

Public Utilities Commission

Docket No. 05-0145

O`ahu Power Plant

Testimony of

Trisha Kehaulani Watson

re Environmental Justice

LOL T-3

1
2 I am currently a lecturer in American Studies at the University of Hawai`i, Manoa. (In Dec, I'll
3 be a lecturer in History) I am a research assistant at the Kamakakuokalani Center for Hawaiian
4 Studies. And I am a Post-JD fellow at the UH School of Law. I am also Executive Director of
5 Kako`o `Oiwai, a Native Hawaiian non-profit organization.

6

7 **Education**

8

9 University of Hawai`i at Mānoa (Honolulu, HI)

10 *Doctor of Philosophy in American Studies, expected graduation date December 2006*

11 *International Cultural Studies Certificate, expected completion date December 2006*

12 *Dissertation: "Kumu Maoli: Understanding the Physical and Ideological Displacement of*

13 *Native Hawaiians – A Case Study of the Ecocolonization of Wai`anae, Hawai`i"*

14 *Carlos Andrade, William Chapman, Mark Helbling, Paul Hooper and Jon Osorio, Advisors.*

15

16 University of Hawai`i at Mānoa, William S. Richardson School of Law (Honolulu, HI)

17 *Juris Doctor, May 2003*

18 *Environmental Law Certificate, May 2003*

19

20 Washington State University (Pullman, WA)

21 *Master of Arts in American Studies, December 2002*

22 *Thesis: "The Changing Face of Environmental Racism: Why the Current Model of*

23 *Environmental Justice Fails." T.V. Reed, Noel Sturgeon, and Cornell Clayton, Advisors.*

1

2 University of Hawai`i at Mānoa (Honolulu, HI)

3 *Bachelor of Arts in American Studies, August 1999 (awarded with distinction)*4 *Bachelor of Arts in Sociology, August 1999 (awarded with distinction)*

5

6 Kapi`olani Community College (Honolulu, HI)

7

8 Punahou School (Honolulu, HI)

9 *High School Diploma, June 1994*

10

11 **Awards, Professional Recognitions and Fellowships**

12

13 *Post-Juris Doctor Fellowship from the Center for Excellence in Native Hawaiian Law (awarded*
14 *2006)*15 *University of Hawai`i Graduate Fellowship (awarded 2005)*16 *Danny Kalekini Kahala Hilton Scholarship (awarded 2004)*17 *Liko A`e Scholarship (awarded since 2004)*18 *Kuali`i Pauahi Foundation Scholarship (awarded since 2000)*19 *Native Hawaiian Leadership Project (awarded since 2001)*20 *Advocates for Public Interest Law Grant (awarded 2002)*21 *Honu Grant (awarded 2002)*22 *William S. Richardson Scholarship (awarded 2001)*23 *Grant to attend ALI-ABA Environmental Law Conference (awarded 2001)*

1

2 **Honors and Awards**3 *PhD Qualifying Examinations Passed with Distinction (2005)*4 *CALI Excellence for the Future Award (awarded in 2002 for receiving the highest grade in*
5 *Non-Profit Corporations)*6 *Rush, Moore, Craven, Morry and Beh Award (awarded 2000)*7 *CALI Excellence for the Future Award (awarded in 2000 for receiving the highest grade in*
8 *Torts)*9 *CALI Excellence for the Future Award (awarded in 2000 for receiving the highest grade in*
10 *Civil Procedure)*11 *CALI Excellence for the Future Award (awarded in 2001 for receiving the highest grade in*
12 *Civil Rights)*13 *Outstanding T.A. Award Nominee, Washington State University (2000)*

14

15 **Professional Memberships and Service**16 *He `Ohe (Vice-President, Board of Directors, 2005)*17 *Papahana Kuaola (Secretary/Treasurer, Board of Directors, 2005)*18 *Kahea: The Hawaiian-Environmental Alliance (Member, Board of Directors, 2005-2006)*19 *University of Hawai`i Enrollment Management Task Force (Member 2004-2005)*20 *Hawai`i American Studies Association (Officer 2004-2005)*21 *Kuali`i Council, University of Hawai`i at Manoa (Member 2004-2005)*22 *University of Hawai`i Arts and Sciences Advisory Council (Member 2004-2005)*23 *University of Hawai`i Commission on Diversity (Member 2003)*

- 1 *University of Hawai'i Financial Aid Committee (Member 2003)*
- 2 *University of Hawai'i Council on Program Reviews (Council Member since 2003)*
- 3 *University of Hawai'i Student Conduct Committee (Member 2003-2005)*
- 4 *Graduate Student Organization (Executive Council Member 2003-2004)*
- 5 *Phi Delta Phi (Member since 2003)*
- 6 *American Trial Lawyers Association (Director of Student Chapter 2001-2003)*
- 7 *Advocates for Public Interest Law (Board Member 2002-2003)*
- 8 *Equal Justice Hawai'i (Founder and Executive Director 2002-2003)*
- 9 *English National Honor Society (Member since 2000)*
- 10 *Graduate and Professional Student Association (Senator 1999-2000)*
- 11 *Golden Key National Honor Society (Member since 1998)*
- 12 *Sociological Honor Society (Member since 1998)*
- 13 *Community Service*
- 14 *Halele`a Arts Foundation (2006)*
- 15 *Hui Malama (2006)*
- 16 *Native Nations Education Foundation (2004-2006)*
- 17 *Judiciary History Center (2004)*
- 18 *Mediation Center of the Pacific (2004)*
- 19 *American Civil Liberties Union (2003)*
- 20 *Legal Services for Children (2003)*
- 21 *The Contemporary Museum (2003)*
- 22 *Kua'ana Student Services (2001)*
- 23 *Hawai'i's Homeless Women and Children (2001)*

1 *Na Pua No'eau (Center for Gifted and Talented Native Hawaiian Children) (2001)*

2

3 **Professional Experience**

4 Teaching Experience

5 *Lecturer, University of Hawai'i, History 484: Hawaiian Kingdom, Fall 2006*

6 *Lecturer, University of Hawai'i, History 284: History of Hawai'i, Spring 2006*

7 *Lecturer, University of Hawai'i Outreach College, American Studies 320: American*

8 *Environments, Summer 2006*

9 *Lecturer, University of Hawai'i Outreach College, American Studies 320: American*

10 *Environments, Spring 2006*

11 *Graduate Assistant, University of Hawai'i, American Studies 320: American Environments,*

12 *Spring 2006*

13 *Teaching Assistant, University of Hawai'i, Hawaiian Studies 107, Spring 2006*

14 *Instructor, University of Hawai'i Outreach College, How to Start a Non-Profit Organization,*

15 *Fall 2005*

16 *Lecturer, University of Hawai'i Outreach College, American Studies 212: Contemporary*

17 *American Global Issues, Fall 2005*

18 *Lecturer, University of Hawai'i, American Studies 212: Contemporary American Global Issues,*

19 *Fall 2005*

20 *Lecturer, University of Hawai'i Outreach College, American Studies 212: Contemporary*

21 *American Global Issues, Summer 2005*

22 *Graduate Assistant, University of Hawai'i, American Studies 212: Contemporary American*

23 *Global Issues, Spring 2005*

1 *Teaching Assistant, University of Hawai`i, American Studies 150: American and the World, Fall*
2 *2004*

3 *Graduate Assistant, Washington State University, English 100, Spring 2000*

4 *Teaching Assistant, Washington State University, Political Science 300: The American*
5 *Constitution, Spring 2000*

6 *Seminar Leader, University of Hawai`i, Sociology 100, Spring 1999*

7

8 **Experience**

9 Kâko`o `Ôiwi (2006)

10 *Executive Director*

11 Duties: Start up and administer a non-profit organization dedicated to the educational and health
12 of the Native Hawaiian people.

