

HAWAII

How Does Hawaii Define Environmental Justice and Environmental Justice Communities?

Environmental Justice Definitions:

The Hawaii Department of Health (HDOH), Environmental Health Administration (EHA) 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.”¹

Environmental Justice Mapping Tools:

Under HDOH sits the Hazard Evaluation and Emergency Response (HEER) office which “provides state leadership, support and partnership in preventing, planning for, responding to, and enforcing environmental laws relating to releases or threats of releases of hazardous substances, pollutants, or contaminants.”² HEER publishes and maintains the iHEER mapping tool which provides environmental information on “incidents” and “sites” across Hawaii.³ While not explicitly an environmental justice mapping tool, it does speak to hazardous substance releases and contaminated areas.

How Does Hawaii Consider Environmental Justice in its Substantive Actions⁴?

Environmental Justice as a Policy of the Environmental Agency or Across All Agencies:

Hawaii has made commitments to preserving its environment and to furthering environmental justice through various policy initiatives, one of which is the Aloha+ Challenge, launched in 2014 with the support of the governor and legislature. This initiative supports six “environmental and sustainability goals to be achieved by 2030.”

To further this goal, the governor of Hawaii implemented the Sustainable Hawaii Initiative of 2016, which outlined specific goals and timelines related to local food production, biosecurity, watersheds, nearshore ocean waters and renewable energy.

In keeping with these goals, Governor David Y. Ige signed Executive Order 18-06 in November 2016, which authorizes and directs “all departments of the State of Hawaii” to implement actions that assist the state in achieving seventeen goals by the year 2030. These goals, along with a brief summary of the environmental justice aspects, are:

➤ Poverty

¹ HDOH EHA, *Environmental Justice*, <https://health.hawaii.gov/epo/ej> (last visited June 28, 2022).

² HDOH, *HEER* <https://health.hawaii.gov/heer/>.

³ HDOH, *iHEER Information*, <https://health.hawaii.gov/heer/siteinfo/iheer-information/> (last visited June 28, 2022).

⁴ Substantive is defined as governing the original rights and obligations of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/substantive_law (last visited June 28, 2022).

- Decreasing the number of people in Hawaii living in poverty and reducing their exposure to “climate related extreme events and other economic, social, and environmental shocks and disasters.”
- Food and Hunger
 - Ending hunger and promoting food security and nutrition; promoting sustainable agriculture.
- Health
 - Reducing deaths and illness caused by hazardous pollution and other health goals.
- Education
 - Promoting equitable access to education and advancing “environmental and cultural literacy,” among other goals.
- Gender Equity
- Clean Water and Sanitation
 - “Providing clean, safe and affordable access to drinking water; providing adequate and equitable sanitation; reducing water pollution; increase water use efficiency; implementing integrated water resource management; protecting priority watersheds and restoring water related ecosystems; supporting the counties in water- and sanitation-related activities and programs; and supporting local communities regarding water and sanitation management.”
- Affordable and Clean Energy
 - “Ensuring access to affordable, reliable, and modern energy services; promoting clean and renewable energy; working to achieve the goal of one hundred percent renewable energy; facilitating access to clean energy research and technology; promoting investment in clean and renewable energy technology and infrastructure; and expanding and upgrading clean and renewable energy infrastructure.”
- Sustainable Work and Economic Growth
- Industry, Innovation, and Infrastructure
 - Including sustainable industrialization; promoting clean and environmentally sound technologies and processes.
- Reducing Inequality

➤ Sustainable Cities and Communities

- “Ensuring access to affordable housing and basic services; providing access to public transportation; increasing livability through planning at the state and county levels; protecting and safeguarding Hawaii’s cultural and natural heritage; reducing human and economic loss caused by natural disasters; ensuring sufficient air quality and waste management; providing access to green spaces; and implementing integrated policies and plans for the development of cities and towns.”

