

CADES SCHUTTE
A Limited Liability Law Partnership

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Electronically Filed
THIRD CIRCUIT
3CCV-25-0000438
03-JUL-2026
12:33 PM
Dkt. 102 REPLY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DAISY MITCHELL; REBECCA
MELENDEZ,

Petitioners,

v.

KAMEHAMEHA SCHOOLS (BISHOP
ESTATE); HAWAII COUNTY
PLANNING, JEFF DARROW IN HIS
OFFICIAL CAPACITY AS DIRECTOR;
MARISSA HARMAN, IN HER
PROFESSIONAL & OFFICIAL
CAPACITY; G70; KAWIKA
MCKEAGUE, IN HIS OFFICIAL
CAPACITY; JANE DOES 1-20; DOE
ENTITIES 1-20; DOE
GOVERNMENTAL UNITS 1-20,

Respondents.

Civil No. 3CCV-25-0000438
(Declaratory Judgment)

**RESPONDENTS G70 AND KAWIKA
MCKEAGUE'S REPLY TO
PETITIONERS' SUR-REPLY TO
RESPONDENTS G70 AND KAWIKA
McKEAGUE'S REPLY
MEMORANDUM (DKT. 81),
SUBMITTED JUNE 22, 2026 [DKT.
89] AND FIRST NOTICE OF
ERRATA, FILED JULY 1, 2026
[DKT. 98]**

CERTIFICATE OF SERVICE

Continued Hearing:

Date: July 8, 2026

Time: 10:00 a.m.

Judge: Honorable Kauanoë Jackson

Trial Date: None

RESPONDENTS G70 AND KAWIKA MCKEAGUE'S REPLY TO PETITIONERS' SUR-REPLY TO RESPONDENTS G70 AND KAWIKA MCKEAGUE'S REPLY MEMORANDUM (DKT. 81), SUBMITTED JUNE 22, 2026 [DKT. 89] AND FIRST NOTICE OF ERRATA, FILED JULY 1, 2026 [DKT. 98]

Petitioners appended a proposed sur-reply to their June 22, 2026 *ex parte* motion (Dkt. 89) (the “**Sur-reply**”) and, on July 1, 2026, filed a “First Notice of Errata to Petitioners’ Response and Opposition to [the G70 Respondents’] Motion to Dismiss First Amended Petition for Judicial Review” (Dkt. 98) (the “**Notice**”). The G70 Respondents address both filings below. Neither disturbs the two threshold questions presented by the underlying Motion to Dismiss (Dkt. 55): whether HRS Chapter 343 authorizes suit against an applicant’s consultant, and whether the untimely addition of the G70 Respondents relates back to the original Complaint.

I. THE SUR-REPLY AND NOTICE SUFFER FROM PROCEDURAL ERRORS

A. No Sur-Reply Was Filed as the Court’s Order Directed.

In its June 26, 2026 Order, the Court granted Petitioners leave to file a sur-reply and directed that any sur-reply be filed no later than June 29, 2026. Dkt. 94. No separate sur-reply was filed. The only sur-reply in the record is the proposed submittal appended to Petitioners’ June 22, 2026 *ex parte* motion. The G70 Respondents nonetheless address the substance of that submission below so that no argument is left unanswered.¹

¹ The Sur-reply within the *ex parte* motion was purportedly submitted on behalf of both Petitioners but is signed by only one. To the extent the Court considers it, the arguments contained therein should only apply to the Petitioner that signed it. See HRS § 605-2 (permitting a self-represented party to prosecute or defend only that party’s “own cause”).

B. The “Notice of Errata” Is Additional Argument, Not an Errata.

An errata corrects an inadvertent non-substantive or clerical error in a document already filed. The July 1, 2026 “First Notice of Errata” does not do that. It instead advances new legal argument and distinguishes one authority at a time, the cases cited in the Motion. Notice at 2-6. Those arguments do not appear in Petitioners’ Response to the Motion to Dismiss (Dkt. 57). In substance, the Notice is a second supplemental memorandum, filed without leave and beyond the single sur-reply the Court authorized. The G70 Respondents address its substance below, again out of an abundance of caution, but object to this procedurally improper argument and the Court’s consideration of it.

II. NEITHER SUPPLEMENTAL FILING ADDRESSES THE SUBSTANCE OF THE G70 RESPONDENTS’ MOTION TO DISMISS

A. Chapter 343 Still Does Not Authorize Suit Against a Consultant.

As the Motion and Reply explained, Chapter 343 places the duty to prepare and submit an environmental impact statement on the applicant, HRS § 343-5(c), and the remedy for a deficient submission is nonacceptance or judicial review of acceptance under HRS § 343-7(c). In more than fifty years, no reported Chapter 343 decision has named an applicant’s consultant as a respondent or subjected one to any remedy. Petitioners’ Sur-reply does not identify any provision of Chapter 343 that creates a cause of action against a consultant. Their only answer is that the absence of a reported case does not establish that consultants have “immunity” from Chapter 343. Sur-Reply § A. That inverts the question. The issue is not whether the statute immunizes consultants from a claim that otherwise exists; it is whether the statute

creates a claim against consultants in the first place. It does not, and Petitioners cite no authority to establish otherwise.