13 University of Hawai`i (2006)

14 *Graduate Research Assistant, Kamakakûokalani Center for Hawaiian Studies*

15 Duties: Assist director in the administrative needs and functioning of the center. Conduct
16 research. Organize events. Assist in public relations.

17 Hawai`i Council for the Humanities (2005)

18 *Project Director, "We the People" Program*

19 Duties: Serve as director for the "We the People" Program in accordance with standards
20 developed by the National Endowment for the Humanities.

21 University of Hawai`i, William S. Richardson School of Law (2005)

22 *Financial Aid Counselor*

23 Duties: Counsel law students on financial aid and scholarship opportunities; assist in the

- 1 admission of incoming students; develop scholarship advising program and database.
- 2 Honua Consulting (2003-2006)
- 3 *Owner and President*
- 4 Duties: Manage and operate small consulting firm; submit bids for State and City
- 5 contracts; consult non-profit organizations regarding development of programs, non-profit status
- 6 and grant writing; assist companies with human resource development and the maintenance of
- 7 positive productivity; creating and maintaining website.
- 8 Jouxson- Meyers and del Castillo, LLLC (2003-2004)
- 9 *Legal Consultant*
- 10 Duties: Assist with administrative petitions and litigation in the areas of health and
- 11 employment law.
- 12 Hawai'i Coalition for Health (2003-2004)
- 13 *Legal Consultant and Website Manager*
- 14 Duties: Assist with administrative petitions and litigation in the areas of health and
- 15 employment law; manage webpage content and newsletters.
- 16 University of Hawai'i, William S. Richardson School of Law (2001-2002)
- 17 *Research Assistant (Professor Hazel Beh)*
- 18 Duties: Research and writing for courses and projects relating to higher education law,
- 19 contract law and construction law.
- 20 Native Hawaiian Legal Corporation (2002)
- 21 *Law Clerk*
- 22 Duties: Trial preparation, motion writing, assistance with on-going litigation, research
- 23 and writing relating to Native Hawaiian rights and land use.

1 Center for Computer Assisted Legal Instruction (2002)

2 *Research Assistant/Computer Programmer*

3 Duties: Create an online tutorial for law students on the subject of contract remedies.

4 University of Hawai'i, William S. Richardson School of Law (2002-2006)

5 *Research Assistant (Professor Virginia Hensch)*

6 Duties: Research and writing on criminal law.

7 Social Welfare Evaluation and Research Unit (2002)

8 *Research Assistant*

9 Duties: Primary research data collection and analysis (including interviewing and

10 statistical analysis), secondary research and writing for a research/evaluation project studying

11 domestic violence intervention.

12 Equal Employment Opportunity Commission (2001)

13 *Law Intern*

14 Duties: In-take, review complaints and conduct investigations into employment

15 discrimination. Assist in on-going litigation.

16 Judge Helen Gillmor, District Court of Hawai'i (2001)

17 *Extern*

18 Duties: Research, writing and drafting.

19

20 **Papers and Publications**

21 *Civil Rights and Wrongs in Educational Discrimination: the Misuse of §1981 in Doe v.*

22 *Kamehameha, Hulili, Forthcoming.*

23 *Some Place in My Body.* In *Indigenous Encounters.* (Honolulu, University of Hawai'i Press)

- 1 Forthcoming.
- 2 Review: *Aloha Betrayed: Native Hawaiian Resistance to American Colonization*. (Durham, Duke
3 University Press, 2004), *Journal of Māori and Pacific Development*, September 2005.
- 4 *Na Lewa: The Physical and Ideological Diaspora of Native Hawaiians*. Presented at the
5 Indigenous Knowledges Conference, Wellington, Aotearoa, 2005.
- 6 *Na Lewa: A Media Analysis of Native Hawaiian Diaspora*. Presented at the East-West Center
7 Cultural Studies Speaker Series, Honolulu, HI, 2004.
- 8 *With the Master's Tools: How and Why Native Hawaiians Should Be Protected Under the*
9 *Endangered Species Act*. Presented at the 1st Annual Native Hawaiian Graduate Student
10 Conference, Honolulu, HI, 2003.
- 11 *Preservation of the Land, Preservation of the People: Broadening the Environmental Justice*
12 *Model to Protect Multicultural Societies*. Presented at 1st Annual Student Equity, Excellence and
13 Diversity Conference Showcasing Diversity, Honolulu, HI, 2002.
- 14 *The Law and the Land: Environmental Injustice in Hawai'i*. Presented at the 13th Annual School
15 of Hawaiian and Asian Pacific Studies Graduate Conference, Honolulu, HI, 2002.
- 16 *Environmental Racism*. Presented at the 19th Annual Public Interest Environmental Law
17 Conference, Eugene, OR, 2002.
- 18 *The Impact of Colonization on Indigenous Cultures as Represented in Things Fall Apart*.
19 Presented at the 1st Annual Phi Alpha Theta Conference, Honolulu, HI, 1999.

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1 **Testimony**

2

3 Environmental justice is the social and legal movement devoted to creating fairness and
4 equality for low-income and majority-minority¹ communities that have been disproportionately
5 impacted by the presence of locally unwanted land uses (hereinafter “LULUs”). As defined by
6 early studies:

7 The concept of “environmental justice” requires “the fair treatment of all races,
8 cultures, incomes and educational levels with require to the development,
9 implementation and enforcement of environmental laws, regulations and polices,”
10 with “fair treatment ‘implying’ that no subgroup of people should be forced to
11 shoulder a disproportionate share of the negative environmental impacts of
12 pollution or environmental hazards due to lack of political or economic strength.”²

13

14 The environmental justice movement developed after a series of studies conducted in the 1980s
15 discovered that minorities were over-represented in districts where hazardous waste sites and
16 landfills were located.³

¹ “Majority-minority communities” refer to communities in which the majority of residents are traditional ethnic minorities (i.e., ethnic minorities by national standards). The use of this term in this paper is distinct from the use of the term in cases that determine the constitutionality of districts that are purposefully drawn to increase the voting power of minorities. See *Shaw v. Hunt*, 517 U.S. 899 (1996); *Bush v. Vera*, 517 U.S. 952 (1996).