➤ Responsible Consumption and Production

- “Practicing sustainable management for the efficient use of natural resources; increasing water management, invasive species control and restoration of native species; conduct comprehensive species baseline assessments; increase food security; reduce wasting of food resources; practice the environmentally sound management of waste; encouraging sustainable practices; and providing information on developing sustainable lifestyles.”

➤ Climate Action

- “Strengthening capacity to climate-related hazards and natural disasters; integrating climate change into policies and planning; improving information processes regarding climate change and natural disasters.”

➤ Conserving Ocean, Sea, and Marine Resources

➤ Protecting Life on Land

- Conserving and restoring freshwater ecosystems; sustainably manage forests; combating desertification; conserving mountain ecosystems; sharing the benefits of genetic resources; taking urgent action to reduce the degradation of natural habitats; promoting biodiversity; preventing the extinction of threatened species; ending poaching and trafficking of protected species; implementing the State’s biodiversity plan; and mobilizing resources toward forest management and conservation efforts.

➤ Promoting Peace and Justice

- Including promoting programs that reduce all forms of violence and exploitation.

➤ Promoting Partnerships

- “encouraging partnerships of public, private and civil societies to achieve the goals set forth herein.”

Thus, Hawaii’s executive branch has worked closely with the legislature to promote environmental justice initiatives.

Consideration of Environmental Justice in Permitting:

Chapter 342 of Hawaii’s statutes governs various subparts of environmental regulation, including air pollution, ozone layer protection, water and nonpoint source pollution, noise pollution, solid waste management and pollution regulation, special waste recycling, hazardous waste, underground storage tanks, asbestos, and lead. In short, Hawaii’s regulation of these areas is robust. For example, Chapter 342D, which governs water pollution, prohibits any person from discharging “any water pollutant” into state waters, and establishes civil and administrative penalties for both knowing and negligent violations.⁵

Consideration of Environmental Justice in Enforcement:

To uphold the principles set out in its constitution, Hawaii is one of only two states to develop a statewide environmental court.⁶ It was created by legislative action in July 2015, with the stated purpose to “promote and protect Hawaii’s natural environment through consistent and uniform application of environmental laws by establishing environmental courts.”⁷ The environmental courts’ purpose is to better ensure that the State upholds its constitutional duty to protect the public trust for the benefit of all beneficiaries.⁸

The environmental courts have been successful in protecting environmental justice in a number of ways. Hawaii’s law is unique in that it places the rights to natural resources in the public trust.⁹ Environmental courts are best equipped to protect these rights because of their specialized knowledge base in public trust theory and in technical and legal issues surrounding the environment.¹⁰

Consideration of Environmental Justice in Land Use:

See “Consideration of Environmental Justice in Permitting”.

State Environmental Policy Act “Mini-NEPA”:

The Hawaii Environmental Protection Act (HEPA) supplements the National Environmental Policy Act or (NEPA).¹¹ The legislature in creating the Act found that “the quality

⁵ Haw. Rev. Stat. Ann. § 341 (West).

⁶ Hon. Michael D. Wilson, *The Hawaii Environmental Court: A New Judicial Tool to Enforce Hawaii’s Environmental Laws*, 19 Hawaii B.J. 4 (2015).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ CEQ, *Introducing Federal National Environmental Policy Act Practitioners to the Hawaii Environmental Policy Act*

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.”¹² Although this passage does not explicitly reference the term “environmental justice,” it does expand the protections of NEPA.

HEPA regulates procedures for agency actions that fall within certain “triggers,” such as the use of a shoreline for the purpose of a landfill or oil refinery.¹³ Such an action usually requires an environmental assessment (EA), which determines if an environmental impact statement (EIS) is necessary.¹⁴ Part of this process involves determining whether there is a “significant” environmental impact. Notably, the legislation explicitly protects against the loss of cultural resources.¹⁵ Hawaii has published a flowchart visually outlining the environmental review process.¹⁶

Dedicated Funding to Environmental Justice Communities:

N/A.

Consideration of Cumulative Impacts:

Per the most recent updates to Environmental Impact Statement Rules

‘Cumulative impact’ means the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes the other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.¹⁷

Prohibitions on Disparate Impact Discrimination:

N/A.

