HAWAI`I ENVIRONMENTAL JUSTICE INITIATIVE REPORT

Prepared for the State of Hawai`i Environmental Council

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EXECUTIVE SUMMARY

This **Hawai`i Environmental Justice Initiative Report** was prepared by the Environmental Justice Project Coordinator hired by the State of Hawai`i Environmental Council in Spring 2007 to meet the requirements of Act 294, signed by Governor Linda Lingle on July 10, 2006. With this act, the Hawai`i Legislature recognized that environmental justice concerns may arise from disproportionate impacts on the environment, human health, and socioeconomic conditions of Native Hawaiian, minority, and/or low-income populations. The act aimed to accomplish two tasks: to define environmental justice in the unique context of Hawai`i through community outreach activities, and to develop and adopt a guidance document that addresses environmental justice in all phases of the environmental review process with assistance from the community.

This report documents the completion of those tasks. It includes a definition of environmental justice for Hawai`i; an environmental justice guidance document that includes, among other components, information on environmental justice screening analyses and community benefits agreements; an overview of the legal foundations for environmental justice in Hawai`i; and recommendations for future environmental justice efforts in this state.

Community Involvement

The community involvement process was conducted from August 28, 2007, through November 15, 2007. The 152 individuals participated in one-on-one/small group interviews, community meetings, and survey completion from the islands of Hawai`i, Kaua`i, Maui, Moloka`i and O`ahu.

A total of 62 people participated either in one-on-one interviews or small group (two to six people) interviews. A total of 84 people participated through community meetings. Sixty-one people participated in community meetings on September 20, 2007, in Niumalu and on November 1, 2007, in Kapaa, both on Kaua`i. Eleven people participated in a community meeting on September 20, 2007, in Wailuku (Maui) and 12 people on September 19, 2007, in Waianae (O`ahu). Six people chose to participate by completing the questionnaire on their own and then submitting it by e-mail.

Definition of Environmental Justice for Hawai`i

The definition of environmental justice for Hawai`i is:

Environmental justice is the right of every person in Hawai`i to live in a clean and healthy environment, to be treated fairly, and to have meaningful involvement in decisions that affect their environment and health; with an emphasis on the responsibility of every person in Hawai`i to uphold traditional and customary Native Hawaiian practices that preserve, protect, and restore the `aina for present and future generations. Environmental justice in Hawai`i recognizes that no one segment of the population or geographic area should be disproportionately burdened with environmental and/or

health impacts resulting from development, construction, operations and/or use of natural resources.

Environmental Justice Guidance Document

In accordance with Act 294, this report also includes an environmental justice guidance document developed to ensure that principles of environmental justice are systematically included in all phases of the environmental review process. The goal for the document is to ensure that all agencies and applicants fulfill their duty to identify and address at the earliest possible time any disproportionately adverse human health, environmental, or cultural effects on Native Hawaiian, minority, and/or low-income populations that would be caused by a proposed action or by an agency's policies, programs, and activities.

The guidance document draws from previous efforts to incorporate environmental justice into the National Environmental Policy Act (NEPA), which helped develop guidelines for incorporating environmental justice principles under the environmental impact statement (EIS) law of Hawai`i. The Hawai`i guidance document also incorporates input gathered during the community involvement phase of the Initiative.

Guidance document components include details on conducting environmental justice screening analyses to identify under-represented populations in proposed action areas and to determine whether disproportionate effects will impact these populations. These issues are addressed by asking two questions: Does the potentially affected community include under-represented populations? And, are the environmental impacts of a proposed action likely to fall disproportionately on under-represented members of the community?

Additionally, the guidance document builds on new trends across the United States by incorporating the *precautionary principle*. This principle places the burden of proof on the project proponent to demonstrate that no significant impacts to the environment or human health will occur as the result of a proposed project.

Finally, the guidance document includes information on community benefits agreements, which aim to provide the public with greater opportunity to participate in the EIS process for Hawai`i.

Legal Foundations

The report includes an overview of laws that trigger environmental justice issues in Hawai`i. The overview walks the reader through primary sources of law and pertinent judicial interpretations, and is designed to offer perspective on how environmental justice issues may be inferred from or supported by existing Hawai`i law and policy.

Recommendations for the Future

Finally, the report offers the following recommendations to further environmental justice efforts in Hawai`i.

First, it is recommended that the State of Hawai`i, Office of Environmental Quality Control (OEQC), adopt the environmental justice guidance document as agency policy for use in the state of Hawai`i environmental review process. This will allow agencies, applicants, OEQC, the Environmental Council, and the public to assess the efficacy and practical implications of implementing environmental justice in Hawai`i as envisioned by Act 294. Agency and applicant use of this guidance is highly recommended, but the document is not legally binding. Once OEQC adopts the Environmental Justice Guidance Document, it is recommended that it take the following actions to assist agencies, applicants, the Environmental Council, and the public:

- Provide an environmental justice link on the OEQC website. The environmental justice link will include environmental justice tools, resources, helpful website links, and examples of addressing environmental justice in the EIS process.

- Appoint or hire an environmental justice consultant to answer questions from agencies or applicants seeking advice on implementing the environmental justice guidance document.

- Establish a State of Hawai`i hotline for reporting environmental justice complaints.

- Evaluate state health department enforcement and inspection programs to determine whether they have a disproportionate impact on environmental justice communities.

- Provide education to agencies, businesses, and the public on environmental laws.

- Conduct community-wide information sessions to explain what environmental justice is and citizens' rights to meaningful involvement in decisions that impact them.

- Build the capacity of environmental groups through activities such as small grants programs or island-wide environmental justice conferences.

- Evaluate state Freedom of Information Act (FOIA) programs to ensure that access to environmental information is easy and not unduly expensive for citizens.

Finally, it is recommended that, after the efficacy and practical implications of the environmental justice guidance document have been evaluated, Hawai`i Revised Statute (HRS) Chapter 343 be amended to incorporate the successful aspects of the Environmental Justice Guidance Document. Act 294 states that "the legislature finds that there is a need to conduct a comprehensive and scholarly review of the state environmental impact statement process to evaluate its continued efficacy, the effectiveness of the amendments made by Act 50, Session Laws of Hawai`i 2000, and the possible need to revise chapter 343, Hawai`i Revised Statutes." The comprehensive review and possible revisions of HRS Chapter 343 afford the legislature the opportunity to incorporate environmental justice into the Hawai`i EIS law; by so doing, the legislature will ensure enforceability and accountability on the part of government agencies in implementing environmental justice practices in the environmental review process which, in

turn, will afford fair treatment and meaningful involvement of under-represented populations in Hawai`i when environmental decisions impact their environment and their health.

1. INTRODUCTION

The **Hawai`i Environmental Justice Initiative Report** (Initiative) was prepared by a consultant (Environmental Justice Project Coordinator) hired by the State of Hawai`i Environmental Council, under administration of the Research Corporation of the University of Hawai`i, to meet the requirements of Act 294, signed by Governor Linda Lingle on July 10, 2006. The Hawai`i Legislature recognized that environmental justice concerns may arise from disproportionate impacts on the environment, human health, and socioeconomics of Native Hawaiian, minority and/or low-income populations, and the act was passed to accomplish two tasks: to define environmental justice in the unique context of Hawai`i through community outreach activities and to develop and adopt a guidance document that addresses environmental justice in all phases of the environmental review process. This report documents the completion of those tasks.

Section 1 – Background of Environmental Justice – first presents the history of environmental justice in the United States and the development of federal actions to address environmental justice in minority and low-income populations. Next, it describes efforts in Hawai`i to address environmental justice at the state level.

Section 2 – Community Involvement Methodology – describes the methods used to conduct community outreach activities. This section details preparation activities, methods of outreach, and types of involvement. Also included is a breakdown of the number and types of people who participated in the Initiative who came from Hawai`i, Kaua`i, Maui, Moloka`i, and O`ahu.

Section 3 – Defining Environmental Justice for Hawai`i – lays out policies and definitions relating to environmental justice at the international level, beginning with the United Nations Declaration on Human Rights, then at the federal level, including the U.S. Environmental Protection Agency (EPA) and the National Environmental Policy Act. At the state level, the section presents policies and definitions developed by various states across the country. Using what others have previously developed, along with input gathered during the community involvement process, this report presents a definition of environmental justice for the State of Hawai`i.

Section 4 – Hawai`i Environmental Justice Target Populations – recognizes that the minority population distribution of Hawai`i differs greatly from that of the United States as a whole. Building on work by the O`ahu Metropolitan Planning Organization to identify environmental justice populations on O`ahu and on community input, target populations are identified for Hawai`i.

Section 5 – Environmental Justice Guidance Document – lays out the guidance document, which will be used to supplement the Hawai`i Revised Statute Chapter 343 – Hawai`i Environmental Impact Statement Law. This guidance document is based on the EPA's efforts to incorporate environmental justice into the National Environmental Policy Act.

Section 6 – Legal Foundations for Environmental Justice in Hawai`i – was prepared by two students at the University of Hawai`i, William S. Richardson School of Law. The framework of the legal research outlines sections from the Constitution of the State of Hawai`i, Hawai`i Revised Statutes, and case law that are relevant to environmental justice and Native Hawaiian rights.

Section 7 – Recommendations for Future Environmental Justice Efforts – recognizes that Act 294 is only the first step in addressing environmental justice efforts here in Hawai`i. The basic recommendation is to incorporate the environmental justice guidance document into the Hawai`i environmental impact statement law. Other recommendations also are made.

Note: Text boxes contain quotes from Initiative respondents, taken from Appendix D.

2. BACKGROUND OF ENVIRONMENTAL JUSTICE

2.1. History of Events

How did the environmental justice movement arise? It was started by individuals, primarily people of color, who sought to address unequal environmental protection in their communities. Grounded in the struggles of the 1960s Civil Rights Movement, members of the environmental movement sounded the alarm about public health dangers to their families, their communities, and themselves.[1]

A landmark event in the environmental justice movement occurred in Houston, Texas, in 1979, when African American homeowners began a bitter fight to keep a landfill out of their suburban middle-income neighborhood. In *Bean v. Southwestern Waste Management Corp.*, residents and their attorney were the first to use civil rights law to challenge the siting of a waste facility.[2]

In 1982, the siting of a landfill to dispose of polychlorinated biphenyls prompted protests from a rural, mostly African American community in Warren County, North Carolina. The protests resulted in more than 500 arrests, which led to a U.S. General Accounting Office study titled *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*. The study revealed that "three out of four off-site, commercial hazardous waste landfills in the U.S. Environmental Protection Agency's Region 4 happened to be located in predominantly African-American communities, although African Americans made up only 20 percent of the region's population."[3]

The Warren County protests also led to the 1987 United Church of Christ Commission for Racial Justice publication *Toxic Wastes and Race in the United States*, the first national study to correlate waste facility sites and demographic characteristics. "The study found that race was the most potent variable in predicting where such facilities would be located – more powerful than poverty, land values, and home ownership."[4]

Probably the single-most important event in the history of the environmental justice movement, however, was the First National People of Color Environmental Leadership Summit held in Washington, D.C., in 1991. The summit broadened the environmental justice movement from a focus on toxics to a focus that included issues of public health, worker safety, land use, transportation, housing, resource allocation, and community empowerment. Summit delegates

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[1] U.S. Environmental Protection Agency. (2007). *Environmental justice: Basic information*. Retrieved December 9, 2007, from http://www.epa.gov/compliance/basics/ejbackground.html

[2] Bullard, Robert D. (2005). *The quest for environmental justice: Human rights and the politics of pollution*. San Francisco, CA: Sierra Club Books.

[3] *Ibid*., p. 20.

[4] *Ibid*.

adopted 17 "Principles of Environmental Justice," which were developed as a guide for organizing, networking, and working with governmental and nongovernmental organizations.[5]

2.2. Executive Order 12898

In response to growing public concern and mounting evidence of disparate treatment, President Bill Clinton signed Executive Order 12898*, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* on February 11, 1994. Its purpose was to focus federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities. The executive order directed federal agencies to develop environmental justice strategies to help address disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations. The order also intended to promote nondiscrimination in federal programs that affect human health and the environment, and aimed to provide minority and low-income communities with access to public information and public participation in matters relating to human health and the environment. The Presidential Memorandum accompanying the order underscored certain provisions of existing law that could help ensure that all communities and persons across the nation live in safe and healthy environments.[6]

The executive order established an Interagency Working Group (IWG) on environmental justice chaired by the EPA administrator and comprised of the heads of 11 federal departments or agencies and several White House offices. These include the EPA; the departments of Justice, Defense, Energy, Labor, Interior, Transportation, Agriculture, Housing and Urban Development, Commerce, and Health and Human Services; the Council on Environmental Quality; the Office of Management and Budget; the Office of Science and Technology Policy; the Domestic Policy Council; and the Council of Economic Advisors. The IWG meets on a monthly basis to continue collaborative projects. [7]

In October 2002, environmental justice leaders convened the Second National People of Color Environmental Leadership Summit in Washington, D.C. Five hundred participants were expected to attend the four-day conference, but more than 14,000 people representing grassroots and community-based organizations, faith-based groups, organized labor, civil rights groups, youth groups, and academic institutions attended. Several themes emerged from the conference, including making environmental justice a top priority in the 21st century. Also, summit delegates called for students and other youth to be integrated into the leadership of the environmental justice movement.[8]

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[5] *Ibid*., p. 21.

[6] U.S. Environmental Protection Agency, *Environmental justice.*

[7] *Ibid*.

[8] Bullard, *The quest for environmental justic*e.

2.3. Today

The environmental justice movement continues to expand and mature. In 1992, there were only 300 environmental justice groups in the United States. By 2000, the list had grown to more than 1,000 groups in the United States, Puerto Rico, Canada, and Mexico. At Summit II, women led, moderated, or presented in more than half of the 86 workshops and plenaries. In 1991, there were no environmental justice networks, university-based environmental justice centers, or environmental justice legal clinics. By 2005, there were a dozen environmental justice networks, four environmental justice centers, and a growing number of university-based legal clinics that emphasize environmental justice.[9]

2.4. Addressing Environmental Justice in Hawai`i

The Hawai`i Legislature adopted Senate Concurrent Resolution (SCR) 140 HD 1 (see Appendix A) on May 3, 2005, in recognition of the environmental justice concerns that may arise from effects on the natural and physical environment, including human health or ecological effects on minority populations, low-income populations, and Native Hawaiians, and from related social or economic effects. The resolution requested that the State of Hawai`i Environmental Council, with the Office of Environmental Quality Control (OEQC) and the University of Hawai`i Environmental Center (UHEC), "develop and promulgate a guidance document on including principles of environmental justice in all phases of environmental review undertaken pursuant to Chapter 343, Hawai`i Revised Statutes." The resolution requested that the working group seek input "from a wide segment of interested parties, including high school students who are concerned about this issue."

> *An environmentally just society would be one where benefits and costs are more evenly distributed among all members of society.*

During the summer of 2005, the Environmental Council's standing committee on Education and Cultural Consultants convened three meetings with interested public and stakeholder agencies to discuss a plan to implement the resolution. The committee decided to first accomplish three supplemental goals that were not specifically outlined in SCR140, HD1. These included: (1) engage the community in a conversation about the meaning of environmental justice in general and in Hawai`i; (2) seek input from the community regarding appropriate definition of environmental justice in Hawai`i; and (3) develop a definition of environmental justice for Hawai`i.

The committee then developed a plan to meet the intent of SCR 140 HD 1, along with the supplemental goals. This plan, *State of Hawai`i Environmental Council Proposal: A Process and Plan to Accomplish the Requests of SCR 140 HD 1 (2005),* is included in Appendix A. Activities to meet the intent of the resolution include:

- Increase public interest in and awareness of environmental justice.
- Host a series of community conversations.

[9] *Ibid.*

- Hold a series of environmental justice workshops throughout Hawai`i.
- Develop a high school environmental justice curriculum.
- Conduct ongoing public input on the draft guidance document.
- Finalize the state definition of environmental justice.
- Finalize the environmental justice guidance document.
- Update the state's environmental impact statement process.

Using the Environmental Council's plan, Senator Colleen Hanabusa introduced Senate Bill 2145, *A Bill for an Act Relating to the Environment*, during the 2006 legislative session, which passed the House and Senate without significant amendment. On July 10, 2006, Governor Linda Lingle signed the bill, which became Act 294 (see Appendix A). The legislature found the need "to develop an environmental justice guidance document to ensure that principles of environmental justice are systematically included in all phases of the environmental review process and that each agency fulfills its duty to identify and address at the earliest possible time any disproportionately adverse human health, environmental, or cultural effects on minority populations, Native Hawaiians, and low-income populations that would be caused by a proposed action or the agency's policies, programs, and activities."

> *Hawaiians and other Pacific Islanders seem disproportionately disempowered in their own country. Even those Hawaiians and Pacific Islanders who are in higher income areas still face environmental injustices.*

The Act required the Environmental Council to contract with a consultant (Environmental Justice Project Coordinator) to facilitate and coordinate the state's environmental justice activities, which has since been named **The Hawai`i Environmental Justice Initiative** (Initiative). The consultant was contracted in April 2007 through the Research Corporation of the University of Hawai`i. The activities of the Initiative include:

- Defining environmental justice in the unique context of Hawai`i through educational community outreach.
- Developing and adopting a guidance document that addresses environmental justice in all phases of the environmental impact statement (EIS) process.

The Council was to then submit a report to the Hawai`i State Legislature in January 2008, including the environmental justice definition and guidance document for the environmental review process.

2.5. Environmental Justice High School Curriculum

One of the tasks detailed in the Environmental Council's plan to implement Act 294 is to "develop, with the help of the DOE (Department of Education), high school curriculum that addresses environmental justice, in a hands-on way, to concerned high school student populations." Pacific American Foundation (PAF) was contracted by the Research Corporation of the University of Hawai`i in September 2007 to develop the environmental justice curriculum using DOE standards because of PAF's ongoing work on Kaho`olawe.

The U.S. military took the island of Kaho`olawe from the Native Hawaiian people and used it for bombing practice from the 1930s to the 1990s. This greatly impacted the Native Hawaiians' ability to practice their culture on their lands. Because environmental justice seeks to avoid disproportionate negative environmental impacts to minority (e.g., Native Hawaiians) and low-income people, the Kaho`olawe project is a prime example of an environmental injustice to the Native Hawaiian people. Thus, developing a culturally based curriculum based on Kaho`olawe will have a direct impact on the Native Hawaiian people and represent a step toward overcoming the injustice they feel concerning this issue.[10]

With a grant from the federal Department of Education, PAF formed a partnership with the Kaho`olawe Island Reserve Commission, Protect Kaho`olawe Ohana, Hawai`i Department of Education, and the Polynesian Voyaging Society to develop curriculum for the project *Mālama Kaho`olawe*. The environmental justice portion of the curriculum is based on conditions, content, and circumstances regarding the cleanup and restoration of Kaho`olawe. PAF began work on the *Mālama Kahoolawe* curriculum project in October 2006 and began a pilot test in October 2007. The environmental justice curriculum will be tested in the Spring/Summer of 2008 and is planned for completion in September 2009. The environmental justice curriculum developed through the *Mālama Kaho`olawe* project may be used as a model curriculum for other environmental justice issues in Hawai`i.

2.6. `Ōlelo Youth Xchange Video Contest

Beginning in 2006, the Hawai`i Office of Environmental Quality Control and the Environmental Council sponsored a new environmental justice category in `Ōlelo's Youth Xchange Video competition. The purpose of `Ōlelo Community Television's statewide video competition is to educate students of all ages about the value and importance of speaking out about their concerns through the creative and powerful medium of video. `Ōlelo (which in Hawaiian means "to speak") furthers this goal by empowering student voices through the use of its cable channels. `Ōlelo seeks to encourage students to speak to their island community and to send strong and vibrant messages to the entire world. They are committed to enabling the students of Hawai`i to "SpeakStrong."

In the past two years, students have submitted quality-produced videos. However, the content has been focused more on general environmental impacts rather than disproportionate impacts to minority and low-income populations. So, to assist the teachers and students in understanding environmental justice, the Environmental Justice Project Coordinator will be available to advise in the development of their videos for the 2008 contest.

[10] Information provided by Herb Lee, Executive Director, Pacific American Foundation.

3. COMMUNITY INVOLVEMENT METHODOLOGY

3.1. Preparation

In preparation for the community involvement effort, a one-page fact sheet was developed (see Appendix B). The fact sheet includes the U.S. Environmental Protection Agency (EPA) definition of environmental justice; explains the Hawai`i Environmental Justice Initiative and its goal of defining environmental justice for this state in a collective process involving community members; and describes the Hawai`i environmental review process. In addition, it lists ways that community members can participate and identifies, by general category, people whose input is needed. The fact sheet also provides point-of-contact information for the Initiative effort.

To gather the information required by Act 294, a questionnaire was developed to use during the community outreach process (see Appendix B). The questions aimed to assist in defining environmental justice in the unique context of Hawai`i and in developing a guidance document that addresses environmental justice in all phases of the environmental review process for Hawai`i. In addition, the questionnaire was designed to gather information on how to identify environmental justice populations and the best methods to use to meaningfully involve environmental justice populations in decisions that impact them. It also asked respondents to describe past or present environmental justice issues and what more needs to be done to address environmental justice in Hawai`i.

3.2. Community Outreach

Once the community outreach documents were completed, the public was notified of the Initiative. Mālama Hawai`i, a nonprofit group of more than 70 organizations and hundreds of individuals whose mission is to ensure that Hawai`i is a place where people, land, and sea are cared for, assisted with the public notification efforts by emailing details of the Initiative to many of its members. In addition, the state Office of Environmental Quality Control included details of the Initiative in its August 23, 2007, issue of the *Environmental Notice*. The public was notified of community meetings in *The Honolulu Advertiser* on O`ahu, *The Garden Island* on Kaua`i, and *The Maui News*. Finally, additional contacts were made through referrals obtained from respondents during the community outreach process.

People who participated in the Initiative were classified into the following eight categories:

- Academia
- Community members
- Developers/Utility companies
- Environmental groups
- Lawyers
- Government agencies/Legislators
- Native Hawaiians/Native Hawaiian groups
- Planners/Consultants

In the community outreach process, it was noted that the military was not represented and that direct contact with military public affairs officers would have been an effective avenue for obtaining military participation.

Community outreach efforts focused on five islands: Hawai`i, Kaua`i, Maui, Moloka`i, and O`ahu, as detailed in Table 1. A total of 152 individuals participated in the outreach activities with some representing more than one interest category, as indicated in Table 1 below. Community members comprised the category with the most participants with a total of 81 across all islands, followed by government agencies with 26 participants and environmental groups with 25 participants. Developers/utility companies comprised the category with the fewest participants with only three representatives. Only on O`ahu were all categories of participants reached.

Table 1: Participant categories by island[1]

Groups Represented	Hawai`i	Kaua`i	Maui	Moloka`i	O`ahu	Total
Academia	-	-	1	-	9	**10**
Community Member	1	51	8	2	19	**81**
Developer/Utility Co.	-	-	-	-	3	**3**
Environmental Group	1	14	3	-	7	**25**
Lawyer	-	-	-	-	8	**8**
Government Agency	3	8	10	-	5	**26**
Native Hawaiian/Native Hawaiian Group	1	1	1	2	11	**16**
Planner/Consultant	1	-	1	-	6	**8**
Total	**7**	**74**	**24**	**4**	**68**	**177**

[1] *Because some individuals may represent more than one interest, they were allowed to choose more than one category.*

3.3. Community Involvement

The community involvement process was conducted from August 28, 2007, through November 15, 2007. The 152 individuals participated in one-on-one/small group interviews, community meetings, and survey completion. Table 2 lists the types of community involvement by island.

A total of 62 people participated either in one-on-one interviews or small group (two to six people) interviews. The small groups usually consisted of people from the same office, such as the Department of Land and Natural Resources. A total of 84 people participated through community meetings. Sixty-one people participated in community meetings on September 20, 2007, in Niumalu and on November 1, 2007, in Kapaa, both on Kaua`i. Eleven people participated in a community meeting on September 20, 2007, in Wailuku (Maui) and 12 people on September 19, 2007, in Waianae (O`ahu). One of the Waianae meeting sign-in sheets was not turned in, so the exact number of attendees is unknown. Six people chose to participate by completing the questionnaire on their own and then submitting it by e-mail.

The names of all participants and the organizations they represent are included in Appendix C.

Table 2: Types of community involvement by island

Type of Involvement	Hawai`i	Kaua`i	Maui	Moloka`i	O`ahu	Total
One-on-one Interviews	5	8	10	2	37	**62**
Community Meetings		61	11		12	**84**
E-mail	1	3	1		1	**6**
Total	**6**	**72**	**22**	**2**	**50**	**152**

4. DEFINING ENVIRONMENTAL JUSTICE FOR HAWAI`I

Act 294 requires defining environmental justice in the unique context of Hawai`i. In an effort to develop this definition, existing environmental justice definitions and policies were reviewed at the international, federal, and state levels. Also, participants across the state were asked, "What does environmental justice mean to you?" Their responses and the review of existing federal and state initiatives were then used to develop a definition of environmental justice for Hawai`i.

This section begins with an overview of existing initiatives, then provides an overview of relevant Hawai`i constitutional and state law, followed by a summary of Hawai`i participants' definitions of environmental justice, which are provided in detail in Appendix D. The section concludes with a definition of environmental justice for Hawai`i.

4.1. International Level

On December 10, 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. Its preamble states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In addition, Article 1 of the declaration states that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[11]

4.2. Federal Level

This section focuses on the definitions and policies of two key U.S. federal agencies that implement laws and regulations with respect to the environmental review process.

The EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." This definition emphasizes fair treatment and meaningful involvement. *Fair treatment* means that no group of people should bear a disproportionate share of negative environmental impacts resulting from industrial, municipal, and commercial operations. *Meaningful involvement* means that potentially affected communities have an opportunity to participate in decisions about proposed actions that will affect their environment and/or health. [12]

According to the National Environmental Policy Act (NEPA) of 1969, NEPA's purpose is to "encourage productive and enjoyable harmony between man and his environment" and it recognizes "that each person should enjoy a healthful environment and that each person has a

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[11] Welcome to the United Nations. (n.d.). *UN Declaration of Human Rights*. Retrieved December 28, 2007, from http://www.un.org/Overview/rights.html

[12] U.S. Environmental Protection Agency. (2007, December 6). *Environmental justice: Basic information*. Retrieved December 6, 2007, from http://www.epa.gov/compliance/basics/ejbackground.html

responsibility to contribute to the preservation and enhancement of the environment."[13] Although NEPA is not explicitly labeled an environmental justice policy, it reflects the values of environmental justice as stated by the EPA as well as Executive Order 12898. The order, signed on February 11, 1994, aimed to focus federal attention on the environmental and human health conditions of minority and low-income populations to achieve environmental protection for all communities.[14]

4.3. State Level

The 2007 report *Environmental Justice for All: A Fifty State Survey of Legislation, Policies, and Cases* is the Public Law Research Institute's third comprehensive survey of the laws, policies, and practices under which environmental justice is promoted.[15] Since 1993, at least 32 states and the District of Columbia have adopted formal environmental justice statutes, executive orders, or policies. Ten additional states either employ full-time environmental justice officers or personnel or have environmental justice programs. Fifteen states have explicit environmental justice policies or definitions that were found to be useful in developing the environmental justice definition for Hawai`i.[16] Three of these states recognize the EPA definition for environmental justice: the Colorado Environmental Performance Partnership Agreement, the Pennsylvania Department of Environmental Protection, and the West Virginia Department of Environmental Protection. The environmental justice policies and definitions of the remaining 12 states are summarized immediately below.

The Connecticut Department of Environmental Protection developed an environmental equity policy stating that "no segment of the population should, because of its racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits." [17]

According to the Illinois Environmental Protection Agency, environmental justice "is based on the principle that all people should be protected from environmental pollution and have the right to a clean and healthy environment. Environmental justice is the protection of the health of the people of Illinois and its environment, equity in the administration of the State's environmental programs, and the provision of adequate opportunities for meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." [18]

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[13] The National Environmental Policy Act of 1969. (n.d.) Retrieved November 28, 2007, from http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm

[14] Executive Order 12898 of February 11, 1994: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629. Retrieved December 10, 2007, from http://www.epa.gov/fedrgstr/eo/eo12898.pdf

[15] The Public Law Research Institute. (2007). *Environmental justice for all: A fifty state survey of legislation, policies and cases*. Retrieved September 5, 2007 from http://www.uchastings.edu/site_files/plri/EJ2007.pdf

[17] The Public Law Research Institute.

[18] Illinois Environmental Protection Agency. (2007). *Environmental justice (EJ)*. Retrieved November 28, 2007, from http://www.epa.state.il.us/environmental-justice/.

Building on the EPA's definition, Maryland's Commission on Environmental Justice and Sustainable Communities specifically notes, "all citizens of the State should expect (1) to be protected from public health hazards and (2) to have access to the socio-economic resources necessary to address concerns about their livelihood and health." [19]

The Massachusetts Environmental Justice Policy of the Executive Office of Environmental Affairs defines environmental justice as "based on the principle that all people have a right to be protected from environmental pollution and to live and enjoy a clean and healthful environment. Environmental justice is the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulation, and policies and the equitable distribution of environmental benefits."[20]

The policy of the Minnesota Pollution Control Agency is to "ensure fair and equitable treatment and meaningful involvement of all Minnesota citizens in the implementation of federal and state environmental laws, rules, programs, and policies to insure that:

- Minority and economically-disadvantaged communities in Minnesota do not bear a disproportionate share of the involuntary risks and consequences of environmental pollution,
- That they are not denied equal access to environmental benefits, and
- That they have opportunities for meaningful participation in the development and implementation of Minnesota's environmental programs."[21]

The environmental equity policy of the New Hampshire Department of Environmental Services is to "ensure fair and equitable treatment of all New Hampshire citizens in the implementation of federal and state environmental laws, rules, programs, and policies."[22]

The Environmental Justice Advisory Council (EJAC) to the New Jersey Department of Environmental Protection (NJDEP) "is committed to the basic tenet set forth by the Environmental Justice Movement that all communities, regardless of their racial, ethnic, or economic composition, are entitled to equal protection from the consequences of environmental

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[19] Maryland State Commission on Environmental Justice and Sustainable Communities. (2004), *Annual report*. Retrieved December 10, 2007, from http://www.mde.state.md.us/assets/document/environmental_justice/ej_2004_Annual_Report.pdf

[20] Massachusetts Executive Office of Environmental Affairs. (2007). *The environmental justice policy of the Executive Office of Environmental Affairs.* Retrieved November 28, 2007, from http://www.mass.gov/envir/ej/pdf/EJ_Policy_English.pdf

[21] Minnesota Pollution Control Agency. (1999, September 21). *Strategic framework and interim procedures to incorporate environmental justice principles and practices into Minnesota Pollution Control Agency operations*. Retrieved November 28, 2007, from http://www.pca.state.mn.us/publications/policy-environmentaljustice.pdf

[22] New Hampshire Department of Environmental Services. (n.d.). *Environmental equity policy*. Retrieved November 28, 2007, from http://www.des.state.nh.us/equitypolicy.htm

hazards. EJAC will make strategic recommendations to the NJDEP Commissioner to ensure that the Department develops effective communication programs, implements and enforces environmental laws, regulations, and policies so that such actions do not unfairly burden any New Jersey population of people with a disproportionate share of environmental pollution. Further, EJAC will strongly encourage the Department to provide a mechanism for outreach to direct community participation in environmental decision making."[23]

The State of New Mexico "is committed to affording all of its residents, including communities of color and low-income communities, fair treatment and meaningful involvement in the development, implementation, and enforcement of environmental laws, regulations, and policies regardless of race, color, ethnicity, religion, income or educational level." In addition, New Mexico "is further committed to promoting the protection of human health and the environment, empowerment via public involvement in the development, implementation, and enforcement of environmental laws, regulations, and policies, and the dissemination of information related to the environment to inform and educate, especially in people of color and low-income communities."[24]

North Carolina's Department of Environment and Natural Resources, Environmental Equity Initiative "seeks to foster meaningful participation and greater understanding, reduce risk, share responsibility and enjoy mutual benefits." The Initiative "attempts to create opportunities for successful and productive communication between agency, local community, and neighboring industries. Providing all citizens the opportunity for meaningful input into decision-making processes is critical to effective government."[25]

The Oregon Environmental Justice Citizen Advisory Board defines environmental justice as "the fair treatment and meaningful involvement of people of all colors, national origins, cultures, income levels, age, gender and educational level, in the development, implementation and enforcement of environmental laws, regulations and policies."[26]

In Rhode Island, everyone living in the state has "a right to enjoy a clean and healthy environment. The Rhode Island Department of Environmental Management must, therefore, be affirmative in guarding against environmental discrimination and working towards environmental equity. For purposes of this policy, environmental equity means that no person or particular group of persons suffers disproportionately from environmental degradation or intentional discrimination, or is denied enjoyment of a fair share of environmental

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[23] New Jersey Department of Environmental Protection. (2007, November 21). *Environmental justice program*. Retrieved November 28, 2007, from http://www.nj.gov/dep/ej/ejcouncil.html

[24] New Mexico Environment Department. (2004). *Environmental justice in New Mexico*. Retrieved November 28, 2007, from http://www.nmenv.state.nm.us/Justice/

[25] North Carolina Department of Environment and Natural Resources. (2000, October 19). *Environmental equity policy*. Retrieved November 28, 2007, from http://www.enr.state.nc.us/admin/pdf/Envequin.pdf

[26] Oregon Environmental Justice Citizen Advisory Board. (1997, August 1). *Executive order no. EO 97-16*. Retrieved November 28, 2007, from http://arcweb.sos.state.or.us/governors/Kitzhaber/web_pages/governor/legal/execords/eo97-16.pdf

improvements."[27]

The Vermont Agency of Natural Resources defines environmental justice as "the pursuit of equal treatment and equal protection for all people under environmental statutes and regulations."[28]

Taken together, these policies and definitions emphasize the rights of all people to fair treatment, meaningful involvement, protection from pollutants, no disproportionate burdens, and no denial of access to environmental benefits with respect to development and implementation of environmental laws.

4.4. Within the State of Hawai`i

Governmental foundations. A review of constitutional and state law in Hawai`i has identified the right to a clean and healthy environment; to encourage productive and enjoyable harmony between people and their environment; and the interconnectedness between the health of the environment and the health of the people living in the environment. These reflect the Native Hawaiian value of caring for the people and the land in righteousness in the Hawai`i laws described below.

The Constitution of the State of Hawai`i, Article XI, Section 9, addresses environmental rights and states: "Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources."[29]

The purpose under Hawai`i Revised Statute § 344-1 "is to establish a state policy which will encourage productive and enjoyable harmony between people and their environment, promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humanity, and enrich the understanding of the ecological systems and natural resources important to the people of Hawai`i."[30]

Under Hawai`i Revised Statute § 343-1, "The legislature finds that the quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with

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[27] Rhode Island Department of Environmental Management. (2006, October 27). *Draft environmental equity policy.* Retrieved November 28, 2007, from http://www.dem.ri.gov/pubs/eequity.htm

[28] Vermont Agency of Natural Resources. (n.d.). *Waste*. Retrieved November 28, 2007, from http://www.anr.state.vt.us/env01/waste.htm

[29] State of Hawai`i Legislative Reference Bureau. (2005, January 1). *The Constitution of the State of Hawai`i.* Retrieved November 29, 2007 from http://www.hawaii.gov/lrb/con/conart11.html

[30] State of Hawai`i Legislative Reference Bureau. (2005, January 1). *The Constitution of the State of Hawai`i.* Retrieved November 29, 2007, from http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0344/

existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions."[31]

The Hawai`i state motto, *Ua mau ke ea o ka aina i ka pono – The life of the land is perpetuated in righteousness* – reflects the Hawaiian value of caring for the people and the land in righteousness. These words were spoken by Ke`opuolani on her deathbed to her son Liholiho (Kamehameha II). The legacy to her son was to "(t)ake care of these lands which you have received from your father. Exercise a tender care over the people."[32]

4.5. Community Participants' Definitions

As noted above, detailed responses to the question, "What does environmental justice mean to you?" are provided in Appendix D, Question 1. In summary, participants across Hawai`i identified the following environmental justice elements of importance to them:

- No disproportionate impacts on minorities and low-income populations.
- No one group bears more than its fair share of impacts.
- Inequality of negative impacts.
- Spread burdens equitably.
- Each group receives its fair share of benefits.
- Benefits and costs are more evenly distributed among all members of society.
- Everyone has a right to a clean and healthy environment.
- Fair treatment for all populations.
- Fairness, equality, and equity.
- Right to be heard by the government in all facets of life.
- Citizens have meaningful involvement in decisions that impact their community.
- Community has control over its own environment.
- True protection and long-term use of resources.
- Taking responsibility for the environment; with rights comes responsibility.
- Enforcement of existing environmental laws.