² See Owen, Kenneth, Environmental Justice Enforcement Requires Reassessment Under the Equal Protection Clause, Title VI of the Civil Rights Act, and Environmental Statues, 30 Golden Gate L. R. 379, 379 (2000) (citing Offices of Solid Waste and Emergency Response Environmental Justice Task Force, U.S. Environmental Protection Agency, Draft Final Report 17 (1994)).

³ United States General Accounting Office, *Siting of Hazardous Waste Landfills and their Correlations with Racial and Economic Status of Surrounding Communities* (1983); United Church Commission for Racial Justice, *Toxic Wastes and Race in the United States* (1987);

1 While environmental justice has been developing over the last 30 years, only recently
2 have scholars begun to analyze the role land use and zoning have played in environmental
3 racism. When considering how the placement of LULUs have disproportionately affected
4 certain communities, land use and zoning regulations and siting processes have been particularly
5 informative as to how such disparities and injustices developed.

6
7 The environmental justice movement began in 1982, when a group of residents in Warren
8 County, North Carolina, who opposed the development of a toxic waste landfill in their
9 community collectively acted to prevent the construction of the site by lying in the middle of the
10 street in front of construction vehicles.⁴ This delightful show of non-violent resistance,
11 reminiscent of the passive resistance that took place during the civil rights movement,⁵ became
12 an inspiration for an assault against the siting of locally unwanted land uses (hereinafter
13 “LULU”s) in low-income and minority communities across the country.

14
15 The Warren County incident led to a series of studies into the siting of treatment facilities
16 across the county. The results were startling. The first study, conducted by the United States
17 General Accounting Office (hereinafter “GAO”) in 1983, showed a strong correlation between
18 the ethnic and economic composition of communities in the South and the placement of

Environmental Equity Workgroup, Environmental Protection Agency, Environmental Equity: Reducing Risk for all Communities, Workgroup Report to the Administrator (1992).

⁴ *Supra.*

⁵ For a discussion of the Civil Rights Movement’s commitment to non-violence protest, *see generally*, Juan Williams, Eyes on the Prize: American’s Civil Rights Years 1954-1965, 79, 85, 89 (1987). *See also* Patrick Novotny, Where We Live, Work, and Play: The Environmental Justice Movement and the Struggle for a New Environmentalism (2000), in which Novotny credits the model set by the civil rights movement for influencing environmental justice’s social movement organization.

1 hazardous waste landfills.⁶ Then in 1987, the United Church of Christ's (hereinafter "UCC")
2 Commission for Racial Justice released a follow-up study that showed race as the more
3 significant factor in the correlation between race, income and the siting of hazardous waste
4 landfills.⁷ The most startling finding of the UCC's study was the discovery that 3/5 of all
5 African-Americans and Hispanic-Americans live near a toxic waste site.⁸ After the UCC study,
6 the National Law Journal conducted its own study on the Environmental Protection Agency
7 (hereinafter "EPA") that showed that the EPA took considerably longer to respond to the
8 environmental needs of low-income and minority communities than to comparable white
9 communities.⁹

10

11 The Warren County incident also inspired other communities to ban together to resist the
12 siting of unwanted treatment facilities in communities already over-burdened by existing power
13 plants, treatment facilities and landfills.¹⁰ The result has been a considerable grassroots uprising
14 against environmental racism and environmental injustice.

⁶ United States General Accounting Office (hereinafter "GAO"), "Siting of Hazardous Waste Landfills and their Correlations with Racial and Economic Status of Surrounding Communities" (1983).

⁷ United Church Commission for Racial Justice (hereinafter "UCC"), "Toxic Wastes and Race in the United States" (1987).

⁸ *Supra.*

⁹ The National Law Journal (hereinafter "NLJ"), "Special Issues: Unequal Protection: The Racial Divide in Environmental Law," Sept. 21, 1992.

¹⁰ In addition to the Warren County incident, there have been select other instances in which community members have acted collectively to stop a LULU from being built or developed in their community. See Karl Grossman, "Environmental Racism," *Crisis*, April 1991, 14-17, 31-32 (describing a citizens' group in Chicago which combats environmental justice issues); James Bennet, "Hispanic Voters and the Politics of Sludge," *New York Times*, Mar. 5, 1993, B1 (recounting community resistance in New York where Hispanic voters successfully forced plans to develop a sludge plant from their neighborhood); Barbara Ruben, "Grace Reservations: Waste Companies Proposals Targeting Native American Lands are Meeting with a Growing Pattern of Resistance," 23 *Environmental Action* 12 (1991) (citing the 30 waste disposal proposals rejected by collective action by Native American groups on reservations throughout the United States).

1

2 The 1982 Warren County incident simply brought national exposure to a problem that
3 existed long before the nation became aware of it. In 1971, the Council on Environmental
4 Quality acknowledged in their annual report that race and income affected a community's ability
5 to control and better their surrounding environment.¹¹ In 1979, the first "environmental justice"
6 case had been brought in Texas. In *Bean v. Southwest Waste Management*,¹² town members
7 fought the siting of a landfill in the their community. The plaintiffs argued that the state and city
8 were illegally and discriminately placing the landfill in their community, which was mostly
9 African-American and already overburdened with LULUs.¹³ The court rejected this argument
10 and denied the petitioners' injunction.¹⁴ While *Bean* would later become known as the first
11 environmental justice suit in the United States, the case would remain relatively unnoticed until
12 the Warren County incident a few years later.¹⁵

13

14 The early 1990s would see a push for the government to acknowledge and study
15 environmental justice. In response to the demands of the Michigan Coalition, a group formed in
16 1990 at the "first national gathering on environmental justice"¹⁶ at the University of Michigan
17 School of Natural Resources Conference on Race and the Incidence of Environmental Hazards,
18 the EPA formed the Environmental Equity Work Group. This group would later produce a

¹¹ CEQ annual report (1979); *See also* Environmental Equity Workgroup, Environmental Protection Agency, Environmental Equity: Reducing Risk for all Communities, Workgroup Report to the Administrator (1992).

¹² *Bean v. Southwest Waste Management Corporation*, 482 F. Supp. 673 (S.D. Tex. 1979)

¹³ *Id.*, at 677.

¹⁴ *Id.*, at 677.

¹⁵ While the Warren County incident brought the loss in *Bean* media attention, it did not improve the legal landscape for future plaintiffs similar to those in *Bean*.

¹⁶ COPEEN, *supra*, note 21.