Established Environmental Rights:

Process, https://ceq.doe.gov/docs/laws-regulations/state_information/HI_NEPA_Comparison_22Dec2015.pdf (last visited June 28, 2022).

¹² Haw. Rev. Stat. Ann. § 343-1 (West).

¹³ For a full list, see Haw. Rev. Stat. Ann. § 343-5 (West).

¹⁴ Haw. Rev. Stat. Ann. § 343-5 (West).

¹⁵ For further comment on this, see, for example, Elena Bryant, *Innovation or Degradation?: An Analysis of Hawaii's Cultural Impact Assessment Process As A Vehicle of Environmental Justice for kānaka Maoli*, 13 Asian-Pac. L. & Pol'y J. 230 (2011).

¹⁶ Haw. Env't Review Process, https://files.hawaii.gov/dbedt/erp/OEQC_Guidance/Flowchart_ERP-01.22.pdf (last visited June 28, 2022).

¹⁷ Haw. HAR ch. 11-200.1 (2018), available at <https://files.hawaii.gov/dbedt/erp/Laws/2019-HAR-11-200.1-Signed.pdf>.

At the constitutional level, Hawaii has guaranteed that “each person has the right to a clean and healthful environment.”¹⁸ Section 1 of the same constitutional article also establishes a public trust doctrine for all natural resources, going beyond most states’ standards.¹⁹

How Does Hawaii Address Environmental Justice in its Procedures²⁰?

Environmental Justice as Part of Environmental Agency’s Mission:

Chapter 344, entitled “State Environmental Policy,” echoes the same emphasis on the protection of Hawaii’s environment. Its stated purpose is to:

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 Hawaii.²¹

It's more detailed directives are that:

It shall be the policy of the State, through its programs, authorities, and resources to:

(1) Conserve the natural resources, so that land, water, mineral, visual, air and other natural resources are protected by controlling pollution, by preserving or augmenting natural resources, and by safeguarding the State's unique natural environmental characteristics in a manner which will foster and promote the general welfare, create and maintain conditions under which humanity and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of the people of Hawaii.

(2) Enhance the quality of life by:

(A) Setting population limits so that the interaction between the natural and artificial environments and the population is mutually beneficial;

(B) Creating opportunities for the residents of Hawaii to improve their quality of life through diverse economic activities which are stable and in balance with the physical and social environments;

¹⁸ Haw. Const. art. XI, § 9.

¹⁹ A "Constant and Difficult Task": Making Local Land Use Decisions in States with a Constitutional Right to a Healthful Environment, 38 Ecology L.Q. 1, 32-33 (“[Hawaii’s] public trust provision embraces a broad array of natural resources beyond the water resources traditionally associated with the common law public trust doctrine.”).

²⁰ Procedural is defined as rules and the methods used to ensure the rights of individuals. Cornell L. Sch., LII, *Wex Legal Encyclopedia*, https://www.law.cornell.edu/wex/procedural_law (visited by June 28, 2022).

²¹ Haw. Rev. Stat. Ann. § 344-1 (West).

(C) Establishing communities which provide a sense of identity, wise use of land, efficient transportation, and aesthetic and social satisfaction in harmony with the natural environment which is uniquely Hawaiian; and

(D) Establishing a commitment on the part of each person to protect and enhance Hawaii's environment and reduce the drain on nonrenewable resources.²²

Section 4 of the same chapter creates guidelines for all agencies to follow that require them to focus on various environmental concerns in the development of their programs.