4.6. The Definition of Environmental Justice for Hawai`i

The definition of environmental justice for Hawai`i is:

Environmental justice is the right of every person in Hawai`i to live in a clean and healthy environment, to be treated fairly, and to have meaningful involvement in decisions that affect their environment and health; with an emphasis on the responsibility of every person in Hawai`i to uphold traditional and customary Native Hawaiian practices that preserve, protect, and restore the `aina for present and future generations.

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[31] State of Hawai`i Legislative Reference Bureau. (2005, January 1). *The Constitution of the State of Hawai`i.* Retrieved November 29, 2007, from http://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0343/

[32] Kikawa, D. I. (1994). *Perpetuated in righteousness: The journey of the Hawaiian people from Eden to the present time* (p. 193). Kea`au, HI: Ke Akua Publishing.

Environmental justice in Hawai`i recognizes that no one segment of the population or geographic area should be disproportionately burdened with environmental and/or health impacts resulting from development, construction, operations and/or use of natural resources.

Borrowing from EPA, *fair treatment* means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Meaningful involvement* means that: (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public's contributions can influence the regulatory agency's decisions; (3) the public's concerns will be considered in the decision-making process; and (4) the decision-makers will seek out and facilitate the involvement of those potentially affected.[33]

Environmental justice is the ability for a disenfranchised community, socially, economically and culturally, to have a voice in governmental processes. Environmental justice should work as a tool to level the playing field.

[33] U.S. Environmental Protection Agency. (2007, December 6). *Environmental justice: Basic information*. Retrieved December 6, 2007, from http://www.epa.gov/compliance/basics/ejbackground.html

5. HAWAI`I ENVIRONMENTAL JUSTICE TARGET POPULATIONS

Populations targeted under Executive Order 12898 are minority and low-income populations. Federal- and state-recognized minorities include African Americans, American Indians, Alaskan Natives, Asians, Hispanics, Native Hawaiians, or Other Pacific Islanders. Low-income populations should be identified with the annual statistical poverty thresholds from the Bureau of the Census' Current Population reports, Series P-60 on Income and Poverty.[34]

The racial composition of the population of Hawai`i differs greatly from that of the United States as a whole. Whites represent a clear majority in the United States, accounting for about 74% of the population.[35] In contrast, no racial group in Hawai`i comprises even as much as half the state population. The largest racial group is Asian (for those who reported only one race), with 39.9% of the state's population, followed by White (for those who reported only one race) with a little more than 26.3 %.[36]

In an effort to comply with the U.S. Department of Transportation's environmental justice requirements, the O`ahu Metropolitan Planning Organization (OMPO) used 1990 and 2000 Census data to identify environmental justice populations based on income and race. In its 2004 report,[37] OMPO identified 78 out of 435 census block groups as environmental justice block groups. Nine of the 78 block groups have disproportionate concentrations of both minority and low-income populations. Each of these nine areas is "Native Hawaiian and other Pacific Islander dominated, with four of the nine areas located along the Waianae Coast, where the Native Hawaiian population is most highly concentrated on O`ahu."[38]

In the community involvement effort of this Initiative, participants were asked, "Who are the populations in Hawai`i that environmental justice efforts should target?" Out of 152 participants, the following populations were suggested (see Appendix D, Question No. 3):

> *Native Hawaiians (should be a targeted population) with respect to land claims, taxes, water rights and development policies. The majority of Native Hawaiians have been pushed down all their lives. They feel as though they cannot say anything.*

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[34] Council on Environmental Quality. (1997). *Environmental justice guidance under the National Environmental Policy Act.* Retrieved December 10, 2007, from http://www.nepa.gov/nepa/regs/ej/justice.pdf

[35] U.S. Census Bureau, American FactFinder (n.d.). *2006 American community survey*. Retrieved December 2, 2007, from http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=01000US&-ds_name=ACS_2006_EST_G00_&-mt_name=ACS_2006_EST_G2000_B02001

[36] U.S. Census Bureau, American FactFinder. (n.d.). *2006 American community survey*. Retrieved December 2, 2007, from http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=04000US15&-ds_name=ACS_2006_EST_G00_&-redoLog=false&-mt_name=ACS_2006_EST_G2000_B02001

[37] O`ahu Metropolitan Planning Organization. (2004). *Environmental justice in the OMPO planning process: Defining environmental justice populations*. Retrieved December 5, 2007, from http://oahumpo.org/T6EJ/Final2001/2004Update.pdf

[38] *Ibid.,* p. 63

- Low-income – 25 respondents.
- Native Hawaiian/indigenous people – 24 respondents.
- Disempowered populations – 19 respondents.
- Those living in rural or subsistence lifestyles, and on neighbor islands – 9 respondents.
- Everyone – 8 respondents.
- Minorities – 6 respondents.

Based on the above information, minority and low-income populations, with a special emphasis on the Native Hawaiian population, should be the target population for environmental justice efforts in Hawai`i. For purposes of the environmental justice guidance document, Native Hawaiian, minority, and low-income populations in Hawai`i will be termed "under-represented populations."

Large populations of low-income people are most at risk because they tend to be on the fringes of society and are often the recipients of negative impacts from facilities.

6. ENVIRONMENTAL JUSTICE GUIDANCE DOCUMENT

In Act 294, the Hawai`i legislature stated that there is a need:

To develop an environmental justice guidance document to ensure that principles of environmental justice are systematically included in all phases of the environmental review process and that each agency fulfills its duty to identify and address at the earliest possible time any disproportionately adverse human health, environmental, or cultural effects on minority populations, Native Hawaiians, and low-income populations that would be caused by a proposed action or the agency's policies, programs, and activities.

The following section proposes a new Environmental Justice Guidance Document. This guidance document is intended to reflect State of Hawai`i, Office of Environmental Quality Control (OEQC) policy and the intent of Act 294. Agency and applicant use of the guidance document is highly recommended, but the document is not legally binding. However, its use will allow agencies, applicants, OEQC, the Environmental Council, and the public to assess the efficacy and practical implications of implementing a new environmental justice policy in Hawai`i as envisioned by Act 294. Then, based on this experience, HRS Chapter 343 may be amended to incorporate the successful aspects of this guidance document.

6.1. Hawai`i Environmental Justice Guidance Document

The Hawai`i EIS law, enacted in 1974, was patterned after the federal National Environmental Policy Act (NEPA). NEPA applies to "major Federal actions significantly affecting the quality of the human environment."[39] Similarly, the Hawai`i EIS law applies to general actions at the state level, but it also applies to many private projects. It also includes consideration of a "proposed action's effects on economic and social welfare," thus the "Hawai`i EIS Law calls for a broader range of information than does NEPA."[40]

In May 2000, Hawai`i distinguished itself as an innovative leader in confronting problems of multicultural communities by passing Act 50, which requires state agencies and other developers to assess the effects of proposed land use or shoreline developments on the "cultural practices of the community and State" [41] as part of HRS Chapter 343. The goal of Act 50 was to "promote and protect cultural beliefs, practices, and resources of native Hawaiians and other ethnic groups."[42] The Hawai`i legislature then "amended the process of preparing EISs by requiring project developers to identify and address effects on the culture of Hawai`i and

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[39] Goodsill Anderson Quinn & Stifel LLP. (2000). *Hawai`i environmental law handbook* (3rd ed.). Lanham, MD: Rowman & Littlefield Publishing Group, p. 336

[40] *Ibid.*

[41] Bellati, D. A. (2004, Spring). Act 50: The protections, pitfalls, and possibilities of the new cultural assessment requirement for Hawai`i's diverse communities, p. 3. Retrieved from http://www.hawaii.edu/elp/publications/moolelo/ELP-PS-Spring2004.pdf

[42] Ibid.

traditional and customary rights. Accordingly, an EIS is today defined as an 'informational document which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and *cultural practices of the community* and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.'"[43]

In the memorandum to federal agencies that accompanied Executive Order 12898, the president specifically recognized the importance of NEPA procedures for identifying and addressing environmental justice concerns. The memorandum states that "Each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by the National Environmental Policy Act of 1969 (NEPA)."[44] Hawai`i EIS law does not incorporate this component of NEPA.

In 1997, the U.S. Council on Environmental Quality (CEQ), which oversees the federal government's compliance of Executive Order 12898, developed guidance for incorporating environmental justice principles under NEPA. This report used the CEQ documents, *Environmental Justice Guidance Under the National Environmental Policy Act*[45] and *Final Guidance For Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses*,[46] as a framework for developing guidelines for incorporating environmental justice principles under the EIS law for Hawai`i. Input gathered from the community involvement phase of the Environmental Justice Initiative also was incorporated into the Initiative's guidance document.

6.2. Principles for Considering Environmental Justice under HRS Chapter 343

Environmental justice issues may arise at any step of the HRS Chapter 343 process, and agencies or applicants should consider these issues at each and every step of the process when appropriate. In preparing an EIS or an environmental assessment (EA), agencies or applicants must consider impacts on both the natural and physical environment and related social, cultural, and economic impacts. Environmental justice concerns may arise from impacts on the natural and physical environment, such as human health or ecological impacts on Native Hawaiian, minority, and low-income (under-represented) populations, or from related social or economic impacts. These impacts are elaborated in the five general guidance principles immediately below.

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[43] Ibid., p. 10, citing HB 2895, Act 50, § 1; emphasis in original.

[44] Clinton, W.J. (1994). *Memorandum for the Heads of All Departments and Agencies*. Retrieved December 10, 2007, from http://www.eh.doe.gov/nepa/tools/guidance/volume1/2-6-EO_12898envjustice.pdf

[45] Council on Environmental Quality. (1997). *Environmental justice guidance under the National Environmental Policy Act.* Retrieved December 10, 2007, from http://www.nepa.gov/nepa/regs/ej/justice.pdf.

[46] U.S. Environmental Protection Agency. (1998). *Final guidance for incorporating environmental justice concerns in EPA's NEPA compliance analyses.* Retrieved December 10, 2007, from http://www.epa.gov/compliance/resources/policies/ej/ej_guidance_nepa_epa0498.pdf.

Agencies or applicants should recognize that the question of whether a proposed action raises environmental justice issues is highly sensitive to the history and circumstances of a particular community or population. In addition, the particular type of environmental or human health impact and the nature of the proposed action itself are highly sensitive issues. There is no standard formula for how environmental justice issues should be identified or addressed; each situation needs to be evaluated for environmental justice issues on a case-by case basis. In lieu of no standard formula, the following five principles provide general guidance in addressing environmental justice issues:

1. Agencies or applicants should consider the demographic composition of the affected area to determine whether under-represented populations (Native Hawaiian, minority, and/or low-income) will be significantly impacted by the proposed action. If impacts are identified, it needs to be determined whether there is a disproportionately high and adverse human health or environmental effect on that population.

2. Agencies or applicants should recognize the interrelated cultural, social, occupational, historical, and economic factors that may amplify the natural and physical environmental effects of the proposed agency action. These factors include the physical sensitivity of the affected community or population to particular impacts; the effects of any disruption on the community structure associated with the proposed action; and the nature and degree of impact on the physical and social structure of the community.

3. Agencies or applicants should consider relevant public health data concerning the potential for multiple or cumulative exposure to human health or environmental hazards in the affected population. This should take into account historical patterns of exposure to environmental hazards to the extent such information is reasonably available. Agencies or applicants should consider these multiple or cumulative effects, even if they are not within the control of the agency or applicant proposing the action.

4. Agencies or applicants should develop effective public participation strategies. Agencies or applicants should, as appropriate, acknowledge and seek to overcome linguistic, cultural, institutional, geographic, and other barriers to meaningful participation, and should incorporate active outreach to affected groups.

5. Agencies or applicants should assure early and meaningful community representation through all phases of the HRS Chapter 343 process. Agencies or applicants should be aware of the diverse constituencies within any particular community and should endeavor to have complete representation throughout the process.

6.3. Precautionary Principle

Recognizing that the environment cannot be treated separately from humans and that the natural, physical, and social environments are interconnected, state trends are leading to the inclusion of the Precautionary Principle (basically, “better safe than sorry”) into their

environmental review process laws.[47] By incorporating the precautionary principle into traditional environmental policy, the focus changes from "How much harm is allowable?" to "How little harm is possible?"[48] In January 1998, the Wingspread Statement on the Precautionary Principle was developed as follows:[49]

> *When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof. The process of applying the precautionary principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action.*

In following the precautionary principle, agencies or applicants should bear the burden of proof in establishing reasonable certainty that the proposed project will cause no significant adverse effect on the environment or unfair treatment to Native Hawaiian, minority, or low-income populations. The application of the Precautionary Principle should be carried out through all phases of the HRS Chapter 343 process.

6.4. Additional Considerations

The preceding principles must be applied in light of the following additional considerations, which are pertinent to any analysis of environmental justice under HRS Chapter 343:

- This guidance does not change the prevailing legal thresholds and statutory interpretations under HRS Chapter 343 and existing case law. For example, for an EIS to be required, there must be sufficient impact on the physical or natural environment to be "significant" within the meaning of HRS Chapter 343. However, agency or applicant consideration of impacts on under-represented groups may lead to the identification of disproportionately high and adverse human health or environmental effects that are significant and that otherwise would be overlooked.

- Under HRS Chapter 343, the identification of a disproportionately high and adverse human health or environmental effect on under-represented groups does not preclude a proposed agency action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unsatisfactory. Rather, the identification of such an effect should heighten agency or applicant attention to alternatives (including alternative sites), mitigating strategies, monitoring needs, and preferences expressed by the affected community or population.

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[47] Science & Environmental Health Network. (2007). Precautionary principle. Retrieved December 29, 2007, from http://www.sehn.org/precaution.html

[48] Environmental Research Foundation. (2003). #770 – Environmental Justice and Precaution. Retrieved December 29, 2007, from http://www.rachel.org/bulletin/index.cfm?St=4

[49] Science & Environmental Health Network.

- This guidance does not prescribe any specific format for incorporating environmental justice into the report, such as designating a specific chapter or section in an EIS or EA on environmental justice issues. Agencies or applicants should integrate analyses of environmental justice concerns in an appropriate manner so as to be clear, concise, and comprehensible within the general format suggested by HRS Chapter 343 and Hawai`i Administrative Rule (HAR) 11-200.

6.5. Guidelines for Considering Environmental Justice in Specific Phases of the HRS Chapter 343 Process

While appropriate consideration of environmental justice issues is highly dependent upon the particular facts and circumstances of the proposed action, the affected environment, and the affected population, there are strategies that are useful at particular stages of the HRS Chapter 343 process. These strategies are described below.

6.5.1. Environmental Justice Screening Analysis

Once the proposed action is well understood and before the scoping phase, an environmental justice screening analysis should be conducted. The purpose of the screening analysis is to identify any under-represented populations in the proposed action area and whether disproportionate effects are likely to impact these populations. Each of these issues is addressed by asking two questions.

Question 1 – Does the potentially affected community include under-represented populations?

Determining the exact nature of minority and low-income populations in an affected area can be a difficult task. Although several techniques are available, the analyst needs to determine which techniques are appropriate for the proposed action. Listed below are a variety of tools that can be used to locate minority and low-income populations. This list is not exhaustive, but should at minimum serve as a helpful starting point:

- *Environmental Justice in the OMPO (O`ahu Metropolitan Planning Organization) Planning Process: Defining Environmental Justice Populations* report. OMPO has identified 78 environmental justice populations on O`ahu only using 1999 and 2000 Census data.
- Annual statistical poverty thresholds from the Bureau of the Census Current Population Reports, Series P-60 on income and poverty.
- Department of Business, Economic Development & Tourism, Census & Population Office.
- Small Business Administration (for areas designated as enterprise zones).
- Statewide Transportation Improvement Program.
- City and County of Honolulu land use plans.
- Local resources such as community and public outreach groups, community leaders, public schools (free-and-reduced lunch programs), and local universities.

- Local resources and state or county governments can be contacted for information regarding factors that are characteristic of low-income communities. These factors may include limited access to health care; an inadequate, overburdened, or aged infrastructure; and particular dependence on the community or subsistence living.
- Precincts with low voter turnout.

Question 2 – Are the environmental impacts likely to fall disproportionately on under-represented members of the community?

Disproportionately high and adverse effects encompass both human health and environmental effects. To determine what is "disproportionate" and what is "high and adverse," the analyst needs to exercise informed judgment. This suggests some level of comparative analysis with conditions faced by an appropriate comparison population. Various alternatives need to be considered, along with their impacts on the potentially affected populations, so that disproportional impacts can be identified and assessed.

In addition, the analyst needs to place special emphasis on other sources of environmental impacts within the affected area, including those that have historically existed, those that currently exist, and those that are projected for the future. By combining past, present, and future impacts with those of the proposed project, cumulative and indirect impacts on under-represented populations can be determined. These impacts may affect the cultural, health, and occupation-related aspects of under-represented populations, such as:

- Diets, or differential patterns of consumption of natural resources, which may suggest increased exposures to environmental pathways presenting potential health risk.
- Health data reflective of the community (e.g., abnormal cancer rates, infant and childhood mortality, low birth weight, blood-lead levels, asthma).
- Occupational exposures to environmental stresses, which may exceed those experienced by the general population.
- Sensitive populations that include the elderly, children, or disabled.

In terms of natural resources, the analyst should consider the community's dependence on natural resources for its economic base (tourism and/or agriculture) as well as the cultural values that the community may place on a natural resource at risk. Further, it is essential for the analyst to consider the cumulative impacts from the perspective of these specific resources, which are vital to the affected community.

6.5.2. Public Participation

Early and meaningful public participation in state and county agency decision-making processes is a paramount goal of HRS Chapter 343. EIS rules require agencies or applicants to make diligent efforts to involve the public throughout the HRS Chapter 343 process. Participation of under-represented groups may require adaptive or innovative approaches to overcome linguistic, institutional, cultural, economic, historical, or other barriers to effective participation in the decision-making processes under customary HRS Chapter 343 procedures.

Involve the people from the beginning! Do not make decisions without their input.

If an agency or applicant identifies any potentially affected under-represented groups, the agency or applicant should develop a strategy for effective public participation after the environmental justice screening analysis is complete and before the scoping process begins. The participation of diverse groups in the scoping process is necessary for full consideration of the potential environmental impacts of a proposed action and any alternative.

By discussing and informing the public of the emerging issues related to the proposed action, agencies or applicants may reduce misunderstandings, build cooperative working relationships, educate the public and decision-makers, and avoid potential conflicts. Agencies or applicants should recognize that the identity of the relevant "public" may evolve during the process and may include different constituencies or groups of individuals at different stages of the HRS Chapter 343 process. For this participation to be meaningful, the public should have access to enough information so that it is well informed and can provide constructive input.

A concerted effort needs to be made by the agency or applicant to identify and reach out to those living in under-represented communities. This may require using a variety of methods to reach a diverse group of people. Listed below are some suggestions for identifying community contacts, effective publication venues, convenient locations for and timing of meetings, and effective types of meetings, as well as suggestions for reaching out to people for whom English is not their first language and discussing technically difficult information.

The following groups and organizations should be included in outreach efforts:

- Minority businesses, associations, and cultural centers.
- Civic associations and public interest groups.
- Social organizations and existing social structures within a community.
- Grassroots and community-based social service organizations.
- Native Hawaiian organizations.
- Religious groups and organizations.
- Recognized leaders of a particular community.
- Libraries, schools, colleges, and universities.
- Medical community.
- Legal-aid providers.
- Rural cooperatives.
- Environmental organizations.
- City, county and state government representatives.
- Neighborhood boards or associations.
- Labor unions.
- Ask for referrals for others who should be included.

Public notification of opportunities for community participation should be advertised in the following places:

- Newspapers.
- Newsletters produced by various community organizations.
- Agency or community mailing lists.
- Notices posted in libraries, grocery stores, or coffee shops.
- Send out targeted mailings to people living in the impacted area.
- K-12 school newsletters and flyers.
- Public service announcements on radio and TV stations.
- ‘Ölelo television.
- Videos.
- E-mail.
- Websites, although low-income people may not have the resources to access to computers.
- Blogs for reaching out to the younger generation.

Location and timing of meetings should take into account under-represented populations' transportation habits and abilities and places where they commonly meet. Consider the following when planning meeting times and locations:

Use community organizers who have an ear to the community and have them knock on the doors to reach people. This needs to be done well in advance of any project that impacts a neighborhood.

- Go to where the people are living and working.
- Public schools or libraries.
- District park buildings.
- Local resident's garage where he invites his neighbors.
- Ask a recognized leader where people in the community hold meetings.
- More than one meeting may need to be held to accommodate shift workers.
- Host shorter meetings at multiple locations.
- Arrange for transportation, if necessary.
- Incorporate local protocols such as prayer.
- Provide snacks and drinks (e.g. water).

Types of meetings to gather community input range from one-on-one interviews to open houses. Determining the type of meeting to hold should take into account the means in which under-represented people prefer to share information. These might include:

- Stakeholder interviews.
- Talk story sessions.
- One-on-one or small-group interviews.
- Focus groups.
- Community surveys.
- Open houses.
- Workshops.
- Talk to people at community events.
- Public meetings.

Public meetings are effective as a forum for making statements, not having discussions. Workshops are more useful for exchange of information. Ask, "This is what we are thinking about doing, what do you (the community) think?"

- Establish comment lines for callers to leave recorded messages.
- Use a local or familiar facilitator, preferably one trained in environmental justice issues.
- Co-sponsor meetings with a local community group to nurture trust and credibility.
- Arrange for childcare at the meeting location, taking into account any liability issues.

Special efforts are required on the part of the agency or applicant to communicate with people who speak English as a second language. These efforts may include:

- Advertising in community papers in their native language.
- Providing translators at public meetings.
- Translating key documents in their entirety.

When discussing technically complex information, make a concerted effort to find ways to effectively communicate that information in ways that the community can understand, including:

- Providing sufficient background explanations beyond the usual means.
- Providing background summary reports, fact sheets, and abstracts.
- Using plain language in meetings, materials, and reports and avoiding the use of jargon and acronyms.
- Seeking advice of local groups and individuals.
- Providing hands-on demonstrations or tours.
- Using visual presentations such as pictures or videos.
- Include opportunities for testimonials and explanation of oral traditions
- Providing technical assistance to the community.

Bring the facts and information to the people. Then talk. Spend time building on and understanding the issues.

6.5.3. Local Assessment Committees

In general, minority and low-income communities do not have access to scientific knowledge and may suspect that a discussion by experts will not result in a conclusion responsive to their concerns. To provide an opportunity for community members to understand technical issues and have meaningful involvement, the agency or applicant should consider forming a local assessment committee (LAC). The LAC, consisting of a representative sampling of minority, low-income, and other members of the impacted community, would interact with facility proponents and opponents early in the planning process.

6.5.4. Community Benefits Agreements

A more formal or legally binding agreement between the agency or applicant and the community is known as a community benefits agreement (CBA). CBAs are deals made between agencies or applicants and coalitions of community organizations that address a broad range of community needs and serve as safeguards to ensure that communities impacted by proposed

actions share in the benefits of those actions.[50] They are the result of a negotiation process in which agencies or applicants agree to shape the proposed project in a certain way or to provide specified community benefits. In exchange, the community groups promise to support the proposed project before government bodies that provide the necessary permits and subsidies. The CBA process aims to work toward mutually beneficial objectives and is a mechanism to enforce both sides' promises.

The benefits of the CBA process include:

- Enforceability – it ensures that the agency or applicant's promises regarding community benefits are legally enforceable.
- Inclusiveness – it ensures that community concerns are heard and addressed.
- Transparency – it assists the public, community groups, government officials, and the news media in monitoring a project's outcome.
- Coalition building – the process of negotiating a CBA encourages new alliances among community groups that may care about different issues or have different constituencies.
- Efficiency – it encourages early negotiation between the agency or applicant and the community, avoiding delays in the approval process.
- Clarity of outcomes – it provides local governments with the information they need to show successful delivery of promised benefits.

With respect to addressing environmental issues, CBAs are effective mechanisms for communities to negotiate for environmental benefits and mitigations beyond what is required by law. In addition, CBAs allow communities to step in where government enforcement is lax. Once the application of environmental laws to the proposed project is understood, community groups can use CBAs to strengthen existing environmental requirements, address environmental impacts that existing laws do not, and provide more enforcement options by enabling direct enforcement of environmental requirements. In addition, the community groups should explicitly reference the project-related EIS in the CBA.

Using CBAs depends on the type of project, its size, and the community's sensitivity to the project. They do not need to be used in all circumstances.

The diagram below is based on previous applications of CBAs and depicts the relationships among CBA partners:

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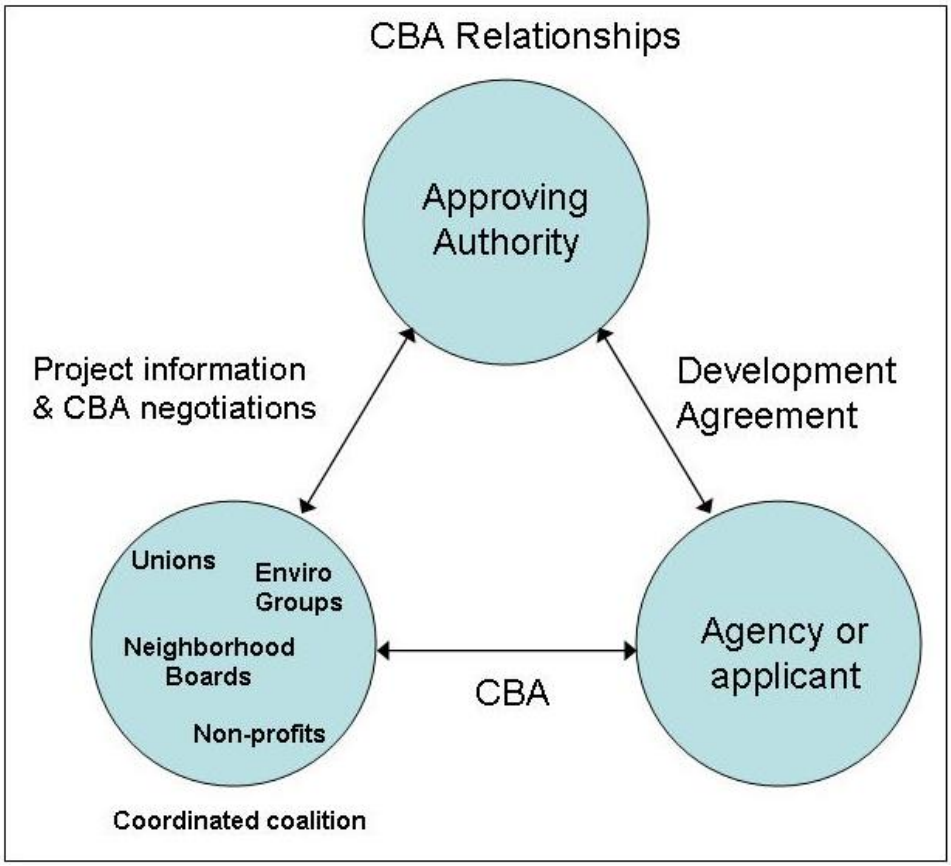
[50] Gross, Julian; LeRoy, Greg; & Janis-Aparicio, Madeline. (2005). *Community benefits agreements: Making development projects accountable*. Retrieved December 29, 2007, from http://www.goodjobsfirst.org/pdf/cba2005final.pdf



An example of a CBA (called community benefit package by HECO) was initiated by Hawaiian Electric Company, Inc. (HECO) regarding its Campbell Industrial Park Generating Station and Transmission Additions project (CIP Generating Station Project).[51] HECO began conducting community meetings in 2004 for the neighborhoods surrounding the proposed project to discuss the impact that it would have on these communities. The meetings resulted in a consensus that communities on Oahu benefiting from the CIP Generating Station Project as well as HECO needed to "give back" some sort of benefit to mitigate the impact of the CIP Generating Station on the communities accepting the new facility. Also as a result of these community meetings, a set of six community benefits were agreed upon as the appropriate "give back" for siting the CIP Generating Station Project within the impacted communities. These community benefits included (1) reducing rates for the immediately impacted residential area around the CIP Generating Station Project site (this was not approved by the Public Utilities Commission); (2) substituting reverse osmosis water from the Board of Water Supply's Honouliuli Wastewater Treatment Plant for potable water used for industrial purposes at HECO's Kahe Power Plant; (3) adding three air monitoring stations and resuming HECO's fish monitoring studies; (4) starting a long-term financial commitment by HECO to support conservation education spearheaded by community leaders; (5) providing a report card on HECO's activities and distributing Campbell Local Emergency Action Network (CLEAN)

[51] For more information on HECO's CIP Generating Station Project community benefit package, contact Robert A. Alm, Senior Vice President, Public Affairs at 808-543-7650.

reports to the surrounding communities; and (6) reaffirming HECO's corporate commitment to strongly support charitable activities in these communities.

HECO's community benefit package is a legally binding agreement, approved by the Public Utilities Commission in 2007.

6.5.5. Planning and scoping

Planning and scoping consists of identifying impacts, alternatives, and actions that will be considered in completing an EA or EIS. With the results of the screening analysis in hand, potential impacts to any environmental justice populations may be disclosed and appropriate alternatives and actions can be considered during the remainder of the HRS Chapter 343 process, as described in the text and diagram below.

Incorporating environmental justice concerns in EA planning:

- If the environmental justice screening analysis (EJSA) does not identify minority or low-income communities and does not suggest disproportionately high and adverse impacts on those communities, then the agency or applicant should describe the analysis and note the conclusion in the EA.

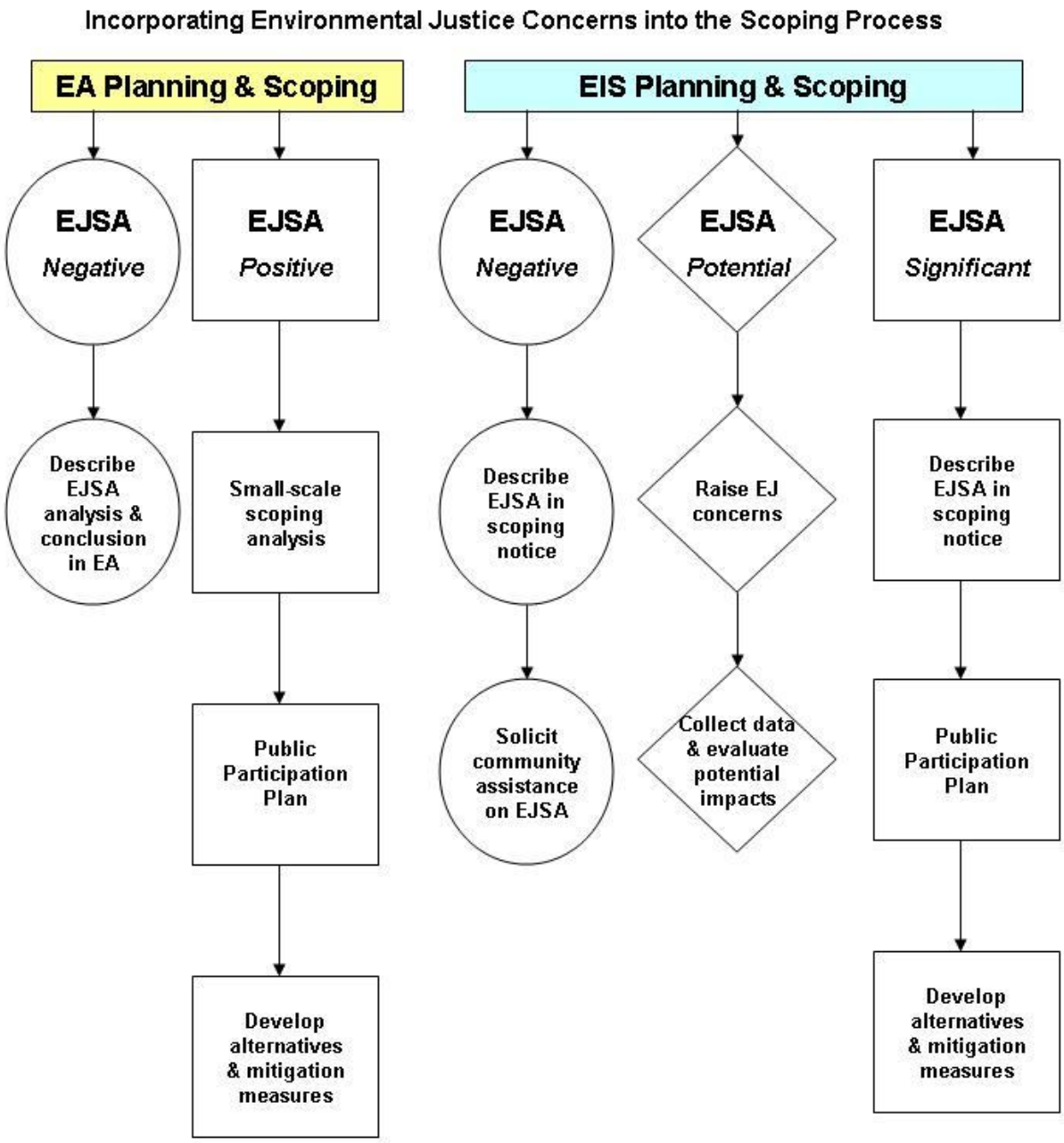
- If the environmental justice screening analysis identifies an affected under-represented community and/or a disproportionately high and adverse impact upon a minority or low-income community, then the agency or applicant should conduct a smaller-scale scoping analysis than undertaken for an EIS. In addition, the agency or applicant should design and implement a public participation plan to solicit community input and to develop alternatives and mitigation measures.

Incorporating environmental justice concerns into EIS scoping:

- If the environmental impacts of a proposed action are deemed significant, the agency or applicant should include a description of the environmental justice screening results in the scoping notices. In addition, the agency or applicant should design and implement a public participation plan to solicit community input and to develop alternatives and mitigation measures.

- If the environmental justice screening analysis concludes that there is a potential for disproportionately high and adverse impacts, then the analyst needs to ensure that the EIS scoping process raises the environmental justice concerns and collects sufficient data and information to evaluate the potential impacts.

- If the results of the environmental justice screening analysis are negative, then the agency or applicant should state this finding in the scoping notice and solicit information from the community on whether there may be disproportionately high and adverse effects that were overlooked during the screening analysis.



The agency or applicant should provide the following information to assist the public during the scoping process:

- A description of the proposed action.
- An anticipated schedule for completing the EIS process, with key milestones.
- Results of the Environmental Justice Screening Analysis.
- An initial list of alternatives (including

Get people involved in the beginning. Do not just inform them about the project, but provide an opportunity for people to be involved in the scoping.

alternative sites, if applicable) and potential impacts.

- An initial list of other existing or proposed actions that may have cumulative impacts.
- Maps, drawings, and any other materials and references.
- An agency or applicant point of contact.
- Timely notice of meeting locations and where public comments will be received.

6.5.6. Describing the affected environment or environmental setting

When describing the environment in which the proposed action will take place, the agency or applicant should take into account its historical, physical, human, and cultural landscapes. A description of the historical landscape should include the history of the area, its activities, and people. Place names are often given based on past significant events. A physical description should include a list of natural resources and their use – not just for economic purposes, but also for cultural purposes. The description of the human environment should include human-use patterns – where do people live, work, recreate, harvest, gather, eat, worship, etc. In describing the cultural landscape, take into account how the proposed project will fit into the ahupua`a in which the project is located. Archaeological sites, cultural sites, and activities should also be described. Allowing the community to share personal stories during this phase of the EIS process would enhance the understanding of the agency or applicant on the value of the environment to the people.

Describe (the affected environment) from an indigenous perspective, not Western. Do not ignore the connection to the land and the need to mālama, to nurture the land.

In order to determine whether a proposed action is likely to have disproportionately high and adverse human health or environmental effects on under-represented groups, agencies or applicants should identify geographic areas for which they will obtain demographic information on the potential impact areas. Agencies or applicants may obtain demographic data from Census sources to identify the composition of the potentially affected populations.

Agencies or applicants should recognize that the impacts within under-represented groups might differ from impacts on the general population because of a community's distinct cultural practices. For example, data on different patterns of living, such as subsistence fish, vegetation, or wildlife consumption and the use of well or surface water in rural communities, may be relevant to the analysis.

Where a proposed action would not cause any adverse environmental impacts and therefore would not cause any disproportionately high and adverse human health or environmental impacts, specific demographic analysis may not be warranted.

