**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT**
**STATE OF HAWAI'I**

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REBECCA MELENDEZ,

Petitioner,

vs.

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 CORPORATIONS 1-20; DOE ENTITIES 1-20; AND DOE GOVERNMENTAL UNITS 1-20;

Respondents.

CIVIL NO. 3CCV-25-0000438
(Declaratory Judgment)

**PETITIONER REBECCA MELENDEZ'S MEMORANDUM IN OPPOSITION TO COUNTY RESPONDENTS' MOTION FOR SUMMARY JUDGMENT FILED OCTOBER 22, 2026 [DKT. 223] AND RESPONDENTS KAMEHAMEHA SCHOOLS' AND MARISSA HARMAN'S JOINDER THERETO [DKT. 232]; DECLARATION OF REBECCA MELENDEZ; CERTIFICATE OF SERVICE**

Hearing Date: November 9, 2026

Time: 9:00 a.m.

Judge: Hon. Kauanoe A.D. Jackson

Division Three

NO TRIAL DATE SET

**TABLE OF CONTENTS**



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INTRODUCTION ..... 5
I. THE STANDARD OF REVIEW DOES NOT SUPPORT SUMMARY JUDGMENT (County Mem. at 4–5) ..... 6
II. PETITIONER'S ISSUES COME FROM HER OWN TIMELY COMMENTS, AND HER ACTION IS TIMELY (County Mem. at 6–8) ..... 7
III. PETITIONER'S OTHER REQUESTS FOR RELIEF (County Mem. at 8–11) ..... 8
A. Declaratory, injunctive, and constitutional relief ..... 8
B. Public trust ..... 9
C. Ka Pa'akai and acceptance as "not an approval." ..... 9
D. Director Darrow ..... 11
E. Trust accounting, title, and trails ..... 14
IV. THE FEIS'S CONTENT IS INSUFFICIENT (HAR § 11-200.1-28(b)(2); County Mem. at 13–18) ..... 14
A. Section headings do not establish adequate content ..... 14
B. Manta rays and the ecological importance of Keauhou Bay ..... 14
C. Increased Stormwater Runoff into an Impaired Bay and Deferred Drainage Analysis ..... 15
D. Water-Supply Capacity and Unresolved Issues ..... 16
E. Cultural Practices and Longstanding Community Uses ..... 17
F. Traffic ..... 17
G. Other Infrastructure and Cumulative Impacts ..... 18
H. Inadequate Marine Environmental Baseline ..... 18
V. CONSULTATION OCCURRED, BUT ITS FINDINGS WERE NOT CARRIED INTO THE ANALYSIS (HAR § 11-200.1-28(b)(1); County Mem. at 12–13) ..... 20
VI. THE RESPONSES TO PETITIONER'S COMMENTS ARE NOT COMMENSURATE (HAR § 11-200.1-28(b)(3); County Mem. at 19) ..... 20
VII. DIRECTOR DARROW'S DECLARATION DOES NOT IDENTIFY THE FEIS COPY HE REVIEWED (County Mem. at 18–19) ..... 21
CONCLUSION ..... 22
DECLARATION OF REBECCA MELENDEZ ..... 25
CERTIFICATE OF SERVICE ..... 27

## TABLE OF AUTHORITIES

**Cases**

Cruise Lines International Association, Inc. v. Suganuma, Civ. No. 25-00367 JAO-KJM, Order (D. Haw. Dec. 23, 2025) ..... 11

In re Water Use Permit Applications (Waiāhole), 94 Hawai'i 97, 9 P.3d 409 (2000) ..... 9

Kaupiko v. Bd. of Land & Nat. Res., 154 Hawai'i 456, 555 P.3d 143 (2024) ..... 6, 11, 20, 23

Larez v. City of Los Angeles, 946 F.2d 630 (9th Cir. 1991) ..... 11

Maui Lani Neighbors, Inc. v. State, 156 Hawai'i 520, 575 P.3d 610 (2025) ..... 8

Price v. Obayashi Hawaii Corp., 81 Hawai'i 171, 914 P.2d 1364 (1996) ..... 6, 7, 9, 14

Punohu v. Sunn, 66 Haw. 485, 666 P.2d 1133 (1983) ..... 8

R.W. v. Columbia Basin College, 77 F.4th 1214 (9th Cir. 2023) ..... 11

**Constitutional Provisions and Statutes**

Haw. Const. art. XI, §§ 1, 7 ..... 9

HRS § 343-2 ..... 10, 11

HRS § 343-5(e) ..... 10

HRS § 343-7(c) ..... 7, 8, 11, 12, 22–24

HRS chapter 554D ..... 14

HRS § 264-1 ..... 14

HRS § 632-1(b) ..... 8

**Hawai'i Administrative Rules**

HAR § 11-200.1-24(a) ..... 10, 15

HAR § 11-200.1-24(i) ..... 19

HAR § 11-200.1-24(l) ..... 10, 15, 16, 17, 18, 19

HAR § 11-200.1-24(p) ..... 16

HAR § 11-200.1-24(q) ..... 10, 16

HAR § 11-200.1-26 ..... 21

HAR § 11-200.1-26(a)–(d) ..... 21

HAR § 11-200.1-27(a) ..... 10, 14, 17, 19, 21
HAR § 11-200.1-27(b)(1) ..... 10
HAR § 11-200.1-28 ..... 13, 22, 23
HAR § 11-200.1-28(a) ..... 6, 10, 13, 22
HAR § 11-200.1-28(b) ..... 6, 22
HAR § 11-200.1-28(b)(1) ..... 20, 22
HAR § 11-200.1-28(b)(2) ..... 10, 13–19
HAR § 11-200.1-28(b)(3) ..... 13, 18–21