Environmental Justice as Part of Other Agency's Mission:

The State of Hawaii Department of Health commits to the policy goal of protecting the health and environment of all Hawaiians. Its Draft Environmental Justice Plan 2015-2020 states its commitment to environmental justice as:

The Hawaii Department of Health will, through the implementation of federal and state environmental laws, rules, policies and programs, endeavor to ensure that no segment of the population bears a disproportionate share of the risks and consequences of environmental pollution.²³

It specifically commit to environmental justice by taking the following actions:

- Promoting environmental justice analysis and procedures throughout the Department of Health;
- Partnering with other stakeholders to maximize the department's impact;
- Prove that environmental justice is being implemented;
- Plan long-term policy outcomes to better ensure human health and a quality environment in Hawaii.²⁴

The Department of Health has also established new greenhouse gas rules and regulations, updated clean water standards, and the Hazard Evaluation and Emergency Response Office expanded mapping to identify priority areas for pending sea level rise.

²² Haw. Rev. Stat. Ann. § 344-3 (West).

²³ DOH EHA, *Draft Environmental Justice Plan 2015-2020*, <https://health.hawaii.gov/epo/files/2015/09/Draft-DOH-EJ-Plan-2015-2020.pdf> (last visited June 28, 2022).

²⁴ *Id.*

In 2008, the governor and the U.S. Department of Education established the Hawaii Clean Energy Initiative, the goal of which is to obtain seventy percent of Hawaii's energy from renewable energy resources.²⁵

Processes and Procedures (including Title VI):

- Non-Discrimination Policy:

N/A.

- Grievance Procedures:

N/A.

- Enhanced Public Participation and Information Access:

N/A.

- Language Access:

Hawaii has established an Office of Language Access “to affirmatively address, on account of national origin, the language access needs of limited English proficient persons.”²⁶ The office’s purpose

is to address the language access needs of limited English proficient persons and ensure meaningful access to services, programs, and activities offered by the executive, legislative, and judicial branches of state government, including departments, offices, commissions, boards, or other agencies, and all covered entities, for limited English proficient persons.²⁷

- Consultation with Indigenous Communities and Tribal Nations:

Another provision of the state’s constitution that has been construed to uphold environmental justice goals is Article XII, § 7:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of *native Hawaiians*

²⁵ Elena Bryant, Innovation or Degradation?: An Analysis of Hawaii's Cultural Impact Assessment Process As A Vehicle of Environmental Justice for kānaka Maoli, 13 Asian-Pac. L. & Pol'y J. 230, 253 (2011).

²⁶ Haw. Rev. St. Ann. § 321C-1.

²⁷ *Id.*

who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.²⁸

Governmental Environmental Justice Structures, Positions, and Funding Streams;

- Environmental Justice Coordinating Agency:

Chapter 342 creates an office of environmental quality control and an environmental council, which is responsible for working with the public to further environmental justice goals and to publish a yearly report about the progress of the state, county, and federal agencies in achieving the State’s environmental goals.²⁹

It is important to note however that the Environmental Planning Office under DOH which largely dealt with environmental justice and released an environmental justice plan³⁰ was closed May 2, 2020, due to lack of funding.

- Environmental Justice Coordinator:

N/A.

- Environmental Justice Advisory Board:

N/A.

- Funding for Environmental Justice:

- The Kānāwai Community Engagement Project provides “opportunities for west Kaua’i residents to learn about and protect against impacts to water quality and public health due to toxic pesticide use by large agricultural companies working in the local area. The project will educate community members on the CWA, FIFRA, and local watersheds through exchanges with local water experts, Hawaiian cultural practitioners, policymakers and state agency conservationists. Project activities include: 1) Engaging at least 150 residents through a Neighborhood Door-to-Door Education effort 2) Conducting walking tours and trainings, and 3) Developing a First Draft of a Community Collaboration Plan of Action.”³¹

²⁸ Haw. Const. art. XII, § 7. For an interpretation of this provision as related to native Hawaiians’ environmental justice, see, for example, Chasid M. Sapolu, *Dumping on the Wai’Nae Coast: Achieving Environmental Justice Through the Hawai’i State Constitution*, 11 Asian-Pac. L. & Pol’y J. 204, 239-40 (2010).

²⁹ Haw. Rev. Stat. Ann. § 341-6 (West).

