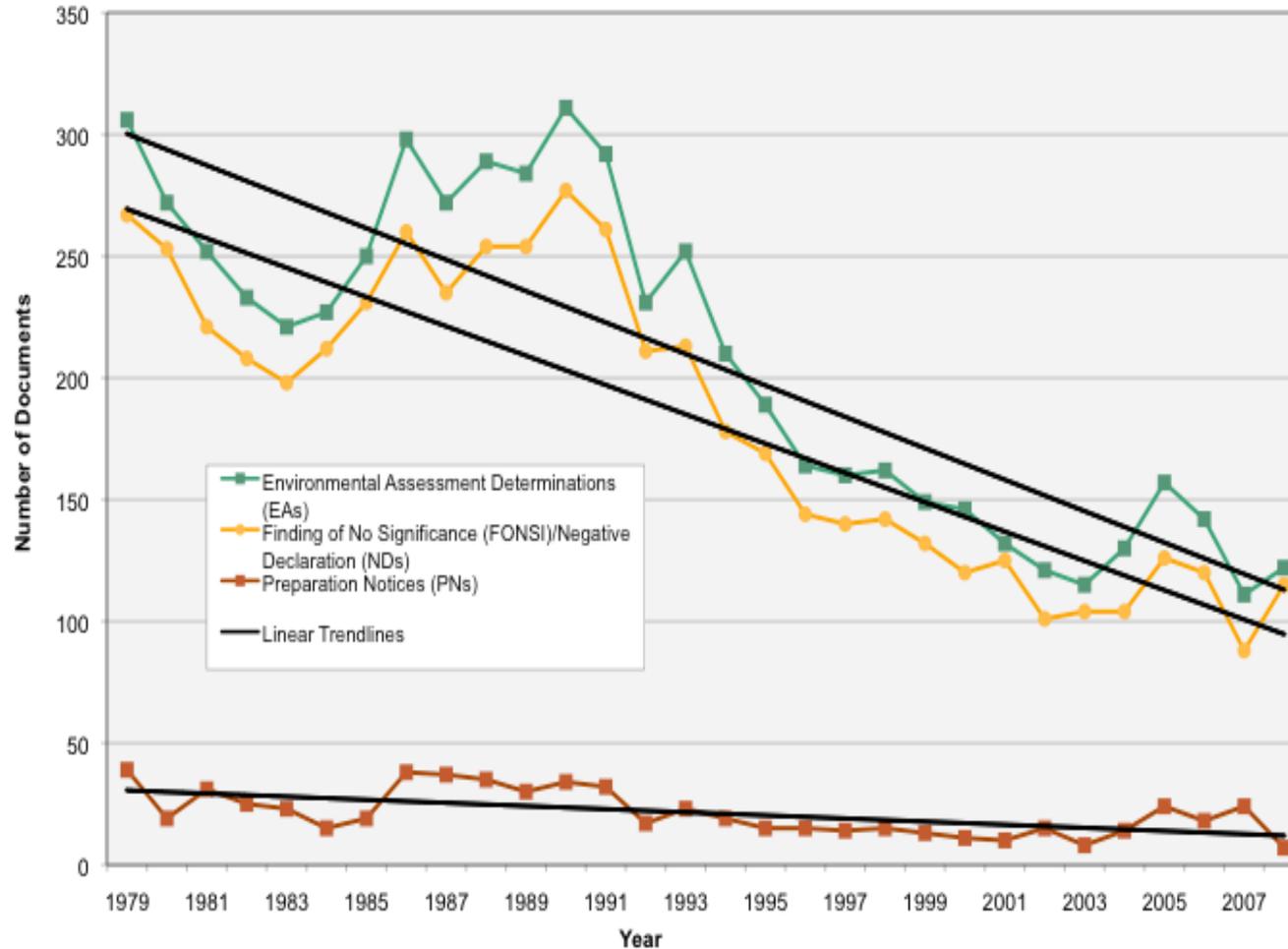


# Background

- Overview of current system
- Last review was in 1991
- Controversial cases have shown the need for examination of the system – Superferry, Koa Ridge, etc.
- Key legislative changes since 1991 – cultural impacts, increased public review, additional triggers added

# Trends in Environmental Review

Figure 1  
Environmental Assessment Determinations from 1979-2008  
EA Determinations, FONSI/Negative Declarations,  
and Preparation Notices for EISs