1 report entitled “Environmental Equity: Reducing Risk in All Communities” that assessed the
2 environmental burden placed on minority and low-income communities in the United States and
3 confirmed the existence of the discrimination discovered in the earlier studies.¹⁷
4

5 All these efforts would lead to President Clinton issuing Executive Order No. 12898.¹⁸
6 This order not only addressed the problem of environmental justice in the United States but also
7 directed federal agencies to create strategies for dealing with environmental justice and to take
8 environmental justice concerns into consideration when making agency decisions.¹⁹ The
9 issuance of this order has led to a number of significant changes throughout the federal
10 government.²⁰ Perhaps the most promising change has been the increased focus on public
11 participation and outreach during the National Environmental Policy Act (hereinafter “NEPA”)
12 Environmental Impact Statement (hereinafter “EIS”) process.²¹
13

14 Yet, federal agencies have been slow to police themselves regarding environmental
15 justice practices and efforts in the courts have been widely unsuccessful. Therefore, until
16 enforcement improves,²² even this seemingly promising presidential action will not be enough.
17 Grassroots protests will have to remain the “battle front” of this movement.²³
18

¹⁷ Environmental Equity Workgroup, *supra*, note 29.

¹⁸ 59 Fed. Reg. 7629 (1994).

¹⁹ *Id.*

²⁰ Binder et al., *supra*, note 4.

²¹ Council on Environmental Quality, “Environmental Justice: Guidance Under the National Environmental Policy Act,” *reprinted in* Environmental Law: ALI-ABA Course of Study Materials, 217-246 (Feb. 13-15, 2002).

²² As this paper will discuss, enforcement of environmental justice provisions has been unsuccessful in the courts.

²³ *E.g.*, Grossman, *supra*, note 28; Bennett, *supra*, note 28; Ruben, *supra*, note 28.

1 Widely considered an offshoot of the civil rights movement and the environmental
2 movement, discourse on the environmental justice movement quickly developed and illustrated
3 how slow improvement has been.²⁴ While originating as a race issue, the discourse rapidly
4 developed to include class, wealth, culture and gender issues. Very early on, researchers
5 identified the distribution of power within a specific region as the source of discriminatory land-
6 use decisions.²⁵ But the legal scholarship virtually fails to acknowledge the role power plays in
7 land use and environmental issues.

8
9 The academic scholarship on environmental justice continues to push for greater
10 emphasis of the plights of minority groups other than African-Americans and Latinos,²⁶ but it's a
11 hard sell. The bottom line is that most victims of environmental racism are African-American
12 and Latino.²⁷ This "bottom line" has developed into a consensus that falsely supports the
13 position that environmental justice is about all-Black or all-Latino communities with a number of
14 toxic landfills in their community.²⁸ The result has been that the legal battles and remedies have
15 focused on these communities to the detriment of other marginalized racial communities who
16 suffer from equally harmful land uses yet receive no attention and no assistance. Like many
17 other cases in which the mainstream minorities have marginalized other ethnic minorities by
18 contributing to a monolithic picture of race in America,²⁹ environmental justice, in the rare

²⁴ E.g., Cooney, *supra*, note 14; Mihaela Popescu and Oscar H. Gandy, Jr., "Whose Environmental Justice? Social Identify and Institutional Rationality, for Presentation to panel #2214," Environmental Regulation in International Perspective (July 5, 2001).

²⁵ Confronting Environmental Racism: Voices from the Grassroots (Robert Bullard ed., 1993).

²⁶ See Weintraub, *supra*, note 10.

²⁷ UCC, *supra*, note 25.

²⁸ This "consensus" is reflected in the environmental justice claims being brought into court.

²⁹ See generally, The Cultural Territories of Race: Black and White Boundaries (Michele Lamont ed., 1999).

1 instances in which it occurs for minority groups, seems available only to African-Americans and
2 occasionally Latinos. This poses a serious problem for Native groups whose civil rights issues
3 often differ considerably from the legal problems facing other racial or political communities.
4

5 Within the legal model, the environmental justice movement's most glaring flaw has
6 been that practical efforts to combat environmental injustice have remained primarily about race.
7 From the start of the movement, advocates for environmental justice have recognized that
8 environmental injustice is not exclusively about race.³⁰ Yet this fact has gone virtually ignored
9 in the litigation because of the judicial system's general unwillingness to combat, or even
10 acknowledge, class discrimination. Even worse, the mainstream understanding of "race" in
11 America, which remains narrow and overly simplistic, stifles the consideration of racial
12 discrimination against groups that fall outside the restrictive racial paradigm employed by courts,
13 thus limiting even the claims brought solely on the basis of environmental racism.
14

15 Academics have long criticized the practice of "racial dichotomizing" in the United
16 States.³¹ This practice of categorizing race into over-simplified and dichotomous (i.e., "black"
17 and "white") definitions is considered by some to be a cultural "epidemic."³² The reality is that
18 when we discuss race in America, we are often talking only about the relationship between
19 blacks, whites, and occasionally Latinos. The United States is not a nation that has yet grappled

³⁰ GAO, *supra*, note 24; UCC, *supra*, note 25; P. Brown, "Race, Class, and Environmental Health: A Review and Systematization of the Literature," 69 Environ. Res. 15 (1995).

³¹ Omi and Winant, *supra*, note 15, at 153.

³² *Supra*.

1 with the reality that it is quickly becoming a multiethnic nation,³³ and it certainly has not
2 acknowledged racism against marginalized ethnic groups to the degree to which this form of
3 racism exists in the United States.

4
5 The literature dealing with racism against ethnic minorities other than African-Americans
6 and Latinos remains primarily regional.³⁴ Therefore, national trends of racism against other
7 minorities are relatively hard to identify. Demanding federal legislative protection for these
8 groups becomes even more difficult to obtain, because without national concern, it is often
9 difficult to convince the needed number of legislators to support any particular bill.³⁵ Equally
10 difficult to come by is judicial protection granted to communities other than those with clear
11 racial divides. This is particularly problematic since the future of equal rights protection seems
12 particularly grim for America's multiethnic populations.

13
14 Yet, despite the thin body of literature dealing with marginalized ethnic groups, the
15 multicultural³⁶ discourse slowly grows throughout the United States. Many critics of modern
16 race relations in the United States articulate how mainstream America remains largely ignorant

³³ For an adequate survey of America's multicultural history, see Ronald Takaki, A Different Mirror: A History of Multicultural America (1993).

³⁴ See generally, Race (Steven Gregory and Roger Sanjek eds., 1996).

³⁵ The recent difficulty that the passage of the "Akaka Bill", Native Hawaiian Recognition Bill, S.746, 108th Cong. (2001), is seeing is a perfect example of this.

³⁶ By "multicultural", I refer to post-modern and post-structural theories like critical race theory, which advocate for a retelling of consensus narratives that place greater emphasis on the histories of all Americans, as opposed to only the white majority and African-Americans. See Evelyn Hu-Dehart, "P.C. and the Politics of Multiculturalism in Higher Education," in Race, 243-256 (Steven Gregory and Roger Sanjek eds., 1996).