6.5.7. Identifying and analyzing the impacts of the proposed project

When agencies or applicants have identified any potential environmental justice issues, they should clearly state the issues in the EA or EIS. These statements should be supported by information sufficient enough for the public to understand the rationale for the conclusions. The

underlying analysis should be presented as concisely as possible, using language that is understandable to the public.

> *Discuss both the human and environmental impacts. Evaluate long-term impacts, not just short-term, and how they will affect future generations. Need to include Native Hawaiian values and principles.*

When a disproportionately high and adverse human health or environmental impact on under-represented groups has been identified, agencies or applicants should analyze how the distribution of environmental and health impacts affect the community. Displaying available data spatially can provide agencies and the public with an effective visualization of the distribution of these impacts among the populations. This type of data should be analyzed in addition to qualitative or quantitative information gathered through the public participation process.

6.5.8. Identification and Analysis of Alternatives

The selection of potential alternatives should begin in the scoping process. If agencies or applicants have identified a disproportionately high and adverse human health or environmental impact on under-represented groups from either the proposed action or alternatives, the distribution as well as the magnitude of the disproportionate impacts in these communities should be factors in determining the environmentally preferable alternatives. In weighing these factors, the agencies or applicants should consider the views they have received from the affected communities and the magnitude of environmental impacts associated with the alternatives that have a less disproportionate and adverse effect on under-represented groups. These efforts should be fully described in the scoping documents and all results fully disclosed in the public participation process. Public comment and input on the analyses and conclusions should be solicited.

The goal of developing reasonable alternatives is to identify viable alternative actions that meet program goals and avoid or reduce the environmental, socioeconomic, human health, and/or ecological effects associated with the preferred action.

6.5.9. Determining Significance

> *Ask, "What is the significance to the well-being of the community?" There are no good and clear criteria here; communities vary so much that it is tough to define.*

When agencies or applicants determine that a proposed action may result in significant environmental effects, EIS rules state that an EIS must be prepared. Disproportionately high and adverse human health or environmental effects on under-represented groups should be among those factors explicitly discussed in the determination of significance and should also be addressed in any discussion of whether all practicable means to avoid or minimize environmental and other interrelated effects were adopted. Where relevant, the agency or applicant should discuss how these issues were addressed.

Dissemination of the information in the document acceptance letter may provide an effective means to inform the public of the extent to which environmental justice concerns were considered in the decision-making process and, where appropriate, whether the agencies or applicants intend to mitigate any disproportionately high and adverse human health or environmental effects within the constraints of HRS Chapter 343 and other existing laws.

6.5.10. Mitigation

Mitigation measures should be developed to specifically address potential disproportionately high and adverse impacts of a proposed action on under-represented populations. When identifying and developing potential mitigation measures to address environmental justice concerns, members of the affected communities should be consulted. Mitigation measures may include a variety of approaches for addressing potential effects and for balancing the needs and concerns of the affected community with the requirements of the proposed action.

The enforceable means of implementing mitigation measures, as determined by permits and approving agencies, should be clearly identified so the public can ensure follow-through of the mitigation measures.

> *Developers and planners think they can mitigate away everything. But when you disrupt a community, you cannot mitigate the impacts by hiring more social workers.*

7. LEGAL FOUNDATION FOR ENVIRONMENTAL JUSTICE IN HAWAI`I

This report was prepared for the Hawai`i Environmental Justice Initiative by Evan Silberstein and Ryan Keesey, students at the University of Hawai`i, William S. Richardson School of Law, under the supervision of Denise E. Antolini, University of Hawai`i associate professor of law and director of the University of Hawai`i Environmental Law Program.

7.1. Introduction and Structure of Report

This report presents relevant sources of law where environmental justice issues are triggered in the State of Hawai`i. The report walks the reader through primary sources of law, pertinent judicial interpretations, and persuasive authority. It is designed to supply perspective on how environmental justice issues may be inferred from or supported by existing Hawai`i law and policy.

The report begins by outlining pertinent sections of the Hawai`i Constitution, highlighting foundational issues to be considered in an analysis of environmental justice in the State of Hawai`i. Next, an overview of Hawai`i Revised Statutes reveals applicable laws that offer deeper insight into how the legislature has both explicitly and implicitly dealt with the challenge of protecting at-risk communities from environmental injustices or negative impacts on their quality and way of life.

This report includes key judicial decisions and cases that interpret pivotal Constitutional provisions and Statutes previously brought forth in the report. Judicial opinion and case law is of primary importance in understanding how our laws are being applied to environmental justice issues.

Policy statements and other persuasive sources of authority are also important reflections of the current status of our laws. Law review articles and other legal scholarship have been included to provide greater detail into the myriad of issues that are implicated in examining environmental justice in the State of Hawai`i.

Finally, potential definitions for environmental justice communities in Hawai`i are explored. The diverse ways in which one can designate and serve these under-represented populations is crucial to our evolving understanding of environmental justice.

This report is designed to provide the reader with potential sources of environmental justice law in Hawai`i, and thus, it excludes input from other states and federal sources. However, it should be noted that additional insight could be gleaned from sources outside Hawai`i.

7.2. 1978 Constitutional Convention and the Hawai`i Constitution

- The 1978 Constitutional Convention (Con Con) greatly increased the rights of Native Hawaiians. Con Con set forth the intention to "preserve the small remaining vestiges of a

quickly disappearing culture [by providing] a legal means… to recognize and reaffirm native Hawaiian rights."[52] Several key provisions arising from the Con Con evidence a renewed commitment to preserving and protecting Native Hawaiian rights and affirming public trust responsibilities: Article XI § 1 states:

> For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. *All public natural resources are held in trust by the State for the benefit of the people*.

- Article XI, § 7 identifies a public trust that obligates the State to "protect, control, and regulate the use of Hawai`i's water resources for the benefit of the people."

- Article XI, § 9 states:

> Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulations as provided by law.

This provision has been interpreted as removing barriers to sue based on standing, according to its legislative history.[53] Specifically, the provision helps the public bring environmental protection claims by allowing for the recovery of attorney's fees.[54]

- Article XII § 7 states:

> The state reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the land prior to 1778, subject to the right of the State to regulate such rights.

7.3. Related Hawai`i Revised Statutes (HRS)

- HRS § 1-1 provides that:

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[52] Stand. Comm. Rep. No. 57, reprinted in 1 Proceedings of the Constitutional Convention of 1978, at 640 (1980).

[53] *Fiedler v. Clark*, 74 F. 2d 77 (1983).

[54] *Kahana Sunset Owners Association v. Maui County Council,* 86 Haw. 132, 948 P.2d 122 (1997).

> The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawai`i in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State.

- HRS § 7-1 provides that:

> Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house, timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have the right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.

7.3.1. Hawai`i State Planning Act

The Hawai`i State Planning Act, passed in 1978, is based on principles and values drawn from the unifying theme of the Hawai`i state plan.[55] These principles include individual freedom and achievement, accomplished through fellow members of society, institutions, customs, and the rights and responsibilities created there from.[56] Opportunities for choice, necessary for self-sufficiency, are created by social and economic mobility.[57] Healthy social, economic, and physical environments foster a sense of responsibility that contributes to community well being. Society has the role of encouraging the fundamental rights of choice and mobility, which result in self-reliance and self-determination. These principles are achieved through an environment of "an agreed upon legal system that protects human rights."[58]

In furtherance of these principles, it is the goals of the State to provide a strong economy, a viable environment, and social well being that encourage a sense of community spirit.[59] Objectives and policies for the physical environment include "enhancement of multi-cultural and historical resources and protection of special areas or elements that are part of Hawai'i's ethnic and cultural heritage"[60] Land, air, and water quality objectives are to be achieved while considering the enhancement of Hawai`i's communities.[61]

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[55] HRS § 226-3.
[56] Id § 226-3(1).
[57] Id § 226-3(2).
[58] Id §226-3(3)
[59] Id §§ 226-4(1), (2), (3).
[60] Id § 226-12 (a), (b)(4).
[61] Id §§ 226-13(b)(6),(8).

Health, a component of socio-cultural advancement, is accomplished through consideration of the basic health needs of the public.[62] This includes promoting sanitary and environmentally sound communities.[63] Programs and strategies that improve the State's ability to prevent contamination by potential hazardous substances shall also be considered.[64] Consistent with the themes of this Act, additional provisions assure public safety and protection of life and property for all members of Hawai`i's communities.[65]

7.3.2. Environmental Impact Statement Law and Policy

In 1974, by enactment of a package of environmental statutes, the legislature recognizes the relationship between a person's well-being and the quality of her physical environment.[66] They set out to expand and coordinate efforts to determine and maintain the optimum quality of the environment of the State.[67]

The environmental review process will integrate environmental concerns with economic considerations and adherence to the principles of state planning processes. This review process benefits from, and is prudently informed by, public participation. The environmental policy of the State emphasizes a harmonious balance among the social, economic, and physical environment for the benefit of the public. [68] Quality of life improvements are also a focus, and accomplished through prudent use of land and pursuit of aesthetic and social satisfaction in the context of Hawai`i's unique environment.[69]

Act 50, often referred to enacting the "Cultural Impact Statement" requirement, amended HRS § 343 with specific language to address the importance of cultural preservation.[70] Key changes were the redefinition of "environmental impact statement" to include effects on the "…economic welfare, social welfare, and cultural practices of the community."[71] Additionally, "significant effect" was redefined as "the sum of effects on the quality of the environment, including actions that are…contrary to the State's environmental policies…or adversely affect the economic welfare, social welfare, or cultural practices of the community and State."[72]

To effectuate the purposes of the environmental policy, the State is to recognize the importance of the traditional community values and mores that accompany the diverse populations of the State.[73] To this end, environmentally harmonious community development should encompass "safe, sanitary, and decent homes," pollution controls to prevent degradation

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[62] Id § 226-20(a)(1).
[63] Id § 226-20(a)(2).
[64] Id § 226-20(b)(5).
[65] Id § 226-26(a)(1).
[66] HRS §§ 341,343, 344.
[67] HRS § 341-1.
[68] Id HRS § 341-1.
[69] HRS § 343-3(2)
[70] H.B. 2895, Act 50, 20th Leg., Reg. Sess., H. Doc. No. 1 § 1 (Haw. 2000).
[71] Id.
[72] Id.
[73] HRS § 344.

of communities, and a sense of identity and social satisfaction in relation to the physical environment.[74]

7.3.3. The Coastal Zone Management Act (CZMA)

The CZMA, passed in 1977, establishes a public advisory body that will provide support to the lead agency in the planning, coordination, and facilitation of functions of the coastal zone management program.[75] The public advisory body is comprised of a balanced representation of interests including environmentalists and practitioners of Native Hawaiian culture.[76] The public advisory group shall advocate, provide for, and act upon citizen input in alignment with the objective and policies of the Act, including full consideration of ecological, cultural, historic, aesthetic, recreational, scenic, and open space values.[77]

7.3.4. The Water Code

To implement the mandates of Article XI § 7 of the Hawai`i Constitution, the legislature adopted the Water Code in 1987. The Code outlines the Water Commission's administrative structure and provides specific directives regarding all aspects of water resource management, including the regulation of water use and related reporting requirements, stream diversion works, and instream uses of water. The Code serves dual purposes in its management of State waters:

> The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.

HRS §§ 174C-2(c), 174C-4(a). Although specific uses are declared to be in the public interest, the Constitution and Code make clear that public trust purposes, such as ecological protection, traditional and customary Native Hawaiian rights and practices, domestic water uses, and reservations for the Department of Hawaiian Homelands, have priority over private commercial uses.[78]

The Code charges the Water Commission with establishing an instream use and protection plan for surface water and sustainable yields for all ground water within each hydrologic unit of each county.[79] As part of the instream use and protection plan, the Water

[74] HRS §§ 344-4(A),(B),(C),(D).
[75] HRS § 205 A-3.5 (a), (f).
[76] Id. § (b)(2).
[77] Id. § (f) (3), (g), HRS § 205 A(4).
[78] In re Use Permit Applications, 105 Hawai`i 1, 93 P.3d 643 (2004).
[79] HRS § 174C-31(i)(1).

Commission is required to "[e]stablish instream flow standards on a stream-by-stream basis whenever necessary to protect the public interest in waters of the State."[80] Whether instream flow standards are to be adopted for a given stream, the Water Commission must provide written conclusions with findings and rationale regarding its determination.[81] If the Water Commission determines that "an area may be threatened by existing or proposed withdrawals or diversions of water," the Water Commission must designate that area as a water management area and establish "administrative control over the withdrawals and diversions of ground and surface waters in the area to ensure reasonable-beneficial use of the water resources in the public interest."[82]

No provision of the Water Code extinguishes appurtenant water rights or restricts the issue of water use permits, which are based on an existing appurtenant right.[83] Importantly, Native Hawaiian water rights are protected and preserved by the Water Code. This includes the incorporation and protection of sufficient water reserves for current and foreseeable development use in Hawaiian Homelands.[84] The traditional and customary rights of Native Hawaiian ahupua`a tenants, including but not limited to the cultivation and propagation of taro, shall not be abridged or denied.[85]

7.3.5. Burial Law and Historic Preservation

The historic preservation law contained in HRS Chapter 6E (1976) provides the most comprehensive protection to date for historic and cultural sites and materials, with a focus on preservation of the state's Native Hawaiian heritage. Policies and procedures regarding archaeological survey and recordkeeping, acquisition and preservation of historic sites, access to cultural resources by Native Hawaiian practitioners, and treatment of ancient Hawaiian burials comprise an integrated, state-wide preservation and protection program.[86]

Before development or other alterations may occur on public or private historic or culturally significant land, authorization must be sought. The development activities are evaluated for their effect on the historic properties; if any effect is found, the activities may not proceed or must be modified to mitigate the effects on the historic property.[87] Special consideration is provided for ancient Hawaiian burial sites. When burial sites are discovered, determinations are to be made in consultation with Native Hawaiian representatives as to whether and how the sites are to be preserved and remains are to be handled and recorded.[88]

The State's interest in heightened protection of Native Hawaiian and other cultural history is evidenced in the intent of HRS § 6E. This history is an important asset to the state, and should be preserved for the benefit of the public. The aspects of development and modern

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[80] Id. § 174C-71 (1).
[81] Id. § 174C-71 (1)(b).
[82] Id. § 174C-41(a).
[83] Id. § 174C-63.
[84] Id. § 174C-101(a).
[85] Id. § 174C-101(c).
[86] HRS § 6E-3.
[87] HRS § 6E-8, 10.
[88] HRS § 6E-43.

society that threaten our cultural heritage should be mitigated by a proactive preservation program that will safeguard Hawaiian heritage for this and future generations.[89]

7.4. Environmental Justice Policy for Department of Health

The Hawai`i Department of Health will, "through the implementation of federal and state environmental laws, rules, policies and programs, ensure that no segment of the population bears a disproportionate share of the risks and consequences of environmental pollution."[90]

The Department has created an implementation strategy, which proposes a series of actions designed to meet the goal of incorporating environmental equity into their programs, policies and activities. The Department will review and assess the impacts of, and opportunities provided by, its activities with regard to lower income residents and ethnic minority groups. Environmental equity, as a core value, will be integrated in their land-use comment coordination and other programs. Communities will be encouraged to participate in the Department's ongoing operations and program development, including but not limited to inclusion on the agency's advisory groups and committees. The Department will work with other federal, state, and municipal agencies on coordination of environmental equity issues and encourage the use of alternative dispute resolution methods, if needed, to resolve allegations of environmental inequity.[91]

7.5. Hawai'i Case Law

Following the 1978 Constitutional Convention, a series of cases furthered the concept that Native Hawaiian rights must be considered alongside and incorporated into contemporary state laws and policies. The groundbreaking 1982 case *Kalipi v. Hawaiian Trust Co.* involved a Native Hawaiian plaintiff who sought to gather traditional ceremonial items from undeveloped private land in the ahupuaʻa (traditional Hawaiian wedge-shaped land unit extending from the mountains to the sea) in which he resided.[92] The Hawaiʻi Supreme Court held these gathering rights were "established by Hawaiian usage" and thus protected by HRS § 1-1 and § 7-1. Moreover, it was the Court's duty under Art. XII, § 7 of the Hawaiʻi Constitution to "preserve and enforce" these rights despite the conflict with western notions of property ownership.[93]

The holding in Kalipi was expanded in 1992 when the Court held in *Pele Defense Fund v. Paty* that Native Hawaiian gathering rights and religious practices may be protected even in ahupuaʻa in which individuals do not reside, provided the rights and practices have been established on those lands by custom.[94] This analysis is to be applied on a case-by-case basis, thus eschewing creation of a limited list of protected rights.

The Hawai`i Supreme Court reaffirmed the importance of preserving Hawaiian rights in

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[89] HRS § 6E-1.
[90] State of Hawai`i, Department of Health Environmental Equity Policy, March 29, 2001.
[91] Id.
[92] *Kalipi v. Hawaiian Trust Co.* 66 Haw. 1, 656 P.2d 745 (1982).
[93] Id.
[94] *Pele Defense Fund v. Paty* 73 Haw. 578, 837 P.2d 1247 (1992).

our ever-evolving society with the powerful 1995 decision in *Public Access Shoreline Hawai`i (P.A.S.H) v. Hawai'i County Planning Commission.* After the Hawai'i County Planning Commission issued a developer a permit for a resort, P.A.S.H., a public interest group opposing the resort, demanded and was afforded a contested case hearing.[95] The Hawai`i Supreme Court held P.A.S.H., with its Native Hawaiian members, had standing to request the hearing because Native Hawaiians were found to have interests distinct from those of the general public, who would have been denied standing under state administrative rules. Further, not only are state and county governments bound by Art. XII, § 7, but state agencies such as the County Planning Commission are henceforth "obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians to the extent feasible."[96]

The obligation to protect Native Hawaiian traditional and customary practices was more clearly defined in 2000 in the Hawai'i Supreme Court case *Ka Pa'akai o Ka'aina v. Land Use Commission, State of Hawai'i.* State governments and agencies must utilize a three-prong analysis when considering the propriety of actions that may affect traditional or customary practices. First, identify the cultural, historic, or natural resources of the subject area and how traditional and customary activities are being exercised there. Second, examine how the proposed actions will affect those traditional activities and practices. Third, if native Hawaiian rights exist in the area, determine how the government can reasonably protect those rights. [97]

In Waiahole, the Hawai`i Supreme Court recognizes the precautionary principle as an applied legal doctrine such that the State has an affirmative duty to consider public trust in planning and allocation of water resources. In addition, the Court determined that applicants requesting water diverted from streams prove their actual water needs. Applicants must also "demonstrate the absence of practicable mitigating measures, including the use of alternative water sources."[98] In demonstrating an applicant's actual water needs, water calculated for agricultural use must be based on actual acres in cultivation.[99]

7.6. Unique Challenges to Defining Environmental Justice in Hawai`i

Traditional definitions of environmental justice include low-income populations and racial minorities. Yet, distinctions among races, cultures, and ways of life are often overlooked by the established environmental justice framework, which tends to treat racial minorities as interchangeable.[100] Although environmental justice can be a formative aspect in "improving the quality of life in many communities of color," defining those communities and understanding their needs can be problematic.[101]

The majority of supporting authority included in this report applies to Native Hawaiian communities. Based on many of the laws currently in place, any inclusive definition of

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[95] *Public Access Shoreline Hawai`i (P.A.S.H) v. Hawai'i County Planning Commission* 79 Haw. 425, 903 P.2d 1247 (1995).
[96] Id.
[97] *Ka Pa'akai o Ka'aina v. Land Use Commission, State of Hawai'i* 94 Haw. 31, 7 P.3d 1068 (2000).
[98] *In re Water Use Permit Applications,* 94 Hawai'i 97, 9 P.3d 409 (2000).
[99] Id.
[100] Eric Yamamoto and Jen-L W. Lyman, Racializing Environmental Justice, 72 U. Colo. L. Rev. 311 (2001).
[101] Peggy M. Shepard, Issues of Community Empowerment, 21 Fordham Urb. L.J. at 740 (1994).

environmental justice in Hawai`i would need to consider Native Hawaiian populations due to their unique status as the indigenous people of Hawai`i, long standing stewards, and holders of legally recognized rights in Hawai`i.

Additionally, low-income populations, including those in outer island and rural communities, face unique challenges and require specific solutions in bearing significant environmental disruption and injustice. Recent immigrants and other ethnic groups including Micronesian and Filipino communities require consideration in an inclusive class of those potentially exposed to environmental injustice in the State of Hawai`i.

Any definition of environmental justice communities must encompass the diverse ethnic, regional, economic, and cultural groups that exist in the State of Hawai`i. Within this definition, each group includes Native Hawaiian populations. Therefore, any definition of environmental justice in Hawai`i, while considering the interests of each group, must include the Native Hawaiian community.

8. RECOMMENDATIONS FOR FUTURE ENVIRONMENTAL JUSTICE EFFORTS

The passing of Act 294 is an important first step in implementing environmental justice principles and practice in Hawai`i. But more needs to be done – especially because Hawai`i is behind the national curve with respect to implementing environmental justice into its policies and laws. Detailed below are recommendations to achieve environmental justice in the state of Hawai`i.

First, it is recommended the State of Hawai`i, Office of Environmental Quality Control (OEQC) adopt the environmental justice guidance document as agency policy for use in the State of Hawai`i environmental review process.

Adopting the Environmental Justice Guidance Document as agency policy will allow agencies, applicants, OEQC, the Environmental Council, and the public to assess the efficacy and practical implications of implementing new environmental justice policy in Hawai`i as envisioned by Act 294. Agency and applicant use of the guidance is highly recommended, but the guidance document is not legally binding.

Once OEQC adopts the Environmental Justice Guidance Document, it is recommended that it implement the following actions to assist agencies, applicants, the Environmental Council, and the public in using the guidance.

- Provide an environmental justice link on the OEQC website. The link will include environmental justice tools, resources, website links, and examples of addressing environmental justice in the EIS process.
- Appoint or hire an environmental justice consultant to answer questions from agencies or applicants who are seeking advice on how to implement the environmental justice guidance document.
- Establish a State of Hawai`i State hotline for reporting environmental justice complaints.
- Evaluate state health department enforcement and inspection programs to determine whether they have a disproportionate impact on environmental justice communities.
- Provide education to agencies, businesses, and the public on environmental laws.
- Conduct community-wide information sessions to explain what environmental justice is and citizens' rights to meaningful involvement in decisions that impact them.
- Build the capacity of environmental groups through activities such as small grants programs or island-wide environmental justice conferences.
- Evaluate state Freedom of Information Act (FOIA) programs to ensure that access to environmental information is easy and not unduly expensive for citizens.

Second, once the efficacy and practical implications of the environmental justice guidance document have been evaluated, it is then recommended that HRS Chapter 343 be amended to incorporate the successful aspects of the Environmental Justice Guidance Document.

Act 294 states that "the legislature finds that there is a need to conduct a comprehensive and scholarly review of the state environmental impact statement process to evaluate its continued efficacy, the effectiveness of the amendments made by Act 50, Session Laws of Hawai`i 2000, and the possible need to revise chapter 343, Hawai`i Revised Statutes." The comprehensive review and possible revisions of HRS Chapter 343 afford the legislature the opportunity to incorporate environmental justice into the Hawai`i EIS law; by so doing, the legislature will ensure enforceability and accountability on the part of government agencies in implementing environmental justice practices in the environmental review process which, in turn, will afford fair treatment and meaningful involvement of under-represented populations in Hawai`i when environmental decisions impact their environment and their health.

APPENDIX A: HAWAI`I LEGISLATION

State of Hawai`i Environmental Council Proposal, A Process and Plan to Accomplish the Requests of SCR 140 HD 1 (2005).

Act 294

APPENDIX B: HAWAI`I ENVIRONMENTAL JUSTICE INITIATIVE PREPARATION MATERIALS

Fact sheet

Questionnaire

APPENDIX C: HAWAI`I ENVIRONMENTAL JUSTICE INITIATIVE PARTICIPANTS

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Wai, Ms.
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APPENDIX D: HAWAI`I ENVIRONMENTAL JUSTICE INITIATIVE PARTICIPANT RESPONSES

The bulleted items below are participant responses to each of the respective questions. Editing of comments was done only to add clarification. Any facts stated by participants were not checked for accuracy.

1. What does environmental justice mean to you?

- One segment of the population or geographic area is disproportionately overburdened with environmental impacts from facilities that benefit the larger population. For example, the Waianae Coast suffers a disproportionate burden from landfills, a power plant and an industrial park that benefit the O`ahu population.
- There should be no disproportionate adverse impacts on environmental justice populations.
- Disproportionately adverse impacts on minority and low-income populations, per the federal Executive Order 12898.
- Making sure all of the heavy industrial waste - electrical plants, etc. – is not placed in communities primarily of color or low-income, whether – intentionally or inadvertently. Share the burden by spreading it out.
- That no one group bears more than its fair share of impacts and that each group receives its fair share of benefits. For example, site a roadway in a location that provides access to different opportunities, such as jobs, shops and hospitals, for both EJ and non-EJ groups.
- It has to do with the adverse effects of a project that benefits the larger society. The effects disproportionately fall upon a community with less economic and political power.
- People understand the general definition – disproportionate siting near low-income or minority developments. Makes the siting process more complex.
- In the context of Hawai`i Department of Transportation (HDOT) program areas (planning, project development, right of way, construction, and research projects), environmental justice is about fairness and meaningful participation by all potentially affected communities in the transportation decision-making process. Environmental justice seeks to ensure that underserved communities participate in planning and decision-making for transportation projects, that their concerns and needs are incorporated into plans and policies, and that the resulting system can better serve all its users. HDOT implementation of environmental justice principles requires that the adverse impacts of transportation plans, programs and projects do not fall disproportionately on low-income and minority communities, and that these communities receive an equitable distribution of the benefits of transportation investments. In addition to the minority concern, environmental justice focuses on income and/or poverty distributions. One of the key determinants of access to decision-making is economic resources. Poverty incidence, then, is taken to be a key identifier of an environmental justice population.
- It means that disadvantaged people should not bear undue burdens of environmental impacts or inequity of considerations when planning public development.
- It should mean that marginalized indigenous people receive specific opportunity to participate and contribute to the environmental and economic planning for their regions or place.
- Inequality of negative impacts. If the impacts are good for one, then they should be good for all.

- The siting of hazardous, industrial or commercial sites in ethnic or poor working-class communities. These communities cannot organize to protect themselves from these hazards.
- An environmentally just society would be one where benefits and costs are more evenly distributed among all members of society.
- Hawaiians and other Pacific Islanders seem disproportionately disempowered in their own country. Even those Hawaiians and Pacific Islanders who are in higher income areas still face environmental injustices.
- When you are planning or siting facilities, they should not all be clustered in areas with low-income population or in certain geographic areas with concentrations of minority or lower socioeconomic groups. These communities should not be deprived of or receive lower or less basic services than other areas.
- It is a process for recognizing that environmental consequences and burdens are to be spread equitably, not just among poor people.
- Issues that impact and degrade the environment of minority or indigenous people.
- Everybody has a right to a clean environment. Everybody must participate in keeping the environment clean by properly disposing of things.
- The human right to a clean and healthy environment needs a constitutional basis.
- Broadly, the right of people to have a quality environment to live in.
- Fair treatment for all populations and communities. Consider the needs and concerns of everyone.
- Fairness.
- Fairness. Opportunity to comment on issues of concern, no matter who you are.
- It is an equality issue. Try to minimize impacts to everybody and to the environment. Unsure whether or not it has to do with disproportionate impacts.
- Equity.
- Values of equality, consistency, follow through, responsibility. Give and take with more giving!
- The ability for a disenfranchised community, socially, economically and culturally, to have a voice in governmental development processes. Environmental justice should work as a tool to level the playing field.
- Right to be heard by our government in all facets of life in our islands; that is, to be heard from agencies such as the State Historic Preservation Division in protecting our cultural sites and burials; the City and County of Honolulu Department of Planning and Permitting in preventing building within 30 feet of heiau and gated communities to block shoreline access; the Department of Land and Natural Resources in setting fishing rights; and the state Commission on Water Resource Management in not authorizing potable water to irrigate new golf courses and wasting this precious resource.
- Local citizens have meaningful involvement in decisions that affect their community.
- In Hawai`i, it should mean that those who know the places best should be consulted and included in considerations of protections and profit.
- Protection from hazards such as depleted uranium, unexploded ordinance and military operations that use toxic and hazardous chemicals and materials. Live ammunition, missiles and rockets also ignite wildfires in areas rich in endemic species and ancient cultural sites. There is no need to continue to destroy the unique and fragile environment

of Hawai`i with military munitions that create environmental and human health dangers with contaminated soil and groundwater.

- It means addressing issues that affect and impact the environment including people. It is making sure that we humans understand that we have a responsibility to show extreme care for our environment and leave it better than how we found it so that future generations may continue to use and benefit from it.
- Environmental justice is when the community controls its own environment. Examples of this are the ‘aha moku council system of community elders that was used for centuries in Hawai`i.
- Environmental justice would mean that economic values would be assessed equally and consistently. For example, the economic value of a developed property is given a higher economic “value” than healthy natural resources. The previous undeveloped condition is not assessed for sustainability, cleaner ocean water or minimal impact to the environment and ecosystem. For example, the losses claimed in “expected” economic values to South Maui because of algae blooms are actually the result of poor planning and development impacts that increased fertilizers and the use of injection wells that increased groundwater nutrients. These nutrients are from population growth and development. The algae are responding to what has been changed.
- Following the environmental laws that are in place without any exceptions. Consequences for not following these laws are administered at all branches of the government. The consequences should be significant enough to deter future unjust actions.
- Environmental justice requires affirmative action by government to make it real. It is easy to talk about environmental justice, but it needs to be followed up with concrete action.
- The National Environmental Policy Act (NEPA) definition for environmental justice is good. It seems to work well. Would base the Hawai`i definition off the NEPA definition. Do not see a conflict.
- Consideration for social and economic impacts of proposed projects**,** which is already a part of the National Environmental Policy Act process. Regardless of the size of the project, the environmental assessment or impact statement process should consider these impacts.
- Indigenous peoples reap the benefits of technological and local development without being unfairly burdened with the costs and impacts of that development.
- Honoring and respecting traditional and local knowledge, recognizing its value even though it does not follow scientific protocol.
- The return of ceded and crown lands to a Native Hawaiian government.
- The role of environmental justice is to be an advocate for the environment. The land has no voice.
- Protect the environment for future generations.
- Important to remember the “environment” in environmental justice.
- Justice for the environment. In Hawai’i, one’s income status does not matter; injustice is being done to the environment. There is so little of the environment in various regulations. Laws are so inadequate to protect the environment; the environmental impact statement (EIS) process is a joke. The laws are all set up to protect jobs and development at the expense of the environment. The EIS does not work. Hawai`i should

be the leader in how to care for the environment. We are going to lose what gives us life. Hawaiian genealogy teaches us to go back to the first born, Hāloa, the taro plant. Then came man. This tells us where man is in the hierarchy.

- Prohibit developers from diverting water necessary to support native stream life and to the rights of Native Hawaiians to exercise their traditional customs and water uses, including taro farming and fishponds.
- Protection of marine resources. It is not just about getting people to abide by existing resource protection laws, but educating people as to why they should not break the laws. The education should focus on the value of the natural resources.
- Common sense in protecting natural resources
- Respecting island diversity. Every island is different and unique with respect to its resources and the protection of those resources. Laws to protect resources on one island may not be sufficient for another island.
- Decisions are made based on true protection and long-term use of resources, regardless of financial and ownership interests. Take care of the environment's needs based on the real needs of those resources, not based on money, commerce and economics.
- Fair use and distribution of resources. Put information out to the people and provide them access to the decision-making process. Should not have to pay fees for accessing documents (i.e. private development) so they can conduct research to understand the issues and be involved.
- Consistency.
- Sustainability.
- Sustainable practices, such as allowing for the recharging of Maui aquifers.
- Give and take situation; however, there is too much taking, not enough giving.
- Justice. Understand kuleana (responsibility). Know your place and responsibility with respect to the environment. There is a failure of individuals and businesses to do what is right to properly protect Hawai`i resources.
- Take care of environment injustices.
- Not pitting the rich against the poor.
- Health for all of God's creation.
- Justice needs to be for all cultures.
- Hawaiian culture is the culture of these islands.
- Environmental justice needs historical perspective.
- Enforcement of existing law.
- Staffing to hear and identify injustice issues.
- Depoliticize environmental enforcement.
- The land is the chief and the people are the servants.
- That the environment will be viewed as having "rights" as persons do. If the environment had rights the abuse would be more difficult.
- Is inherently connected to Native Hawaiian rights, and not just any minority group.
- Self-determination must be respected.
- Hawaiians live in this place because of their historical and ancestral ties.
- Respect for the 'āina, natural resources and Native Hawaiian culture. How do you execute that respect? Encourage respect by preserving, protecting and engaging in informational and educational purposes. Partner with those who also respect the 'āina.

- Need recognition for people whose families are longtime residents of Waianae. People have chosen the lifestyle of Waianae. So, when projects are proposed, you need to think about what those projects will do to the community as their chosen place to live. When infrastructure is placed in areas that nobody else wants, it denigrates why people are there in the first place. Some people cannot afford to live anywhere else. Some people choose to live in a community because of its resources.
- As a metaphor from a Hawaiian perspective, it is about taking care of the environment. Everything of it, in it, all around it. All plants on land, water in streams, life in the sea. All created by akua (god). We are responsible for taking care of it. What we take out of the land, we must give back. We must undo any harm we do to the land. Respecting the native people's responsibility to the earth and to their ancestors, and the knowledge from ancestors is to be in harmony with nature. Take care of nature and nature will take care of you.
- Respect and duty to the countless physical manifestations of Hawaiian gods in the plants, animals, land and sea.
- The human and natural sector not impaired by development. Decision-makers understand the responses of the sector.
- Rights with responsibility.
- Cannot be as narrowly defined as on the Mainland. Use a wide lens.
- More EPA enforcement, but the EPA currently is not taking responsibility.

2. Many words used to define environmental justice are based on Western values. In Hawai`i, a different value system is used. For example, Hawaiians see themselves as being a part of the environment, while Westerners view the environment as something distant and separate. Based on your knowledge of Hawaiian values, how would you define the following terms?

General Comment

- I think the above dichotomy is simplistic. I doubt this was ever strictly true – certainly my Lapp ancestors were extraordinarily in tune with their taiga environment and did not waste any scrap of the reindeer, which they sacrificed with reverence. I think it's more a matter of traditional, pre- and post-techno/isolation culture. I know many "Westerners" who see themselves inextricably linked to their environment and many Hawaiians who don't, or at least it's pretty hard to tell. My real Hawaiian neighbors work regular jobs and use Pampers for their babies and drive to their kids' soccer games in SUVs and eat at Taco Bell afterward…just like us. Part of their "culture" – and by that I mean what they actually say, do and think – is derived from attitudes that reflect pre-contact Hawaiian culture, but most of it comes from growing up in 20th century Hawai`i and participating in the American experience…like it or not. We all speak pidgin and we all like laulau and our girls and boys all dance hula and play volleyball and marry each other, making our grandkids the same people. These kids' varying shades of whites or browns definitely do not correlate with their worldviews. Isn't that your experience too?

Environment

- The indigenous view is that we are a part of the land, the land a part of us. The land should not be abused, but should be used to care for 'ohana. Mālama – the land does not belong to you, you belong to it. It is your earth mother. It needs to be there for her children. It inspires a generational goal.
- Hawaiians have a strong sense of kinship to the environment, which is also the foundation of Hawaiian spirituality. Wahi pana (legendary places) especially possess special meaning to Hawaiians and provide a critical link between the past and present. Perpetuation of our wahi pana and special cultural places must continue even in the face of modernization and the paving over of much of our 'āina.
- In Hawai`i, the environment is a relationship between the people and the land. Often, impacts that cut people off from the cultural resources necessary to perpetuate their cultural practices are overlooked. Need to evaluate and appreciate the aspect of not cutting off traditional and customary practices. You cannot cut off people from the land.
- The environment is made up of one's total surroundings. It is your sense of place and connectedness to that place. It includes physical, natural and social aspects of the environment.
- The Western view sees the land separate from the people. Land is used as capital. Inspires quarterly goals (i.e., dollars).
- Western archaeological thinking sees the human-built environment, such as heiau made of rock. In reality, there is a cultural landscape that has cultural significance that has not been modified. One must take into account the human interaction component of a cultural site or practice.
- Atmosphere, winds, rains, elements, land, ocean and all the natural resources of the land.