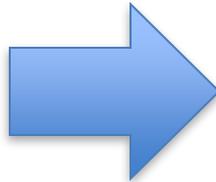
# 5 Principles of Environmental Review

- Protect the environment
- Improve information quality and decision making
- Enhance public participation
- Integrate with planning
- Increase efficiency, clarity, and predictability of the process

# Structure of Legislative Report

## Areas of Concern:

- *Applicability*
- *Governance*
- *Participation*
- *Content*
- *Process*



1. **Problem Analysis**
2. **Recommendations:**
  - a. **Statutory Changes**
  - b. **Rules Changes**
  - c. **Other Changes.**



# Applicability Issues

- Existing trigger system misses some large projects, captures too many small projects, might not include unanticipated future projects even if these have significant impacts, and isn't adaptable
- Environmental review occurs too late in the development process
- Rights-of-way and utility connections are required to undergo environmental review.
- EAs increasingly resemble EISs
- Exemption lists are outdated and inconsistent



# Applicability Recommendations

- Adopt an “earliest discretionary approval” screen
- Encourage programmatic environmental review
- Clarify that environmental review is not required for the use of land solely for connections to utilities and rights-of-way
- Streamline the exemption process, increase transparency, consolidate exemptions lists, and allow agencies to cross-reference their lists



# Governance Issues

- Authority, organizational Structure and responsibilities are unclear
- Environmental Council not functioning properly
- Inadequate staff and funding
- Environmental review system lacks modern communication and information technology



# Governance Recommendations

- Make the Environmental Council advisory to the Governor, similar to the CEQ; streamline the Council from 15 to 7 members
- Move OEQC and Environmental Council to the Department of Land and Natural Resources from the Department of Health
- Create a pay-as-you go process to ensure adequate funding for the administration of the environmental review process through reasonable filing fees
- Require OEQC and the Environmental Council to conduct regular outreach and training, annual workshops, publish an annual guidebook, and prepare an annual report on the effectiveness of the environmental review process.
- Require the OEQC to create and maintain an information management and electronic communication system to meet best practices for environmental review.



# Participation Issues

- It is unclear what constitutes adequate public notice
- For complex projects, comment periods are too short or public participation too late
- Repetitious and voluminous comments
- Interagency review need improvement



# Participation Recommendations

- Encourage broad, early, and sufficient public participation in the statute
- Develop rules based on NEPA that address repetitious and voluminous comments
- Permit agencies or applicants to extend the period for public comment one time for no more than 15 days
- Adopt in the rules examples of “reasonable methods” for informing the public
- Designate in the rules an EIS coordinator within each agency to coordinate and streamline EIS-related responsibilities



# Content Issues

- Lack of guidance and training on the environmental review process
- Documents are too long, repetitive, and contain too much boilerplate
- Mitigation measures lack transparency and follow up
- Cumulative impacts assessment not done well
- Guidance is needed for how to best address climate change



# Content Recommendations

- Require OEQC to conduct annual workshops and publish annually an updated guidebook or supplement
- Adopt NEPA's Record of Decision (ROD) requirement for mitigation measures in EISs
- Amend significance criteria to address climate change mitigation and adaptation
- Require OEQC to establish a database for cumulative impacts assessment
- Establish maximum page limits for environmental review documents



# Process Issues

- Requiring an EA for projects likely to require an EIS is time consuming and burdensome
- Supplementals and “Shelf Life”
- A perception of bias in preparation and acceptance undermines public confidence



# Process Recommendations

- Allow project proponents, with agency consultation, to proceed directly to an EIS.
- Require the Environmental Council to make certain rules regarding supplemental EISs.
- Enhance public and interagency review through more stringent requirements, guidance and training

# Conclusions

- Environmental review is broadly supported and has been beneficial to Hawaii.
- Agencies and applicants sometimes evade necessary environmental review.
- Applicant and agency decision-making is improved by early and robust public and interagency review.

# Conclusions cont'd

- The environmental review system has significant problems that need to be addressed.
- Major reform is challenging because of the complexity of the system, diversity of values held by stakeholders, and vested interests in perpetuating the existing system.
- In the past, Hawaii had a reputation for being a leader in environmental policy and it is up to the Legislature and others to restore that image.

# Final Thoughts

- Many *different kinds* of issues/ concerns
- **Major** versus **Minor** Concerns
- *Legislation, Administrative Rules, Guidance*
- **Stakeholder Perspectives**
- Where is there *agreement / disagreement?*
- How best to **balance** *environmental, economic and social / cultural / community* concerns?

# Website, Email, and Contacts

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