³⁰ DOH EHA, *Draft Environmental Justice Plan 2015-2020*, <https://health.hawaii.gov/epo/files/2015/09/Draft-DOH-EJ-Plan-2015-2020.pdf> (last visited June 28, 2022).

³¹ EPA, *Environmental Justice Grants*, <https://www.epa.gov/environmentaljustice/environmental-justice-grants#main-content> (last visited June 28, 2022).

- Kokua Kaliha Valley Comprehensive Family Services will “address public health issues within the Kuhio Park Terrace public housing community. Kokua Kaliha Valley Comprehensive Family Services and its partners will conduct a community-wide campaign to mitigate the causes of indoor air pollution, reduce exposure to toxic cleaning chemicals, and address public health issues resulting from poor sanitation within the Kuhio Park terrace public housing community. Run by multilingual, multicultural staff, this project will empower the predominantly Pacific Islander community of Kuhio Park Terrace by providing resident with necessary information and tools to take ownership of their physical surroundings and thereby improve the health of their families and community.”

Additional Hawaii Environmental Justice Provisions?

N/A.

Hawaii Environmental Justice Contacts?

Environmental Review Program (formerly Office of Environmental Quality Control)
 235 South Beretania Street, Suite 702
 Honolulu, Hawai‘i 96813
 (808) 586-4185
dbedt.opsd.erp@hawaii.gov

Hawaii Department of Health
 1250 Punchbowl St, Honolulu, HI 96813
 (808) 586-4400

Department of Health, Environmental Health Administration

- Clean Air Branch:
 - Cab.general@doh.hawaii.gov
 - Wastewater Branch, Hawaii Department of Health; Hale Ola Building; 2827 Waimano Home Road, Room 207; Pearl City, HI 96782-1487
- Safe Drinking Water Branch
 - sdwb@doh.hawaii.gov

Where to Find Hawaii Environmental Justice Laws, Policies, and Tools?

Constitutional Provisions:

- Haw. Const. art. XI, §§ 1, 9.

- Haw. Const. art. XII, § 7.³²
 - Reaffirms traditional cultural and religious rights of indigenous native Hawaiians who inhabited the Hawaiian Islands prior to 1778.

Executive Orders:

- Hawaii’s Department of Health has a stated commitment to supporting federal Executive Order 12898: “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.”³³ This executive order, signed in 1994, is designed to “focus federal attention on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities.”³⁴
- EO 18-06.

Legislation and Statutes:

- Rev. Stat. Ann. §§ 341 - 344 (West).

Hawaii’s most comprehensive laws relating to environmental justice are Chapters 341, 342, and 344, which govern environmental quality (with various sub-parts), and Chapter 343, which formally revises the environmental decision-making process to account for environmental justice concerns.³⁵

- Haw. Rev. Stat. Ann. § 343 (West). State NEPA

Regulations:

- Title 13 of Hawaii’s Regulations governs the Department of Land and Natural Resources, and includes subtitles such as administration, conveyances, fisheries, forestry and wildlife, state parks, water resources, water and land development, natural area reserves system, and land management.

Policies/Guidance:

- Aloha+ Challenge

³² For an interpretation of this provision as related to native Hawaiians’ environmental justice, *see, for example*, Chasid M. Sapolu, *Dumping on the Wai’Nae Coast: Achieving Environmental Justice Through the Hawai’i State Constitution*, 11 Asian-Pac. L. & Pol’y J. 204, 239-40 (2010).

³³ HDOH, *Environmental Justice*, <https://health.hawaii.gov/epo/ej/> (last visited June 28, 2022).

³⁴ EPA, *Summary of E.O. 12898*, <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice> (last visited June 28, 2022).

³⁵ Kerry Kumabe, *The Public’s Right of Participation: Attaining Environmental Justice in Hawai’i Through Deliberative Decisionmaking*, 17 Asian Am. L.J. 181, 189 (2010).

- Sustainable Hawaii Initiative of 2016

Mapping Tools:

- [iHEER](#); provides environmental information on “incidents” and “sites” stateside.

Other:

N/A.