- The natural environment.
- Land, nature, animals and sea. The natural world, not the built environment.
- When you walk out of the house, all that is there that man has not touched nor has control over. Not manmade; all that nature has provided.
- Natural systems functioning well to deliver services.
- Our natural resources and also the air and water quality.
- Most try to define the environment in terms of its physical aspects. The holistic aspect also needs to be captured, which includes the social well-being and mental makeup of a community.
- The natural world we all have to live in, where humanity meets nature.
- Includes places untouched by humans and places well developed by humans.
- Balance. The ahupua`a system worked well. If needed resources were not available, you were forced to work outside your ahupua`a to manage resources.
- There needs to be a balance between human interaction and the environment. We as humans stress commercialism, which exploits or compromises our environment.
- In some instances, the environment needs to be quantified, which is difficult to do. For example, measure the travel time it takes for EJ and non-EJ groups to get to hospitals or recreation areas.
- Sustains the people.
- We depend on the islands where we live to take care of us. We should be able to grow our own food, hunt, fish and gather. We should be able to live off the ocean and mountains and not be dependent on outside imports. The current economy cannot be perpetuated.
- Natural and manmade.
- How one is socialized according to culture.
- Elements that direct and impact socialization of individuals and communities in which culture is perpetuated.
- People define environment and what is important.
- Everything. The environment is our surroundings and all the resources in the surroundings that allow for our quality of life. It includes water, air and food and is disease free.
- Everything we live in. The air, ocean, mountains, forest, vegetation, streams, the places we live in, and all in it. Start with the natural aspect and judiciously look at the manmade aspect. The manmade environment destroys the environment, which creates more problems. For example, storm water canals destroy near-shore estuaries.
- All encompassing – includes natural and cultural resources, and social justice - that is, what is not the environment? Clean air and water. Trees. Livable communities. Interconnection among all the different resources that support life. They all comprise the environment.
- The all-encompassing whole – people, plants, air, land and water. You can throw in spirits if you want, too.
- Environment varies from community to community and island to island.
- A person needs to be in tune with their surroundings.

- Use the ahupua`a system for environmental justice. This system perpetuates the righteousness of the land. There is concern about the use of the word "ahupua`a." It may become a "development" word used to justify development.
- All who live in the ahupua`a system must be inclusive. Everyone has his or her responsibility within the system.
- The space in which we exist.
- Look at the Hawaiian value system.
- Includes rights of native peoples.
- All the things that allow me to live.

Resources

- Things that make up the environment.
- A subset of the environment.
- Services from a healthy operating natural system.
- Non-commodities. All that nature provides for opportunity of sustenance.
- Consists of the natural, social and economic aspects of the environment.
- Flora, fauna, minerals, natural elements.
- Hawaiians shared freely the resources in their ahupua`a, from fruits and plants to fish and seaweed. My 'ohana continue this tradition by taking only what is needed and sharing what we have.
- Resources are usually defined for human use, but I see this as shortsighted, because plants and animals certainly require these resources too and must be considered.
- Based on the ahupua`a concept. Everything is interrelated from the mountain to the sea. Nothing should be wasted.
- We need to understand our impacts on the environment. Natural public resources should not be commercialized or sold. Nothing is free and user fees or volunteer labor should be established to maintain and manage public resources properly. There is responsibility for using or harvesting from nature. We have too many people taking or making money and using public resources irresponsibly. We are susceptible to introduced species, and invasive species will continue to occur at an increasing ecological cost to protect what is natural to Hawai'i. We do not protect our individual islands from what is established on the other islands. We allow expansion of introduced species statewide over time. Our priority to make travel convenient and concern about increasing the number of visitors is wrongly greater than our concern about keeping illegal contraband from being transported between islands.
- Pertains to people and their ability to gather and obtain resources.
- Acquire enough resources into one's diet to sustain their livelihood and practices.
- Resources have cultural, natural, human and spiritual components. Resources are the things that enable us to live a quality of life we desire.
- Things we need for our lifestyle, to support our lives and our spiritual life. Cultural sites. The history of the community.
- Those things with which you can utilize in various forms and fashions, to include the ocean, land and forest. Resources match the environment, but the difference is a matter of how you use it.

- Everything that is necessary for Hawaiians to eat, to use for medicinal purposes and to use for shelter. These resources are things that make us self-sufficient. Resources were provided; all we need to do is to take care of them.
- For Native Hawaiians, it is the space in which we exist. From a legislative point of view, resources are broken down into land, ocean, monetary, human (workers), etc.
- A general term that includes budget, human resources, natural resources and economic resources.
- To ensure that money and projects are distributed in an equitable manner, planners are often forced to quantify resources in a Western context.
- Manmade capitalistic economic system versus natural subsistence economy

Sustainability

- Leave no footprint.
- Creatively find ways to live a life acceptable to people that allows them to prosper.
- Use resources and replace them without diminishing their quality.
- Mālama ʻāina, or respect and conserve the ʻāina for present and future generations.
- Always plan for the future – never taking more than you need, protecting the resources at all costs.
- True sustainability manages and shares abundance. There should be no hesitancy in using kāpu (prohibition) to protect areas or populations. The right for Native Hawaiians to gather or fish never allowed anyone to over-harvest. (They would have been killed for greed or ignorance.) It is inherent that the individual, who knows, will stop.
- Ability to maintain resources by knowing when to harvest, when to fish, etc.
- Engaging the environment and knowing how to maintain its resources.
- Living within the limitations of our resources, despite what modern technology tells us to do. People forget that we live on an island and do not realize that our resources are limited. We cannot continue to use natural resources without experiencing adverse impacts. There is merit to how Native Hawaiians sustained themselves prior to Western contact.
- To not be so dependent on outside sources for food and materials. The people used to live off the land for sustainability. Now we need to have money in the bank to plan for the future.
- The United Nations definition for sustainability is a system that utilizes resources in present time so as not to impact their use in the future. Leave the world better than you found it.
- The resources you use are not used at a rate that they cannot be naturally replenished. This applies to people, fish, natural resources, etc.
- Self-sufficiency. Nature and natural resources help sustain needs. Refers to taking from nature only what we need, not more, not less.
- Providing for needs of today without consuming the resources needed by future generations. Assuring resources are available over the long term.
- Statistics state that 10% of the U.S. population moves each year. In five years, it will be 50%. But when people leave for greener pastures, they leave a mess behind. If they do not plan to make a certain place their home for life, they tend to have a different attitude

than those who want to stay for life. We cannot ruin this place because there is nowhere else to go. We need to care for this place.

- "Sliding baseline:" with each generation our baseline perception of what is good diminishes. If we understand historically what the resources were like and try to leave more behind in our generation, it will enhance the resources for the next generation.
- The ahupua`a is a system of sustenance.
- Pretty hard to believe we are ever again going to live sustainably, at least anytime soon. Modern humans are consuming energy and resources in a way that is very unsustainable – i.e., we are depleting certain valuable resources and degrading others in a way that hurts us and other members of the environment. This is the difference between modern and pre-industrial – not the difference between Western and Hawaiian or rich and poor. We all need to get closer to sustainable living…but we will not get real close in our lifetime. *When you take a trip on a plane instead of paddling your canoe to come to the Big Island, you make a big, if unconscious, choice for unsustainable living.*
- The United Nations defined sustainability 10-plus years ago, but the United States did not buy into this definition. It has become a global catch phrase, but Hawai`i is just now picking it up. This delay is because Hawai`i is very myopic, tending not to engage in other initiatives.
- A commitment by the larger population to sustainability will occur if they can maintain their quality of life while impacts to the environment are mitigated.
- People catch as much fish as possible, fill up their coolers and go home (this is not sustainable).
- Raping and pillaging resources.
- People legally go into communities and take as much as they can. This is being rude!

Justice

- Being treated equally (pono). Behave in a way that is just and righteous.
- Equality.
- All parties have an equal opportunity to have access to the natural resources. And all who have access hold each other accountable for the use of those resources. If one abuses these resources, they are held accountable by making them undo the wrong they have done.
- In Hawai`i, the hierarchy of social classes determined that everyone had a role.
- (2) Fairness
- Fairness and balance for everybody. No one community should bear the burden for the majority so that the majority can live well and the minority takes the hit. When are Waialae and Kahala going to have a landfill?
- Fairness. Equality. Apply the same standards to everyone.
- Should apply to all, equally and fairly.
- Is impartial. It does not matter whether you are rich or poor, or whom you are related to.
- Neutral perspective decision-making.
- Making sure everything is pono.
- Doing what is right – pono. Pono is what you apply every day to do what is right in every situation.

- Pono – the right result in the fullest sense. The process had to be right. Right for the community. Attempt to find the right result together.
- A value-laden term. From Native Hawaiian perspective, it is all about balance. We do not mind having one dump here, but not all of the dumps. From a Western perspective, justice is represented by eye-for-an-eye mentality. These different perspectives create miscommunications between Hawaiians and Western communities. Knowingly or unknowingly, where is the best place to get a project in? Developers often find the path of least resistance, which tends to be in communities who want balance versus those who want eye-for-an-eye.
- Equal access to representation and opportunities to health care education
- Recognition that different people have different experiences and living conditions that are not always equal.
- Getting what you deserve.
- Strict protection of the resources by folks in the community, not outside government agencies that have no stake in the community. This was formerly done by the konohiki (land stewards).
- Justice must be enforced, fair and consistent to everyone. The current system allows people to pay fines and to settle cases without determining or admitting guilt. It allows the rich to pay for their illegal actions. There appears to be minimal priority for enforcement of existing rules and regulations. Unless human behavior is not changed, resources will disappear.
- A resident of the islands for multiple generations is a carrier of stories/histories. These residents have rights that the person who just moved here does not have. It is culturally based rights. Recent transplants are not accepted because they have no attachment to the land. This results in a clash of cultures.
- Bring back the balance in general use of resources and environment. Make it better or increase it.
- Consequences follow negative behaviors and are a reflection of the value we place on those resources.
- A person and his heirs will have their place to live. A millionaire can invest his money and get a sizeable return. Fairness versus one power dominating others.
- A "chief" oversees the environment to make sure all are treated fairly.
- Making hard decisions to protect resources despite what the people want.
- The assimilation of Hawaiians into American culture has had adverse negative impacts on the Hawaiian culture, especially in regard to loss of ʻāina, access to the shoreline and loss of identity and respect.

Cumulative impacts

- The tendency is to look at cumulative impacts in terms of the chemical and physical environment. Need to include cultural impacts. What are the emotional and/or spiritual impacts on the fourth generation who has grown up in an environment surrounded by dumps? Hawaiians who work the land feel good about themselves and what they do. They are like a boat anchored in the water. But when the Hawaiians are oki, or cut off from their land, they lose their sense of self-worth. The anchor line has been cut off and they are adrift in the water.

- Cumulative impacts depend on the timeframe being considered. Cumulative impacts for a project planned 25 years in the future will have very different cumulative impacts than a project planned four years in the future.
- Impacts that accumulate, evolve and expand over time.
- The impacts from a particular action considered together with those of other ongoing and foreseeable actions.
- We are a NOW society. We should look out seven generations to determine cumulative impacts. Show people what the cumulative impacts have been as one goes back in time. Show people what has already been lost and what can potentially be lost.
- Do not just look at the direct impact but the "rings in the pool" that spread out and affect decisions.
- Impacts are defined differently, depending on one's perspective or cultural viewpoint. From a Western mindset, for example, the impacts are monetary -- the cost will be passed down the line. From an indigenous perspective, the land is worth something because it nourishes, so impacts include the spiritual aspect. The impacts just keep adding up. No one project viewed independently is going to be the breaker of whether or not a community can continue to live in the fashion accustomed to. It is the addition of all projects together.
- Trickle-down effect when a wrong is done to the natural resources or environment.
- Many actions have a big impact. The impacts cannot be seen immediately but over time.
- Need to define boundary of impacts.
- You never want to reach a point of cumulative impact. A tipping point is reached when the cumulative impacts are too much.
- In land use, do not just look at the impacts of one development but look at the total impacts of all the developments in a region. That would include impacts on transportation, groundwater, surface water runoff, agriculture lands, sewage systems and education systems.
- Need to be conscious of burdens we exact on people, even if for the good and benefit of society.
- Need a wider view than just the permit for the project now. Environmental justice forces this discussion to the table.
- The difference between Kaho`olawe (prior to military leaving) and O`ahu. On Kaho`olawe, people could see the effect of cumulative impacts. As a result, something was done to stop the impacts (bombing). On O`ahu, there are millions of cumulative impacts and nobody sees it. So nobody really does anything about it.
- Each generation defines what is good and what is based on their experiences, but only compare to the best of what we have now. Need to study the history of resource and land changes in an area before determining future cumulative impacts.
- The losses suffered by Hawaiians have already been too great - from ancient heiau, fishponds and burials to subsistence living in harmony with the 'āina as practiced by my ancestors.
- Approving too many golf courses, hotel resorts and luxury condos on important environmental land.
- With our increasing population, too many people play ignorant about the community and the responsibilities and duties of living on an island. The "current law" grandfathers

illegal and immoral acts. The continued diversion of streams and the burning of sugar cane with impacts to communities on the island are wrong. Proper cumulative impact studies should determine a carrying capacity and limits because of space and time. The continued expansion of all activities is unsustainable.

- Rarely considered.

3. Who are the populations in Hawai`i that environmental justice efforts should target?

Responses are categorized and listed based on the number of responses, from highest to lowest.

Native Hawaiian Population

- Thirteen people simply said Native Hawaiians.
- Native Hawaiians because they are the host culture.
- Native Hawaiians/indigenous people.
- Preference for indigenous cultures.
- Justice for indigenous people of Hawai`i.
- Native Hawaiians. Historically, the more Hawaiian you were, the fewer opportunities you had. From a justice perspective, if Hawaiians are not allowed to gain some recognition, e.g., through the Akaka bill, they could lose trusts established by former ali'i: Kamehameha Schools, which educated Hawaiian children; Queen Emma hospital, which cares for the health of Hawaiians; Queen Liliuokalani Children's Center, which assists orphans; Lunalilo's efforts to help the elderly; and Kapiolani hospital for women and children.
- Hawaiians. If we take care of our indigenous population, the entire population will benefit.
- Hawaiians. Different ethnic groups that have come into Hawai`i have impoverished the Hawaiians. The ethnic groups have been responsible for the negative impacts that have happened to Hawai`i in reference to the land and natural resources. They have been insensitive by disrespectfully continuing to ignore the plight of the Native Hawaiians. Hawaiians would not be in the predicament they are in today (diversion of water, taking of limu, pollution, overdevelopment, threat to ground water, sewage spills) had they been proactive. All these cultures come here, go after our natural resources and deplete them. They do not make an effort to learn how to be respectful and learn the ways of Native Hawaiians in protecting their resources.
- Hawaiians and other Pacific islanders, such as Micronesians. These people / groups are disempowered. They tend to be on the low-end of the economic stick and discriminated against in the political structure. Micronesians do not vote because they are not citizens, but they are impacted by decisions made around them.
- The federal government model of EJ does not fit the Hawai`i model – default to the Native Hawaiians as the EJ population target.
- Native Hawaiians with respect to land claims, taxes, water rights and development policies. The majority of Native Hawaiians have been pushed down all their lives. They feel as though they cannot say anything.
- From a water perspective, Native Hawaiians should have rights. As streams dry up, water sources are affected. For example, dike water on the windward side of O`ahu feeds the streams. When the dike water is tapped into for drinking water, less water is available for the streams. The decrease in stream flow infringes on Native Hawaiian cultural gathering and traditional practices.
- Also need to look at local culture. People who have been here for many generations have many of the same values as Native Hawaiians.

Low-Income Populations

- Twelve people simple said low-income populations.
- Impoverished, low-income populations.
- Focus more on low-income, not ethnicity.
- Low-income population, which would also include Native Hawaiians.
- Low-income populations. Poverty is a leading indicator of income. The poverty guidelines are the federal poverty measure. They are used each year in the Federal Register by the Department of Health and Human Services (HHS). The guidelines are a simplification of the poverty thresholds for use for administrative purposes – for instance, determining financial eligibility for certain federal programs. The 2007 Hawai`i annual income poverty guidelines for a family of four is $23,750.
- Low-income and challenged groups.
- Low-income populations, regardless of minority status, should automatically qualify for protection.
- Low-income populations, such as farmers.
- Large populations of low-income people are most at risk because they tend to be on the fringes of society and are often the recipients of negative impacts from facilities.
- The lower socioeconomic groups that are in specific geographic areas, such as Waianae. Low-income groups do include Native Hawaiian groups. May also include immigrants.
- People of low-income, minimal status who are not as active in fighting against the issues that impact them.
- Cannot necessarily look at racial make-up and draw conclusions about which communities are disempowered versus empowered. Need to evaluate based on economics.
- To meet the *letter* of law all Civil Rights Title VI minority groups should be included. To meet the *intent* of the Title VI law, the truly disadvantaged – based on income and dispersion throughout area – should be considered. For example, if a minority group makes up 10% of the state population, that group should receive 10% of the benefits. In another example, Japanese in the middle- to high-income bracket tend not to congregate in one specific geographic area. Although Title VI states the Japanese are a minority, they are not necessarily triggered as an EJ population.
- I disagree with identifying low-income households. There are some who have been waiting for a promise of Hawaiian Homelands to be distributed. You have many people who live peacefully within their means. Money is not a priority. They have learned to get by with what they have and will often go without. For many people, it may mean that they will never be able to afford a piece of real estate. There should be a way of insuring affordable "rentals" in addition to the building of affordable homes.
- The socially and economically challenged. Those people who do not have time to fight battles in their back yard because they are too busy working to pay rent and buy food.

Rural/Neighbor Island Populations

- Four people simply said rural communities.
- Rural people are sparse in population, have little clout and few of these voters participate in political decisions.

- Definitely rural areas. Cheaper lands are located in rural areas. People in rural areas face pressures from exploitation. In depressed communities someone may create an appearance of opportunity and people sell themselves short for that opportunity. Development may be presented with the opportunity of improving a community's quality of life – but by whose measurement is life improved?
- Neighbor islands tend to be neglected because the dominant focus is on O`ahu. Yet, they face problems with exploitation of their precious and pristine areas.
- People who are connected to the environment via business and socially. Includes those who see the value of respecting the environment and natural resources.
- People who rely on resources for subsistence.
- Folks closest to the land and resources, such as those who live a quasi-subsistence lifestyle, like fishers, hunters and gatherers.
- Practitioners who live off the land and need its resources to maintain their lifestyles. Includes Filipinos, etc., who live rural lifestyles. Very few Hawaiians live subsistence lifestyles.
- They should directly benefit the common people, the people who depend on the natural resources as part of their daily survival and therefore need access to these resources to help sustain their cultural and spiritual practices. These include also farmers and gardeners who preferably practice organic and sustainable methods, as well as children and elders.

Minority Populations

- Minorities.
- Evaluate minorities by locality/districts.
- Minority populations. To ensure that the benefits of transportation improvements are distributed without discriminating against any of the ethnicities in Hawai`i, the HDOT gathers, utilizing Census Data (demographic information) for the following ethnicities: American Indian/Alaskan Native, Black, Hispanic, White, Asian Indian, Chinese, Filipino, Chamorro, Hawaiian/Part Hawaiian, Japanese, Korean, Samoan, Vietnamese and Other. Although the White ethnic category is the majority for the United States, there is no significant majority ethnicity in the State of Hawai`i; therefore, every ethnicity could be considered a minority.
- The vast majority of people in Hawai`i are Title VI minorities. To truly protect the poor, an EJ analysis needs to consider a subset of each minority group to meet the intent of the Title VI law.
- Ethnic groups (who may have cultural practices different from others).
- Micronesians.

Disempowered Populations

- Disempowerment. Rural and agrarian dwellers are not up to speed on their legal rights with respect to development. Indigenous people and recent immigrants are not familiar with their rights and laws and are easily exploited.
- Disenfranchised.
- Disenfranchised communities, which includes Native Hawaiians and Pacific Islanders.
- Any population that would be especially vulnerable or subject to persistent infringement.

- Linguistically isolated populations (the inability to speak English could keep people from participating, regardless of income).
- Those who speak English as a second language. Just because they do not speak English does not mean that they lack an opinion.
- People living in segregated housing (plantation sites).
- Any community that lacks political muscle.
- A community that has had to bear and adapt to the brunt of government agency action.
- People who are not fully able to participate in political life due to education or ethnic barriers.
- What about elderly, disabled, homeless or residency status?
- Seniors.
- Two people said those with limited mobility, such as physical disabilities or lack of transportation, need further study to determine their EJ status.
- Children, because proposed projects impact schools. Increases in military personnel increase the population of children in schools. However, other federal laws address impacts to children, which is folded into NEPA.
- Long-term residents, at least those born and raised in Hawai`i.
- What about immigrants? If immigrants are new to Hawai`i, does this matter? No; environmental justice should apply to everyone.
- Immigrants who are exploited for their labor.
- Blighted communities such as Wailuku, Waipahu and Lihue.

All Populations

- Everyone equally.
- Environmental justice is too late – people who have been impacted know they have been impacted.
- Everyone. If one group receives too much focus, another group may be disproportionately impacted.
- Everybody. People are not educated to understand the issues and facts that impact them. We should be speaking out for the minority.
- All. If one talks about being fair and equal, then everyone should be targeted.
- Justice for all.
- The whole state.
- This is an interesting question. Everyone in Hawai`i is a minority – long may that be true!

Other Populations

- It appears that Hawai`i has still not grown out of "plantation thinking or management" where businesses still continue to benefit at the expense of the rest of the population and a healthier ecosystem. Proper planning would seem to dictate that proper infrastructure should be built along with upgraded schools, government buildings and support services to address the public needs and adequately maintain facilities, ecosystems and natural areas.
- People most affected by development
- Those who are intimidated by the formal HRS Chapter 343 process and do not speak out.

- The populations that are identified or impacted by a particular project.
- Because the islands are so small, all communities are impacted by projects. Cannot isolate people on a small island -- most projects affect whole islands.
- Native plants and animals.
- Environments need “champions” to bring attention to the ecosystem’s needs. Support those people who are warriors.

4. If you are in the business of developing or accepting environmental assessments and environmental impact statements, what process do you use to identify environmental justice populations?

- Using Census data to identify Census tracts below the standard deviation of the median island income.
- Start with Census data.
- Identifying environmental justice populations is not always an easy effort. Although Census data may be used, some people do not see themselves as being disenfranchised. Many of the disenfranchised are not visible and, therefore, extra effort needs to be spent locating them and offering them an opportunity to participate. This involves a "full-faith effort."
- I mainly use Census data…nothing else is fine-grained enough to deal with the impacts from individual projects, such as highways. For ethnic groups, it works pretty well. It would be really nice to have a state data set that looked more closely at income…sometimes you just gotta go by common knowledge, too.
- Use Census data. Existing data sources are not always sufficient and it can be very costly to get extra data. Suggest getting anecdotal data, which many know about their neighborhoods.
- For determining low-income status, use Census data in relationship to the socioeconomic context -- poverty in the community versus the county as a whole. Evaluate sources of income, such as welfare or unemployment. School data on who is eligible for free and reduced lunches is available on a year-to-year basis.
- See the document "Environmental Justice in the OMPO Planning Process: Defining Environmental Justice Populations" [available at http://oahumpo.org/T6EJ/t6ej.html]. OMPO has decided to follow the intent of the Title VI law rather than the letter of the law. Since OMPO is a planning organization, they tend to be more "soft" in their efforts. When trying to develop transportation plans, it is easier to bring various stakeholders to the table to get consensus.
- O`ahu Metropolitan Planning Organization environmental justice maps [available at http://oahumpo.org/T6EJ/t6ej.html].
- Look at environmental justice populations especially on federal properties to comply with environmental laws and executive orders.
- City and County of Honolulu land use plans are a great source of information for identifying minority groups. [An online source of interactive O`ahu maps is http://www.honoluludpp.org/gis/view_in1.htm].
- Utilize a three-step process. Step one, identify and know proposed actions and alternatives. Step two, identify and know the impacted communities. Use the client's involvement with the community over the years to gain this knowledge, along with speaking to recognized stakeholders. Step three, research Census data to obtain objective information. Then crosscheck the Census data and information provided by stakeholders. This involves balancing objective information with anecdotal information.
- Analysis under the Statewide Transportation Improvement Program (STIP): Specific to the STIP was the utilization of maps obtained from the state Department of Business, Economic Development & Tourism Office of Planning (OP). Locations of each minority group and low-income population have been identified statewide for STIP Projects. The

effects of STIP projects on identified Title VI/environmental justice populations were evaluated by breaking the projects into six categories: system preservation, safety, congestion mitigation, modernization, enhancement, and other projects.

Specific to the STIP was that each minority group and low-income population be analyzed separately statewide to determine any inequities based on four *performance measures*:

Safety / Equity focuses on whether project equity is programmed in the STIP to address roadway safety in target population areas. Programmed safety projects appear to address higher-risk safety concerns in areas identified as historically having significant amounts of traffic incidents. Furthermore, the intent of all road projects is to be designed and constructed with the most recent safety standards to the extent feasible. Safety improvements are prevalent in both environmental justice and non-environmental justice population areas statewide.

Displacement focuses on whether significant right-of-way impacts could occur in the target population areas. The potential for displacements occurs most for new roadways and, to a lesser extent, widening projects. These projects are generally distributed throughout the state based on need. These projects, including the Waimea and Kawaihae bypasses on the Big Island, the Lahaina and Paia bypasses on Maui and the Kapaa Bypass on Kaua`i, have the biggest potential to displace environmental justice populations. However, these areas also have the biggest potential to benefit the mobility and safety of environmental justice populations. Furthermore, each individual project has or will develop a plan to avoid, minimize and mitigate all environmental impacts, including displacements.

Equity focuses on whether transportation investment benefits are equitably distributed (as share of benefits) to the target population areas. Environmental justice and non-environmental justice groups appear to have a relatively fair distribution of STIP projects programmed in those areas. In this STIP, environmental justice groups tended to benefit a little more as more of the larger capacity/modernization projects occurred in environmental justice population areas.

Mobility focuses on how these projects impact mobility of the target populations. In general, all projects can have some degree of positive effect on the mobility of all populations: The intent of all transportation projects is to improve mobility. Furthermore, the betterment of mobility through a local project can have secondary mobility benefits nearby and even regionally, where other projects are not planned. With STIP projects programmed statewide and generally consistent where population is

growing or anticipated to grow, it is expected that overall mobility will increase for all.

The analysis focused on locations where *relatively* high concentrations of each minority or low-income population were found.

- Native Hawaiian communities identified in the cultural impact assessment.
- The presence of a Native Hawaiian community triggers the need to examine impacts to culture and its practices.
- Look at impacts to Native Hawaiian culture and practices. Consult with kupuna before projects are started.
- Talk to the elders/kupuna in a community.
- Form a community advisory committee made up of people from proposed impact areas.
- Form focus groups. Everyone knows everyone. Do your homework by calling people. Approach questioning with a semi-structured list. When people talk story, they provide very rich information.
- Survey the community via the telephone or a mail-out. Randomly select people to get good representation. This process will give a sense of how many support the proposed project and how many do not. Gather demographic data, such as where employed, length of residency, education level, etc. This may be useful for community outreach.
- Castle and Cook public affairs personnel.
- For military projects, go to the public affairs officers (PAOs). They attend community board meetings and know the people. PAOs tend to be very active in the community.
- Websites about local groups.
- State websites, which show the breakdown of ethnic groups by region.
- The goal is to work with the entire community – everyone who is impacted.
- Would not know how to reach out to environmental justice communities.
- Some communities feel that they are not receiving enough government-funded projects, so the goal is to try to reach out to everyone equally.
- Focus on how use excludes access by the general public.
- Take into account the natural plants and animals.
- Determine who the people are who use the resources.
- First I would look at WHO is and WHAT is causing the impact. Then look at, WHO or WHAT is being impacted? And WHY?
- I make regular comment to the USDA (U.S. Department of Agriculture) during their comment periods for certain GMO agricultural crops coming into Hawai'i for field trials. These highly experimental crops do not receive adequate overview or scrutiny by HDOA (Hawai`i Department of Agriculture), and so their mere presence creates long-term problems that we are only beginning to understand. The microorganisms, insects, bees, birds, mammals, etc. that live in the vicinity of a GMO experimental field trial (are at risk). There are hundreds of these (field trials) at any one time going on on four islands.
- I review and comment on EA's and EIS's as an NGO (non-governmental organization) community advocate. I use the knowledge of the people of the place in question to guide my comments.

5. What do you consider to be a past or present environmental justice issue here in Hawai`i? Please explain why this is an environmental justice issue.

Note that these are community-perceived environmental justice issues. No analysis has been completed to determine whether these issues represent a disproportionately high and adverse human health or environmental effect on under-represented groups.

Issues unrelated to a specific location

A1. Native Hawaiian issues

- The fair treatment of Hawaiian groups.
- Need to be cognizant of and complying with Native Hawaiian rights. "It is my right" to take resources from an area, but if too much is taken or it destroys the environment, then it is an injustice. Just because you have the right does not mean it is just. There are too many changes too fast. Enough already. Need to stop and redefine the use of resources.
- Water. No matter where one lives on earth, water flows across the land; it is like blood in a person's veins. It is life.
- The diverting of water for use on plantations or agricultural sites without considering the user at the bottom. The legal system concerning water did not consider the Hawaiian system.
- Water diversions. Water is used by large corporations, which are turned into governmental subsidies for those corporations. Meanwhile, people who relied on this water for cultural practices are left to deal with the lack of water, which affects their livelihood and the environment.
- Storm water runoff flows into areas of traditional limu and fish-gathering areas. The runoff affects the environment and how it has been traditionally and customarily used.
- Military facilities that have confiscated Hawaiian homelands.
- The Hawaiian lands were taken by the military and were isolated and desolated, irrespective of the importance of traditions of native peoples tied to those lands. Native peoples were not organized to say no to the taking of their lands.
- Ordnance activities that impact Hawaiian lands, areas such as Waikane Valley and Pōhakuloa.
- Native Hawaiians will never be able to access and regain full use of their lands due to impacts from the military.
- Power lines that go through low-income and Hawaiian communities.
- Burial sites. The law is supposed to equally protect unmarked as well as marked burial sites. Unmarked burial sites, however, are not being protected. Landowners argue that they have the right to use the land in any way they see fit.
- Development impact on kupuna iwi: specific impact on indigenous people
- Lack of efforts to repatriate iwi.
- The removal of iwi, which have not been repatriated.
- The filling in of fishponds to build homes
- Loss of wahi pana (legendary places)
- Private property prevents access to beaches via gates and vegetation. Traditional fishing areas are blocked.

- The governor is disrespecting statutory requirements for Native Hawaiian membership on the land and water commissions. Appointees to these positions often lack the knowledge of special land use practices.
- Native Hawaiians have been alienated from their responsibility to care for the land. The responsibility was given to the state and federal government. Hawaiians now take too much from the land, such as overfishing to pay for their boats. They no longer subsist off the land. The land and water have become commercialized. Hawaiians can no longer afford to live on the land due to increasing land values.
- Impacts to land, water and fishing. These issues have always been Native Hawaiian priorities. Without these three, Hawaiians cannot survive. If Hawaiians had their ancestral lands, they would not need to worry about high mortgages. Water for drinking, richness of who you are. The land cannot exist without water.
- The construction of H-3 highway because it aggravated Native Hawaiian issues. Sacred sites were bulldozed over during construction. It comes down to an economic discussion on how to make things happen. H-3 highway was not located in Moanalua Valley because the Damien Estate owns it.

A2. General issues unrelated to a specific location

- The Superferry, which is a home rule issue. Outer island folks see lots of people from O`ahu who does not care about sustainability. This infringes on the rights of paddlers and people who use the harbor areas.
- Superferry. People on Kaua`i say this is our island, we live here. People come over and surf and bring alien species. This may not necessarily be a true environmental justice issue – need to look at dynamics. Is the Superferry disproportionately impacting any particular people or groups?
- Superferry. Supreme Court opinion. Issue: Whether HDOT complied with HEPA. Supreme Court opined that the lower court "erred in ruling that HDOT has complied with HEPA, because under the regulatory and statutory framework HDOT was required, 'in making exemption determinations, to review all phases of a project as a whole, without segmentation, and to review the secondary and cumulative impacts of the project.' In short, the dispute is whether HDOT was correct to analyze only the harbor improvements in making its exemption determination, or was also required to consider the potential environmental impacts caused by the Hawai`i Superferry project" (Appeal from the Second Circuit Court, Civ. No. 05-1-0114, August 31, 2007). Environmental justice issue: Look at low-income/rural and affordable alternatives to air travel. Check demographic data to identify whether there are environmental justice populations in the area of secondary effects. Check especially Native Hawaiian demographic data to analyze environmental justice issues. If so, are disproportionately high and adverse effects borne by environmental justice populations?
- Superferry – inconsistent policy creates social and legal turmoil.
- Cruise ships and the Superferry that want entry into rural communities such as Moloka`i and Hana. These ships bring in three times the number of people living in the local community. Ships also dump their waste in oceans adjacent to rural areas.
- The bioprospecting debate – the University of Hawai`i wants to own patents and form partnerships to market bioprospecting products. In this process, there are no perceived benefits to the indigenous community by marketing their biodiversity. The U.N.

Declaration on the Rights of Indigenous Peoples specifies that indigenous people of the area own biodiversity. For example, a specific limu only grows in a tide pool located in Hana, Maui. Scientists want to use and patent the limu for medicinal purposes. Patenting is the same as owning life. How will the indigenous people benefit by taking their biodiversity?

- The astronomy debate of placing telescopes on mountains. Native Hawaiian resources are being used without consulting Native Hawaiians.
- The genetically modified organism (GMO) debate. The concept is to put GMO plots in places where people have the least ability to understand what is going on in the GMO process. They are not given an opportunity to participate in GMO decision-making. They do not understand the dangers involved. For example, no one saw the effects from asbestos exposure until 30 years down the road. Need to apply the precautionary principle. What is the most cautious way to approach an issue? It should not be about economics. GMO has not been proven to be safe or dangerous, therefore the most cautious route should be taken.
- The dilution of concentration of cumulative impacts depending on the timeframe of the project being considered.
- In the development of a regional transportation plan, several communities wanted a second access road. A scientific survey on O`ahu showed that the Waianae Coast deserved a second access road more than any other community. The cost of this second access road, however, would be very expensive. The planning phase is "easy" but getting the money and actually building the access road is much harder.
- Primarily as it relates to siting issues such as the siting of power plants, sewage treatment plants and landfills. These facilities tend to be sited in areas where land is cheap. Decisions to site facilities in a particular location seem to be focused on practicality (technical issues, land costs, climate, geology, etc.) rather than deliberately targeting a group of people.
- The siting of landfills.
- Silt contained in runoff impacts the reef system, which impacts the fisheries, which impacts their habitat, which impacts fishing.
- The handling of the state's waste. Are we actively pursuing alternatives?
- Communities are not given enough tools with which to make decisions.
- Access to place-based education to get kids involved in their community and resources.
- Pesticide contamination from agriculture.
- Urban sprawl.
- Militarization.
- Environmental assessments and impact statements are biased toward the project. They should be biased toward the public good.
- Areas that have high incidences of cancer.
- Rubbish dumps, landfills and sewage treatment plants on Hawaiian homelands.
- Loss of indigenous flora and fauna.
- Lack of shoreline access.
- Shoreline setback violations: individual benefit at cost of public
- Excessive tourism that depletes resources, the continued overdevelopment of our residential areas, and elimination of open spaces.