**Hawai'i Rules of Civil Procedure**

HRCP Rule 15(a)(1), (c)(2) ..... 8
HRCP Rule 21 ..... 11, 24
HRCP Rule 25(d)(2) ..... 11
HRCP Rule 54(c) ..... 24
HRCP Rule 56(c) ..... 7

## INTRODUCTION

Petitioner Rebecca Melendez, pro se, opposes the County Respondents' Motion for Summary Judgment [Dkt. 223] ("County Mem.") and the joinder of Respondents Kamehameha Schools ("KS") and Marissa Harman [Dkt. 232]. The County also "joins in and incorporates by reference" KS's Motion for Summary Judgment [Dkt. 150], County Mem. at 6, and has substantively joined it [Dkt. 230]. Petitioner relies upon and incorporates by reference her Memorandum in Opposition to Dkt. 150, filed October 27, 2026 ("Opp. to Dkt. 150"), together with its Declaration and Exhibits. Because KS and Ms. Harman expressly joined the County's motion, Petitioner opposes their joinder on the same grounds and requests denial of summary judgment as to all Respondents seeking relief under Dkt. 223.

Petitioner does not contend that the FEIS contains no research. Her position is that the research and responses it contains are insufficient, incomplete, and not adequately connected to the actual impacts of the proposed lodging and commercial development. Calling a document a Final Environmental Impact Statement, and pointing to its section headings, does not establish that its contents are complete, accurate, or legally sufficient. The County cites the FEIS's sections and appendices as evidence of sufficiency. Dkt. 223, Mem. at 13–19. Petitioner disputes that sufficiency based on the following evidence:

- the FEIS contains no project-specific marine habitat survey of Keauhou Bay, although KS acknowledges the bay as habitat for endangered Hawaiian monk seals and threatened green sea turtles; its finding of "no specific impacts to marine life" rests on terrestrial surveys, a consultant's unpublished field notes, and studies prepared for other projects (Section IV.B);
- the FEIS defers detailed drainage analysis until after acceptance, although the bay is listed as impaired and the FEIS's own Cultural Impact Assessment recommended "appropriate studies" to prevent runoff (Section IV.C);
- the FEIS leaves to a later DWS determination whether the water system can serve the Project, and its own list of unresolved issues mentions neither water-system capacity nor drainage; (Section IV.D)
- the FEIS lists removal of the longstanding community volleyball court as an unresolved issue and does not show where canoes will be parked and launched (Section IV.E);

- KS's responses to Petitioner's timely comments, and to the 6,198-signature petition she submitted, are generic (Section VI); and
- Director Darrow's declaration does not identify the particular FEIS copy he reviewed (Section VII).

Together, these issues raise substantial questions about whether the FEIS satisfies HAR § 11-200.1-28(a)–(b). Summary judgment should be denied.

**I. THE STANDARD OF REVIEW DOES NOT SUPPORT SUMMARY JUDGMENT**

**(County Mem. DKT 223 at 4–5)** The County relies on the rule of reason, the "very narrow" scope of review, and the presumption of validity. County Mem. at 4–5. Petitioner recognizes that the Court does not substitute its policy judgment for that of the accepting authority and that an EIS need not discuss every possible detail. Price v. Obayashi Hawaii Corp., 81 Hawai'i 171, 182–83, 914 P.2d 1364, 1375–76 (1996). But the rule of reason is considered "in conjunction with HEPA's content requirements." Kaupiko v. Bd. of Land & Nat. Res., 154 Hawai'i 456, 555 P.3d 143 (2024), slip op. at 3, 27–28 (applying the 2018 rules, HAR chapter 11-200, which the Court described as substantively the same as current chapter 11-200.1, id. at 5 n.2, 30 n.7). Even narrow judicial review requires the Court to "ensure that the agency has taken a 'hard look' at environmental factors." Price, 81 Hawai'i at 182 n.12, 914 P.2d at 1375 n.12; see County Mem. at 5. The question is whether the EIS "sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved," Price, 81 Hawai'i at 184, 914 P.2d at 1377 (quoted at County Mem. at 15–16), and whether its errors are "significant enough to defeat the goals of informed decision making," Kaupiko, slip op. at 31. Petitioner maintains that the FEIS's reliance on prior marine studies and its treatment of runoff into an impaired bay fail to demonstrate the project-specific analysis necessary for a hard look and an informed decision. *See* Sections IV.B–IV.C. Petitioner further maintains that the FEIS fails to give serious consideration to cultural impacts. The FEIS acknowledges that "[a]n informal sand volleyball court also provides recreational and team building opportunities for the public," FEIS Vol. I at 2-6 (PDF p. 56), yet states that "[p]roposed KBMP improvements include: the conversion of the existing volleyball court to open space," *id.* at 5-48 (PDF p. 388). It treats the removal of this court, which community members describe as in use for approximately fifty years, principally as a recreation question, without adequately addressing its longstanding importance to the local community. *Id.* at 4-119 (PDF p. 269); FAP at 50, 51, 52. The FEIS's own Cultural Impact