1 about what “race” and “racism” are in the United States.³⁷ Racism in the United States has
2 always been far more diverse and prevalent than the judicial remedies available for racial
3 discrimination. Just as black slaves were once left out of the promise that “all men were created
4 equal,”³⁸ marginalized minorities have been excluded from civil rights and equal protection
5 guarantees in modern America. The case law on racial discrimination effectively demonstrates
6 that when the courts speak of “equal protection” for racial minorities in this country, they mean
7 only African-Americans. “Other” minorities³⁹ are marginalized not only in the rhetoric and the
8 discourse but also in the courtroom.⁴⁰

9
10 Race discrimination cases have primarily benefited African-Americans.⁴¹ This article
11 does not even remotely imply that this group, which has suffered tremendously throughout
12 American history, is not deserving of remedy for the racial injustices it has suffered. But this
13 article does argue that African-Americans are not the only group deserving of equality and
14 protection in the United States.

³⁷ See Steven Gregory, “Race, Rubbish, and Resistance: Empowering Difference in Community Politics,” *in Race*, 366-392, 366 (Steven Gregory and Roger Sanjek eds., 1996): “Research on race during the past decade stresses the instability and heterogeneity of racial categories and meanings.”

³⁸ Derrick Bell, “The Real Status of Blacks Today: The Chronicle of the Constitutional Contradiction,” *in Power, Privilege and Law: A Civil Rights Reader*, 124-134 (Leslie Bender and Dann Braceman eds., 1995).

³⁹ Clara E. Rodriguez, “Challenging Racial Hegemony: Puerto Ricans in the United States,” *in Race*, 131-145 (Steven Gregory and Roger Sanjek eds., 1996); Dana Y. Takagi, “Post-Civil Rights Politics and Asian-American Identity,” *in Race*, 229-242, (Steven Gregory and Roger Sanjek eds., 1996).

⁴⁰ See Gitanjali S. Gutierrez, “Taking Account of Another Race: Reframing Asian-American Challenges to the Race-Conscious Admissions in Public Schools,” 86 *CNLLR* 1283 (2001); Michael Omi, “Rethinking the Language of Race and Racism,” 8 *Asian L. J.* 161 (2001); Enid Trucios-Laynes, “Why ‘Race Matters:’ Latcrit Theory and Latina/o Racial Identity,” 12 *La Raza L.J.* 1 (2001).

⁴¹ See generally, Ann K. Wooster, “Equal Protection and Due Process Clause Challenges Based on Racial Discrimination—Supreme Court Cases,” 172 *A.L.R. Fed.* 1 (2001).

1

2 The discourse on multiculturalism is the best source for exploring how the racial
3 composition of America is currently evolving from easily definable groups to increasing
4 complex compositions of ethnic heritages.⁴² This picture of a complicated multiethnic nation
5 differs substantively from the rhetoric of American jurisprudence that seems committed to the
6 illusion of racial dichotomization. This narrow racial focus has posed a serious problem in
7 environmental litigation. Environmental justice litigation mimics the narrow application of
8 judicial relief in American jurisprudence.⁴³ In his recent article, “Racializing Environmental
9 Justice,” Eric Yamamoto discusses the lack of “meaningful analysis” of racial issues in
10 environmental justice cases. He states:

11 Courts usually forgo meaningful analysis of racial or cultural discrimination in
12 considering environmental justice issues. In particular, when addressing claims of
13 environmental racism, courts focus their equal protection inquires on the disparate
14 impact of a government decision and a search for racial animus by individual
15 actors....This proof is not only difficult to muster, it focuses attention on
16 government officials and tends to flatten racial and cultural distinctions into a
17 monolithic “racial minority” victim.⁴⁴

18

19 This “flattening” of race has impaired environmental justice claims in the courtroom, but it is not
20 solely the reason for the lack of successful litigation; the horrendous burden of proof standard

⁴² For a general account of the development of multiculturalism in the United States, *see generally*, Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (1995).

⁴³ *See* Eric K. Yamamoto and Jen L. W. Lyman, “Racializing Environmental Justice,” 72 U. Colo. L. Rev. 311 (2001).

⁴⁴ *Supra.*

1 placed upon plaintiffs in environmental justice cases has been the primary culprit in defeating
2 these types of claims.

3 Native Hawaiians and Environmental Law in Hawai'i

4
5 There is little disputing that Hawai'i's racial composition and cultural history creates a
6 markedly different cultural atmosphere than that of the United States mainland. Hawai'i was an
7 independent nation until 1898 at which time the United States forcibly overthrew the reigning
8 monarchy.⁴⁵ Most Native Hawaiians saw their ancestral lands stolen by American merchants
9 backed by the American government's political and military force.⁴⁶ These same Native
10 Hawaiians were subsequently forced off these lands⁴⁷ and subjected to years of cultural and legal
11 oppression by the American government.⁴⁸ In addition to its unique cultural and political
12 history, unlike throughout the rest of the United States, there is no racial majority in Hawai'i;
13 most of the residents of Hawai'i are ethnic minorities⁴⁹. This preempts traditional environmental
14 justice claims for most Hawai'i residents. Therefore, any claims brought in Hawai'i would have
15 to be brought under laws other than Title VI or the equal protection clause. The Hawai'i State
16 Constitution is currently the only law under which environmental justice claims could be brought
17 in Hawai'i.

18

19 The Hawai'i State Constitution contains a seemingly impressive provision entitling all

⁴⁵ Michael Dougherty, To Steal a Kingdom: Probing Hawaiian History (1992).

⁴⁶ *Supra*.

⁴⁷ Michael Kioni Dudley and Keoni Kealoha Agard, A Call for Hawaiian Sovereignty (1990).

⁴⁸ Sally Engle Merry, Colonizing Hawai'i: The Cultural Power of Law (2000).

⁴⁹ U.S. Census 2000, *available at* <http://www.census.gov> (last visited April 20, 2002).

1 the residents of Hawai'i to the right to a healthy environment⁵⁰. Article IX of the Hawai'i State
2 Constitution ensures every citizen the right to a "healthful environment."⁵¹ This right to a
3 healthy environment is protected under the Hawai'i State Constitution. Article XI, Section 9
4 reads as follows:

5 Each person has the right to a clean and healthful environment, as defined by laws
6 relating to environmental quality, including control of pollution and conservation,
7 protection and enhancement of natural resources. Any person may enforce this
8 right against any party, public or private, through appropriate legal proceedings,
9 subject to reasonable limitations and regulation as provided by law.⁵²

10

11 The language of this section creates a self-executing constitutional provision,⁵³ which also
12 provides standing for any citizen who takes legal action to enforce this right. In this regard, the
13 Hawai'i Constitution has created legal rights for its citizens not available in many other states.⁵⁴
14 Unfortunately, efforts to enforce this right have yielded mixed results.⁵⁵ This provision is often

⁵⁰ Hawai'i Constitution, Article IX, Section 9.

⁵¹ *See generally*, Robert McClaren, "Environmental Protection Based on State Constitutional Law: A Call for Reinterpretation," 12 U. Haw. L. Rev. 123 (1990).