- Pay-to-play system where developers pay politicians and the City and County of Honolulu Department of Planning and Permitting to rezone land for development.
- The complete destruction of the State Historic Preservation Division, which has caused historic and cultural sites across the islands to be destroyed by developers.
- Loss of beach and mountain access when new developments are approved.
- There is no recognition of the differences between windward and leeward sides of the islands. Our windward watersheds are where our healthy aquifers need to be protected. Our leeward (dry) locations are being developed and landscaped into tropical rainforests with golf courses that will never be sustainable. There will be a huge environmental cost in the future. The increases in impervious surfaces will make these locations susceptible to flooding by kona storms. The overdevelopment of some areas will only compound the environmental problems.
- Public access after development is often reduced or restricted. In many cases, there is an "approved" lack of adequate parking, increase in fenced areas and "intentional" hiding of historical walkways or trails necessary to maintain public access for gathering and fishing.
- The developed real estate value often presented does not fully evaluate the "need" for additional water, infrastructure and public support services and the environmental impacts from development. The overall change to an algae-dominated reef and the decrease in natural ecosystem productivity is perpetuated.
- Sewage is generated from the growing population and is piped to a wastewater treatment plant, usually in a tsunami inundation zone that has likely been expanded because legislative bodies reasoned it would cost less than building another plant in another location. The higher cost for separate, smaller systems would have less overall impact compared to existing large facilities that will generate large, million-gallon spills that cannot be easily contained and will be discharged into the ocean, often ending with the posting of signs warning people not to swim in the ocean. The actual cost for these incidents has not been accounted for.
- We must protect wetlands, watershed areas and flood plains and minimize the use of storm drains and drainage runoff. These locations have been targeted for development but will be susceptible to future flooding or tsunami inundation. These risks are not identified or disclosed in the current review and approval process.
- The pollution of any water, which is a public trust, should be a crime, with punishment and economic responsibility.
- The shoreline areas are being changed by rising sea levels. More beaches will be lost in the next few decades, but we continue to allow encroachment on shorelines and in flood plains next to streams.
- Local people carry the tourism industry.
- The Omega Station navigation system that transmitted radio waves through the earth to submarine areas. The energy field changed rain patterns and the atmosphere. The state has been decommissioned.
- Environmental justice would mean that taro farming would be immediately represented on the state water commission and there would be less plantation dominance in statewide decisions. The inaction by the state Commission on Water Resource Management maintains plantation control of water diversions and private use of a public resource. "Water recharge and wise use of water" shall be given the highest priority for action and

people would not take "clean water" for granted. Water education is necessary in our island state. Streams need to flow to maintain ecosystem productivity. "Potable water" should not be used for private swimming pools or water features (aesthetics). Water must be recycled as much as possible. Current weather data suggests that we are in a period of below-average rainfall.

- Military. The military has lots of land, which prevents access to the land and the sea. The military spends money to develop its installation infrastructure to support its families with decent housing. Meanwhile, those who have direct ties to that land no longer have access to that land and may be living in tents on the beach.
- Isolated geographic areas have received waste-producing facilities. This might have been acceptable 50 years ago, but not today. We need to rethink how to deal with industries that people not want in their back yards. If an industry has to be in a community's back yard, then do not keep pushing other facilities/industries on them.
- Agricultural chemicals contaminate water wells. Filipino immigrants have been impacted.
- Former Pearl Harbor workers exposed to asbestos.
- Overpopulation and overdevelopment, which are always based on jobs. Jobs collectively are an issue that has allowed these injustices. Development occurs to provide people with jobs, but since the amount of people coming into the state keeps increasing, there is no reason to stop development. It is a vicious circle. No place has adequate jobs.
- Land, access to sites and protection of natural and cultural sites.
- Cost of living impacts on local people.

Issues related to a specific location by island. Islands are listed in alphabetical order.

B1. Issues related to Hawai`i

- Two people simply stated Pohakuloa Training Area:
- Geothermal development
- Attempts to develop geothermal energy that destroys rainforests and impacts cultural practices.
- Wao Kele O Puna Forest was scheduled for a geothermal energy development project. Wao Kele O Puna Forest is a national reserve, a native forest on ceded lands. This forest is located in a religiously significant area where the goddess Pele is worshiped. Pele is steam. If the steam is taken, the life of Pele will be shortened. The Pele Defense Fund took out national and international ads to stop the development. Although permits were issued to start the development of the geothermal plant, no steam was found. This effort set the standard on how to settle Native Hawaiian access rights for gathering and worship practices.
- There has been a consistent problem of using Hawaiian homelands for nuisance land uses. In Hilo alone, the harbor, the airport and industrial parks all took Hawaiian Home Lands, the landfill and sewage treatment plant were located nearby. A lot of this wasn't sinister – you need to put the harbor on the coast, and you need to put the airport on flat land, and the wastewater treatment plant empties its bounty into an ocean outfall…but there was a lack of sensitivity nonetheless.
- Airport at Keokaha in Hilo was located on Hawaiian homelands. Runways were located where streets used to be.

- Department of Hawaiian Home Lands (DHHL) took bids to harvest koa trees. Thirty-six people, two of whom were Hawaiians, submitted bids. DHHL wanted the entire 200-plus acres planned for harvest to be fenced at one time. The Hawaiian bidder telling this story could only afford to fence and harvest 10 acres at a time. His bid, however, was not accepted; instead, it was given to a realtor from Maui. Three months later, the realtor realized that he could not do the work. The work was then given to a realtor on O`ahu. The Hawaiian telling this story filed a contested case against DHHL, but the contract was given to the other Hawaiian bidder.
- Hokulia in Kona, which consists of "gentleman estates," or luxury homes on agricultural lands. The county allowed for the grading and sale of agricultural lands without rezoning as long as one or two trees were grown on the property. The issues were settled out of court.
- In Kona-Kailua, the workforce is not large enough to meet the demand of development. Suggest providing housing for workers so they do not have to travel from far distances every day.
- Kamehameha Hotel in Kona wants to deny access to the heiau located on its property.
- The people in Puna felt they were underserved with respect to transportation programs.
- Townscape on Hawai`i. The state Department of Transportation (DOT) long-range master plan was slanted, prioritizing projects to help developers fulfill their needs and ignoring existing local needs. A lawsuit was filed against DOT and the plaintiff won.
- Do not place universities or harbors on Hawaiian homelands. Do not use mountaintops that are on ceded lands for telescopes. It seems all the infrastructure gets dumped on Hawaiian homelands.

B2. Issues related to Kaho`olawe

- Two people simply stated Kahoolawe.
- Not all of the land on Kaho`olawe has been cleared of ordnance.
- The bombing of Kaho`olawe. Through community and congressional efforts, the bombing was stopped. The Kaho`olawe Island Reserve Commission now oversees the management of the island.
- Kaho`olawe is a classic environmental justice issue as Hawai`i struggles to retain its land and culture.

B3. General issues related to Kaua`i

- The government is not following the state sustainability statute.
- Lack of managing population growth and development.
- Lack of government enforcement of environmental laws. Department of Land and Natural Resources and those agencies that should have provided oversight of Kaloko Reservoir on Kaua`i are not enforcing laws.
- The government is not leading the state in using alternative energy.
- The State Historic Preservation Division, Department of Land and Natural Resources, Office of Hawaiian Affairs or county offices are not protecting cultural and archaeological sites.
- Public Access Shoreline Hawai`i (PASH) rights are not being protected. Loss of access both mauka and makai of the shoreline.

- Lack of balance in appropriating state funds. For example, $26 million was appropriated for bomb detection at Lihue airport while island infrastructure needs are not being funded.
- The presence of the military in Hawai`i. Military operations impact rural areas. The military is often exempt from following environmental laws. Pacific Missile Range Facility (PMRF) tried to get a lease in perpetuity for land it had a 25-year lease for.
- Census data does not include a count of the military population in Hawai`i. Military personnel use natural resources.
- The Superferry. Hawai`i courts ruled that Hawai`i Revised Statue 343 was not followed during the Superferry approval process. Now the legislature is in the process of changing the law to allow the Superferry to sail before completion of an environmental impact statement. Why did the Superferry not comply with the National Environmental Policy Act (NEPA) when $100 million had been received for Superferry-related harbor developments? A former secretary of the Navy is an investor in the Superferry, which is an apparent conflict of interest.
- The issue with the Superferry. As a person who lives on the outer island (outside of Oahu) we understand that our resources are our limu, opihi, fish, maile, mokihana, beaches, Kokee, and way of life will all be severely impacted. Traffic, drug issues, thefts will definitely increase and will result in changing our communities drastically and an EIS could've addressed these very real issues. Invasive species is now likely to occur even quicker.
- Cruise ships concerns: Impact on water and air quality. Handling of waste. Fueled with unrefined fuel, which contributes to acid rain. Brings in a "city" of people to the islands. Lack of study on cumulative impacts.
- Genetically Modified Organisms (GMO)
  - GMO testing should not be allowed in Hawai`i because the effects of the organisms in the environment are unknown.
  - Kaua`i has the largest number of test plots in the country.
  - The unknown effects on cross-pollination with non-GMO plants with the use of medicines and antibiotics in GMOs.
  - Patenting of genes, knowledge and seeds, which leads to the privatization of food.
  - Many GMO workers are not educated on GMO issues but pressured to work in GMO test sites to meet their economic needs. Withholding information is an issue.
  - Issue of corporate welfare versus human welfare.
  - What are the effects of genetically modified corn on Nene (native duck) when the Nene eat the corn? What are the effects of GMO pollen when blown by the wind into the ocean and onto coral reefs?
  - The GMO process includes the introduction of a virus.
  - No required labeling of GMO products in stores.
  - It is not sustainable and does not provide healthy food for our people. Impacts such as spraying and the GMO plants themselves have not been tested to be safe for humans. These companies are poisoning our lands and waters and air and contaminating our conventional and organic and open pollinated plants. This affects farmers because they are not able to save their own seeds anymore because, 1) if your seed becomes contaminated with the GMO genes, you would be subject to a lawsuit because you are not permitted to grow a GMO plant without a license from the

company that owns that gene. 2) if your open pollinated seed becomes contaminated, you will not have your original seed anymore. 3) there is a technology called the "terminator gene" where after growing the crop, if you saved the seed and tried to replant it, it would not grow so then the farmer is forced to buy new seeds from that company. Saving seeds is a right that all people in all countries have always had. This right is fast disappearing and truly affects those of small, minority and indigenous and third world farmers who traditionally have always saved seeds and cannot afford to buy them all the time.

- Diversion of water/water rights. Lack of government oversight and protection of reservoirs and streams. There are no baseline standards for stream flow. Shortage of staff at the state Commission on Water Resource Management.
- Non-point source pollution. The lack of biofilters on storm drains allows pollution to be dumped through drains into ocean. Coral reefs are killed, fisheries eliminated.
- Cesspools/septic systems impact ground water, which leads into the ocean. Many are located too close to the coastline.
- Wastewater treatment plant at Lydgate is over capacity.
- Carrying capacity as it relates to local sustainability. Our future cannot depend on others because Hawai`i is geographically isolated. Self-sufficiency. Use Native Hawaiian practices to learn to sustain ourselves.
- Continuing to consume resources that we do not have, such as water.
- Overdevelopment of resorts on Kaua`i. What are the limits to tourism? There is too much tourism now as it is.
- Tourism. Lack of understanding on how tourism overburdens Hawai`i resources. Tourism marketing is racist in that it exploits the culture. Tourism creates service jobs that do not pay high enough wages for residents to afford decent housing.
- No curbside recycling.
- Loss of native species.
- The Aloha Spirit Law is not being applied. People are not treated with respect.

B4. Issues related to Hanalei, Kaua`i

- Illegal boating.
- Boaters want to develop Black Pot Beach, where locals have surfed and swum for centuries.
- Diesel and gasoline in the water by the pier from the tourist boat business.
- Raw sewage from the sailboats moored in the bay.
- Cesspools leaking into the bay and the Hanalei River, making swimming dangerous after it rains. No signs are ever posted warning people of high E.coli counts.

B5. Issues related to Hanamalu, Kaua`i

- Five years ago, Kaua`i administration decided to site a new landfill near Hanamalu. The site was opposed because it was too close to a low-income community and because the community already had a power plant.

B6. Issues related to Hanapepe, Kaua`i

- Salt ponds (Waimaka O Hiaka) polluted by diesel fumes, airport operations, dust and road residue.

B7. Issues related to Hanapepe to Kekaha, Kaua`i

- Watershed issues.
- Depletion of cultural resources, coral reefs and sand.
- Who controls the waters in the Kekaha plain?

B8. Issues related to Kalaheo, Kaua`i

- Too much development along the ocean.
- Genetically modified organisms (GMOs) are coming.
- Watershed issues.
- Want development local people can afford and use.

B9. Issues related to Kalapaki Bay, Kaua`i

- Golf course chemicals and cesspools are leaking into the bay and the stream that feeds into it whenever it rains
- Oil from cruise ships is leaking into the water.
- Fumes from the cruise ships affecting air quality for those who live above the harbor.
- No signs posted to warn tourists and locals of high E.coli in the water.

B10. Issues related to Kekaha, Kaua`i

- Becoming the new "Princeville."
- The community pool has not been fixed because the Department of Hawaiian Homelands is preparing to sell the land.
- Crown lands are being converted to fee simple lands, which are being used to develop luxury homes.
- Kekaha, Kaua`i, landfill expansion. At a public meeting in August 2007, the people talked about an excessive burden from the existing landfill for so many years. Is the expansion of a landfill an environmental justice issue?

B11. Issues related to Kokee, Kaua`i

- Department of Land and Natural Resources plans to open leased ceded land to the international market for hotels, tollgates, and improvement of highways. The loss of pristine land concerns community members. The land is being developed for the sake of the visitors at the expense of the local residents.
- Cabins used by local residents were removed by Department of Land and Natural Resources so land could be leased to international market.
- The question is, how do you responsibly host visitors AND malama the island and its resources?
- Ecobusiness.

B12. Issues related to Lihue, Kaua`i

- Injection wells from hotels are polluting water resources.

B13. Issues related to Moloaa, Kaua`i

- Lack of enforcement of federal regulations related to endemic birds.

B14. Issues related to Nawiliwili Harbor, Kaua`i

- Air emissions from cruise ships.
- Ships moored overnight in Nawiliwili Harbor serve as hotels.
- Ships emit odors and smoke. Residents get headaches from odors. Smoke leaves black soot on ground in community. Fine particulates from soot breathed in by residents. Cruise ships change from bunker to diesel fuel.
- Traffic and noise pollution from activities at the harbor. Music and loudspeaker noise from cruise ships travel up the valley.
- A 2005 environmental assessment for harbor improvements did not describe the local community nor include input from community members.
- Total Maximum Daily Load (TMDL) issues -- top 5 most-impaired streams drain into this harbor.
- Need to conduct baseline monitoring of streams and harbor.
- Depletion of stingray, malu, imu and fish from the harbor.

B15. Issues related to Po`ipu/Koloa, Kaua`i

- Twelve simultaneous construction projects causing the following problems:
  - Lack of dust control – affecting the quality of life and health of people in their homes.
  - Destroy preservation land and cultural sites.
  - Erosion.
  - Blasting of rock in development areas, which produces dust.
  - Rock crushing operations.

B16. Issues related to Wai`ale`ale, Kaua`i

- Pyrotechnics used for filming of movie at headwaters for streams. No DLNR monitoring.

B17. Issues related to Waimea, Kaua`i

- Issues with Department of Land and Natural Resources related to water resource management, Hawaiian burial sites and historical properties.
- Issues with the state Bureau of Land Conveyances relate to the return of mahale lands. It is not pono (right) to sell these lands.
- Boating impacts community recreational activities.

B18. Issues related to Westside Kaua`i

- Genetically modified organisms (GMOs).
- Chemical spraying at GMO test plots have made students and teachers at Waimea School sick.
- Two people simply stated PMRF.
- The Navy has a new proposal to expand PMRF operations.
- PRMF must do a community cooperative initiative.
- Kekaha Landfill.

- The potential relocation of the island landfill will impact some communities.
- Potential siting of a waste-to-energy facility
- The proposed siting of an ethanol facility, which would burn coal. Coal produces the most pollution of all fossil fuels. Byproducts of coal burning include mercury and lead. Pollution may affect organic farms.
- Desecrating sacred burial grounds.
- Removal of public access rights.

B19. Issues related to Maui

- The natural resources debate. For example, there has been an ongoing lawsuit for 25 years about East Maui irrigation issues. Alexander and Baldwin landowners are diverting water to the Kihei and Wailea areas; however, there is not enough water going to the taro fields. Public resources need to be adequately managed for "public use and access." There was a report that identified limits to sand resources on the island of Maui. (Have those companies stopped the export of sand? It seems the permit process has no reporting and the lack of monitoring has failed. Who should be accountable for this situation? There should be an immediate moratorium on the export of sand from Maui.)
- Developers are allowed to control the locating of water wells while individual landowners have to wait years for public water to be provided to them.
- Water issues. Due to decreased water in streams, fresh water critters do not flow into the ocean to feed the ocean fish.
- The state constitution states that water is a public trust, but corporations control Maui water. Developers are installing wells for their developments, but local people cannot get meters for water on their private lands. There is unfair access to water.
- Some communities have no access to the public water supply. They are dependent on stream flow, rain and small private wells – f they can afford them.
- Steam water is being diverted and wasted in open ditches where evapotranspiration occurs.
- Poor water quality. In the Napili area, four water wells were drilled, but agricultural chemicals had polluted three of the wells. The Napili community got access to the contaminated water, while Maui Land and Pineapple drilled new wells that were not contaminated for use at a resort. Where will the water come from to support new developments? How will this affect local communities?
- Existing residents in Kula have waited seven to 10 years to have water meters installed at their homes. They cannot expand homes or add new toilets. New development automatically receives water meters. Shows lack of parity between existing and new developments.
- Injection wells located near Maalaea (Maui Ocean Center) dispose sewage above drinking water aquifer.
- Honolua. Fresh water is diverted from streams for agricultural or development (Alexander & Baldwin, Maui Land and Pineapple) purposes. Rivers are no longer flowing because of lack of water. This is impacting the marine sanctuary, which is not receiving fresh water flows.
- Contamination of ground water by Maui Land and Pineapple.
- Theft of groundwater on Maui.

- Private land owners build sea walls on the shoreline edge of their properties, causing negative impacts on their neighbors.
- Kuleana lands. Private development and agriculture are land-locking private kuleana lands, creating access issues for people who own kuleana lands. Kuleana landowners are not involved in decision-making processes related to surrounding development. Development is increasing land values, thereby increasing property taxes of kuleana landowners.
- Developers build affordable housing projects separate from the higher-income housing areas.
- Starting construction work before permits are received.
- Although developers are required to build affordable housing when they develop a site, they are not required to include the affordable housing in the prime development area. This is unfair to those who buy affordable housing.
- Planning and design in developments and transportation do not take into account seniors and their different mobility needs.
- The paving over of alii (royalty) graves at 505 Front Street in Lahaina, Maui.
- The expansion of the Kahului Airport to accommodate larger planes bringing in more visitors. More visitors mean the use of more water and greater impacts to the environment and infrastructure.
- The land title process is not clear. People are bullied through the system. There are breaks in the chain of the title process. This breaks up family lands. This is a tool often used to disadvantage others.
- People feel there is no use in participating in the decision-making process because government listens to the people they pay to gather the information for them.
- Citizens are not given enough time to respond to issues. Make process of accessing government and information easier for citizens.
- Lack of cultural sensitivity.
- Centralization of state government that allows one island to tell another island what to do. Recognition of home rule would allow each island to be empowered to decide what is best for them. This would help the entire state.
- Avoid focusing too much on process, and focus more on issues. For example, the State Historical Preservation Division is often pressured to make a determination on a burial issue, or the plan will be passed without their input.
- Appropriation of state funding is unjust. More money is spent on harbors and airports than the War Memorial Stadium in Kahului.
- The installation of windmills by UPC Wind in the West Maui mountains. Portions of what was proposed and designed are not what were built. The broader problem is that state government on O`ahu approves something on another island and forces it on that island, thinking they are doing something for a greater good.
- The proposed Advanced Technology Solar Telescope on Haleakala. Native Hawaiians have concerns about impacts to cultural and environmental resources, along with visual impacts. The Haleakala National Park has raised issues, but the National Science Foundation is planning to go ahead with the project anyway.

- The Superferry is a model for how not to implement the environmental review process. The focus was on making immediate profit while risking long term and cumulative impacts.
- Tourism and hotel industry. Tourists impact resources, but the tourist industry does not contribute to resource protection. Individual tour operators have big impacts, such as impacts at Molokini, where so many people are in the water.
- Hawai`i needs to wrestle with the carrying capacity of these islands and the impacts to its resources. Environmental justice shows the value we place on these resources. For example, Haleakala National Park is dealing with a low-quality visitor experience. Large amounts of people trample and pulverize the soil. While viewing the sunrise, the presence of 1,300 people prevents picture-taking of the sunrise. The people then get into the cars to beat the cyclists down the mountain. Tour buses bring people up to the summit, but visitors cannot stay for 20 minutes.
- The proposed expansion of military buildup on Guam will increase flights between O`ahu and Guam, increasing the likelihood of the introduction of brown tree snakes to Hawai`i.
- Public access to beaches.
- Invasive species. Politics and economics get in the way of doing what is right to protect the island from invasive species.
- Every county in Hawai`i has different issues.

B20. Issues related to Moloka`i

- Moloka`i Ranch and the La`au development.
- Moloka`i Ranch attempting to rezone 875 acres of culturally significant fishing and hunting grounds so that they can build $200 million mansions. They will also take the water used by local farmers to do it.
- Former pineapple fields used for homestead lands on Moloka`i still test high for heptachlor, an agricultural chemical.

B21. Issues related to Central O`ahu

- Dangerous military activities that are not fully disclosed to the public. For example, Waikele stored nuclear bombs during the 1960s to the 1980s.
- The presence of depleted uranium at Schofield Barracks.
- That the sugar and pineapple plantations were allowed to pollute the soils and underground water systems and the corporations such as Dole, were NOT held accountable for the clean-up or solutions to the problems, like the high nitrate water in the underground water of the Kunia area.

B22. Issues related to Honolulu/South Shore, O`ahu

- Development of Whole Foods store in Kaka`ako. Department of Land and Natural Resources chair gave permission to disinter 10 individuals. There is no way to quantify the value of tearing iwi (bones) out of the ground. The ancestors wish to be interred for eternity. When the ancestors are ripped out of the ground, their journey is stopped, causing disrespect. Kupuna are assets to protect. Pono. Western developers see the iwi as a liability and want them removed. Doing some ceremony does not justify the

removal. These actions teach children that their parents and grandparents are expendable. The cost to the ‘ohana cannot be compared to the value of Whole Foods store.

- No public access to the 266 acres of waterways in the Hawai`i Kai Marina.
- Kalanianaole Highway improvement project in Hawai`i Kai included landscaping/beautification. Kamehameha Highway improvement project did not include landscaping/beautification. This is perceived as an inequity.
- Navy’s university-affiliated research center.

B23. Issues related to Kalihi, O`ahu

- Sand Island industrial area impacts Kalihi. A major industrial area is located on the lower portion of Kalihi, with low-income communities in the middle and more middle-class communities farther up into the valley. Kalihi was formerly on the edge of Honolulu; however, overdevelopment has been allowed to encroach into Kalihi. There is no buffer between the low-income communities and the industrial areas. With no buffer, low-income people continue to move into the area because people go where the land is cheap, which tends to be near industrial areas. Large economic and health risks exist all around the least desirable infrastructure. But it was allowed to happen. People tend to lose hope, faith and self-confidence, and then give up.
- Cobalt 60 food irradiator (nuclear radiator) project in Kalihi-Palama area. Citizens are outraged about another economically disadvantaged community being impacted by a proposed hazardous project.
- Kalihi, because it hosts a sewage treatment plant, a high number of public housing units, an incinerator, bus barn, Sand Island industrial junk facilities, high emissions, trucks, prisons, shelters, halfway homes, etc.

B24. Issues related to North Shore, O`ahu

- Turtle Bay development on the North Shore, where thousands of condos will be built on rural lands in a burial area.
- Continental Pacific threatening the Kahuku community that unless they approve the development of their beachfront for mansions, they won’t be able to buy their homes.

B25. Issues related to the Waianae Coast, O`ahu:

- The Waianae Coast is seen as far away and isolated. It is occupied by minority and low-income people who speak up but do not have the political muscle to effect change. These people do not have much, but share what they have. Thus, they are easily taken advantage of.
- Five people simply stated Makua Valley.
- Makua Valley has experienced 60 years of military presence. The military made an agreement with the Hawaiian people that they would be allowed to return to their lands six months after WWII ended. The people were never allowed to return to their land.
- Makua Valley was also used for disposal and open burn/detonation of chemicals and ordnance from the University of Hawai`i, hospitals, and the military. Fuels and chemicals were often mixed with ordnance to explode them.
- The Makua Valley EIS evaluated contamination of marine resources by activities in the valley. The army failed to test any shellfish or other fish that normally live in marine

soil. Issues like this, which are unique to areas that have large subsistence populations, routinely get overlooked.

- Exploitation by the military to use Hawai`i as a dumping ground, especially in Makua Valley and Ordnance Reef off the Waianae Coast. The military has not taken into consideration how ordnance impacts the environment and people's quality of life and health.
- Military operations in Makua Valley.
- Presence of military in Nanakuli since WWII.
- Naval Computer and Telecommunications Area Master Station (Lualualei) antennae may be source of high incidences of cancer in community.
- Lualualei – two low-frequency towers, which emit electromagnetic fields.
- Electromagnetic towers on military lands.
- Kolekole Pass – winds blowing east to west funnel pollutants from Central O`ahu to Waianae Coast. Examples include agricultural pesticide residue and smoke from fires.
- The lack of an independent third party participating in the review of reports concerning military ordnance impacts.
- Waianae Harbor was once used as a military firing range.
- Dumping of ordnance off the coast of Waianae is now being washed up on the beaches.
- Presence of depleted uranium on military lands.
- Chemical weapons, munitions and depleted uranium, both on land and in the ocean, resulting from military operations.
- Movement of military munitions.
- Proposed Stryker brigade operations.
- Military chafe.
- Expansion of naval war games.
- Unequal impact of military. Community has no ability to hold military accountable for its impacts on the environment.
- Waianae, because it has too many landfill sites and the communities do not want them there any more. But is this really an environmental justice issue? Those who site landfills say the conditions (climate and geology) in Waianae are suited for landfills. The windward side has much rain. Urban areas have no space.
- Waimanalo Gulch Landfill.
- Waimanalo Gulch Landfill. The Waianae Coast is made up of mostly low-income people who feel disenfranchised. They do not vote because they feel their votes will not count. But the debate over the landfill issue is forcing the Waianae community to wake up and take action. It is hard for the community to fight big money and big politics. They feel manipulated and a lack of justice.
- Waimanalo Gulch Landfill and proposed expansion.
- Two people stated Nanakuli PVT Landfill wants to open a "recycling" place across the street from its current location. Recycling would include the mulching and disposal of trash in this new location.
- Church experiencing significant dust control problems from PVT Landfill operations. Prohibits church from expanding ministry to local community because of increased maintenance issues resulting from dust.

- PVT Landfill in Nanakuli – is this the place it has to be? Can it be located elsewhere? Community groups say enough is enough.
- Continued dumping of opala (rubbish) in Waianae instead of using recycling and modern waste utilization techniques.
- Ma`ili landfill – ash and solid waste.
- Waianae Valley was used as a municipal dump between 1955 and 1978. A swamp was filled in to make the dump. The dump was covered with soil without any remediation or installation of monitoring or control measures.
- Two people stated Bedminster LLC because they are proposing to compost human waste across from the PVT Landfill (Nanakuli), which is close to productive agricultural lands.
- Three people simply stated HECO's (Hawaiian Electric Company) Kahe Power Plant.
- Keawaula Valley – trains formerly carried agricultural products through this valley. Also contains a former municipal dump where trash was brought in by the trains.
- Pacific Aggregate Limestone quarry
- Housing/rental market – local families cannot compete. Purchase of property and houses at higher real estate values along Waianae Coast increase rental and purchase costs to community residents. Many become houseless.
- Makaha Valley was zoned for 2000-3000 residential units in the 1970s. The houses were never built because developers did not want to invest in the upgrade of the infrastructure (i.e., sewer).
- High rate of asthma along the Waianae Coast.
- Health issues, respiratory, particulate matter, fumes.
- Cancers along street in Maili (see Mill Road report).
- Need studies of environmental impacts on the health of community members.
- People of Waianae are economically and educationally challenged, therefore, they do not have enough clout to be heard.
- Two people simply stated Campbell Industrial Park.
- Campbell Industrial Park – southerly winds blow pollutants from this park up the Waianae coast.
- The building of another HECO power plant near Campbell Industrial Park.
- Ko Olina town homes, Honokai Hale and Makakilo should never have been allowed to be built so close to Campbell Industrial Park. Sooner or later, there will be impacts from the park on those communities.
- Ko Olina. The building of high rises prevents access to boat ramps.
- The adverse effect of contamination on traditional and subsistence use of resources is also overlooked. For example, a lawsuit was brought against the Stryker Environmental Impact Statement because it did not evaluate alternate locations for the Stryker Brigade other than Hawai`i. Subsequently, a comparative analysis for locating the Stryker Brigade was completed for locations in Colorado, Alaska and Hawai`i. When evaluating subsistence issues, the EIS only addressed subsistence in Alaska and not Hawai`i. A second example consists of analyzing contamination of surface water. The analysis only examined the water to determine if safe drinking water standards were violated. The analysis did not include an examination of potential bioaccumulation of contaminants in ecological receptors such as limu, fish and shellfish – which the people eat.

- When studying the impacts of contamination on subsistence resources, regulations need to mandate generating new information when no data exists -- the analyses need to be based on the best available data. Now, if no data are available, agencies tend to use proxies. This is not acceptable – new data needs to be generated to figure out actual subsistence impacts.
- Pass/No Pass Line – a line drawn around O`ahu by the Hawai`i Department of Health and the O`ahu Board of Water Supply to protect designated groundwater. Development mauka of the line is restricted. The line drawn around the Waianae Coast follows topographic lines into valleys, which is not consistent with lines on other parts of O`ahu.
- Individuals who have been swimming the ocean since 1948 are now experiencing rashes when they swim.
- Source-water protection line (Safe Drinking Water Act) along Waianae Coast is exposed to siting of toxins.
- O`ahu river contamination.
- Desecration of iwi kupuna (burial sites of ancestors).
- Stop development until infrastructure is in place to support the development.
- Lack of information transparency and education.
- Need due diligence of community people.
- Drugs.
- Crystal methamphetamine problems lack focus of police.
- Homeless on Waianae beaches.
- Build transitional shelters for the homeless in other places besides Waianae, such as Kailua or Kahala.
- Lack of funding for Hawaiian homes.
- Farrington Highway is dangerous for both drivers and passengers.
- Diesel particulates from 18-wheeler trucks.
- Waipahu and Ewa Beach because they host incinerators, weed and seed neighborhoods, and hospitals.

B26. Issues related to Windward Side, O`ahu

- Two people stated Waiahole Ditch was an issue of farmers versus development.
- Waikane.
- Bellows Air Force Station.
- Waimanalo Urban Warfare Training Range.
- Mokapu Urban Warfare Training Range.
- *Stop H-3 Association v. Dole*. All reasonably foreseeable indirect effects. "Among other challenges to the project, the Plaintiffs challenged the adequacy of the EIS prepared for completion of the H-3 highway. The EIS failed to adequately assess the secondary (socio-economic) effects of the proposed highway." The environmental justice link: See the Halawa Luluku Interpretive Development website (www.hlid.org) for Native Hawaiian disproportionately high adverse effects and effects related to rights of way.

6. Who or what organization do you know that is practicing environmental justice principles in their work? If possible, please provide names and contact information.

Responses are first listed based on the number of responses, from highest to lowest. Other responses relating to that person or organization are included in that grouping. Then, those items with only one response are listed in alphabetical order.

- Five people simply stated Earthjustice
- Two people stated Kapua Sproat of the University of Hawai`i and Earthjustice
- Isaac Moriwake at Earthjustice
- David Henkin at Earthjustice
- Earthjustice (formerly Sierra Club Legal Defense Fund [SCLDF]). Brigham Young University was dumping waste into a land area, but did not realize the area opened into a stream. The SCLDF fund got a consent decree to build a new sewage treatment plant. They hired engineers to oversee the construction and cleaned up the wetlands. SCLDF put $2.2 million in a trust fund for Hawaiian cultural issues, education and the environment. The community nonprofit Hawai`i Laie I Ka Wai oversees the trust fund.
- Earthjustice is working for the land and people of Hawai`i.
- Five people simply stated Native Hawaiian Legal Corporation.
- Allan Murakami at Native Hawaiian Legal Corporation.
- Five people simply stated Maui Tomorrow Foundation.
- Four people simply stated Sierra Club.
- Sierra Club Moku O Kiewe.
- Two people stated Aloha ‘Āina ‘O Kamilo Nui, which is a nonprofit community organization dedicated to the protection and preservation of the land, natural and cultural resources of Kamilo Nui Valley and the East Honolulu area. Aloha ‘Āina ‘O Kamilo Nui embraces the Hawaiian values of “aloha ‘āina” and “mālama ‘āina” (love and care for the land) and strives to protect and perpetuate the ‘āina and its cultural resources for the benefit of future generations. Contacts are Jeannine Johnson and Elizabeth Reilly Barry Usagawa at Honolulu Board of Water Supply.
- Office of Hawaiian Affairs
- Office of Hawaiian Affairs to some extent. They go to bat for Native Hawaiians in legal court. They are allies for East Maui streams.
- Two people simply stated O`ahu Metropolitan Planning Office
- Denise Antolini, Kapua Sproat and Melody McKenzie at the University of Hawai`i
- Davianna McGregor and Jon Matsuoka at the University of Hawai`i
- University of Hawai`i Environmental Center
- Adam Asquith, Kaua`i Sea Grant Agent
- Alu Like
- Alyssa Miller at Mālama Maunalua
- Belt Collins (environmental consultants)
- Betty Gearen at The Greenhouse
- Clyde Tamaru at Waikalua Fishpond
- Daniel Ornellas at the Department of Land and Natural Resources, Maui District Land Office

- Department of Transportation
- By law, transportation agencies at the city and county level (Department of Transportation Services) and the state Department of Transportation.
- DES Sustainable Communities LLC
- Donna Kahakui at Kai Makana
- Eric Enos of Ka`ala Farms
- Hawaiian Learning Center decided to restore its fishponds. So the first order of business was to produce enough fish so that whomever uses the center can make money to sustain themselves. This is not pono; not Hawaiian. It is the job of Haloa (first born in Hawaiian genealogy) to feed and job the people and the people to care for Haloa. Never mind about jobs. Why did the kupuna make fishponds to feed people? Not to make money, but to provide fish for a long period of time. But one cannot feed family just on fish. Need money to buy other foods. So the center devised a way to create live rocks in its fishpond to sell to the aquarium industry -- diversifying the uses of the fishpond based on what we have to live with today.
- Hawai`i SEED
- He'ia Fishpond
- Haleakala National Park
- Hana Community Association (sued on water issues)
- Hawai`i Seed is informing people of dangers of GMOs. Many small organic sustainable farms. These are the kinds of farms that should be encouraged to flourish.
- Hawaiian Electric Company, Inc. (HECO) is looking at smaller distribution facilities spread across O`ahu so that no one community bears one big burden. Helps neighborhoods to not feel picked on if they know others are shouldering the burden.
- HECO - In recent years, there has been a growing discussion about the continuing placement of infrastructure burdens on particular O`ahu neighborhoods. There have been charges that the continuing siting of these facilities in these areas amounts to "environmental racism." In the fall of 2003, the University of Hawai`i Energy Policy Forum organized a discussion on these issues through Community Impact Groups convened by Sen. Colleen Hanabusa and Robbie Alm of HECO. At about that time, HECO representatives met with leaders of the West O`ahu/Waianae Coast communities to discuss a possible wind farm resource in the area above Kahe Power Plant.

  The result of these meetings was a clearer understanding of how impacted communities want to be treated. HECO has stated that it understands it should adhere to the following protocols for working with communities when its activities will place significant additional infrastructure burdens on neighborhoods:

  A. Tell us (the neighbors) what you are going to do before you tell the general public about your proposals.
  B. Ask our permission for your activities.
  C. Understand that we may oppose you.
  D. If we are unsuccessful in opposing you or if we agree to what you are doing, we need to discuss your giving back to the community for the burdens you impose on us.
  E. You need to ask us what form those givebacks should take.

  This protocol guided HECO's initial briefings with various community members on the Campbell Industrial Park Generation Station project. The Public Utilities

Commission, HECO and the West O`ahu/Waianae Coast communities agreed on the siting of the generation station along with a community giveback package.

- Hui Kuahi Kuleana – Kau`aula community group
- Isaac Hall, attorney
- Kaua`i Trust for Public Lands
- Kipuka – University of Hawai`i graduate student program
- Kokua Kalihi Valley
- Kona Kohala Chamber of Commerce.
- Life of the Land
- Lokahi Pacific
- Makaala Kaaumoana of Hanalei Watershed Hui
- Mālama Makua
- Makai Watch Programs. Local communities take responsibility by playing a larger role in managing environmental resources such as fishing areas. Miloii and Haiena participate in this program. It is a self-identified effort for sustenance fishing. Nonprofits may assist with the effort.
- Maui Economic Opportunity
- Maui Invasive Species Committee – employ people from the local community to help with their work.
- Maui Lani property management company built affordable housing
- Maui Office of the Mayor
- Moloka`i Subsistence Task Force Final Report, 1994. Multi-media approach. Telephone. Focus group. Participatory mapping. Mo`omomi protection area came out of this. Helped people document what is important to them, and led to policy changes.
- The NEPA process. If you just follow this process and show a good-faith effort to collect data and reach all people, there is no reason to do a separate environmental justice effort.
- NRDC-Natural Resources Defense Council and Green Peace on a more global front.
- In petitions for development, the State Office of Planning looks at impacts on communities and mitigating conditions.
- Surfrider Foundation
- Every environmental group
- I know a lot of people talk about it, but few actually practice it.