Assessment records that "the club is aware that the hālau will be moved a little more to the north, however, the conceptual plans do not show where, on the beach, they will be able to park and launch their canoes." FEIS Vol. III, App. H at 103 (PDF p. 121).

Petitioner does not ask the Court to "flyspeck" the FEIS or to measure sufficiency by public disagreement. County Mem. at 5. The gaps she identifies concern core information: whether marine species were actually studied, whether runoff into an impaired bay was analyzed before acceptance, whether the water system can serve the Project, and whether existing cultural uses will continue. A presumption of validity cannot supply information the FEIS does not contain.

The County also says EIS sufficiency is a question of law with "no factual determinations to be made." County Mem. at 4 (quoting Price, 81 Hawai'i at 182). Yet it relies on Director Darrow's declaration asserting that the County reviewed a complete FEIS, without identifying or providing the actual document reviewed or any evidence, beyond his own assertion, that it contained the six omitted pages. Dkt. 228, Darrow Declaration (PDF pp. 160–161). The County's own filed FEIS also omits those pages. Dkt. 224, Ex. 1, Vol. I (PDF pp. 58–59). This unresolved issue warrants denial of summary judgment. Because this leaves a "genuine issue as to [a] material fact," summary judgment should be denied. HRCP Rule 56(c); *see* Section VII. See Section VII.

**II. PETITIONER'S ISSUES COME FROM HER OWN TIMELY COMMENTS, AND HER ACTION IS TIMELY (County Mem. at 6–8)** Each issue Petitioner raises was identified and discussed in her timely written comments. FEIS Vol. II, App. C at 36–38 PDF p.p. 335-337. The same concerns were raised by numerous other commenters during the review period. HRS § 343-7(c) therefore does not bar them. Each issue argued here comes from her own timely DEIS comments, which the FEIS reproduces: Keauhou Bay's impaired-water status and runoff (FEIS Vol. II, App. C, pp. 126–129 (PDF pp. 425–428)); harm to coral, reef fish, and manta rays (id. pp. 236–237 (PDF pp. 535–536)); endangered monk seals, green sea turtles, and human disturbance (id. pp. 277–279 (PDF pp. 576–578)); canoe paddling, the bay's one-person canoes, fishing, baptisms, and funerals (id. pp. 36–38 (PDF pp. 335–337)); North Kona's 2023 mandatory 25% water restriction and the Honokōhau Deepwell failure (FAP Exs. R-4-36, R-4-38); resort traffic (FEIS Vol. II, App. C, PDF pp. 343–347, 379–380); and KS's financial

priorities (FAP Exs. R-4-50–R-4-51). Her timely submission also included the opposition petition, with 6,198 signatures. FAP Exs. R-4-2, R-4-51; Melendez Decl. ¶ 10 (Opp. to Dkt. 150).

Petitioner asserts no claim on behalf of Jeffrey Caufield or anyone else. County Mem. at 7. Other commenters' materials are offered only as corroboration of issues she raised herself; HRS § 343-7(c) limits the issues, but it does not require the Court to ignore evidence relevant to them. Opp. to Dkt. 150, Ground (3). On timeliness, the County concedes that Petitioner filed this action on October 22, 2025, within sixty days of the September 23, 2025 notice of acceptance. County Mem. at 3, 8. The original complaint alleged inadequate responses to comments and incomplete environmental review, and its attached comments raised water quality and effects on the bay. Dkt. 1, Statement of Facts ¶¶ 7–13, Count I ¶¶ 14–16 (PDF p. 2); id., PDF pp. 8–16, 60–92. The April 8, 2026 FAP elaborates the same challenge to the same acceptance; Petitioner maintains that her filing was permitted under HRCP Rule 15(a)(1) and that the elaborated allegations relate back under Rule 15(c)(2). Opp. to Dkt. 150, Ground (6). Rule 15 does not dispense with § 343-7(c)'s comment limitation, and Petitioner contends that the issues concerning FEIS adequacy discussed here fall within her timely comments.