⁵² Added Constitutional Convention 1978 and election Nov 7, 1978

⁵³ "Constitutional provisions are self-executing when they are complete in themselves and do not require further legislative action." Janelle P. Eurick, "The Constitutional Right to a Healthy Environment: Enforcing Environmental Protection through State and Federal Constitutions," 11-SPG Int'l Legal Presp. 185, 202 (2001).

⁵⁴ For a discussion on the constitutional environmental rights in other states, *see* Eurick, *supra* note 108; Chuck D. Barlow, "State Environmental Justice Programs and Related Authorities," *in the Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risks*, 140-150 (Michael B. Gerrard ed, 1999).

⁵⁵ *See* Carole L. Gallagher, "The Movement to Create an Environmental Bill of Rights: From Earth Day, 1970 to the Present," 9 Fordham Env'tl. L. J. 107, 137-141 (1997).

1 cited in law reviews articles as progressive.⁵⁶ Unfortunately, this right can hardly be considered
2 substantive. There is no evidence to demonstrate that the state has ever taken any action to
3 define what it means to have a constitutional right to a healthy environment or that it actively
4 protects this right. Not all the courts in Hawai'i have been willing to afford plaintiffs this state
5 constitutional right.

6
7 Environmental claims have found no success in Hawai'i's federal district courts, where a
8 traditional environmental justice would generally be brought. In two cases, *Stop H-3 Association*
9 *v. Lewis*⁵⁷ and *Fiedler v. Clark*,⁵⁸ federal district courts refused to extend Article XI rights to the
10 plaintiffs in those cases. Fortunately, the State of Hawai'i's high court has not followed the
11 federal courts' lead in refusing to acknowledge the rights established in Article XI of the Hawai'i
12 State Constitution. As discussed later in this chapter, this difference may be reason for potential
13 environmental justice plaintiffs to be hopeful about the viability of their claims in Hawai'i
14 courts. In *Life of the Land v. Land Use Commission of the State of Hawai'i*⁵⁹, *Richard v. Metcalf*
15 ⁶⁰ and *Kahuna Sunset Owners Association v. Maui County Council*⁶¹, the Supreme Court of the
16 State of Hawai'i has found that Hawai'i residents do in fact have the right to enforce the right
17 conferred in Article XI of the Hawai'i State Constitution.

18

19 Yet, Hawai'i has no "environmental justice" statute. Therefore, Hawai'i residents have

⁵⁶ See generally, Susan Morath Horner, "Embryo, Not Fossil: Breathing Life into the Public Trust in Wildlife," 35 *Land & Water L. Rev.* 23, 64-66 (2000).

⁵⁷ *Stop H-3 Association v. Lewis*, 538 F. Supp. 149 (D. Haw. 1982), rev'd on other grounds, 740 F.2d 1442 (9th Cir. 1984), cert. denied, 471 U.S. 1108 (1985).

⁵⁸ *Fiedler v. Clark*, 714 F.2d 77 (9th Cir. 1983).

⁵⁹ *Life of the Land v. Land Use Commission of the State of Hawaii* 623 P.2d 431 (Haw. 1981).

⁶⁰ *Richard v. Metcalf*, 921 P.2d 169 (Haw. 1996).

⁶¹ *Kahuna Sunset Owners Association v. Maui County Council*, 948 P.2d 122 (Haw. 1997).

1 no statutory right to a healthy environment and no party or entity is required by state law to
2 consider “environmental justice” issues when making land use decisions. The problem with
3 having a constitutional right but no statutory right is that constitutional rights, although
4 substantial because they are conferred by the constitution, are often vague and therefore difficult
5 to enforce in court, as is the case with Hawai’i’s constitutional guarantee to a “healthful
6 environment.” Statutory rights are generally more specific as to the rights they ensure, either
7 through the statutory language itself or through the legislative history. The lack of statutory
8 language presents a considerable problem for victims of environmental injustice in that it
9 provides state agencies and county councils a means of circumventing environmental justice
10 considerations when making land use decisions. A few states have experimented with
11 environmental justice statutes,⁶² allowing parties to obtain relief under state law instead of state
12 constitutions or federal environmental statutes. Arkansas, Florida, Tennessee and Virginia have
13 all passed environmental justice statutes within the last ten years.⁶³

14

15 This is not to insinuate that developers and agencies have no obligation to local
16 communities regarding the environmental impact of their actions. Under the Hawai’i Revised
17 Statutes (hereinafter “HRS”), agencies are required to determine the significance of all projects
18 undertaken by state and city agencies. Under Section 11-200-12, “agencies shall consider the

⁶² All states have laws regarding environmental standards and procedures. They are generally given this authority under federal statutes and are regulated by the Environmental Protection Agency (“EPA”). Although “state statutes often contain stricter procedural requirements and provide for greater involvement by affected communities when compared to federal laws,” Valerie P. Mahoney, “Environmental Justice: From Partial Victories to Complete Solutions,” 21 *Cardozo L. Rev.* 361, 376 (1999), very few have taken affirmative legislative steps to address environmental justice issues.

⁶³ Mahoney, *supra*, (note 117), discussing the various state legislation passed to address environmental justice issues at the state level.

1 sum of effects on the quality of the environment.”⁶⁴ Section (b) provides additional guidance as
2 to determining if action is in fact “significant”: “action shall be determined to have a significant
3 effect on the environment if it...(4) [s]ubstantially affects the economic or social welfare of the
4 community or State.”⁶⁵ While this language is broad, it has to date not been interpreted to
5 include consideration of environmental justice issues (i.e., any disproportionate impact upon
6 low-income and/or racially targeted communities).

7

8 Hawai’i’s environmental laws therefore fall short of the initiatives taken by some other
9 states to relieve some of the burdens placed upon low-income communities by the siting of
10 LULUs. For example, the Arkansas statute states:

11 The General Assembly also acknowledges that, while solid waste management
12 facilities are essential, certain types of facilities impose specific burdens on the
13 host community. National trends indicate a tendency to concentrate high impact
14 solid waste disposal facilities in lower-income or minority communities. Such
15 facilities may place an onerous burden on the host community without any
16 reciprocal benefits to local residents. The purpose of this subchapter is to prevent
17 communities from becoming involuntary hosts to a proliferation of high impact
18 solid waste management facilities.⁶⁶

19

20 To make this law substantive, Section 8-6-1504 of the Arkansas environmental justice law
21 creates a rebuttable presumption against the siting of “any high impact solid waste management

⁶⁴ Hawai’i Revised Statutes (hereinafter “HRS”) §343 et seq.

⁶⁵ HRS §343 et seq.

⁶⁶ Arkansas Code Annotated §8-6-1501.