7. What methods can be used to meaningfully involve minority and low-income communities in Hawai`i in environmental decisions? Please take into account that, based on 2000 Census data, at least 25 percent of the Hawai`i population does not speak English very well.

General Comments

- Employ a variety of methods to reach a variety of people.
- Include community people early in the process. Do not wait.
- Involve the people from the beginning!! Do not make decisions without their input.
- The community needs explanations in terms they can relate to. Provide benchmarks they can understand.
- People find it difficult to manage change when not given enough information about what is being changed.
- The environment needs to be conducive to the free sharing of information without fear of retaliation so that people can make good decisions.
- When information is provided, provide tools to understand the information. Do not bury the information in layers of stuff.
- Bring the facts and information to the people. Then talk. Spend time building on and understanding the issues. People are not going to call the legislature, because they do not know the issues well enough.
- A polished and finished idea/topic/product shows that the person who worked on it has lots of ownership in it. People may then be reluctant to critique their work.
- Share the end product with the community.
- If people are not directly impacted by the proposed project they do not get involved.
- Go through a process of education and transparency to lead people to the point where they can make an informed decision.
- Once feedback is received from the community, take into consideration and apply their input.
- Train pro bono attorneys and send them out to assist the community.
- Community members need to phone their representatives and have the representatives follow up with the issue. You cannot win the issue unless you have a lot of people behind you.

Public notification

- Two people simply said newspapers
- Publicize in the Office of Hawaiian Affairs newspaper
- Newspapers such as *Westside Stories* and *Honolulu Advertiser*
- Public service announcements on radio and TV stations
- ‘Ölelo television
- Videos
- E-mail
- Websites
- Websites, although low-income people may not have the resources to access them.
- Develop blogs and use websites. Great for younger generation.

- Provide greater access of government documents online. Citizens should not have to go to a government office and pay for documents.
- Use of the Internet along the Waianae Coast
- Require the posting of signs on the property affected by proposed planning prior to any decision making. Let people know the site is being considered for development and provide a point of contact. Hawai`i County ordinance has guidelines for this.
- Agency community mailing lists
- Put up notice in public libraries.
- Use the media to get message and meeting schedule out.
- For controversial issues, avoid the media because they can interfere with the outreach process. Go door-to-door to get community input.
- Hawai`i Department of Transportation (HDOT) Statewide Transportation Improvement Program (STIP): Maintaining a mailing list (dynamic in nature, originally composed of neighbor island citizen advisory committee members). Individuals/groups on this list were mailed a copy of the meeting notices for their island/county. This list is constantly being edited. Individuals who sign the attendance list at public meetings are added to this list as well as people who request to be placed on it. This mailing list includes email addresses. Individuals who submitted comments through the mail or email are also added. Local legislators and councilpersons were separately informed of all our public meetings via email. A special effort was undertaken to inform minority and low-income communities. Hardcopy flyers with general information about the STIP, the STIP website address, HDOT contact information and STIP meeting information were mailed throughout the communities. Libraries, civic centers, supermarkets, Laundromats, eateries, convenience stores and community bulletin boards were targeted.

Outreach through existing social structures

- Visit social organizations within the impacted community.
- Work through existing social structures in a community.
- Work through system of existing hierarchy within a community.
- Identify community groups working on project of similar concerns
- Send notes to parents of students at schools.
- Send home flyers from the schools.
- Identify linguistically isolated populations using school data.
- Use schools to reach people who do not speak English as their first language.
- YMCA, Boys & Girls Clubs, Veterans of Foreign Wars
- Salvation Army may know where to locate the disenfranchised people.
- Work through church groups in Samoan and Tongan communities.
- Community centers in Filipino and Okinawan communities
- Involve organizations that represent minority and low-income populations into stakeholder process.
- Talk to recognized leaders in immigrant community.
- Work through community associations on neighbor islands.

Outreach to stakeholders

- Through grass-root efforts. Talk to who you know, who will talk to whom they know.

- Coconut Wireless – find a community leader and ask whom else you should talk to.
- Use community organizers who have an ear to the community and have them knock on doors to reach people. This needs to be done well in advance of any project that impacts a neighborhood. Native Hawaiians are too busy working and could rely on these community organizers.
- I guess we need more people who speak Filipino and Micronesian languages to help us engage the community.
- Get the kids excited by getting them involved in caring for the environment.
- Have the right people involved. For example, in the Waikane water case, O`ahu researchers were not allowed into the community for fear their knowledge would be used against the project.
- I think that Hawaiian people should be consulted about their needs. Perhaps groups of local people could be formed….fishermen, farmers, hunters, musicians and kupuna to identify their needs and to assist them to take the lead as teachers to the rest of the community. I am sure that intermediaries could be used successfully to assist and to be spokespersons. These people should be consulted about the impact on them of the actions, which are being planned in Hawai`i and actions that have already been taken. They should have representation on all levels.
- Involve people like fishermen, farmers and others from all walks of life. They should have a say in how they see the world and how they want to see the community.
- Contact the "old" Native Hawaiian families. Find out who the new people are in the community. People power.
- Get referrals on who else to include, not just those who are popular. Get the same people from the community who do the representing, they tell the same stories. They do not share anything new, which does not help the community at large.
- Starts with assessment. Hire consultants who can work with the community and find the right people. Sometimes it's about whom you know. Partner with recognized leaders to help you meet with the right people.
- Conduct research on how a community gets information. Look for the people who are key in making change happen within that community.
- First outreach to those who are spatially or functionally immediately affected by the project. Then outreach to special interest groups.
- Campaigning, going door-to-door.
- When sending letters to property owners, many have renters who live on their property. The renters need to somehow be notified.
- Do a mail-out to community members, and then follow up with phone calls. Give people an opportunity to participate.
- Send targeted mailings based on location of proposed project.
- Telephone survey – target people from particular ethnic, income, zone groups.

Meetings/interviews

- Two people simply stated stakeholder interviews
- Two people simply stated talk story sessions
- One-on-one interviews
- One-on-one sessions or small groups.

- Go to where the people are. Avoid holding meetings downtown. This may be tough for under-funded government agencies.
- Individual and small group conversations work best. Allotting and taking the time to communicate, including listening, is critical. Mentor local youth to assist the process.
- Door to door works!
- Offer meetings at different times to accommodate shift workers.
- Community meetings
- Public meetings are effective as a forum for making statements, not having discussions. Workshops are more useful for exchange of information. Ask, "This is what we are thinking about doing, what do you (the community) think?" Generate a record of discussions.
- Workshops that offer training on how to use the government system and understand environmental laws.
- Public meetings at schools are intimidating. Many people who speak English as a second language found school to be a negative experience, so they do not want to go to the school. The community needs to feel safe in speaking out.
- Special events/meetings. For example, when Longs Drugs Stores advertise a toilet paper sale, it gets people out to buy cheap toilet paper. Identify which Longs Drugs Stores are in environmental justice communities and speak to the people in those communities about a proposed project.
- To get a true sense of what people think and feel, it is important to get a homogenous group together. Mixing an environmental justice group with well-to-do group may bring about feelings of shame. Peers from the same environmental justice group feel more comfortable sharing amongst each other.
- Conduct more than just one community meeting. Have numerous smaller meetings.
- Garage meeting – go into a neighborhood and ask a resident to invite their friends to their garage for a meeting. Keep it to about 10-15 people. People will ask questions and feel safe.
- For meetings with numerous attendees, do not use a podium and microphone to avoid grandstanding. Instead, have an open house with stations to get information. Create small forums where information can be shared in a friendly, less-formal setting.
- In rural communities, form focus groups. Also identify different service and health providers.
- You have to go to their communities and provide interpreters if necessary. Hawaiians speak to other Hawaiians more freely. Having volunteers from each ethnic group would help.
- Provide a Hawaiian language translator. Also translators for other languages if needed.
- Cut out the government in the environmental decision-making process. Replace it with ʻaha moku councils of community experts.
- Although the above statement (Question #7) says some do not speak English very well, the main question should be whether these people think and understand in English. It seems if you are going to give them an English test they may not perform up to standard. But I believe many have experience and common sense. They may not want to talk with you or be bombarded with questions. You may need to meet with the community more than once or work through neighbors and others to get an introduction.

- Hawai`i Department of Transportation (HDOT) Limited English Proficiency (LEP) Plan - its intent is to provide essential and meaningful access to LEP persons. (Office of Language Access approved HDOT's LEP Plan.)
- Attend community board meetings to get people involvement
- During the land use district amendment process, public hearings are held. On controversial issues there is significant public input. It is important to have meetings with stakeholder groups. Include nonprofits or organizations that represent low-income or minority interests in focus groups, task forces or advisory groups, such as the Native Hawaiian Legal Corporation and the Waianae Coast Comprehensive Health Center.
- Speak Out Sessions
- Cluster Model (Mind Mapping). Identify a central theme. Branch off onto different topics and ask questions. Use visuals, diagrams, etc.
- Community surveys
- Person to person surveys for big or important projects.

Community development

- Build community capacity to understand and advocate for environmental justice. Teach people how to play the game of government procedures and lingo. People do not know how to effect change. They know how to be responsible for themselves, their 'ohana, the land. They need to get involved to mitigate problems. Many people are deathly afraid of public speaking. Need to learn how to talk to the press and be aware of their tactics.
- The Honolulu Board of Water Supply (BWS) developed watershed partnerships with communities. Because a community knows its watershed better than anybody else, BWS involves the community in planning and implementing initiatives to manage resources in the watershed. Also, BWS feels it needs to give back to communities when they are disrupted due to waterline projects. For example, during the installation of a waterline from Punaluu to Kaneohe to Kailua, 61 sets of iwi were disturbed. BWS worked with the local communities to appropriately manage the iwi through educational workshops.
- Utilize a process called Context Sensitive Solutions. Invite 12-15 representatives from each affected neighborhood and the community at large to form an advisory committee. Invite those with divergent views. The advisory committee takes all the issues and narrows them down to common issues, then narrows down again to a manageable level. Then it takes a committee vote on the most important issues to focus on.
- Community organizing – do lots of protesting, play lots of defense. Not just preach, but be action-oriented, pushing the limits of the laws. Confront. Justify by saying Native Hawaiians have a kuleana because they are Hawaiian and they have a responsibility to protect Haloa, who cares for the Hawaiians.

8. In developing the guidance document for the environmental review process (detailed in Hawai`i Revised Statute 343), what environmental justice principles should be taken into account for each environmental impact statement (EIS) section listed below?

General Comments

- HRS Chapter 343 is already sufficient in encompassing environmental justice issues. An environmental justice guidance document would raise red flags, highlighting while completing the EIS process.
- When scoping and drafting the EIS, call out an environmental justice section. Ask whether any groups are being unfairly or disproportionately impacted by the proposed project?
- Mostly spelled out in NEPA process.
- He who controls the question controls the outcome. For example, in the Makua Valley EIS, the Army focuses the question on impacts resulting from returning to training in Makua Valley. The community focuses the question on impacts to Makua Valley based on 60 years of military use. Big difference! Need to make sure the right question is being asked. The environmental review process does not allow the community to question the question.
- He who controls the action controls the discussion. This is a technique to avoiding issues that some do not want to deal with.
- Define the basic responsibility for implementing environmental justice procedures in the state government process.
- Usually the project plans are difficult for the community to find and turn out differently when implemented. Often they are disguised with technical jargon or vagueness. They are also misleading. The community is normally threatened that something larger and uglier will be built if they don't support the project.
- Follow the requirements of Section 106, which includes contacting Office of Hawaiian Affairs to obtain a list of Native Hawaiian organizations.
- Under Section 106, EIS preparers are required to consult with Hawaiian organizations. *Organization*, using Hawaiian values, can mean 'ohana (family). The definition of organization in Section 106 should be changed to reflect Hawaiian values.
- Provide a measure to protect burial and historical sites.
- Constitutional provision mandates that traditional and customary NH practices be considered in decisions. Applicants are required to do an archaeological study to identify historic sites, which may be preserved during the development process.
- Identify the entity responsible for making sure the environmental review process is completed diligently and to ensure community concerns are addressed.
- Need to make state/county responsible for ensuring applicants comply with rules.
- Develop environmental justice advisory councils to assist with EIS process.
- Do not move forward with EIS process until all stakeholders are identified and have an opportunity to participate.
- Include a legal clause of action and laws that provide communities with remedies for disproportionate impacts and detrimental reliance caused by environmental damage. For example, the city's broken promise to close Waimanalo Gulch Landfill by 2008.

- Provide a list of negative environmental impacts. If a community has been impacted disproportionately, then do not allow any new impacts (e.g., resulting from landfills, power plants, etc.).
- Adopt the precautionary principle like California.
- Public Access Shoreline Hawai`i (PASH) should be taken into account in zoning debates and all land decisions. It can be used to turn down development projects. In the same way, environmental justice should be applied throughout the EIS process. Environmental justice cannot be compartmentalized or the effects of what is being looked at will be lost.
- The environmental impact statements and cultural impact statements are processes to be followed; they are not meant to be a step-by-step list. The process should raise red flags concerning environmental justice, which then should be addressed
- Environmental justice hits the road in the county zoning process. It is at the county level where determinations for proposed project locations are made. It is a home rule local issue.
- Develop specific criteria for whom environmental justice applies to and describe what is considered a significant impact on a particular population.
- Health and Safety/Hazardous Waste and Material/Socioeconomic sections of the EIS process environmental justice issues.
- Include botanical studies and require the preservation of sites where an endangered species would be impacted. For example, an endangered spider was found in cave on Kaua`i. It was recommended the cave entrance be buffered from development.
- Read the Hawai`i Land Use Commission guidelines and Land Use District Boundary amendment procedures.
- Current issue with developers and City and County of Honolulu Department of Planning and Permitting: Clients will do what they want to do. Outcome is that they have the community support to build residential houses on agriculture land. Get community to support changing the master plan to do this. Developers now have to do an EIS.
- Fearful of developers and impact on kuleana lands, encroachment of development. Encroachment has numerous negative affects – zoning rules changes, traffic impacts, larger populations, sewage, runoff issues and contamination in streams, estuaries, ocean and fishes.
- Fear that these developments create a social stratification, lose the middle class, have only rulers and servants. Majority of people of color will be in the servant category. Eventually in service jobs, economic status will not change; those in service jobs will be an oppressed people, always on the lower echelon of society, poorly educated, economically deprived or highly dependent on subsidies.
- The EIS process is weighted toward those with money. Government should help fund projects that do not have funding for EISs. Justice becomes skewed.
- Development of EISs appears to be profit- and special-interest driven and provided only to people who support the development.
- Private projects should not be excluded from the EIS process. These projects do have cumulative impacts on surrounding areas.
- The military should be subject to the same environmental laws as everyone else.

- EIS would be based on caring for Haloa, the first born in the Hawaiian genealogy. Set up the EIS process to ensure there are no negative impacts on Haloa. The EIS is not set up that way right now.
- No community should have all the landfills. Every community should take care of disposing their own waste.
- All potential polluters must make sure the waste they produce is biodegradable and non-toxic.

Scoping

- Announce general calls for scoping information. The scoping process needs to be more specific and focused.
- Let people know what they can accomplish in the scoping process.
- Important to describe the purpose.
- State whether the purpose of the project is to improve the environment or community development. Will the project benefit the environment or extract from it?
- Get people involved in the beginning. Do not just inform them about the project, but provide an opportunity for people to be involved in the scoping.
- Target particular groups you think will be impacted and get them involved early in the process.
- Be open and honest.
- Consider all public comments, even if they do not fit the question.
- Public participation efforts are important.
- Ask the community for information they have that the developer does not have. Do this all along the way.
- Accommodate community group presentations.
- Develop contact lists from those who attend the meetings.
- Programmatic environmental reviews must address issues specific to a community. They should not be reviewed just at the national level.
- Do not make decisions before the environmental impacts are studied.
- The scope needs to be broader. Currently, scopes are highly focused on economics, employment, public services, traffic, infrastructure, etc. More focus needs to be placed on lifestyle, mental health, cultural stuff, etc.
- Look back at where you have been and decide if you want to continue on the same path.
- Have good maps of where the proposed projects would be located. Natural features relate to known landmarks. Pictures/photos are great visuals for the community.
- User-friendly terms should be used, not legal or environmental jargon.
- Cite what the impacts are on the population.
- Look at everything; mauka to makai, east to west, north to south.
- Screen first to see whether environmental justice populations are impacted.
  At the scoping stage in the NEPA process, which provides early identification of public and agency issues, there should be adequate consideration Title VI and environmental justice. Minority and low-income populations should be identified as early as possible and their concerns should be examined and addressed, preferably in planning.
- Immediately work to identify any environmental justice areas in the impact area.

- Identify affected populations and deal with those who know the people and activities of those affected areas. Use local knowledge even if anecdotal, Census data, and other publicly gathered data.
- Conduct best practices research on what others are doing with respect to advertising, how comments are submitted, where reports are made available, use of translators, time limits, etc.
- Consider cultural impacts.
- Include cultural knowledge; cultural concerns; sustainable benefit to locals; education and training for future

Public participation

- Get people involved early in the process.
- Ensure everyone is represented.
- Do not just advertise in the usual places. Get free public service announcements on local radio stations in pidgin. People will realize that they are being spoken to.
- Ensure that public meetings are well publicized and held at convenient times.
- Advertising in newspapers in large print – which everyone can read – would help.
- When scheduling public meetings, please check on other community events and local agencies to determine the best time and place to meet publicly. Too often, the place and time is made for the convenience of people who are flying in from O`ahu or flying out that night, rather than an optimal time for the resident population.
- Must have hearings in communities where the project and EIS are being considered.
- The (Office of Environmental Quality Control) Environmental Notice needs to do a better job of providing links to the departments so community members can contact them with questions. That would increase public participation.
- The amount of public outreach should be proportionate to the proposed action. Make an honest effort to reach people, both formally and informally. Make a good-faith effort.
- Local kupuna should be consulted, as well as people who use the resource in question.
- Be as inclusive as possible, accessing all sectors of a community and allowing them to have a voice.
- Contact local NGO's, cultural organizations; community associations, watershed councils, farming organizations, paddling groups, etc.
- Expand the list of people to include more participants. Conduct a good-faith search of people who know the history of the impacted area. The impacted area is not just a blank landscape with no face or history.
- Educate and inform the people to realize that they have a stake in the process. People in Hawai`i provincial, they need things to drop on their doorstep in order to pay attention. People are too busy. It is the Asian-Pacific cultural lifestyle to not be all that politically active. Yet, they are all affected.
- Provide hard copies of information. Environmental justice populations tend not to have computers nor know how to use them.
- Time needs to be given for the community to gain clarification on aspects of environmental review so that they can provide accurate and adequate testimony.
- Always provide the maximum amount of time required by law for the public to provide comments.

- If the developer is allotted one hour to a give a presentation on his proposed project, then community groups with significant information should be allotted equal time to bring up concerns and ask questions. Most people are given three minutes to provide input. Allow the spokesperson of an organized "hui" (family) to tell their story. This would need to be planned in advance.
- Focus on the needs of the community, not necessarily on the vision of the developer.
- Public hearings are set up so that the community must visit experts to gain information, which prevents a free exchange of information that everyone can participate in.
- Regional meetings do not capture environmental justice groups. In order to get input from environmental justice groups, the clients/planners need to go to them. People in the environmental justice populations are very busy working and taking care of their families. They do not have time to attend meetings. This is especially true when the project area is within an environmental justice community.
- Outreach to low-income populations.
- Try to hold meetings at times and places that accommodate environmental justice populations. It's good to go to churches, social clubs, Hawaiian civic clubs and community associations, rather than just holding your own meeting. I have had very good participation for some of my other projects in Hawaiian neighborhoods by going to gyms, parks, nature preserves, etc. It should be recognized that these efforts would cost more money and take more time. That means that everyone's taxes will be higher and they will pay more for goods and services. Therefore, the requirement to do this should be tempered by how serious the effects can be and how effectively the wider participation can help make a better decision. I am very wary of just adding extensive public participation efforts for regulations and requirements and thinking we are solving something.
- The way in which scoping and public meetings are set up affects the way communities participate. Cross-pollination of information occurs when people can hear each other speak. This is especially important for communities who provide oral presentations. Make sure a court reporter transcribes the meeting without summarizing. During the public comment period, give people time to review transcripts and make corrections. Hawaiian words tend to be transcribed as "inaudible." Court reporter should be trained in both English and Hawaiian, or have a Hawaiian translator transcribe later.
- Provide complete information on the proposed project to communities. Communities often have difficulty in getting good information on what is being proposed. The burden is placed on the public to get the information. This is particularly true in the scoping process. They do not have the education or resources to educate themselves or are unable to hire someone to help them. Agency and community comments must be taken seriously. These comments are not always addressed, especially by other government agencies.
- Solicit opinions from people affected and note those comments in the document. Be very inclusive, even if not agreed upon by others, even if the comments oppose the project.
- Make reports available electronically and provide hard copies to those who request them. This is especially helpful for rural communities where it is not easy to go into town to a library to read a report.
- Work with the newly formed `aha moku councils, which consist of consultants who advise on impacts to cultural practices.

- Establish a technical assistance fund, such as one done with the Army at Makua Valley. Technical issues are often beyond a community's education ability. The technical fund provides a mechanism where communities can express their project concerns through an expert. The expert then translates those concerns to the project personnel. Agencies then know community concerns. Also, evaluate and do peer reviews to ensure that the community gets the information it wants. For example, hydrologists, toxicologists, fishery biologists, air specialists or hazardous waste specialists can be hired at a cut rate. This allows for community confidence.

Describing the affected environment and environmental setting

- Describe from an indigenous perspective, not Western. Do not ignore the connection to the land and the need to mālama, to nurture the land.
- Native Hawaiians use analogies and metaphors. Scientists complete an EIS with their own biases and prejudices. Hawaiian archaeologists do reports, but they still come out the same way as any other report because they did not go and talk to the people in the community. They are educated based on Western standards. Western education does not allow for free access of communication between archeologists and Hawaiians.
- Describe how the proposed project will fit into the ahupua`a it is located in.
- Include descriptions of cultural sites.
- Describe the cultural landscape. Place names describe a significant event that occurred in that area. What is the true history of the land; what was there long ago?
- Describe human-use patterns and the significance of land use, including resources, spirituality and sacred sites. Need to combine the human element with the natural environment.
- Use correct place names and names of ahupua'a, and make local inquiries about features of the affected environment.
- Cannot ignore the human, social and cultural environments.
- Describe the environment by concentric rings of impact, moving out from the proposed project location.
- Include surrounding areas, not just the immediate area where the proposed project is located.
- Include population data.
- Must be written in plain language.
- Describe how drainage issues will be addressed in a non-engineering fashion. Drainage often flows to natural drainages that contain cultural sites.
- Really need community input at this point.
- Include secondary effects.
- Consult existing mapping (at University of Hawai`i and The Nature Conservancy) that identifies natural and cultural resources.
- In many near-shore inspections, the surveys are sometimes done in one or two days. A minimal presence or absence is presented with no evaluation of location and populations. There is insufficient data to determine if there is drainage runoff from land or seasonal sea conditions. It is important for water quality results to be pooled and shared at department of health and/or county planning departments for the various proposed

developments. I would like specific tests to be identified for water quality samples, test procedures and controls.

- This can be done in two ways. One, on a quantitative basis by evaluating Census and school data. Two, qualitatively by identifying environmental justice communities and asking, "What happens next?" Minimally, assess their vulnerability to the proposed action and review alternative actions and mitigations.

Describing the impacts of the proposed project

- Right now, I don't think the impacts are described at all.
- Consider economic impacts. The cost of living adjustments given to military personnel cause real estate prices to increase, making housing unaffordable for low-income people.
- Consider the social impacts. The increase in military personnel increases the likelihood of soldiers racing/speeding on highways.
- Consider spiritual impacts. How is this manifested in the Hawaiian people?
- Describe not just impacts to the physical environment, but also to the spiritual environment (cultural perspective).
- Discuss both the human and environmental impacts. Evaluate long-term impacts, not just short-term, and how they will affect future generations. Needs to include Native Hawaiian values and principles.
- Consider the ahupua'a and cultural uses of the place.
- Describe impacts on socioeconomic and minority groups.
- Impacts to human beings are very subjective. Some people take the issue more seriously than others. Try to be objective.
- Describe land, water, air, and health issues. Place a bigger emphasis on impacts on health.
- Health and safety impacts, water use, sewage disposal, runoff (such as reef life and fishing), etc.
- An attempt needs to be made to balance the cost of the project with the need to protect the environment and environmental justice groups. This is important because the island is so deficient with regard to infrastructure needs. Performance measures need to be identified to determine the accessibility of environmental justice and non-environmental justice groups to jobs, shop, hospitals, etc.
- Need to look at what happened before and after the proposed development, not just the proposed project by itself. People tend to look at impacts in a linear process, but it moves in other directions. You start with one hotel, then two hotels, and then three hotels. Impacts from these three hotels move sideways.
- Those who describe impacts tend to be very myopic in how they understand those impacts. Need to get out of linear cause-and-effect thinking. Change reverberates all through the ecology of culture and social interaction.
- Describe the impacts on people of various socio-economic groups. Do not make assumptions. Tie back to equity in terms of access to lands and water quality.
- Solicit environmental justice populations' opinions and report them in the EIS, even if as an analyst you might dispute some of the comments.
- Consultants can give a very good overview of the project but can also bury things such as drainage plans or water quality test results in appendix materials.

- The environmental impact statement process is a one-shot deal for stand-alone development projects. Over time, additional development changes the whole environment and lifestyle of the community.
- Developers tend to have narrow perspectives, so they can push their projects through the process with little interference.
- Current EIS process looks at certain past timeframes. The timeframe needs to take a historical perspective, looking at historical markers.
- Be neutral by stating the facts, not opinion.
- Community and zoning plans already account for growth. The EIS should tie into these plans.

Evaluating alternatives

- Usually no alternatives are given.
- The alternatives need to be realistic.
- Need to be realistic
- The narrowness of the scoping question limits alternatives to be considered.
- Demonstrate absence of avoidance alternative by (1) showing that there is no way the environmental justice population can be avoided, (2) showing that the footprint of the project has been minimized and (3) showing that all practical measures have been taken to mitigate harm.
- Make sure full ranges of alternatives are considered. If all the alternatives are sited on the Waianae Coast, then these are not valid alternatives from an environmental justice perspective.
- It is important to involve the community in this effort. Work with the community to determine and balance all interests and alternatives.
- Allow community to provide input.
- This is probably the meat of the analysis. Ask whether there are any disproportionately and adversely impacted environmental justice populations.
- Alternatives that benefit the community are never considered.
- Include the no-build alternative.
- Doing nothing does not necessarily mean it is OK. For example, if noxious weeds are left alone, they will eventually take over.
- Need meaningful interaction on the no-action alternative.
- Be neutral and apply the law.
- Take into account externalities. Development often limits beach access to the public. People crowd into smaller areas on the beach and water quality suffers.
- Developers and planners think they can mitigate away everything. But when you disrupt a community, you cannot mitigate the impacts by hiring more social workers. You cannot mitigate the sanctity of family and community. For example, a developer pays for school counselors to deal with mental health issues.
- What is a coral reef worth? If damaged, who pays for it? More fairly distribute the benefits and ascribe costs to the impacts. Define worth based on the natural services it provides, such as a wetland. The natural capital and impacts to people are dependent on what is in public purview, such as the air you breathe.

- Evaluate based on allowing for future use of resources, not just for right now. This may be inconvenient, but do what is right so resources are perpetuated for future use.
- Give consideration to the larger area of impacts; consider the next seven generations.
- Usually perfunctory.

Determining significance

- Just because a significant impact can be mitigated does not mean that it is not significant. Include it as a significant impact anyway.
- Need to evaluate the quality and quantity of resources and accessibility to them. Then determine how people who use resources will be impacted.
- Finding of No Significant Impacts should not be allowed.
- Open space is wrongfully considered insignificant.
- In most instances, there is a claim of minimal impact. For some projects, it would seem logical to monitor before, during and after project construction.
- Needs to be done within the context of quality of life. You cannot equate quality of life with employment; otherwise, you create a community fraught with social problems. Who connects home life with the economy anyway?
- Talk to people who live on the land, whose ancestors lived on the land. People will have specific knowledge of the land. People know the history of their community.
- Utilize the Hawaiian perspectives of mālama ʻāina, the interconnectedness of all things, seen and unseen.
- Ask, "What is the significance to the well-being of the community?" There are no good and clear criteria here; communities vary so much that it is tough to define.
- Just because a client has a letter from the State Historic Preservation Division stating that they are compliant does not necessarily mean that there are no significant impacts. There is a significant impact because sites will be destroyed. The client needs to be willing to see this as a significant impact.
- Do not rely on the paid consultants – they are bought. Need to have a core of people, trained at the university, available for unbiased evaluation.

Mitigation

- Take into account indigenous values.
- Consider cumulative impacts and how they tie into the groundwater, the soil and the cultural values.
- Who approves mitigation efforts? Do these mitigation efforts apply over the long term? What if conditions change, then what? How do you assess this?
- The data-gathering process of taking photos before the destruction of a cultural site – which is allowed by law -- is not a legitimate mitigating action to the Hawaiians.
- If it is known that an environmental justice group will be impacted, then one must be sensitive to their cultural needs. For instance, if a mitigation effort blocks Hawaiians' access to the ocean, then this does not show cultural sensitivity to an environmental justice group.
- If an impacted environmental justice population does not have adequate political representation, then full participation by the community will be hard or impossible. Effective mitigation involves working things out.

- Consult with the user on measures that can be taken to minimize or eliminate the impacts.
- Killing endangered species is allowed with mitigation. Therefore, mitigation is not appropriate when it affects future generations.
- This is the area of the policy that should allow for creativity, which many federal agencies discourage. For example, if you adversely impact populations in a transportation project, you are required to mitigate in some transportation-related way -- fix a road, improve bus service or make bike lanes -- but what if that is not what the community says it wants and needs? This has happened to me.
- Small fences that don't stop erosion are usually erected. The water washes the dirt right under these fences.
- How does the community benefit from profit a landowner made in buying the land, which is now at a higher value? The cost of living goes up and the county benefits. But the people can no longer afford to live in their homes. The landowner should give back to the community by asking them what would benefit their community. Tradeoffs. Building roads or adding sewer lines does not really help the community. The giveback needs to enhance the quality of life for the community.
- Local government should have a list of mitigation alternatives that developers can choose from.
- Development projects should be scaled down so that water is more fairly shared between developments.
- Be proactive and not just reactive.
- There should be public participation from all peoples regardless of race, culture, income bracket, political connections etc. and all views need to be taken into account. Also a lot of times, people are not aware that there is a process that needs our input. Greater initiatives should be taken to inform people.
- For all these things, full disclosure, looking at "whole systems," determining who is responsible, asking is this project sustainable?
- Consider benefit to cultural resources that would provide sustainable benefit to local culture and economy.

9. Do you know of any good examples of addressing environmental justice within an EIS? If so, please describe.

- Geothermal study
- Geothermal project in Puna
- Maui geothermal project contracted by the U.S. Department of Energy
- Hawaiian Electric Company
- EISs completed by the University of Hawai`i
- West Maui Watershed Partnership
- East Maui Watershed Partnership
- Hokulia (Honaunau) – strong protections for cultural sites, great community involvement, project sized down to fit community.
- Waiena Power Plant – 1996. Consulted with anyone in the community who wanted to participate. Took years to do a good process. Took into account community concerns. Considered native plants and cultural sites. Robust process. Citizens testified in support of the power plant because they were treated with respect.
- Stryker Brigade EIS
- The EIS master plan for Bellows Air Force Station. Unused federal lands were given to the Department of Hawaiian Home Lands. The Record of Decision included the transfer lands. This is an appropriate response for federal areas next to a Native Hawaiian community.
- In the Superferry issue, HRS 343 was already in place and the law is clear. The courts and legislature should not have had to get involved with changing this environmental justice process. They have done a grave injustice to the resources and people of the outer islands (of O`ahu).

10. The passing of Act 294, which requires defining environmental justice for Hawai`i and developing a guidance document for the environmental review process, is a first step in implementing environmental justice principles in Hawai`i. In your opinion, what more needs to be done to achieve environmental justice in Hawai`i?

Incorporate into HRS Chapter 343 law review

- (2) Fold environmental justice into HRS Chapter 343 under future efforts to review HRS Chapter 343.
- Include environmental justice in HRS Chapter 343. This could lead to Act "51" which would require environmental justice be addressed as a significant criteria.
- The larger issue right now is to evaluate HRS Chapter 343 and have environmental justice as a component of that discussion. This addresses environmental justice prospectively. Respectively, we need a different way of addressing past injustices.
- Following through on Act 294 and implementing it.

Incorporation of Hawaiian values

- In defining environmental justice and developing a guidance document, look at existing federal and state laws that address social and cultural issues and incorporate Hawaiian values. Indigenous people have an unusual connection to the land and water. These values need to be codified into existing federal, state and county laws. This gives life meaning and value by which to compare against monetary assertions.
- State policies and laws should incorporate island concepts and values, not Western.
- `Aha moku law which decentralizes the power and returns it back to the people of each ahupua`a of each island. People in the ahupua`a can now make decisions for their district, instead of some government on O`ahu making decisions for another island. People from the outside with their solutions should not be in control. Traditional methods are time-tested methods and have worked for 2000 years.
- Environmental justice is not adequately being addressed in Hawai`i. The topic is brushed off by talking about minorities and income levels, while cultural impacts are not discussed.
- Utilize the new `aha moku councils, which allow Hawaiian practitioners to manage the land.
- Highly impacted areas should receive reparations – to be paid for their pain and suffering. This would include the military returning lands back to the Hawaiians or the designation of money for environmental clean up.
- Achieve political and economic justice for Hawaiian communities in the areas of environment, employment, housing and living an environmentally sustainable lifestyle.
- The rights of the Native Hawaiians need to be defined. This is an unresolved issue that needs to be resolved.

Environmental Justice Guidance Document

- Needs to be practical.
- Develop a matrix of best practices given different situations.
- What are the triggers for environmental justice in the EIS?

- Concerned that adding environmental justice to the EIS process would shut down projects. There should be flexibility to change requirements based on what the findings are. Go slow and use common sense. Do a level-of-impact analysis commensurate with actual impacts.
- The guidance document should not create ability to divide a community. Hawai`i is already experiencing a loss of aloha spirit. Have everybody take responsibility. Incorporate Hawaiian culture and use it as an educational tool to draw in the people. Maybe the aloha spirit will come back.
- The environmental justice guidance document should just be a reminder of what the law already requires.

Require certification of planners

- Three people stated that planners who prepare environmental assessments and impact statements should be licensed/certified to do so. There is no licensing requirement at this time.
- Environmental impact statements should be written and produced by an independent pool of people, paid out of pool funds, and not by some client paying a consultant. Takes out the bias. Increases jobs.
- Designate an independent consultant to sample sewer outfalls to avoid possible bias in data collection.

Education and awareness

- Educate people on their rights and help them understand the laws. Because of the passivity among local people, they tend to buy into simple explanations as to why these projects should happen. Some people only care about jobs for their kids so they can stay close to home. But it does not work. People leave the islands anyway.
- More education about environmental justice for both the general populous and the government. Focus on how to address consequences and impacts?
- Educate affected communities about their rights and responsibilities under the environmental laws.
- Clearly define the process for applying environmental justice principles and educate everyone.
- Educate everyone. The public needs to understand the disproportionate or unfair impacts – not just impacts. Project proponents need to consider environmental justice when designing the project. This will allow the community to give meaningful comments.
- Provide environmental justice training for planners and landowners, especially if it is going to be part of the EIS process.
- Anything to increase awareness.
- Education. People need to understand that their demand for power creates a need for power plants in their back yards. This applies to other issues, such as drinking water supplies, solid waste disposal, etc.
- Cultivate a mindset where it is important that environmental justice becomes a critical part of decision-making and working towards an informed decision. People tend to look at environmental issues separate from the project, not a part of the total mindset. It is inconvenient but should be second nature. Start with kids. Graduate new planners and

engineers who look at environmental issues in general and with a social justice perspective.