## III. PETITIONER'S OTHER REQUESTS FOR RELIEF (County Mem. at 8–11)

**A. Declaratory, injunctive, and constitutional relief.** The County argues under HRS § 632-1(b) and *Maui Lani Neighbors, Inc. v. State*, 156 Hawai'i 520, 575 P.3d 610 (2025), that these requests are limited to HEPA sufficiency review. County Mem. at 8–9. Yet the County itself acknowledges that "only a genuine Chapter 343 sufficiency challenge receives original circuit court jurisdiction under HRS § 343-7." *Id.* at 9. That is precisely Petitioner's challenge. Petitioner proceeds under HRS § 343-7(c) and has already addressed this argument, including *Maui Lani* and *Punohu v. Sunn*, 66 Haw. 485, 666 P.2d 1133 (1983), in her filed opposition. Dkt. 236, Grounds (7), (13), and (14), at 14–15, 22–23. *Maui Lani* confirms that "the circuit court has jurisdiction to hear challenges brought pursuant to HRS § 343-7," that article XI, section 9 claims defined by HRS chapter 343 "may proceed on remand," and that if "there was not a proper environmental review," the resulting permit "could be invalidated." *Maui Lani*, slip op. at 54–56. Accordingly, Petitioner seeks "a declaration that the FEIS is unlawful and invalid,

vacatur of the County's FEIS acceptance, and appropriate injunctive relief," while maintaining her other requested relief to the extent authorized by law. Dkt. 236, Ground (14), at 23; FAP pp. 102–103.

**B. Public trust.** The County argues that the public trust does not apply because "the project lands are privately owned." County Mem. at 10. Petitioner has addressed her constitutional claims in Dkt. 236, Ground (13), at 22–23. But private ownership of KS's land does not eliminate the State's public-trust obligations concerning the Keauhou Aquifer and the waters of Keauhou Bay. "All public natural resources are held in trust by the State for the benefit of the people," Haw. Const. art. XI, § 1, and "[t]he State has an obligation to protect, control and regulate the use of Hawaii's water resources," *id.* § 7. The Hawai'i Supreme Court has held that the public trust doctrine applies to all water resources, including groundwater. *In re Water Use Permit Applications* (*Waiāhole*), 94 Hawai'i 97, 9 P.3d 409 (2000). The FEIS likewise identifies the "Public Trust Doctrine" in the Keauhou water plan, explaining that "the State holds ownership over public water resources as a trustee for the benefit of the people of the State." FEIS Vol. I, p. 5-46 (PDF p. 386). As detailed in Dkt. 236, Ground (13), at 22, the FEIS projects 68,800 gallons per day for lodging alone, while DWS identifies only 101 water units assigned to the lodging parcel, equivalent to approximately 40,400 gallons per day. FEIS Vol. I, Table 4-15, p. 4-145 (PDF p. 295); FEIS Vol. II, PDF p. 38. Although KS claims 240 existing water credits for the overall Project Area and asserts that DWS confirmed their sufficiency, KS's response does not identify the supporting DWS confirmation, and the FEIS does not document how those credits are allocated among the parcels. FEIS Vol. I, p. 4-85 (PDF p. 235); FEIS Vol. II, PDF p. 504. DWS expressly stated that additional water could be made available subject to Water Board approval, and KS earlier acknowledged it was working with DWS to allocate the necessary credits. FEIS Vol. II, PDF pp. 38–39. The FEIS therefore leaves unresolved whether sufficient credits were assigned to the lodging parcel, whether further Water Board approval was necessary, and how the proposed water demand would be accommodated. These omissions raise a substantial question about the adequacy of the FEIS's water-resource disclosures before acceptance. Dkt. 236 at 22–23.

**C. Ka Pa'akai and acceptance as "not an approval."** The County argues that *Ka Pa'akai* findings attach only at the discretionary permit stage and that acceptance "authorizes nothing." County Mem. at 10, 17 (citing *Price*, 81 Hawai'i at 181); *see* FEIS Vol. I, p. 4-31

(PDF p. 181) (deferring *Ka Pa'akai* analysis to the SMA permit). HEPA independently requires adequate evaluation of cultural impacts before FEIS acceptance. HRS § 343-2; HAR §§ 11-200.1-24(a), (l), 11-200.1-27(a), (b)(1), 11-200.1-28(a), (b)(2). The EIS must also identify unresolved issues and explain how they will be resolved before commencement of the action or provide overriding reasons for proceeding without their resolution. HAR § 11-200.1-24(q); *see* HAR § 11-200.1-27(b)(1).

The FEIS lists the volleyball court's "removal and possible relocation" as unresolved, characterizes such issues as "future operational considerations," and states that they largely "will be addressed following construction." FEIS Vol. I, § 4.17, p. 4-189 (PDF p. 339). Although the Cultural Impact Assessment concludes that the proposed plans do not appear to adversely impact canoeing, it recognizes canoe use as "an ongoing and ever-evolving traditional customary practice," records that the plans "do not show where, on the beach, they will be able to park and launch their canoes," and warns that failure to implement its recommendations "has the potential to adversely impact" cultural resources and traditional customary practices. FEIS Vol. III, App. H, pp. 103, 119 (PDF pp. 121, 137).