1 facility” within twelve miles of any other such facility. This statute is particularly effective
2 because it does not require a claimant to show any racial or class discrimination; it only requires
3 a plaintiff to show that one facility will be or has been placed within twelve miles of a similar
4 facility. It completely circumvents the burdensome discriminatory intent requirement discussed
5 in the previous chapter, thus making it easier for communities to bring environmental injustice
6 claims in state court and successfully have hazardous facilities placed elsewhere. Such a law is
7 bold and unique, and clearly without a counterpart in the City and County of Honolulu. This
8 lack of legal protection has arguably been the disproportionate siting of undesirable land uses on
9 the Leeward Coast of O’ahu.⁶⁷

10

11 Despite the lack of protective measures available in Hawai’i, residents are theoretically
12 not completely without legal safeguards. While limited, there are potential legal remedies
13 available for communities discriminatorily burdened by the placement of undesirable land uses,
14 although they have yet to be employed by local residents in an “environmental justice” claim.
15 As previously stated, the Hawai’i Constitution grants its residents “the right to a clean and
16 healthful environment.”⁶⁸ The constitution also includes language concerning standing (i.e., the
17 right to bring a claim before a court),⁶⁹ therefore parties have more latitude in this state than in
18 others in regards to what they can bring a claim for. Further, as stated, the Hawai’i Supreme
19 Court has already addressed the issue of standing under this provision of the state constitution

⁶⁷ Located on the Leeward Coast of O’ahu are the following undesirable land uses: six power plants (of seven located on the island), two major wastewater treatment facilities (of eight located on the island), and all three active landfills on the island, one of which is currently set for expansion. There are two slaughterhouses in this area, as well as a considerable amount of noise nuisance from the Honolulu International Airport.

⁶⁸ Hawai’i Constitution, Article IX, Section 9.

⁶⁹ *Id.*

1 and found that plaintiffs need only state a claim in the “interest of justice” in order to have
2 standing.⁷⁰ Therefore, considering the broad interpretation of standing available in Hawai’i,
3 environmental justice litigation claims, despite the lack of environmental justice litigation to
4 date, retain substantial potential to address any discriminatory land use patterns in this state.⁷¹
5 And considering the growing social concern over the land use siting decisions occurring on the
6 Leeward Coast of the Island of O’ahu (Figure 1),⁷² the environmental right conferred under
7 Article IX of the Hawai’i State Constitution has yet to be tested in an environmental justice
8 claim.

9

10 Environmental Injustice: The Killing of the Leeward Coast

11 The statistics of the Leeward Coast⁷³ are startling. There are a total of eighteen sewage
12 treatment plants, active landfills and power plants on the island of O’ahu. Eleven of those
13 facilities are located in the Ewa District on the Leeward Coast. Correlate the siting of these
14 eleven facilities with the racial composition of these communities and it becomes clear that there
15 is a suspicious correlation between the over-representation of low-income ethnic groups and
16 LULUs on the Leeward Coast. And how the Hawaiian Electric Company (hereinafter “HECO”)

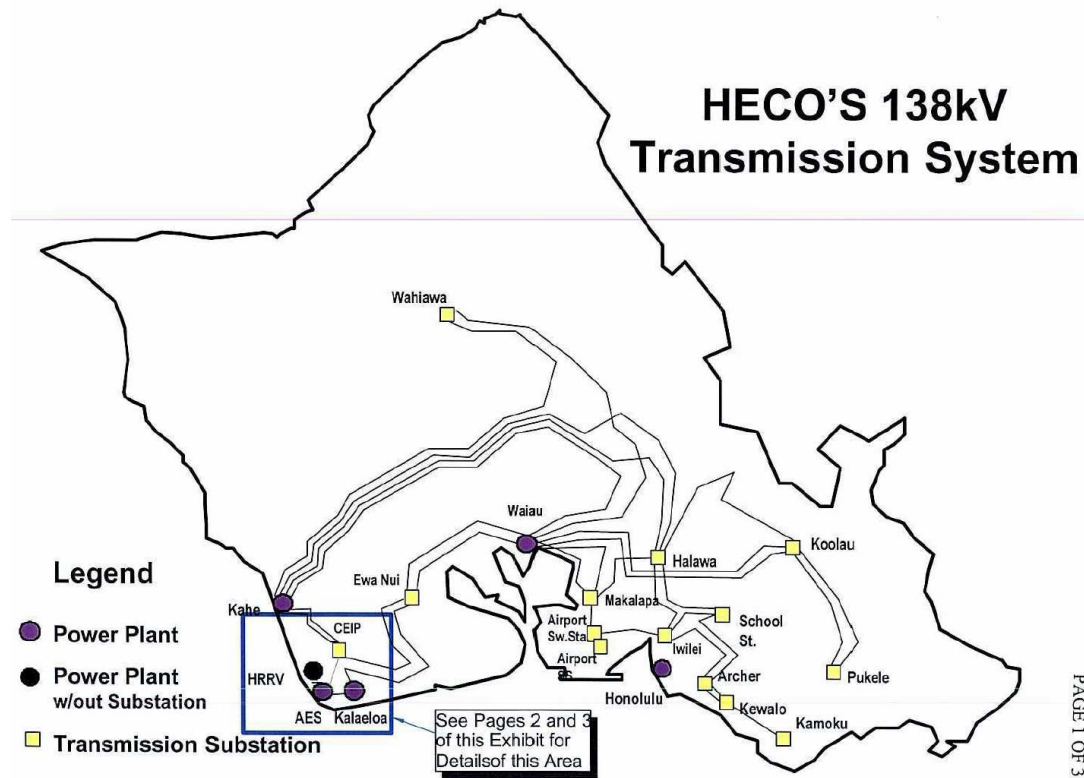
⁷⁰ *Life of the Land v. Land Use Commission*, 623 P.2d 431, 441 (Haw. 1981).

⁷¹ Considering the public opposition to the Waimanalo Gulch expansion discussed in this paper, it is quite possible that residents, who have sited the numerous LULUs already located in their community, may be the first group to be claims under the Hawai’i Constitution to remedy environmental injustice.

⁷² For examples of some of the public comments received in response to the proposal to expand the Waimanalo Gulch landfill on the Leeward Coast, *see* O’ahu Landfill Community Discussion Group, Meeting Notes, *available at* <http://www.opala.org/TECH/WaimanaloGulchMeetingNotes2-20-01.pdf> (last visited April 20, 2002). These comments provide for a good comparison to the comments received by HECO in the public meetings held on the proposed power plant.

⁷³ The Leeward Coast includes the island from Waipahu to Ewa Beach and Barbers Points on the south point of the Island of O’ahu and from Waipahu to Kaena Point on the west point on the island.

1 wants to place yet another power plant on this already over-burdened community.
 2



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Granted, residents on the Leeward Coast do not fall into the traditional paradigm of persons injured by environmental injustice. They are not predominately African American or even predominantly Latino. They are, however, predominately poor.⁷⁴ Therefore, the comparatively simplistic correlation between race, wealth and power that exists on the mainland simply does not apply to Hawai'i. While Anglo-Americans control a great deal of the land and power in Hawai'i, they are not the only ethnicity to disproportionately control wealth and power

⁷⁴ For a review of the district's average wealth and income statistics, see Assessment Resource Center Hawai'i, "School Status and Improvement Report: Leeward District," available at <http://arch.k12.hi.us/school/ssir/2001/leeward.html> (last visited April 20, 2002).