- For HDOT, train Title VI/environmental justice liaisons at the division level about the importance of environmental justice issues. Do public outreach to environmental justice populations.
- Make the O`ahu Metropolitan Planning Office environmental justice study ("Environmental Justice in the OMPO Planning Process: Defining Environmental Justice Populations" [available at http://oahumpo.org/T6EJ/Final2001/2004Update.pdf]) known to everyone. People need to know where to find environmental justice populations and apply the knowledge in their planning.

Enforcement of environmental laws

- How to adhere to existing environmental laws.
- Enforce the state Constitution with respect to water rights. Water is a public trust.
- Enforcement of current laws is sorely lacking and the state must adhere to its own laws.
- Develop a provision that allows for citizen lawsuits if the state government fails to enforce laws.
- Counties enforce the use of special management area (SMA) permits. Currently there is a lack of monitoring and enforcement.
- State government does not place much authority on enforcement of its enforcement laws. For example, the Hawai`i Tourism Authority budget increased from $6 million to $87 million while other constitutionally mandated programs were underfunded and under-resourced.
- Legislate stronger laws that will protect the environment.
- Increase the pool of pro bono lawyers to help enforce environmental laws because county and state governments do not do it.
- Environmental Protection Agency audit Hawai`i State Department of Health.

Community involvement

- Decrease costs of requests under the Freedom of Information Act (FOIA). Request to obtain information for Waimanalo Gulch Landfill now costs individuals $660.
- Receipt of FOIA information needs to be received in a timely manner
- Developers and planners need to provide all documents to the public as planning process proceeds. A 30-day timeframe to review documents that took three years to prepare is an injustice.
- Developers/consultants should prepare documents using terms the community can understand.
- Allow for early community involvement in the planning process.
- Produce a major movie that educates people on a broad scale about environmental justice. Also, develop curriculum for students.
- Identify locations of information repositories. For example, Office of Hawaiian Affairs has cultural mapping information.
- Encourage various government agencies to share information.
- Do a case study on a real environmental justice issue, one the public can get their arms around and solve.

- More community engagement.
- We need to invite public participation. We need to seriously listen to the people espcially in regards to when outer islanders feel threatened that their lifestyles would be impacted. These impacts will affect the social, cultural, economic, health and well being.

Effects on government

- How will Act 294 impact the various agencies? How will they incorporate the environmental justice guidance document but avoid potential lawsuits or delays in their programs? By law, any agency that receives federal funds must implement Title VI environmental justice practices in their efforts. Hawai`i city and county agencies receive U.S. Department of Transportation (federal) funding – what are these agencies going to do to implement environmental justice practices in their programs?
- If the goal is to pass a law to implement environmental justice practices, those who would be required to implement the law would make it difficult to enact the law. Look for an environmental justice action that everyone can agree on and that will have a positive impact. Then move ahead and build upon that. Do not go for a homerun since it might cause polarization. For example, a law was enacted to allow van cams to videotape speeding drivers. The law was eventually repealed because the people did not like it.
- Develop criteria where the government may not approve of any project that adversely or disproportionately impacts Native Hawaiian rights. The effort has to go beyond just mitigating impacts. Without approval through the EIS process, there will be no justice.
- Hawai`i government agencies are already overregulated and under-managed as is. They struggle to enforce existing laws. If environmental justice becomes another law, how are they going to enforce it? An environmental law would just penalize people who might have good intentions. It might get used by activists to stop projects.
- You can have lots of task forces and committees and talk until everyone is blue in the face, but nothing really changes. Government people want to be participatory but are so overloaded with so many responsibilities. Need a "smart" law passed with respect to environmental justice that provides flexibility in its application so it is not used as a tool for backlash.
- Government should prepare maps detailing environmental justice communities and then provide details on how to interpret the maps. Also, detail what to do if a project impacts one of these communities.

Formation of partnerships

- Form partnerships between public and private entities such as Pacific American Foundation, Kamehameha Schools or Office of Hawaiian Affairs. The work cannot be done alone. Share the responsibility and talk about it.
- Provide opportunities for universities to work together with communities on research projects.

Health

- Look at clusters of illnesses as an indicator of environmental injustice.
- Show an evaluation of health impacts in the EIS. The Native Hawaiian Health Care Act has data.

Additional comments

- The state of Hawai`i should adopt the precautionary principle
- Spend state money based on the motto of state: "The life of the land is perpetuated in righteousness."
- Environmental justice needs to be dealt with at the private business level, where many are unknowingly creating injustices. Work with the chambers of commerce and the state Department of Business, Economic Development &Tourism to get the word out to the businesses.
- The current process makes it very hard to determine cumulative impacts if the other developments were not being monitored either. Even when monitoring does show sedimentation or nutrient enrichment, there is very little that can be done to reverse an infrequent event, such as flooding. Although there are "best management" guidelines, further developments continue to add to the existing environmental conditions. Our watershed activities seem to mitigate some of the impacts after developments are completed. Instead of proper planning to avoid development encroaching into flood-prone areas, we develop and then do stream cleanups and the planting of native plants to mitigate the impact.
- Develop decision-making tools that are honorable and respectful.
- Provide grants to organizations to develop legal cases against environmental injustices.
- Develop a disproportionate impact law
- Operate from the understanding that everything is a public-trust resource.
- Based on history, it is important to understand what happened where and when in the past and the consequences. By doing this, the people can stop future injustices. There needs to be a commitment on the part of constituencies who vote legislators in. The commitment involves holding those legislators accountable for injustices.
- What is our state's carrying capacity? How much use can our water, energy and communities endure? We have become commodities on the market.
- Incorporate buffer - one that "plans into" the development process.
- Conceptually, use a randomizer to site hazardous waste facilities. Equitably distribute burdens and projects to make life better for everyone. People think harder about curbside recycling if it would keep a landfill out of their back yard.
- Cost is being externalized to disempowered communities. Better policies are developed if people realize that they have to share the burden.
- Look at what is being lost: The cost to clean up unexploded ordnance versus not cleaning up the ordnance. Similarly, provide permanent limits on access.
- Do your homework on disclosure – do what HRS Chapter 343 calls for. Environmental justice issues should surface and thus be given opportunity to be addressed.
- Return the water back to the streams to rejuvenate the land, aquifers and vegetation. This will attract the clouds and rain again.
- Give access to land to those who will malama it.
- How do you inform people so people can make informed decisions? Some land use commissioners have been bought off. People want to do what is right, for the most part, but do not know how, so they buy the developer's line.
- Bringing $1 million into the economy is not worth it if it destroys one cultural site.

- An acknowledgement that the people of this place are smart, capable and have the kuleana, the true kuleana, to guide and instruct and benefit from all development.
- Take a good look at the GMO companies doing business in Hawai`i. They may be adding money to the state, but what are they taking away from the people of Hawai`i? They are taking away our pristine lands and waters; they are poisoning our resources and people. When are we going to stand up against the dollars and declare that the health of our land, the health of our food, the health and safety of our children and people are more important than the money? When? When we start to see our children die before their time? When parents today start to outlive their children in a world where with the present technology you would think that the opposite should hold true. It is past time to demand environmental justice for people and not corporations who are only interested in making money. It is time to stop the plantation mentality and encourage many small farmers so that we can become a healthy sustainable state.

11. Is there anything we haven't covered that you would like to add?

- People may try to use environmental justice as another way of saying "not in my backyard" (NIMBY).
- People use environmental justice as an excuse to keep development out of their communities. It is a way to cry, "Not in my back yard."
- Just because the siting of a particular project cannot be prevented from going into a specific community does not justify saying that there is not disproportionate impact.
- Siting decisions are difficult. There are very few land choices; must choose the best site that has least impacts. Planners already try to avoid impacts to low-income and Native Hawaiians, but they do get pressure from high-income groups to not put projects in their areas. They have lobbyist and spokesmen work for them.
- I have been involved in site selection for projects that are locally undesirable land uses (LULU), such as landfills, power plants, highways, etc. I think there is a popular perception that a bunch of guys in top hats from Tokyo and L.A. and paying a bunch of guys in aloha shirts on Bishop Street go over the Census data and look for the poorest neighborhoods to site LULUs. This is not true. Every project that I have been involved in diligently tries to fairly pick a place. It often happens to fall in poor neighborhoods because those places are near industrial-zoned lands and the confluence of major highways. Poor people don't complain as much as rich people though. They need to do so.
- What I think is the REAL problem is not so much those LULUs but instead resort residential housing. These developments (1) bring in many, many wealthy mainlanders with no connection to Hawai`i or sensitivity to local issues, which (2) tends to produce secondary impacts on local cultural practices, particularly shoreline-related gathering and fishing that just doesn't work with million-dollar homes dotting the shoreline and oodles of sunbathers and hikers and kayakers. If there is anything unique about Hawai`i, it is that these high-end, glitzy uses may end up being the most damaging.
- The National Historic Preservation Act (NHPA) has been used as a tool to keep Hawaiians from their cultural sites. Hawaiian cultural sites are only significant by the connection/relationship with the people. In the name of safety, the NHPA has been used to protect the sites for Hawaiians from Hawaiians.
- There is a spiritual connection between the cultural site and the Hawaiians who built the site. Their mana, their spirit, is still at the site. Government processes are used to oki (break) Hawaiians from their cultural sites.
- How do we balance environmental justice with a plan with some sort of smart growth development? Can this be offset with appropriate compensation to communities? Can these special social classes be somehow equitably compensated?
- Education on how to implement environmental justice is necessary. Maybe can be done using a website.
- Developers come and go, but people in the community stay for generations. Their concerns need to be considered. The sense of community is being destroyed because human and community values are being replaced by real estate values.
- Approach this cautiously. The factors driving environmental justice issues on the Mainland are different than here.
- The diversity of the population in Hawai`i as compared to continental experiences, allows for a greater distribution of power and wealth among the diverse groups.

- Environmental justice is not just physical. It is physical, emotional and spiritual. Indigenous people are spiritually connected to the land; when the land is poisoned, the people become unhealthy. This is not just an environmental justice issue, but a racism issue. Environmental justice is such a vague issue. People tend to understand the term environmental racism better. It is racism against the Native Hawaiians. Include racism in the definition for the state. Also, it involves economic discrimination: Exploitation of the environment by the wealthy dominates Hawaiian culture.
- Lobbyists and activists come forward, but local residents sit silently for fear of retribution, the result of a plantation mentality with a goal nonetheless to live cooperatively as a community. The local people become a minority – yet they are the majority of people. Local residents are intimidated by the formality of the environmental review process and the vocal activists. Local people will just sit back and trust their representatives will do the right thing. But they do so at a risk – those representatives will listen to the activists.
- The faction part of the population that just wants to get in front of a microphone to say haoles are here illegally and should get off the island do a disservice to the community. This works against the EIS process. The EIS process is not about whether the Army should be here but other issues and impacts. The faction misleads people as to why they are going to a community meeting. Therefore, they do not provide real and productive input. This is an environmental justice issue – people not being afforded a meaningful involvement opportunity. The community as a whole misses an opportunity to have input.
- Remove unilateral decision-making from agencies.
- Do away with consent decrees.
- Environmental justice is just another layer of compliance.
- Today, the ocean is not the same as it once was. This is eating at the soul of the community.
- I know that I am not following your guidelines but for me environmental justice would have to address the fact that 60% of Native Hawaiians cannot afford to live in Hawai`i. Since Hawaiians have a self-sustaining culture, I believe their input is vital and I would like to see them assume the role of teachers in this area and be able to have their requests taken seriously. I also see that when Hawaiians are made to pay property taxes, it becomes necessary for them to leave their life style and take jobs outside in order to keep their land. I would like a remedy for this. I would like to see property tax for Hawaiian people abolished. The other thing I see that is harmful to all of us is the use of pesticides. We are being poisoned. I don't know what can be done about multibillion dollar companies like Monsanto who fund university programs and have contracts with the state to sell their products which are used on roadsides, beside rivers and streams, on crops, in parks etc., and who have GMO programs which should not be allowed in these islands.

APPENDIX E: ENVIRONMENTAL JUSTICE GUIDANCE DOCUMENT

ENVIRONMENTAL JUSTICE GUIDANCE DOCUMENT

This *Environmental Justice Guidance Document* was prepared by the State of Hawai`i Environmental Council in Spring 2007 to meet the requirements of Act 294, signed by Governor Linda Lingle on July 10, 2006. With this act, the Hawai`i Legislature recognized that environmental justice concerns may arise from disproportionate impacts on the environment, human health, and socioeconomic conditions of Native Hawaiian, minority, and/or low-income populations. The act aimed to accomplish two tasks: to define environmental justice in the unique context of Hawai`i through community outreach activities, and to develop and adopt a guidance document that addresses environmental justice in all phases of the environmental review process. The report that documents these tasks is titled, *Hawai`i Environmental Justice Initiative Report*, is available from the State of Hawai`i, Office of Environmental Quality Control (OEQC) for reference.

OEQC has adopted this environmental justice guidance document as agency policy for use in the state of Hawai`i environmental review process. This will allow agencies, applicants, OEQC, the Environmental Council, and the public to assess the efficacy and practical implications of implementing environmental justice in Hawai`i as envisioned by Act 294. It is envisioned that after the efficacy and practical implications of the environmental justice guidance document have been evaluated, Hawai`i Revised Statute (HRS) Chapter 343 may be amended to incorporate the successful aspects of the Environmental Justice Guidance Document.

Agencies and applicants are encouraged to work with OEQC to assess the efficacy and practical implications of this guidance document. Comments and suggestions should be submitted to OEQC staff.

1. Definition of Environmental Justice for Hawai`i

The definition of environmental justice for Hawaii is:

Environmental justice is the right of every person in Hawai`i to live in a clean and healthy environment, to be treated fairly, and to have meaningful involvement in decisions that affect their environment and health; with an emphasis on the responsibility of every person in Hawai`i to uphold traditional and customary Native Hawaiian practices that preserve, protect, and restore the `aina for present and future generations. Environmental justice in Hawai`i recognizes that no one segment of the population or geographic area should be disproportionately burdened with environmental and/or health impacts resulting from development, construction, operations and/or use of natural resources.

Borrowing from EPA, *fair treatment* means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Meaningful involvement* means that: (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public's contributions can influence the regulatory agency's

decisions; (3) the public's concerns will be considered in the decision-making process; and (4) the decision-makers will seek out and facilitate the involvement of those potentially affected.

2. Principles for Considering Environmental Justice under HRS Chapter 343

This guidance document is intended to reflect State of Hawai`i, Office of Environmental Quality Control (OEQC) policy and the intent of Act 294. Agency and applicant use of the guidance document is highly recommended, but the document is not legally binding. However, its use o will allow agencies, applicants, OEQC, the Environmental Council, and the public to assess the efficacy and practical implications of implementing a new environmental justice policy in Hawai`i as envisioned by Act 294. Then, based on this experience, HRS Chapter 343 may be amended to incorporate the successful aspects of this guidance document.

Environmental justice issues may arise at any step of the HRS Chapter 343 process, and agencies or applicants should consider these issues at each and every step of the process when appropriate. In preparing an EIS or an environmental assessment (EA), agencies or applicants must consider impacts on both the natural and physical environment and related social, cultural, and economic impacts. Environmental justice concerns may arise from impacts on the natural and physical environment, such as human health or ecological impacts on Native Hawaiian, minority, and low-income (under-represented) populations, or from related social or economic impacts. These impacts are elaborated in the five general guidance principles immediately below.

Agencies or applicants should recognize that the question of whether a proposed action raises environmental justice issues is highly sensitive to the history and circumstances of a particular community or population. In addition, the particular type of environmental or human health impact and the nature of the proposed action itself are highly sensitive issues. There is no standard formula for how environmental justice issues should be identified or addressed; each situation needs to be evaluated for environmental justice issues on a case-by case basis. In lieu of no standard formula, the following five principles provide general guidance in addressing environmental justice issues:

1. Agencies or applicants should consider the demographic composition of the affected area to determine whether under-represented populations (Native Hawaiian, minority, and/or low-income) will be significantly impacted by the proposed action. If impacts are identified, it needs to be determined whether there is a disproportionately high and adverse human health or environmental effect on that population.

2. Agencies or applicants should recognize the interrelated cultural, social, occupational, historical, and economic factors that may amplify the natural and physical environmental effects of the proposed agency action. These factors include the physical sensitivity of the affected community or population to particular impacts; the effects of any disruption on the community structure associated with the proposed action; and the nature and degree of impact on the physical and social structure of the community.
3. Agencies or applicants should consider relevant public health data concerning the potential for multiple or cumulative exposure to human health or environmental hazards

in the affected population. This should take into account historical patterns of exposure to environmental hazards to the extent such information is reasonably available. Agencies or applicants should consider these multiple or cumulative effects, even if they are not within the control of the agency or applicant proposing the action.

4. Agencies or applicants should develop effective public participation strategies. Agencies or applicants should, as appropriate, acknowledge and seek to overcome linguistic, cultural, institutional, geographic, and other barriers to meaningful participation, and should incorporate active outreach to affected groups.

5. Agencies or applicants should assure early and meaningful community representation through all phases of the HRS Chapter 343 process. Agencies or applicants should be aware of the diverse constituencies within any particular community and should endeavor to have complete representation throughout the process.

2.1 Precautionary Principle

Recognizing that the environment cannot be treated separately from humans and that the natural, physical, and social environments are interconnected, state trends are leading to the inclusion of the Precautionary Principle (basically, "better safe than sorry") into their environmental review process laws. By incorporating the precautionary principle into traditional environmental policy, the focus changes from "How much harm is allowable?" to "How little harm is possible?" In January 1998, the Wingspread Statement on the Precautionary Principle was developed as follows:

> *When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof. The process of applying the precautionary principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action.*

In following the precautionary principle, agencies or applicants should bear the burden of proof in establishing reasonable certainty that the proposed project will cause no significant adverse effect on the environment or unfair treatment to Native Hawaiian, minority, or low-income populations. The application of the Precautionary Principle should be carried out through all phases of the HRS Chapter 343 process.

2.2 Additional Considerations

The preceding principles must be applied in light of the following additional considerations, which are pertinent to any analysis of environmental justice under HRS Chapter 343:

- This guidance does not change the prevailing legal thresholds and statutory interpretations under HRS Chapter 343 and existing case law. For example, for an EIS to be required, there must be sufficient impact on the physical or natural environment to be "significant" within the meaning of HRS Chapter 343. However, agency or applicant consideration of impacts on under-represented groups may lead to the identification of disproportionately high and adverse human health or environmental effects that are significant and that otherwise would be overlooked.

- Under HRS Chapter 343, the identification of a disproportionately high and adverse human health or environmental effect on under-represented groups does not preclude a proposed agency action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unsatisfactory. Rather, the identification of such an effect should heighten agency or applicant attention to alternatives (including alternative sites), mitigating strategies, monitoring needs, and preferences expressed by the affected community or population.

- This guidance does not prescribe any specific format for incorporating environmental justice into the report, such as designating a specific chapter or section in an EIS or EA on environmental justice issues. Agencies or applicants should integrate analyses of environmental justice concerns in an appropriate manner so as to be clear, concise, and comprehensible within the general format suggested by HRS Chapter 343 and Hawai`i Administrative Rule (HAR) 11-200.

3. Guidelines for Considering Environmental Justice in Specific Phases of the HRS Chapter 343 Process

While appropriate consideration of environmental justice issues is highly dependent upon the particular facts and circumstances of the proposed action, the affected environment, and the affected population, there are strategies that are useful at particular stages of the HRS Chapter 343 process. These strategies are described below.

3.1. Environmental Justice Screening Analysis

Once the proposed action is well understood and before the scoping phase, an environmental justice screening analysis should be conducted. The purpose of the screening analysis is to identify any under-represented populations in the proposed action area and whether disproportionate effects are likely to impact these populations. Each of these issues is addressed by asking two questions.

Question 1 – Does the potentially affected community include under-represented populations?

Determining the exact nature of minority and low-income populations in an affected area can be a difficult task. Although several techniques are available, the analyst needs to determine which techniques are appropriate for the proposed action. Listed below are a variety of tools that can be used to locate minority and low-income populations. This list is not exhaustive, but should at minimum serve as a helpful starting point:

- *Environmental Justice in the OMPO (O`ahu Metropolitan Planning Organization) Planning Process: Defining Environmental Justice Populations* report. OMPO has identified 78 environmental justice populations on O`ahu only using 1999 and 2000 Census data.
- Annual statistical poverty thresholds from the Bureau of the Census Current Population Reports, Series P-60 on income and poverty.
- Department of Business, Economic Development & Tourism, Census & Population Office.
- Small Business Administration (for areas designated as enterprise zones).
- Statewide Transportation Improvement Program.
- City and County of Honolulu land use plans.
- Local resources such as community and public outreach groups, community leaders, public schools (free-and-reduced lunch programs), and local universities.
- Local resources and state or county governments can be contacted for information regarding factors that are characteristic of low-income communities. These factors may include limited access to health care; an inadequate, overburdened, or aged infrastructure; and particular dependence on the community or subsistence living.
- Precincts with low voter turnout.

Question 2 – Are the environmental impacts likely to fall disproportionately on under-represented members of the community?

Disproportionately high and adverse effects encompass both human health and environmental effects. To determine what is "disproportionate" and what is "high and adverse," the analyst needs to exercise informed judgment. This suggests some level of comparative analysis with conditions faced by an appropriate comparison population. Various alternatives need to be considered, along with their impacts on the potentially affected populations, so that disproportional impacts can be identified and assessed.

In addition, the analyst needs to place special emphasis on other sources of environmental impacts within the affected area, including those that have historically existed, those that currently exist, and those that are projected for the future. By combining past, present, and future impacts with those of the proposed project, cumulative and indirect impacts on under-represented populations can be determined. These impacts may affect the cultural, health, and occupation-related aspects of under-represented populations, such as:

- Diets, or differential patterns of consumption of natural resources, which may suggest increased exposures to environmental pathways presenting potential health risk.
- Health data reflective of the community (e.g., abnormal cancer rates, infant and childhood mortality, low birth weight, blood-lead levels, asthma).
- Occupational exposures to environmental stresses, which may exceed those experienced by the general population.
- Sensitive populations that include the elderly, children, or disabled.

In terms of natural resources, the analyst should consider the community's dependence on natural resources for its economic base (tourism and/or agriculture) as well as the cultural values that the community may place on a natural resource at risk. Further, it is essential for the analyst to consider the cumulative impacts from the perspective of these specific resources, which are vital to the affected community.

3.2. Public Participation

Early and meaningful public participation in state and county agency decision-making processes is a paramount goal of HRS Chapter 343. EIS rules require agencies or applicants to make diligent efforts to involve the public throughout the HRS Chapter 343 process. Participation of under-represented groups may require adaptive or innovative approaches to overcome linguistic, institutional, cultural, economic, historical, or other barriers to effective participation in the decision-making processes under customary HRS Chapter 343 procedures.

If an agency or applicant identifies any potentially affected under-represented groups, the agency or applicant should develop a strategy for effective public participation after the environmental justice screening analysis is complete and before the scoping process begins. The participation of diverse groups in the scoping process is necessary for full consideration of the potential environmental impacts of a proposed action and any alternative.

By discussing and informing the public of the emerging issues related to the proposed action, agencies or applicants may reduce misunderstandings, build cooperative working relationships, educate the public and decision-makers, and avoid potential conflicts. Agencies or applicants should recognize that the identity of the relevant "public" may evolve during the process and may include different constituencies or groups of individuals at different stages of the HRS Chapter 343 process. For this participation to be meaningful, the public should have access to enough information so that it is well informed and can provide constructive input.

A concerted effort needs to be made by the agency or applicant to identify and reach out to those living in under-represented communities. This may require using a variety of methods to reach a diverse group of people. Listed below are some suggestions for identifying community contacts, effective publication venues, convenient locations for and timing of meetings, and effective types of meetings, as well as suggestions for reaching out to people for whom English is not their first language and discussing technically difficult information.

The following groups and organizations should be included in outreach efforts:

- Minority businesses, associations, and cultural centers.
- Civic associations and public interest groups.
- Social organizations and existing social structures within a community.
- Grassroots and community-based social service organizations.
- Native Hawaiian organizations.
- Religious groups and organizations.
- Recognized leaders of a particular community.
- Libraries, schools, colleges, and universities.

- Medical community.
- Legal-aid providers.
- Rural cooperatives.
- Environmental organizations.
- City, county and state government representatives.
- Neighborhood boards or associations.
- Labor unions.
- Ask for referrals for others who should be included.

Public notification of opportunities for community participation should be advertised in the following places:

- Newspapers.
- Newsletters produced by various community organizations.
- Agency or community mailing lists.
- Notices posted in libraries, grocery stores, or coffee shops.
- Send out targeted mailings to people living in the impacted area.
- K-12 school newsletters and flyers.
- Public service announcements on radio and TV stations.
- ‘Ölelo television.
- Videos.
- E-mail.
- Websites, although low-income people may not have the resources to access to computers.
- Blogs for reaching out to the younger generation.

Location and timing of meetings should take into account under-represented populations’ transportation habits and abilities and places where they commonly meet. Consider the following when planning meeting times and locations:

- Go to where the people are living and working.
- Public schools or libraries.
- District park buildings.
- Local resident’s garage where he invites his neighbors.
- Ask a recognized leader where people in the community hold meetings.
- More than one meeting may need to be held to accommodate shift workers.
- Host shorter meetings at multiple locations.
- Arrange for transportation, if necessary.
- Incorporate local protocols such as prayer.
- Provide snacks and drinks (e.g. water).

Types of meetings to gather community input range from one-on-one interviews to open houses. Determining the type of meeting to hold should take into account the means in which under-represented people prefer to share information. These might include:

- Stakeholder interviews.
- Talk story sessions.
- One-on-one or small-group interviews.
- Focus groups.
- Community surveys.
- Open houses.
- Workshops.
- Talk to people at community events.
- Public meetings.
- Establish comment lines for callers to leave recorded messages.
- Use a local or familiar facilitator, preferably one trained in environmental justice issues.
- Co-sponsor meetings with a local community group to nurture trust and credibility.
- Arrange for childcare at the meeting location, taking into account any liability issues.

Special efforts are required on the part of the agency or applicant to communicate with people who speak English as a second language. These efforts may include:

- Advertising in community papers in their native language.
- Providing translators at public meetings.
- Translating key documents in their entirety.

When discussing technically complex information, make a concerted effort to find ways to effectively communicate that information in ways that the community can understand, including:

- Providing sufficient background explanations beyond the usual means.
- Providing background summary reports, fact sheets, and abstracts.
- Using plain language in meetings, materials, and reports and avoiding the use of jargon and acronyms.
- Seeking advice of local groups and individuals.
- Providing hands-on demonstrations or tours.
- Using visual presentations such as pictures or videos.
- Include opportunities for testimonials and explanation of oral traditions
- Providing technical assistance to the community.

3.2.1. Local Assessment Committees

In general, minority and low-income communities do not have access to scientific knowledge and may suspect that a discussion by experts will not result in a conclusion responsive to their concerns. To provide an opportunity for community members to understand technical issues and have meaningful involvement, the agency or applicant should consider forming a local assessment committee (LAC). The LAC, consisting of a representative sampling of minority, low-income, and other members of the impacted community, would interact with facility proponents and opponents early in the planning process.

3.2.2. Community Benefits Agreements

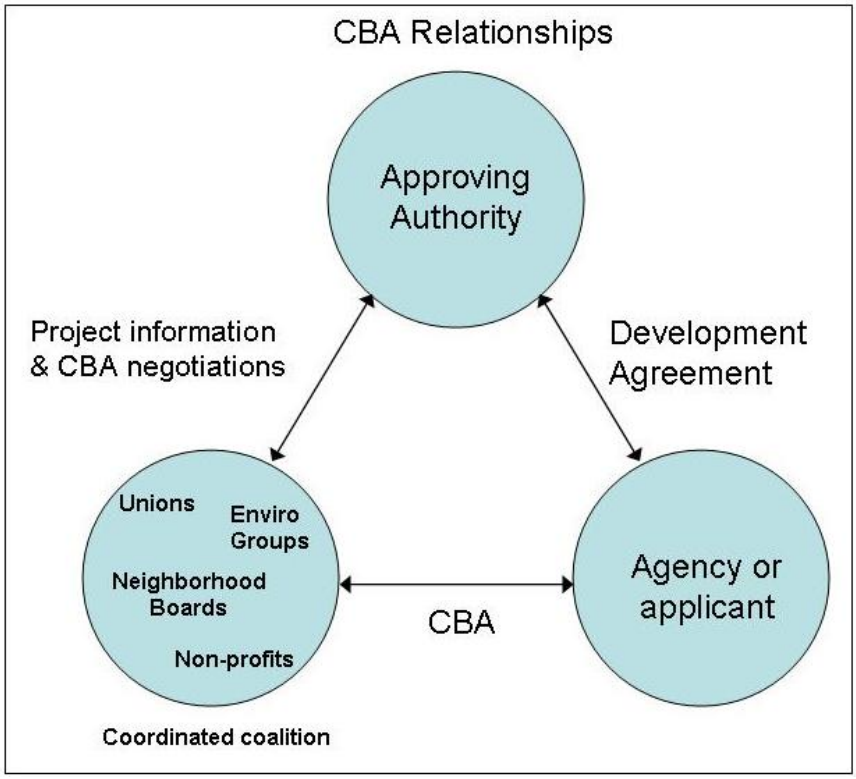
A more formal or legally binding agreement between the agency or applicant and the community is known as a community benefits agreement (CBA). CBAs are deals made between agencies or applicants and coalitions of community organizations that address a broad range of community needs and serve as safeguards to ensure that communities impacted by proposed actions share in the benefits of those actions. They are the result of a negotiation process in which agencies or applicants agree to shape the proposed project in a certain way or to provide specified community benefits. In exchange, the community groups promise to support the proposed project before government bodies that provide the necessary permits and subsidies. The CBA process aims to work toward mutually beneficial objectives and is a mechanism to enforce both sides' promises.

The benefits of the CBA process include:

- Enforceability – it ensures that the agency or applicant's promises regarding community benefits are legally enforceable.
- Inclusiveness – it ensures that community concerns are heard and addressed.
- Transparency – it assists the public, community groups, government officials, and the news media in monitoring a project's outcome.
- Coalition building – the process of negotiating a CBA encourages new alliances among community groups that may care about different issues or have different constituencies.
- Efficiency – it encourages early negotiation between the agency or applicant and the community, avoiding delays in the approval process.
- Clarity of outcomes – it provides local governments with the information they need to show successful delivery of promised benefits.

With respect to addressing environmental issues, CBAs are effective mechanisms for communities to negotiate for environmental benefits and mitigations beyond what is required by law. In addition, CBAs allow communities to step in where government enforcement is lax. Once the application of environmental laws to the proposed project is understood, community groups can use CBAs to strengthen existing environmental requirements, address environmental impacts that existing laws do not, and provide more enforcement options by enabling direct enforcement of environmental requirements. In addition, the community groups should explicitly reference the project-related EIS in the CBA.

Using CBAs depends on the type of project, its size, and the community's sensitivity to the project. They do not need to be used in all circumstances. The diagram below is based on previous applications of CBAs and depicts the relationships among CBA partners:



An example of a CBA (called community benefit package by HECO) was initiated by Hawaiian Electric Company, Inc. (HECO) regarding its Campbell Industrial Park Generating Station and Transmission Additions project (CIP Generating Station Project). HECO began conducting community meetings in 2004 for the neighborhoods surrounding the proposed project to discuss the impact that it would have on these communities. The meetings resulted in a consensus that communities on Oahu benefiting from the CIP Generating Station Project as well as HECO needed to "give back" some sort of benefit to mitigate the impact of the CIP Generating Station on the communities accepting the new facility. Also as a result of these community meetings, a set of six community benefits were agreed upon as the appropriate "give back" for siting the CIP Generating Station Project within the impacted communities. These community benefits included (1) reducing rates for the immediately impacted residential area around the CIP Generating Station Project site (this was not approved by the Public Utilities Commission); (2) substituting reverse osmosis water from the Board of Water Supply's Honouliuli Wastewater Treatment Plant for potable water used for industrial purposes at HECO's Kahe Power Plant; (3) adding three air monitoring stations and resuming HECO's fish monitoring studies; (4) starting a long-term financial commitment by HECO to support conservation education spearheaded by community leaders; (5) providing a report card on HECO's activities and distributing Campbell Local Emergency Action Network (CLEAN) reports to the surrounding communities; and (6) reaffirming HECO's corporate commitment to strongly support charitable activities in these communities.

HECO's community benefit package is a legally binding agreement, approved by the Public Utilities Commission in 2007.

3.3. Planning and scoping

Planning and scoping consists of identifying impacts, alternatives, and actions that will be considered in completing an EA or EIS. With the results of the screening analysis in hand, potential impacts to any environmental justice populations may be disclosed and appropriate alternatives and actions can be considered during the remainder of the HRS Chapter 343 process, as described in the text and diagram below.

Incorporating environmental justice concerns in EA planning:

- If the environmental justice screening analysis (EJSA) does not identify minority or low-income communities and does not suggest disproportionately high and adverse impacts on those communities, then the agency or applicant should describe the analysis and note the conclusion in the EA.

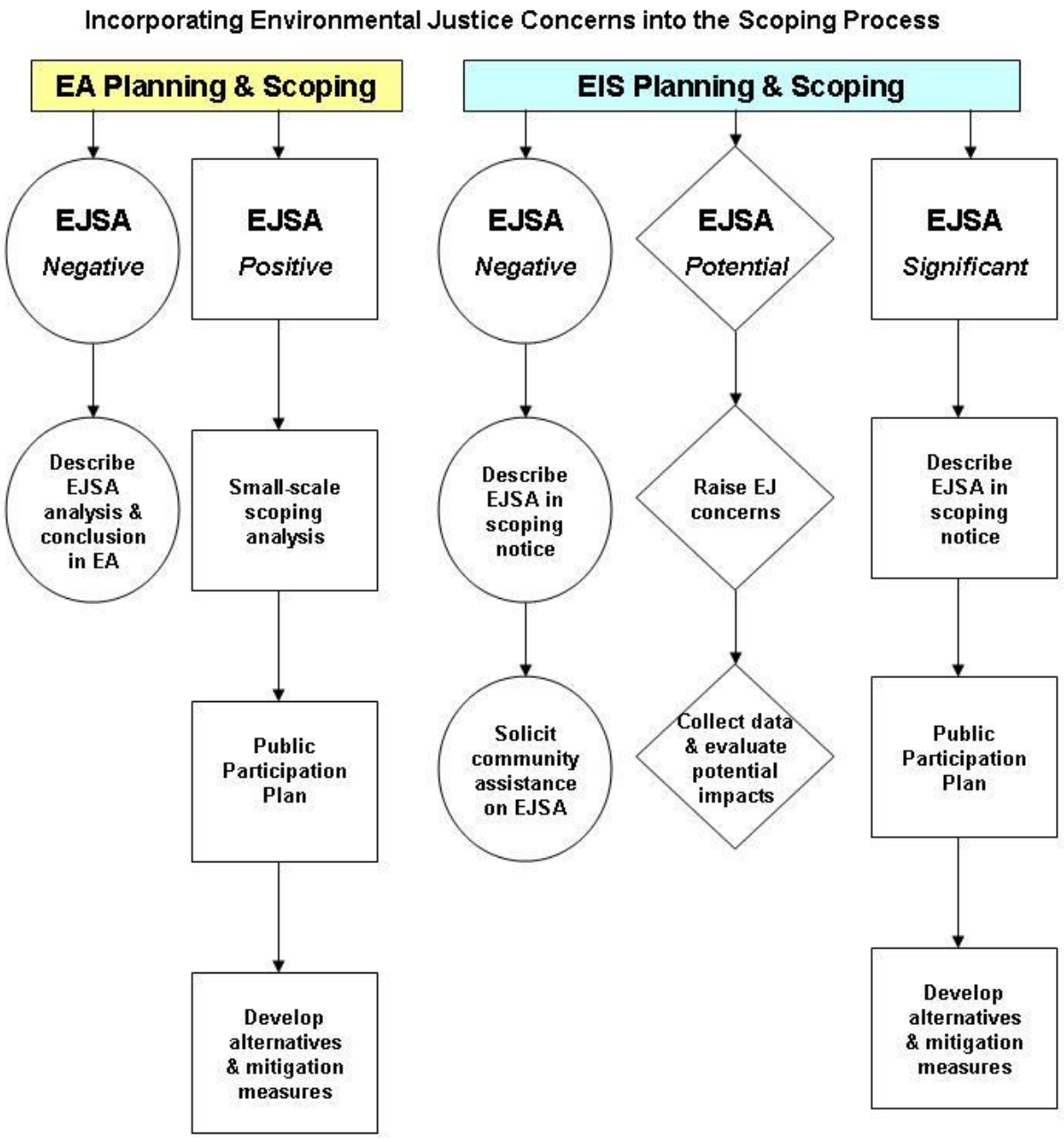
- If the environmental justice screening analysis identifies an affected under-represented community and/or a disproportionately high and adverse impact upon a minority or low-income community, then the agency or applicant should conduct a smaller-scale scoping analysis than undertaken for an EIS. In addition, the agency or applicant should design and implement a public participation plan to solicit community input and to develop alternatives and mitigation measures.