These are not merely future operational details. The FEIS identifies five issues unresolved at publication: cultural heritage programming; selection of a lodging developer and operator; an agreement concerning County walkways; removal and possible relocation of the community volleyball court; and arrangements for boat trailer parking. Yet it characterizes these matters as "future operational considerations" that largely "will be addressed following construction." FEIS Vol. I, § 4.17, p. 4-189 (PDF p. 339). For most of these matters, the FEIS does not explain how they will be resolved before commencement of the action, as HAR § 11-200.1-24(q) requires. Its assertion that the issues "do not present significant barriers to proceeding with the Proposed Action," *id.*, does not supply the overriding reasons the rule requires, because it does not explain why proceeding without resolving matters affecting longstanding community recreation, shoreline access, and cultural practices is justified. Petitioner's timely comments warned of removing one-person canoes to accommodate tourists and interfering with fishing, baptisms, and funerals. FEIS Vol. II, App. C, pp. 36–38 (PDF pp. 335–337); Dkt. 236, Ground (4), at 10. Because FEIS acceptance is "a condition precedent to approval of the request and commencement of the proposed action," HRS § 343-5(e), postponing

these matters until after construction does not excuse inadequate cultural-impact disclosure before acceptance. *See* Sections II, IV.E.

**D. Director Darrow.** The County argues that the Court cannot remove Director Darrow from office. County Mem. at 11. Petitioner addressed this argument in her previously filed opposition, Dkt. 236, Ground (5) pp. 12-13. Whether he remains an official-capacity Respondent is a separate question. HRS § 343-2 defines "agency" to include county executive departments, and Director Darrow signed the challenged acceptance, stating, "I accepted the FEIS on behalf of the Planning Department." Darrow Decl. ¶ 4; County Ex. 3; Dkt. 236, Ex. A-20-1, A-20-2 PDF 32-33. HRCP Rule 25(d)(2) contemplates a public officer sued in an official capacity, and HRCP Rule 21 permits the Court to address the joinder or dismissal of parties on just terms. Kaupiko held that the State was a proper party to defend an EIS acceptance even though the EIS was deemed accepted by operation of law. Kaupiko, slip op. at 3, 24–25. Kaupiko did not decide whether an individual director is indispensable. In *Cruise Lines International Association, Inc. v. Suganuma*, Civ. No. 25-00367 JAO-KJM, Order at 51–52 (D. Haw. Dec. 23, 2025) (ECF No. 103), the federal court declined to dismiss official-capacity defendants as redundant of their government entities, stating that it was "unaware of any requirement that it must do so." The court explained that although "[a] suit against a governmental officer in his official capacity is equivalent to a suit against the governmental entity itself," plaintiffs "may still properly bring official capacity suits 'against persons who would be responsible for implementing any injunctive relief.'" *Id.* at 52 (quoting *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991), and *R.W. v. Columbia Basin Coll.*, 77 F.4th 1214, 1222–23 (9th Cir. 2023)). The court therefore declined to dismiss the official-capacity claims. *Id.* This reasoning supports retaining Director Darrow in his official capacity. Also, HRS § 343-7(c) authorizes judicial review of "the acceptance or nonacceptance of an environmental impact statement," and HRS § 343-2 defines "agency" to include county executive departments. The ERP submission record identifies the Planning Department as the accepting authority. Dkt. 236, Ex. A-20-4 (PDF p. 35). Director Darrow signed the challenged acceptance. Dkt. 228, Darrow Decl. ¶ 4 (PDF p. 160); Dkt. 236, Ex. A-20-2 (PDF p. 33). As the official who signed that acceptance, Darrow is an appropriate official-capacity Respondent for prospective relief concerning the decision, including implementation of any order vacating the acceptance. HRCP Rule 25(d)(2) recognizes that public officers may be sued in their official capacities. Petitioner therefore requests that Director

Darrow remain a party. Whether removal from public employment is an available remedy is a separate issue and does not determine the viability of Petitioner's HRS § 343-7(c) challenge.

Director Darrow, not County reviewer Alex Roy (Planning Department), was responsible for the County's FEIS acceptance determination. Darrow Decl. ¶ 4; County Ex. 3. As early as January 17, 2023, Petitioner notified Roy that nearly 5,000 people had signed her petition opposing the resort. Roy acknowledged that he had "seen the petition," that "the applicant is aware of the petition also," and that he had "not read all the comments." FAP Exs. R-1-1–R-1-2, pp. 361–362 (PDF pp. 416–417). He assured Petitioner that during the Draft EIS process "the applicant is required to respond to all comments." *Id.* Petitioner subsequently submitted 6,198 signatures with her timely DEIS comments. FAP Exs. R-4-2, R-4-51, pp. 381, 430 (PDF pp. 439, 488). The FEIS omitted portions of Petitioner's timely written comments, including her introductory opposition to the resort development and information concerning land ownership and the Bishop Estate will, despite claiming to reproduce her comments verbatim. Dkt. 236, Ground (2), at 8. Yet Director Darrow signed an acceptance declaring that the FEIS "satisfactorily responds to review comments," without demonstrating that he ensured the FEIS adequately addressed the substantive concerns raised about water resources, marine life, cultural practices, and community access. Dkt. 236, Ex. A-20-1- A-20-2 (PDF p. 32-33). Worse, the FEIS the County accepted and uploaded omitted six consecutive pages, Sections 2.6.2 through 2.8, including the entire Purpose and Need and Evaluation Criteria sections, the very criteria the FEIS used to evaluate and reject the alternatives. FEIS Vol. I, PDF pp. 9, 58–59.; Dkt. 236, Ex. A-20-1 (PDF p. 32). That omission went uncorrected for approximately ten months. County Dkt. 228, Exhibit 2, Attachment B, PDF pp. 153–154 (Darrow's July 14, 2026 letter concerning the six omitted pages). Darrow Declaration: Dkt. 228, PDF p. 161, paragraphs 10–12.