1 in Hawai'i. Along with Anglo-Americans, the Japanese similarly retain a significant amount of
2 political and economic power in Hawai'i.⁷⁵

3
4 Hawai'i's unique immigration history led to the establishment of a pluralistic society
5 many years before multiethnic communities began to crop up on the Continent. By the middle of
6 the 20th century, the Japanese were beginning to gain control over land, wealth and power in
7 Hawai'i.⁷⁶ This control still exists today, resulting in environmental injustice that is better
8 explained by the segregation by wealth, power and race, instead of only race. When one
9 analyzes the distribution of wealth and income in Hawai'i, it is the Japanese and Caucasian
10 population's whose average income exceeds Hawai'i's median income.⁷⁷ And law simply does
11 not provide relief for the victims of discrimination in a society that has no "minority" race or to a
12 "minority" group victimized by another "minority" group, as discussed later in this chapter.

13
14 Federal law makes assumptions about race that do not apply to Hawai'i's multiethnic
15 population. Therefore, it is unlikely that the environmental injustice that continues on the
16 Leeward Coast will receive legal support for resistance in the near future, despite considerable
17 public opposition.⁷⁸ Residents are keenly aware of the problem occurring in their community,
18 even if it seems that no one has yet to use the phrase "environmental injustice." One fairly
19 recent example of the public's awareness of environmental injustice was the public outrage over

⁷⁵ See generally, George Copper and Gavan Daws, Land and Power in Hawai'i (1990).

⁷⁶ *Supra*.

⁷⁷ Jeffrey L. Crane and Alton M. Okinaka, "Social Dynamics of the Aloha State: The Population of Hawai'i," in Politics and Public Policy in Hawai'i (Zachary A. Smith and Richard C. Pratt ed., 1980)

⁷⁸ O'ahu Landfill Community Discussion Group, Meeting Notes, *available at* <http://www.opala.org/TECH/WaimanaloGultchMeetingNotes2-20-01.pdf> (last visited April 20, 2002).

1 the proposal to expand the Waimanalo Gulch Landfill, which demonstrated the city's intent to
2 continue place LULUs on the Leeward Coast despite social and environmental concerns.⁷⁹

3
4 Built as a replacement for the Kailua landfill, which reached capacity and closed in 1992,
5 the idea of Waimanalo Gulch landfill siting was originally sold to the community as a temporary
6 site that would not remain in operation past 2002. This past year, the city proposed to expand
7 Waimanalo Gulch and leave it open until 2006. Immediately, the surrounding community
8 opposed the idea. There have already been complaints that the landfill's emission of ash and
9 dust into the air caused the suspicious rise in the number of children suffering from debilitating
10 and chronic asthma in the surrounding communities.⁸⁰ Residents were concerned that leaving
11 the landfill open and expanding it would only lead to further health problems from residents in
12 nearby communities. At a community meeting held to address public concern, the city
13 confirmed that despite the fact that forty-two sites were originally considered for housing a new
14 landfill, only three options remained: expand the existing site, or build a new site at one of two
15 alternate locations. Both alternate locations were located in the Ewa District on the Leeward
16 Coast.⁸¹

17 Yet, EISs are supposed to reveal the extent to which communities are to be affected by
18 development so that negative impacts can be minimized or mitigated. Required by Hawai'i State
19 law, the City must assess the social and cultural impacts of expanding the landfill in its SEIS.⁸²

⁷⁹ *Supra.*

⁸⁰ James Gonser, "Asthma Cases Blamed on Landfill," *Honolulu Advertiser*, available at <http://the.honoluluadvertiser.com/article/2001/Oct/07/ln/ln19a.html> (last visited April 20, 2002).

⁸¹ O'ahu Landfill Community Discussion Group, Meeting Notes, available at <http://www.opala.org/TECH/WaimanaloGulchMeetingNotes2-20-01.pdf> (last visited April 20, 2002).

⁸² HRS §343 et seq.

1 The HECO DEIS does not adequately do this. It does not do this in comparison to other DEISs
2 and it certainly does not do this in consideration of the fact that HECO has already submitted an
3 application for “give-backs” acknowledging that the placement of this power plant over burdens
4 the Leeward Coast community.

5
6 In their Application to the Public Utilities Commission, HECO explains that it conducted
7 a series of meetings “to discuss the impact that the proposed CIP Generating Station Project
8 would have on these community. These meetings resulted in a consensus that the other
9 communities on Oahu (sic) benefiting from the CIP Generating Station Project, as well as
10 HECO, need to “give back” some sort of benefit to mitigate the impact of the CIP Generating
11 Station on the community accepting the new facility.”⁸³ HECO further acknowledges:

12 Invited participants primarily consisted of resisted of those communities familiar with
13 hosting such facilities as it was clearly evident that major infrastructure projects are
14 unevenly distributed across Oahu’s (sic) communities and that only a few communities
15 bear the brunt of the impact (identified by the Community Impacts Group to include
16 impacts such as aesthetics, natural and cultural resources and possible negative health
17 consequences) resulting from these types of projects. For example, most of Oahu’s (sic)
18 power plants and landfill sites are located along the Leeward coast of Oahu (sic). These
19 burdens are exacerbated when general planning models are applied to Hawaii (sic)
20 without taking into account Hawaii’s (sic) distinctive geographic, cultural and social
21 differences.⁸⁴

⁸³ In the Matter of the Application of Hawaiian Electric Company, Inc. Doc. No 05-0146 (2005)

2

⁸⁴ Id at 7

1
2 HECO itself acknowledges in its Application that the Leeward Coast is already overburdened,
3 yet requests the siting of yet another power plant in this community. Further, it puts forth this
4 request without any adequate analysis of the cumulative impacts of this additional burden upon
5 the community as required under State law.

6
7 The siting of this plant should not be granted until HECO provides an adequate impact
8 statement as to the probable impacts of the proposed action on the human environment
9 surrounding the proposed plant, which should include the entire Leeward Coast, as it is this
10 community in its entirety that shares the burden of housing yet another major infrastructure
11 facility. The Leeward Coast houses not only these facilities, but the majority of the State's
12 superfund sites, a concentration of military complexes and extensive former plantation land,
13 which suffered years of environmental contamination prior to the passage of regulatory
14 environmental laws in the 1970s. Only now are the negative long-term health impacts of these
15 land uses beginning to appear. The State cannot in good conscience site yet another facility in
16 this region without first investigating the serious and suspicious health problems that are forming
17 in clusters in this community. While HECO would like us to believe that our first obligation is
18 to the generation of power, our first obligation is to the health of our people. This project should
19 not move forward until the health of this community is ensured and secure.

20

21