Incorporating environmental justice concerns into EIS scoping:

- If the environmental impacts of a proposed action are deemed significant, the agency or applicant should include a description of the environmental justice screening results in the scoping notices. In addition, the agency or applicant should design and implement a public participation plan to solicit community input and to develop alternatives and mitigation measures.

- If the environmental justice screening analysis concludes that there is a potential for disproportionately high and adverse impacts, then the analyst needs to ensure that the EIS scoping process raises the environmental justice concerns and collects sufficient data and information to evaluate the potential impacts.

- If the results of the environmental justice screening analysis are negative, then the agency or applicant should state this finding in the scoping notice and solicit information from the community on whether there may be disproportionately high and adverse effects that were overlooked during the screening analysis.



The agency or applicant should provide the following information to assist the public during the scoping process:

- A description of the proposed action.
- An anticipated schedule for completing the EIS process, with key milestones.
- Results of the Environmental Justice Screening Analysis.
- An initial list of alternatives (including alternative sites, if applicable) and potential impacts.
- An initial list of other existing or proposed actions that may have cumulative impacts.

- Maps, drawings, and any other materials and references.
- An agency or applicant point of contact.
- Timely notice of meeting locations and where public comments will be received.

3.4. Describing the affected environment or environmental setting

When describing the environment in which the proposed action will take place, the agency or applicant should take into account its historical, physical, human, and cultural landscapes. A description of the historical landscape should include the history of the area, its activities, and people. Place names are often given based on past significant events. A physical description should include a list of natural resources and their use – not just for economic purposes, but also for cultural purposes. The description of the human environment should include human-use patterns – where do people live, work, recreate, harvest, gather, eat, worship, etc. In describing the cultural landscape, take into account how the proposed project will fit into the ahupua`a in which the project is located. Archaeological sites, cultural sites, and activities should also be described. Allowing the community to share personal stories during this phase of the EIS process would enhance the understanding of the agency or applicant on the value of the environment to the people.

In order to determine whether a proposed action is likely to have disproportionately high and adverse human health or environmental effects on under-represented groups, agencies or applicants should identify geographic areas for which they will obtain demographic information on the potential impact areas. Agencies or applicants may obtain demographic data from Census sources to identify the composition of the potentially affected populations.

Agencies or applicants should recognize that the impacts within under-represented groups might differ from impacts on the general population because of a community's distinct cultural practices. For example, data on different patterns of living, such as subsistence fish, vegetation, or wildlife consumption and the use of well or surface water in rural communities, may be relevant to the analysis.

Where a proposed action would not cause any adverse environmental impacts and therefore would not cause any disproportionately high and adverse human health or environmental impacts, specific demographic analysis may not be warranted.

3.5. Identifying and analyzing the impacts of the proposed project

When agencies or applicants have identified any potential environmental justice issues, they should clearly state the issues in the EA or EIS. These statements should be supported by information sufficient enough for the public to understand the rationale for the conclusions. The underlying analysis should be presented as concisely as possible, using language that is understandable to the public.

When a disproportionately high and adverse human health or environmental impact on under-represented groups has been identified, agencies or applicants should analyze how the distribution of environmental and health impacts affect the community. Displaying available

data spatially can provide agencies and the public with an effective visualization of the distribution of these impacts among the populations. This type of data should be analyzed in addition to qualitative or quantitative information gathered through the public participation process.

3.6. Identification and Analysis of Alternatives

The selection of potential alternatives should begin in the scoping process. If agencies or applicants have identified a disproportionately high and adverse human health or environmental impact on under-represented groups from either the proposed action or alternatives, the distribution as well as the magnitude of the disproportionate impacts in these communities should be factors in determining the environmentally preferable alternatives. In weighing these factors, the agencies or applicants should consider the views they have received from the affected communities and the magnitude of environmental impacts associated with the alternatives that have a less disproportionate and adverse effect on under-represented groups. These efforts should be fully described in the scoping documents and all results fully disclosed in the public participation process. Public comment and input on the analyses and conclusions should be solicited.

The goal of developing reasonable alternatives is to identify viable alternative actions that meet program goals and avoid or reduce the environmental, socioeconomic, human health, and/or ecological effects associated with the preferred action.

3.7. Determining Significance

When agencies or applicants determine that a proposed action may result in significant environmental effects, EIS rules state that an EIS must be prepared. Disproportionately high and adverse human health or environmental effects on under-represented groups should be among those factors explicitly discussed in the determination of significance and should also be addressed in any discussion of whether all practicable means to avoid or minimize environmental and other interrelated effects were adopted. Where relevant, the agency or applicant should discuss how these issues were addressed.

Dissemination of the information in the document acceptance letter may provide an effective means to inform the public of the extent to which environmental justice concerns were considered in the decision-making process and, where appropriate, whether the agencies or applicants intend to mitigate any disproportionately high and adverse human health or environmental effects within the constraints of HRS Chapter 343 and other existing laws.

3.8. Mitigation

Mitigation measures should be developed to specifically address potential disproportionately high and adverse impacts of a proposed action on under-represented populations. When identifying and developing potential mitigation measures to address environmental justice concerns, members of the affected communities should be consulted. Mitigation measures may include a variety of approaches for addressing potential effects and for

balancing the needs and concerns of the affected community with the requirements of the proposed action.

The enforceable means of implementing mitigation measures, as determined by permits and approving agencies, should be clearly identified so the public can ensure follow-through of the mitigation measures.

APPENDIX F – BIBLIOGRAPHY, OTHER RESOURCE & CONTACT INFORMATION

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OTHER RESOURCES

Related Websites - National

California Environmental Protection Agency
http://www.calepa.ca.gov/EnvJustice/

Civic Practices Network, Environment
http://www.cpn.org/topics/environment/

Council on Environmental Quality
http://www.whitehouse.gov/ceq/

Environmental Defender Law Center
http://www.edlc.org/

Environmental Justice Resource Center at Clark Atlanta University
http://www.ejrc.cau.edu/

Environmental Research Foundation
http://www.rachel.org/home_eng.htm

Golden Gate University, Environmental Law & Justice Clinic
http://www.ggu.edu:80/school_of_law/academic_law_programs/jd_program/environmental_law/environmental_law_justice_clinic

Indigenous Environmental Network
http://www.ienearth.org/

National Environmental Justice Advisory Council (NEJAC)
http://www.epa.gov/compliance/environmentaljustice/nejac/index.html

National Environmental Policy Act (NEPA)
http://www.nepa.gov/nepa/nepanet.htm

Public Law Research Institute at the University of California, Hastings College of the Law
http://www.uchastings.edu/?pid=134

Science & Environmental Health Network
http://www.sehn.org/about.html

U.S. Environmental Protection Agency, Environmental Justice
http://www.epa.gov/compliance/environmentaljustice/

U.S. Environmental Protection Agency, Environmental Justice, Interagency Working Group
http://www.epa.gov/compliance/environmentaljustice/interagency/index.html

Related Websites – State of Hawai`i

Hawai`i Legislative Reference Bureau, The Constitution of the State of Hawai`i
http://www.hawaii.gov/lrb/con/

Oahu Metropolitan Planning Organization
http://oahumpo.org/index.html

Office of Environmental Quality Control, Hawai`i State Department of Health
http://www.state.hi.us/health/oeqc/index.html

State of Hawai`i, Department of Business, Economic Development & Tourism, Census and Population
http://www.hawaii.gov/dbedt/info/census/

University of Hawai`i, William S. Richardson School of Law, Environmental Law Program OHELO
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Related DVDs

Environmental Justice: The Power of Partnerships, Environmental Protection Agency
http://www.epa.gov/compliance/resources/publications/ej/ejcps-dvd.html

Communities and Environmental Laws, Environmental Protection Agency
http://www.epa.gov/compliance/resources/publications/ej/ej-dvd.html

Environmental Protection Agency Environmental Justice Grants

Community Action for a Renewed Environment (CARE)
http://www.epa.gov/CARE/

Environmental Justice Collaborative Problem-Solving Cooperative Agreements Program
http://www.epa.gov/compliance/environmentaljustice/grants/ej-cps-grants.html

Environmental Justice Small Grants Program
http://www.epa.gov/compliance/environmentaljustice/grants/ej-smgrants.html

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STATE OF HAWAI'I
ENVIRONMENTAL COUNCIL PROPOSAL:
A PROCESS AND PLAN
TO ACCOMPLISH THE REQUESTS OF SCR 140 HD 1 (2005)

The processes and plan presented herein were devised and drafted by
the Hawaii State Environmental Council in collaboration with the community.

Community members involved in the development of this plan include:
Lisa Bail, Kat Brady, Sabrina Clark, Henry Curtis, Heidi Guth, John Harrison, Lehua Kinilau, Colleen Murakami, Scott Mowery, Maile Sakamoto, Shannon Wood and Jesse York.

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1. REQUESTS TO THE ENVIRONMENTAL COUNCIL INHERENT IN SCR 140 HD 1

Senate Concurrent Resolution 140 (HD 1)(see Appendix 1) was passed by the Hawaii Legislature on May 3, 2005. The Resolution requests that: The Environmental Council, with the Office of Environmental Quality Control (OEQC) and the University of Hawaii Environmental Center (UHEC): "develop and promulgate a guidance document on including principles of environmental justice in all phases of environmental review undertaken pursuant to Chapter 343, Hawaii Revised Statutes."

In developing and promulgating this guidance document on including principles of environmental justice in all phases of environmental review undertaken pursuant to Chapter 343, Hawaii Revised Statutes, the Environmental Council, working with the OEQC and the UHEC, is requested to seek input: "from a wide segment of interested parties, including high school students who are concerned about this issue."

In addition, the legislature found that the need for continued evaluation and improvement of the State's environmental impact statement process: "may justify the commitment of state funds for

renewed study of the environmental impact statement process through a legislative appropriation in the Regular Session of 2006."

Finally, the Environmental Council is requested: "to submit its comments, findings and recommendations on any need to update the State's environmental impact statement process that may be discovered while conducting its review of Chapter 343."

The outcomes of the above processes: the guidance document and recommendations for legislation, if any, need to be submitted to the Legislature: "no later than twenty days prior to the convening of the Regular Session of 2006" [emphasis added].

A brief summary of the goals we have been requested to achieve, as they will be referred to in this document, are the following:

A. Develop and promulgate environmental justice guidance document for Chapter 343 process;
B. Include input from interested parties;
C. Include input from concerned high school students;
D. Potentially seek State funds for renewed study of environmental impact statement process
E. Submit updates to environmental impact statement process; and
F. Submit all of the above to Legislature 20 days prior to 2006 Regular Session

2. STATEMENT ON MEETING THE REQUESTS INHERENT IN SCR 140 HD 1

The Resolution was first presented to and discussed by the Environmental Council at our May, 11, 2005 full council meeting. It was decided at that meeting that the Council's Standing Committee on Education and Cultural Consultants would convene future meetings with the sole purpose of planning the processes and events by which we could accomplish all of the requests of SCR 140, HD 1 in a timely manner. The Standing Committee met for this purpose on three occasions in the Summer of 2005 (6/8/05, 6/23/05 and 8/10/05). Members of the interested public and prominent stakeholder agencies were present at each of these three planning meetings. After deliberating, it became clear to the group that our challenge is three-fold. We need to:

- Design the particular activities that would lead to the accomplishment of all of the requests of SCR 140, HD 1;
- Devise a timeline for these activities; and,
- Request funding for those activities that require it.

This document embodies an outline of how we would like to accomplish each of these imperatives.

3. GOALS THAT SUPPLEMENT THE REQUESTS OF SCR 140 HD1

The Environmental Council and the Environmental Council's Standing Committee on Education and Cultural Consultants also decided that we had to first accomplish several supplemental tasks that were not specifically requested of us in SCR 140, HD 1. These essential supplemental goals are the following:

G. Engage the community in a conversation about the meaning of environmental justice in general and in Hawaii;

H. Seek input from the community regarding appropriate definition(s) of Environmental Justice in Hawaii; and
I. Develop a definition(s) of Environmental Justice for Hawaii.

Accordingly, this document also includes our outline for how we would like to accomplish these supplementary goals.

4. ACTIVITIES TO MEET THE REQUESTS OF SCR 140 HD 1

The following specific activities are those which, taken collectively, will enable the Environmental Council to accomplish all of the requests of SCR 140, HD 1 plus the essential supplemental goals identified by the Council.

4.1 Increase public interest in and awareness of environmental justice:

The Specific Activity:

- Initiate a variety of media-related events and outreach efforts pertaining to environmental justice. Particular efforts will include:
    a. Inviting students participating in the 2005 Children and Youth Day @ Honolulu Hale and the State Capitol to participate in a Youth Xchange Video Competition specifically about environmental justice. Teachers and administrators will receive packets on the topic prior to Youth Day.
    b. Dedicating one *Topic Hawaii* hour-long television episode to a discussion of environmental justice and environmental justice issues in Hawaii.
    c. Encouraging Hawaii's environmental reporters to familiarize the public with the concept of environmental justice and particular potential environmental justice issues in the State.
    d. Using the OEQC website as a forum for educating the public about environmental justice.
    e. Airing of Community Conversations (Activity 4.2) and Environmental Justice Workshops (Activity 4.3) on public television.

Purpose of the Activity:

1. To increase public awareness of environmental justice as: (1) a general concept, (2) something that Hawaii's citizens are already concerned about, and (3) something which the State is trying to ameliorate and avoid in the future.

4.2 A series of community conversations:

The Specific Activity:

- These meetings would take place in areas where the population may have been particularly impacted by environmental justice issues: Hilo, Hawaii Island (Keokaha region, near the airport), Maui (where water rights are being debated), Waianae, Oahu (where people are impacted by Waimanalo Gulch Landfill …), ….
- The meetings need to be "community conversations" with a casual talk-story format, in which the Council primarily listens to the community.
- The meetings need to include discussions of the history of that particular place.

Purpose of the Activity:
1. To listen and learn from the Hawaii communities that have been impacted
2. To have this particular community take part in coming up with a definition of environmental justice
3. To ask the advice of the community regarding the existing draft of the Guidance Document

4.3 A series of environmental justice workshops throughout Hawaii:

The Specific Activity:
- Workshop invitations would be extended to the public, non-governmental organizations and regional legislators.
- One workshop would occur on O'ahu in proximity to federal, state and county stakeholder agencies to facilitate their attendance.
- At least one workshop would occur on each of the following neighbor islands: Hawai'i Island, Maui, Moloka'i, Lana'i and Kaua'i.
- Each workshop would be announced by press release and television.
- The Oahu workshop could be videotaped and aired on public television. The public would be invited to send definitions of environmental justice and comments to the draft Guidance Document (which will be available at the OEQC website) to OEQC via e-mail.
- These workshops would be well-organized mini-conferences on environmental justice in Hawaii with each having the following general organization:
    a. Presentation of environmental justice case-studies in the Chapter 343 process from Hawaii;
    b. Presentation of environmental justice definitions from other states and nations;
    c. Viewing of high school-produced environmental justice curriculum video;
    d. Break-out groups to work on developing a definition of environmental justice followed by sharing sessions or documents;
    e. Explanation of the environmental review process;
    f. Presentation of the current draft Guidance Document;
    g. Opportunity for participants to make changes to and comment on the draft Guidance Document; and
    h. Collation of comments to the Guidance document
- The definitions of environmental justice and comments on the Guidance Document that come out of each workshop would be collated.

Purpose of the Activity:
1. To involve a wide sector of the public in the State as well as relevant public and private agencies and legislators
2. To arrive at a definition of environmental justice for Hawaii
3. To gather comments to the existing draft Guidance Document

4.4 High school "environmental justice" curriculum:

The Specific Activity:
- Develop, with the help of the DOE, high school curriculum that addresses environmental justice in a hands-on way, to concerned high school student populations.

- The student learning outcomes from the high school curriculum would include:
    a. Definitions of environmental justice for Hawaii;
    b. Comments on the draft Guidance Document; and
    c. Stories from communities about environmental justice issues.
- A video from one of the high school hands-on projects would be made and aired on public television and at the environmental justice workshops.

Purpose of the Activity:
1. To involve concerned high school students
2. To arrive at a definition of environmental justice for Hawaii
3. To gather comments to the existing draft Guidance Document

4.5 Review of the draft Guidance Document by special populations:

The Specific Activity:
- Specifically invite and involve the Department of Hawaiian Homelands, Office of Hawaiian Affairs, University of Hawaii law students and college undergraduates seeking environmental, Hawaiian/ethnic studies, public policy, planning and social justice-related degrees to participate in the review of the draft Guidance Document.

Purpose of the Activity:
1. To ensure that these special and informed populations are involved in the process of developing the Guidance Document.

4.6 On-going public input on the draft Guidance Document:

The Specific Activity:
- Place updates regarding this process and the draft Guidance Document on the OEQC website and solicit comments from the public to OEQC.
- Also periodically place the revised draft of the Guidance Document in *The Environmental Notice* and solicit comments from the public to OEQC.

Purpose of the Activity:
1. To provide a medium for people/agencies who do not attend the conversations or workshops to provide formal written comment on the draft Guidance Document.

4.7 Finalization of State definition(s) of environmental justice:

The Specific Activity:
- Coalesce definitions of environmental justice from all prior activities
- Collate all definitions
- Arrive at a final definition; final working list of definitions

Purpose of the Activity:
1. To generate a final/final list of Hawaii State definitions of environmental justice based on all prior conversations, workshops and meetings.

4.8 Finalization of Guidance Document:

The Specific Activity:

- Coalesce comments to draft Guidance Document from all prior activities.
- Collate all drafts into a final draft version of the Guidance Document.
- Gain approval of the final draft version of the Guidance Document from the Environmental Council's Standing Committee on Education and Cultural Consultants.
- Gain approval of the final draft version of the Guidance Document from the Environmental Council.

Purpose of the Activity:

1. To generate the final draft version of the Guidance Document based on all prior conversations, workshops, electronic input and meetings.

4.9 Update the State's environmental impact statement process:

The Specific Activity:

- With a finalized guidance document in hand, the Environmental Council will prepare its comments, findings and recommendations on any need to update the State's environmental impact statement process under Chapter 343.
- This will be the final activity in response to SCR 140, HD 1 that the Environmental Council undertakes.

Purpose of the Activity:

1. To complete the requests of SCR 140 HD 1 by submitting any recommendations for changes to the environmental impact statement process under Chapter 343 as a result of the creation of a State Guidance Document for considering environmental justice.

5. TIMELINE FOR MEETING THEREQUESTS OF SCR 140, HD 1

The following is the timeline for presenting this plan to the legislature:

September 1 – September 13th: OEQC Investigative Committee works on this draft of plan

↓

September 14th @ 12:00 PM: OEQC Standing Committee on Education and Cultural Consultants and interested members of the community finalize the draft plan

↓

September 14th @ 2:00 PM: Seek full Environmental Council approval of this plan

↓

Late September: Seek approval of the Plan from DOH Deputy Director L. Lau

↓

Early October: Meet with Senator C. Hanabusa and other key Legislators to discuss the plan

↓

↓

November: Seek approval of the plan from the Governor

↓

December: Finalize any approvals needed from the Council

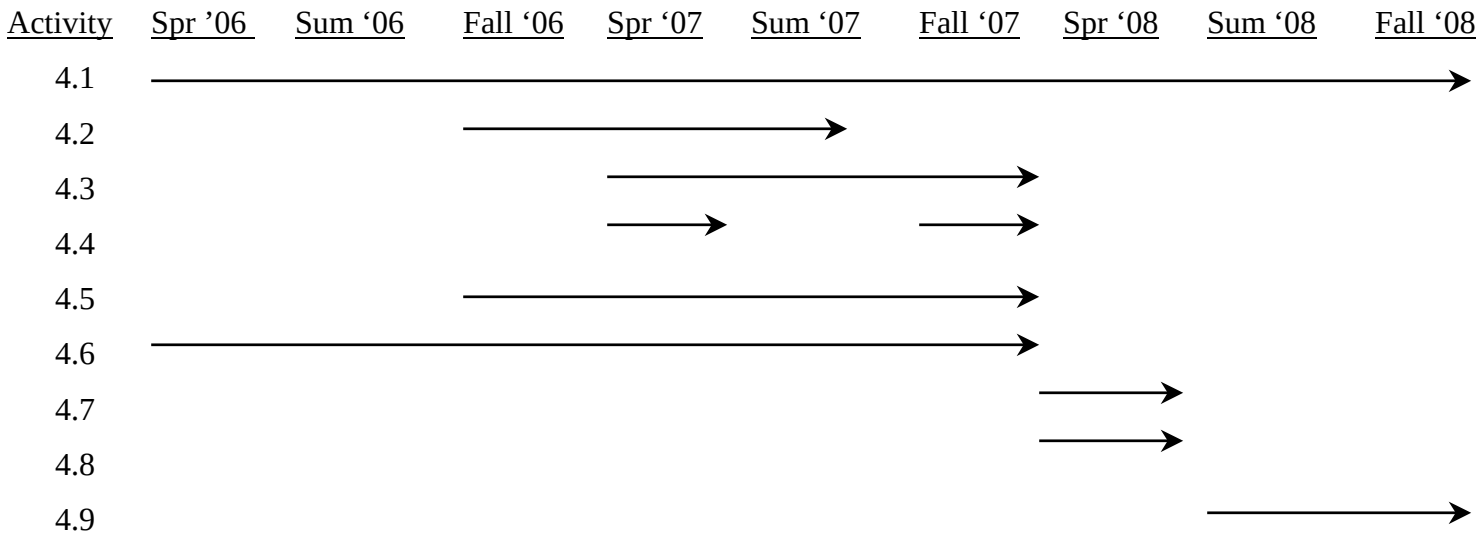
↓

Submission of Plan to the Legislature 20 days prior to 2006 Session

The following are the tentative timelines for each of the events presented in this plan:

4.1 Increase public interest in and awareness of environmental justice: Ongoing
4.2 A series of community conversations: Fall 2006, Spring, Summer 2007
4.3 A series of environmental justice workshops throughout Hawaii: 2007
4.4 High school "environmental justice" curriculum: Spring 2007, Fall 2007
4.5 Review of the draft Guidance Document by special populations: Fall 2006, 2007
4.6 On-going public input on the draft Guidance Document: Fall 2005 through Fall 2007
4.7 Finalization of State definition(s) of environmental justice: Spring 2008
4.8 Finalization of Guidance Document: Spring 2008
4.9 Update the State's environmental impact statement process: Summer and Fall 2008

Visual representation of time-line:



6. BUDGETARY REQUESTS REQUIRED FOR IMPLEMENTING THE PLAN

The Environmental Council believes that the least expensive, most integrative, most efficient way to complete the requests of SCR 140, HD 1 (Goals A through F) and our supplementary goals (Goals G through I) is contract with an appropriate agency, for a two one-year periods (September 2006 to September 2008), to work through OEQC, solely on accomplishing the Activities described in this document. This agency will act as project coordinator for the State's burgeoning environmental justice activities: the establishment of a definition of environmental justice, the development and

promulgation of the Guidance Document, and eventually the updating of Chapter 343. The particular ways in which the contractor will work to accomplish each activity are described below. The total funding requested for Plan is **$252,000**. This amount includes salary for one full-time employee, benefits, travel and equipment. All other funding requests are specific to particular activities, and are described under each activity:

4.0 Contract Project Coordinator: Total request is for **$119,000** from the State for the following:

- $80,000 for one year = **$80,000**
- Benefits for two years = **$24,000**
- Travel = **$10,000**
- Equipment = **$5,000**

4.1 Increase public interest in and awareness of environmental justice:

- $5,000 donation for Youth Xchange Award
- Partnering with community 501(c)3 non-governmental organizations has no cost.
- *Topic Hawaii* environmental justice episode has no cost.
- Encouraging press support has no cost.
- Using OEQC web site has no cost.

4.2 A series of community conversations:

- Organized by the Program Director.
- Community conversations will be funded partly through grants to non-governmental organizations agreeing to sponsor a/the community conversations.
- Funding request from the State: Total request is for **$44,000**:
    - **$20,000** for six meetings throughout Hawaii
    - **$12,000** for community meeting facilitators
    - **$6,000** hotel and travel
    - **$6,000** for media coverage and later airing

4.3 A series of environmental justice workshops throughout Hawaii

- Organized by the Program Director.
- Workshops will be partially funded through grants to non-governmental organizations agreeing to sponsor the workshop.
- Funding request from the State: Total request is for **$78,000**:
    - **$30,000** for six workshops throughout Hawaii
    - **$24,000** for workshop speakers/experts
    - **$12,000** hotel and travel
    - **$12,000** for media coverage and later airing

4.4 High school "environmental justice" curriculum

- Organized by the DOE in conjunction with the Program Director.
- **$10,000** requested for curriculum development materials and postal services.

4.5 Review of the draft Guidance Document by special populations

- Organized by the Program Director.
- **$1,000** requested for packet preparation to all populations and postal services.

4.6 On-going public input on the draft Guidance Document

- On-going, no cost.

4.7 Finalization of State definition(s) of environmental justice

- Organized by the Program Director.

4.8 Finalization of Guidance Document

- Organized by the Program Director.

4.9 Update the State's environmental impact statement process.

- Organized by the Program Director.

Total funding required from the State to complete all activities, plus 10% contingency: **$252,000**

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2006

GOV. MSG. NO. 825

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

This is to inform you that on July 10, 2006, the following bill was signed into law:

SB2145 SD2 HD2 CD1 — A BILL FOR AN ACT RELATING TO THE ENVIRONMENT. **(ACT 294)**

Sincerely,

LINDA LINGLE

S.B. No. 2145, S.D. 2, H.D. 2, C.D. 1

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

President of the Senate

Clerk of the Senate

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

Speaker, House of Representatives

Clerk, House of Representatives

Approved by the Governor
on JUL 10 2006

ACT 294

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 2145 S.D. 2 H.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Environmental justice is generally understood to require the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. In 1994, President Clinton signed Executive Order 12,898 to focus federal attention on the environmental and human health conditions of minority and low-income populations, with the goal of achieving environmental protection for all communities. Executive Order 12,898 directed federal agencies to develop environmental justice strategies to help federal agencies address the disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations. Executive Order 12,898 was intended to provide minority and low-income communities with access to public information and with meaningful public participation in matters relating to human health and the environment.

In 2005, the legislature adopted Senate Concurrent Resolution No. 140, H.D. 1, in recognition of the environmental justice concerns that may arise from effects on the natural and physical environment, such as human health or ecological effects on minority populations, low-income populations, and native Hawaiians, or from related social or economic effects. The environmental council drafted a plan to accomplish the tasks requested by the legislature.

The legislature finds that there is a need to conduct a comprehensive and scholarly review of the state environmental impact statement process to evaluate its continued efficacy, the effectiveness of the amendments made by Act 50, Session Laws of Hawaii 2000, and the possible need to revise chapter 343, Hawaii Revised Statutes. The review should include a determination of whether the environmental impact statement process includes appropriate consideration of the effects of a proposed action on the cultural practices of the State and community, as required by section 343-2, Hawaii Revised Statutes.

The legislature further finds that there is a need to develop an environmental justice guidance document to ensure that principles of environmental justice are systematically included in all phases of the environmental review process and

that each agency fulfills its duty to identify and address at the earliest possible time any disproportionately adverse human health, environmental, or cultural effects on minority populations, native Hawaiians, and low-income populations that would be caused by a proposed action or the agency's policies, programs, and activities.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $82,325, or so much thereof as may be necessary for fiscal year 2006-2007, for the environmental council to contract with a consultant to facilitate and coordinate the State's environmental justice activities and for related administrative and operational costs. The environmental justice activities shall include:

(1) Defining "environmental justice" in the unique context of this State through educational community outreach activities;

(2) Developing and adopting a guidance document that addresses environmental justice in all phases of the environmental impact statement process;

(3) Making recommendations to update the environmental impact statement process in chapter 343, Hawaii Revised Statutes; and

(4) Conducting educational and community outreach activities.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. Notwithstanding chapter 103D, Hawaii Revised Statutes, the office of environmental quality control shall contract with the University of Hawaii environmental center to conduct a comprehensive review of the State's existing environmental impact statement process under chapter 343, Hawaii Revised Statutes. The comprehensive review shall include:

(1) A review of all guidance documents for implementing chapter 343;

(2) An evaluation of the amendments made in Act 50, Session Laws of Hawaii 2000, to determine if environmental impact statements give appropriate consideration to the effects of a proposed action on the cultural practices of the State and community; and

(3) The conclusions, findings, and recommendations of the comprehensive review.

The University of Hawaii environmental center shall submit the comprehensive review to the legislature no later than twenty days prior to the convening of the regular session of 2008.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $108,675, or so much thereof as may be necessary for fiscal year 2006-2007, for the University of Hawaii environmental center to perform a comprehensive review of the State's current environmental impact statement process under chapter 343, Hawaii Revised Statutes, pursuant to section 3 of this Act.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 2006.

GOVERNOR OF THE STATE OF HAWAII

Approved this day: JUL 10 2006

The Hawai'i Environmental Justice Initiative

What is the Hawai'i Environmental Justice Initiative?

In July 2006, Governor Lingle signed into law Act 294 – *A Bill for an Act Relating to the Environment.*

One aspect of Act 294 requires "the development of an environmental justice guidance document to ensure that principles of environmental justice are systematically included in all phases of the environmental review process." Each agency involved in the environmental review process will have a duty to identify and address negative impacts on Native Hawaiian, minority, and low-income populations.

The State of Hawai'i Environmental Council is responsible for implementing the Environmental Justice Initiative. The Council has contracted with an Environmental Justice Project Coordinator to work with community members to:

- Define Environmental Justice for Hawai'i.
- Develop a guidance document that addresses Environmental Justice in all phases of the environmental review process.

In January 2008, the Council will submit a report to the Hawai'i State Legislature. This report will include the Environmental Justice definition and guidance document.

What is the environmental review process for Hawai'i?

In 1974, Hawai'i adopted the Environmental Impact Statement law (Hawai'i Revised Statute [HRS] 343).

HRS 343 requires the preparation of environmental assessments and environmental impact statements for proposed projects.

The law requires that governments give systematic consideration to the environmental, social, and economic impacts of proposed projects before granting construction permits. The law also assures the public the right to participate in planning projects that may affect their communities. The Office of Environmental Quality Control (OEQC) implements this law in Hawai'i.

Hawai'i currently does not have any laws that require the evaluation of disproportionate negative impacts to human health or the environment on Native Hawaiian, minority, and low-income populations. Based on Census data, it is evident that there is no one major ethnic population in Hawaii. Instead, the population of Hawai'i consists of numerous, often low-income minorities. Thus, the evaluation of Environmental Justice issues resulting from development projects is paramount during the environmental review process.

What is Environmental Justice?

At the federal level, Executive Order 12898 - *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* - was signed on February 11, 1994. The goal of the executive order is to focus federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all people.

According to the U.S. Environmental Protection Agency (EPA), Environmental Justice is:

"the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

How can the community be involved with the Initiative?

Contact the Environmental Justice Project Coordinator **if you are interested in:**

- Participating in an interview
- Completing a survey
- Hosting a small community meeting

Your input is needed by October 31, 2007.

Contacts / Information:

Environmental Justice Project Coordinator
Leslie Kahihikolo
EJHawaii@hawaii.rr.com ph.808.728.7991

Environmental Council
Dr. Gail Grabowsky
ggrabows@chaminade.edu ph.808.735.4834

Hawai`i Office of Environmental Quality Control
http://www.state.hi.us/health/oeqc

EPA's Environmental Justice Program
http://www.epa.gov/compliance/environmentaljustice

Input is needed from:

- Academia
- Community members
- Developers
- Environmental groups
- Environmental lawyers
- Government agencies
- Native Hawaiian groups
- Planning consultants

Hawai`i Environmental Justice Initiative
Questionnaire

The State of Hawai`i Environmental Council has embarked on a very important initiative – the Hawai`i Environmental Justice Initiative – to ***define what environmental justice means for Hawai`i*** and to ***develop a guidance document that addresses environmental justice in all phases of the environmental review process***.

Input from government agencies, developers, planning consultants, Native Hawaiian groups, environmental groups, environmental lawyers, academia, and community members from all islands is needed to assist in defining environmental justice for Hawai`i and developing the guidance document.

To this end, the Council seeks input from the Hawai`i community – including you. Thus the Council would greatly appreciate your help, and thanks you in advance for taking the time to respond to this questionnaire.

Background

In July 2006, Governor Lingle signed into law Act 294 – *A Bill for an Act Relating to the Environment.* One aspect of Act 294 requires "the development of an environmental justice guidance document to ensure that principles of environmental justice are systematically included in all phases of the environmental review process." Act 294 assigns each agency involved in this process the duty of identifying and addressing negative impacts on Native Hawaiian, minority, and low-income populations. The environmental justice definition and guidance document aim to assist agencies with this.

The State of Hawai`i Environmental Council is responsible for implementing the Environmental Justice Initiative. It has contracted with an Environmental Justice Project Coordinator to work with community members to define environmental justice for Hawai`i and develop the guidance document. In January 2008, the Council will submit a report to the Hawai`i State Legislature, which will include the environmental justice definition and guidance document. The final report will be available online in early 2008.

Again, your help in defining environmental justice and creating the guidance document will be greatly appreciated. Please respond to the following questions, taking as much space as needed. Your comments will be kept confidential and used only to help create guidelines that reflect the Hawai`i community's Environmental Justice Initiative.

Mahalo!

Leslie Kahihikolo
Environmental Justice Project Coordinator
808.728.7991
EJHawaii@hawaii.rr.com

Hawai`i Environmental Justice Initiative
Questionnaire

Defining Environmental Justice for Hawai`i

1. What does environmental justice mean to you?

2. Many words used to define *environmental justice* are based on Western values. In Hawai`i, a different value system is used. For example, Hawaiians see themselves as being a part of the environment, while Westerners view the environment as something distant and separate. Based on your knowledge of Hawaiian values, how would you define the following terms:

- Environment
- Resources
- Sustainability
- Justice
- Cumulative impacts

3. Who are the populations in Hawai`i that environmental justice efforts should target?

4. One of the requirements listed in Act 294 is to define environmental justice in the unique context of Hawai`i. So, based on the information you provided in Questions 1-3, how would you define environmental justice for Hawai`i?

Identifying Environmental Justice Populations

5. If you are in the business of developing or accepting environmental assessments and environmental impact statements, what process do you use to identify environmental justice populations?

Hawai`i Environmental Justice Initiative
Questionnaire

Environmental Justice Issues in Hawai`i

6. What do you consider to be a past or present environmental justice issue here in Hawai`i? Please explain why this is an environmental justice issue.

7. Who or what organization do you know that is practicing environmental justice principles in their work? If possible, please provide names and contact information.

Environmental Justice and Public Participation

8. What methods can be used to meaningfully involve minority and low-income communities in Hawai`i in environmental decisions? Please take into account that, based on 2000 Census data, at least 25 percent of the Hawai`i population does not speak English very well.

Environmental Justice Guidance Document

9. In developing the guidance document for the environmental review process (detailed in Hawai`i Revised Statute 343), what environmental justice principles should be taken into account for each environmental impact statement (EIS) section listed below?

- Scoping
- Public participation
- Describing the affected environment and environmental setting
- Describing the impacts of the proposed project
- Evaluating alternatives

- Determining significance

- Mitigation

10. Do you know of any good examples of addressing environmental justice within an EIS? If so, please describe.

What more could be done?

11. The passing of Act 294, which requires defining environmental justice for Hawai`i and developing a guidance document for the environmental review process, is a first step in implementing environmental justice principles in Hawai`i. In your opinion, what more needs to be done to achieve environmental justice in Hawai`i?

Additional Comments

12. Is there anything we haven't covered that you would like to add?

Contact Information

If you would like to provide your name and contact information, please do so here.

Name:
Organization
Title:
Address:
City, Zip Code:
Telephone number:
Email:

Which group do you represent?

___Academia
___Community member
___Developer
___Environmental group
___Environmental lawyer
___Government agency
___Native Hawaiian group
___Planning consultant
___Other (Please list)