Accepting an FEIS publicly released without its own Purpose and Need section raises a serious question about whether County Planning Director Darrow exercised the scrutiny HEPA requires. Although Darrow later asserted that he reviewed a complete FEIS, he did not submit the actual version he claims to have reviewed as an exhibit supporting his declaration. His assertion does not explain why the County accepted and uploaded an incomplete FEIS or why the six-page omission remained uncorrected for approximately ten months, until July 2026, when the missing pages were brought to the Court's attention during proceedings in this case. As Petitioner previously argued, the July 2026 errata does not establish that the defects in the

publicly released FEIS were retroactively cured after its September 2025 acceptance. Dkt. 236, Ground (1), at 5–6.

An accepting authority cannot satisfy HEPA merely by signing a letter declaring the FEIS adequate. Acceptability depends on the FEIS "in its completed form," including whether its content requirements are satisfied and whether comments received satisfactory responses. HAR § 11-200.1-28(a), (b)(2)–(3).

The stakes of that review were high. The Project would bring retail development and 150 bungalow-style lodging bedrooms to Keauhou Bay, the birthplace of Kauikeaouli (Kamehameha III). It would convert to open space the community volleyball court, which the FAP alleges has been in use for approximately fifty years. It would move the canoe hālau without showing where canoes would be parked and launched, bring more visitors to a shoreline used by endangered Hawaiian monk seals and threatened green sea turtles, and add 340,919 square feet of impervious surface above an impaired bay. FEIS Vol. I, pp. 4-86–4-88, 4-145, 5-48 (PDF pp. 236–238, 295, 388); Vol. III, App. H, p. 103 (PDF p. 121); FAP p. 51. These are not generalized objections to development. They concern cultural practices, public access, protected resources, endangered species habitat, and the sufficiency of the FEIS. Director Darrow's responsibility was not merely to sign an acceptance letter, but to ensure that the FEIS satisfied HEPA's legal requirements before accepting a document upon which the future of Keauhou Bay, its cultural heritage, natural resources, and surrounding communities may depend.

Director Darrow accepted an FEIS published with six missing pages, without a demonstrated current marine environmental baseline, with detailed drainage analysis deferred despite substantial increases in runoff into an already impaired bay, with unresolved water-supply questions, without adequate evaluation of impacts on protected marine life and their habitat, without adequate evaluation of longstanding cultural practices, and with serious questions about whether the substantive concerns raised through Petitioner's timely comments and 6,198-signature petition received the responses required by law. These documented deficiencies raise substantial questions about whether Director Darrow fulfilled his responsibilities under HRS chapter 343 and HAR § 11-200.1-28 before accepting the FEIS. Keauhou Bay, its cultural practices, and the community that depends on it are entitled to the full environmental review the law requires before an FEIS is accepted—not afterward.

**E. Trust accounting, title, and trails.** The County's arguments concerning HRS chapter 554D, title, and public trails under HRS § 264-1, County Mem. at 8–9, are addressed in Petitioner's previously filed opposition, Dkt. 236, Grounds (8)–(10), at 15–20. Those matters also bear on whether the FEIS adequately supported the Purpose and Need relied upon to reject less-intensive alternatives. See Section VII.

## IV. THE FEIS'S CONTENT IS INSUFFICIENT (HAR § 11-200.1-28(b)(2); County Mem. at 13–18)

**A. Section headings do not establish adequate content.** The County's central argument is that, as in Price, "there is an entire section devoted to each of these topics." County Mem. at 14 (quoting Price, 81 Hawai'i at 184). Petitioner acknowledges that the sections and appendices exist and asks the Court to assess their substance. The final EIS must "fully declare the environmental implications of the proposed action and shall discuss all reasonably foreseeable consequences of the action," and must include "responsible opposing views, if any, on significant environmental issues raised by the proposal." HAR § 11-200.1-27(a). That analysis must address the full development—including up to 150 lodging units (172 bedrooms as calculated in the FEIS), along with new commercial and retail facilities intended to generate revenue to support cultural and educational programs and the renovation of existing bayfront buildings into one Cultural Heritage Education Center—not only the cultural center. FEIS Vol. I, pp. 1-21, 3-90, 4-145 (PDF pp. 47, 148, 295, respectively). A heading does not show that the discussion beneath it does what the rules require.