B. *Maui Lani* Does Not Support Petitioners.

Petitioners quote *Maui Lani*'s observation that HRS § 343-7 gave the circuit court "original jurisdiction" to consider a Chapter 343 claim in the first instance. Sur-Reply § A. That passage addresses only whether such a claim must be pursued through an HRS Chapter 91 agency appeal. It says nothing about who may be named as a respondent. The G70 Respondents cited *Maui Lani* for a different and un rebutted proposition: the character of an action is determined by its substance, and constitutional or public trust framing does not enlarge the statutory action or evade its structural limits. *Maui Lani Neighbors, Inc. v. State*, 156 Hawai'i 520, 540-42, 575 P.3d 610, 630-32 (2025). Petitioners do not address that holding.

C. The Claims Remain Time-Barred, and Nothing Relates Back.

Petitioners argue that the action was "initiated" within sixty days of acceptance and that § 343-7(c) does not require every respondent to be named within that window. Sur-Reply §§ A, D. That misapprehends the Motion. The G70 Respondents do not dispute that the original action was timely initiated. The defect is that the G70 Respondents were first named on April 8, 2026, 197 days after the September 23, 2025 acceptance and 137 days after the jurisdictional window closed. The question is therefore relation back.

Petitioners' reliance on the "same conduct, transaction, or occurrence" language of *Kest* and *Western Contracting* (Notice at 2-3) addresses only one requirement. Where an amendment adds a new party after the limitations period, HRCP Rule

15(c)(3) imposes two further requirements: the new party must have received such notice of the institution of the action that it will not be prejudiced, Rule 15(c)(3)(A); and it must have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it, Rule 15(c)(3)(B). Petitioners plead no such mistake. They acknowledge that they added the G70 Respondents later, after simply deciding to expand the suit. That is fatal to relation back regardless of whether the new claims arise from the same FEIS.

Petitioners' remaining points do not cure the defect. That G70's name appeared in materials attached to the original Complaint (Sur-Reply § B; Notice at 3) shows awareness of the FEIS process, not notice of the institution of this action against G70, and it does not supply the missing mistake of identity. And the right to amend once as a matter of course under Rule 15(a) (Notice at 2) is a separate question from relation back under Rule 15(c): the former governs whether an amendment is permitted, the latter governs whether it is timely.

Petitioners devote much of the Sur-reply to arguing that *Hong v. Estate of Graham* is an unpublished disposition that cannot be cited under HRAP Rule 35(c)(1). Sur-Reply § B. The Court need not resolve it. The relation-back analysis set out above does not depend on *Hong*, or on any forfeiture by Petitioners. Even setting *Hong* aside entirely and reaching the merits, the amendment does not relate back, for the reasons stated in the original Motion and above.

D. The Liberal Pleading Standard Does Not Rescue Petitioners' Claims

Petitioners marshal *Ravelo*, *Au v. Au*, *Kealoha*, and *One Love* for the familiar rule that a complaint survives if any set of facts would entitle the plaintiff to relief. Sur-

Reply § D; Notice at 5-6. That standard does not reach the two questions here. Whether Chapter 343 extends to a consultant is a pure question of law; no set of facts can make a consultant a proper party under a statute that creates no claim against one. And the sixty-day limit of § 343-7(c) is jurisdictional, *Waianae Coast Neighborhood Bd. v. Hawaiian Elec. Co.*, 64 Haw. 126, 129, 637 P.2d 776, 778 (1981); the “any set of facts” standard cannot supply jurisdiction the statute withholds.

Petitioners’ related argument that dismissal is “premature” because one requested remedy might be unavailable (Sur-Reply § D) fails for the same reason. The Motion does not turn on the availability of a single remedy; it turns on the absence of any cause of action against the G70 Respondents and on the jurisdictional time bar.

III. CONCLUSION

For these reasons, and those set forth in the Motion and Reply, the Sur-reply and the Notice do not change the analysis. The G70 Respondents respectfully request that the Court grant the Motion and dismiss the First Amended Petition as to G70 and Kawika McKeague with prejudice.

DATED: Honolulu, Hawai‘i, July 3, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Calvert G. Chipchase
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Civil No. 3CCV-25-0000438
(Declaratory Judgment)

CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on this date, a true and correct copy of the foregoing document was duly served upon the following parties in the manner indicated below:

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MARISSA HARMAN

DATED: Honolulu, Hawai'i, July 3, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Calvert G. Chipchase

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