**B. Manta rays and the ecological importance of Keauhou Bay.** The County argues that the rule of reason "does not require the FEIS to discuss the impact on manta rays exhaustively" and that, because "the project proposes no direct near-shore activities," runoff "is addressed at length" in Section 4.5. County Mem. at 15. But the County identifies no analysis of manta rays at all, and there is none. The FEIS mentions manta rays only three times, each time as a nighttime tourist attraction or a name on a distribution list: vessels "bring snorkelers and divers to the mouth of the bay where manta rays can be observed on any given night of the year." FEIS Vol. I, pp. 3-9, 4-119, 7-5 (PDF pp. 67, 269, 419). Neither Section 4.5 nor Section 4.6 mentions manta rays or the plankton on which they feed. The FEIS addresses night lighting only as a hazard to seabirds, *id.* p. 4-102 (PDF p. 252), not to the light-attracted plankton that sustains

nightly manta feeding at the mouth of the bay. Its marine discussion relies on "past studies conducted for other projects." *Id.* p. 4-103 (PDF p. 253). The record documents what the FEIS omits: some 80,000 people a year view the mantas that congregate "off the back porch of the Sheraton Kona Resort and Spa at Keauhou Bay," now the Outrigger, where lights draw plankton, and mantas hold cultural significance in the Kumulipo. FAP pp. 11, 67–68; Exs. B-18-2, B-18-11 pp. 296, 305 PDF pp. 342, 351. Scientific and governmental sources show that land-based pollution and terrestrial runoff disrupt plankton and the marine food web; one study found that runoff decreased phytoplankton chlorophyll-a "by 70% for 12 days." Exs. B-18-12, B-18-13 pp. 306-307 PDF pp. 352-353. Petitioner raised these concerns in her timely comments. FEIS Vol. II, App. C, pp. 236–238 (PDF pp. 535–537). KS responded that it "understands the significance of Keauhou Bay as a habitat for native marine life, including the manta ray population," and "will continue to work with conservation experts to monitor and mitigate potential impacts," *id.* p. 287 (PDF p. 586). Yet the FEIS contains no manta-specific monitoring or mitigation measure. KS also conceded that "no specific impacts to marine life were identified in the EIS," pointed only to species observed in Hoʻokūkū Pond, and deferred the "detailed drainage analysis and design" to review "subsequent to the FEIS." *Id.* pp. 238–239 (PDF pp. 537–538); FEIS Vol. I, p. 4-99 (PDF p. 249). Acknowledging a resource's significance while deferring the analysis of how the Project's runoff, lighting, and intensified coastal use may affect it is not the evaluation of "reasonably foreseeable consequences" and "probable impact" that HAR §§ 11-200.1-24(a), (l) and 11-200.1-28(b)(2) require.

**C. Increased Stormwater Runoff into an Impaired Bay and Deferred Drainage Analysis.** The FEIS's own calculations demonstrate the magnitude of the runoff concern. The Project would increase non-permeable surface area from 175,926 to 516,845 square feet, "a total increase of 340,919 sf." FEIS Vol. I, Table 4-5, p. 4-86 (PDF p. 236). For a 10-year storm event, projected peak runoff increases from 57.70 to 75.11 cubic feet per second in Drainage Area A, approximately 30%, and from 5.93 to 8.70 cubic feet per second in Drainage Area C, approximately 47%. *Id.*, Tables 4-4, 4-6, pp. 4-82, 4-87 (PDF pp. 232, 237). The FEIS acknowledges that clearing and grading for the lodging "opens the ground surface for increased erosion and transport of eroded soils downslope with runoff, particularly during heavy rain events." *Id.*, p. 4-87 (PDF p. 237). Addressing a DEIS comment concerning fertilizers and pesticides carried by runoff from the upslope golf course, the FEIS admits that "[i]t is unknown

to the Project team what the golf course's management procedures are" and that the undeveloped Kāneaka Zone "currently captures some of this runoff, albeit minimally." *Id.* Yet the FEIS states that mitigation strategies "may include but are not limited to" detaining, retaining, and infiltrating runoff, while postponing detailed analysis: "a drainage masterplan will be developed" before construction, and "[t]he project's detailed drainage analysis and design will require design review and approval by the County" subsequent to the FEIS. *Id.*, pp. 4-87–4-88 (PDF pp. 237–238). The FEIS thus quantifies substantial increases in projected runoff but does not demonstrate, through sufficient supporting analysis or quantified pollutant-loading estimates, how its proposed mitigation measures would adequately address those increases and protect an already impaired Keauhou Bay. Deferring detailed drainage analysis and design until after FEIS acceptance leaves a substantial question whether the FEIS provided the information necessary for an informed acceptance determination under HEPA. HAR §§ 11-200.1-24(l), (p), 11-200.1-28(b)(2).

**D. Water-Supply Capacity and Unresolved Issues.** The County argues that "[w]hether KS ultimately secures additional water is a matter for the permitting process." County Mem. at 18. Petitioner has already addressed the water-supply deficiencies in Section III.B and Dkt. 236, Ground (13), at 22–23. Yet the FEIS's own engineering report states that "DWS will need to determine whether the system in the Keauhou region has enough capacity to honor the credits or if alternative sources of water are required," and that "[t]here is an understanding in place between DWS and KS to develop additional water wells for the West Hawai'i Region." FEIS Vol. III, App. N, p. 5-10 (PDF p. 385). Meanwhile, the FEIS states that the 240 credits are "not dependent on new water source development," FEIS Vol. I, p. 4-85 (PDF p. 235), and that "[t]he Project does not propose the development of a new water well, as it will rely on existing allocated water credits." FEIS Vol. II, App. C, p. 206 (PDF p. 505). Although these statements do not establish that additional wells are required for the Project, the FEIS does not clearly reconcile the engineering report's uncertainty about system capacity with its assurances concerning existing water credits. Nor does its Unresolved Issues section identify water-system capacity among its five listed issues. FEIS Vol. I, § 4.17, p. 4-189 (PDF p. 339). The County's reliance on future permitting does not, by itself, establish that the FEIS adequately disclosed and evaluated this uncertainty before acceptance. HAR §§ 11-200.1-24(l), (q), 11-200.1-28(b)(2).

**E. Cultural Practices and Longstanding Community Uses.** The County relies on the FEIS's cultural sections and Cultural Impact Assessment (CIA) as evidence of adequate review. County Mem. at 15, 17. Yet at the 2022 scoping meeting, when a community member asked whether the volleyball court would be removed, KS responded: "The volleyball court is not in KS's present vision." FEIS Vol. II, App. A (PDF p. 10). Petitioner's timely comments also warned that the bungalow resort would remove one-person canoes from the bay to accommodate tourists and interfere with fishing, baptisms, and funerals. FEIS Vol. II, App. C, pp. 37–38 (PDF pp. 336–337); FAP Ex. R-4-53. KS responded that the KBMP "does not include actions involving removal of canoe facilities or practices from the bay." FEIS Vol. II, App. C, p. 37 (PDF p. 336). However, the FEIS describes "a reconfiguration of the existing sprawling canoe uses" and acknowledges "the small fishing canoes located at Ka'ili'ilinehe Beach," while the CIA records that the conceptual plans do not show where canoes will be parked and launched following relocation of the hālau. FEIS Vol. I, pp. 3-75, 4-24 (PDF pp. 133, 174); Vol. III, App. H, p. 103 (PDF p. 121). The FEIS thus acknowledges existing canoe uses and proposes their reconfiguration without clearly establishing where affected canoes will be stored and launched or adequately evaluating the consequences for longstanding cultural and recreational practices. The County's reliance on the existence of cultural studies does not resolve whether the FEIS sufficiently evaluated these impacts before acceptance. HAR §§ 11-200.1-24(l), 11-200.1-27(a), 11-200.1-28(b)(2); *see* Section III.C; Dkt. 236, Ground (4), at 10.

**F. Traffic.** The County cites "a draft Mobility Analysis Report." County Mem. at 15. The report included in the FEIS is labeled "(Draft)" and dated May 12, 2022, more than three years before acceptance. FEIS Vol. III, App. M (PDF p. 271). The report itself estimates 1,928 new weekday vehicle trips. *Id.*, p. 1 (PDF p. 274). KS acknowledged that its "traffic counts used in the mobility analysis were collected at the time the analysis was initiated, and the month the counts were conducted was not selected based on the time of year." FEIS Vol. II, App. C, p. 57 (PDF p. 356). Although KS offered additional explanations concerning peak-hour conditions, traffic safety, and evacuation access, Petitioner disputes whether those responses adequately addressed her specific concerns. Her timely DEIS comments warned that resort traffic would pass through the bay's historic and ceremonial areas, where families hold funerals, baptisms, and gatherings, and raised concerns about existing congestion, traffic fatalities, and tsunami evacuation. FEIS Vol. II, App. D (PDF p. 1227); App. C, pp. 46, 81 (PDF pp. 345, 380); FAP

Ex. R-4-3, p. 382 PDF p. 440. As detailed in Dkt. 236, Ground (3), pp. 9–10, Petitioner submitted supporting evidence regarding congestion and traffic safety. The existence of a draft roadway-operations analysis does not, by itself, establish that the FEIS adequately evaluated the Project's effects on existing cultural and community uses or satisfactorily addressed Petitioner's substantive comments. HAR §§ 11-200.1-24(l), 11-200.1-28(b)(2)–(3).

**G. Other Infrastructure and Cumulative Impacts.** The County relies on FEIS sections addressing utilities, public services, and cumulative impacts. County Mem. at 14–15 & nn.3, 5. Yet the FEIS acknowledges that "[a]n increase in visitor accommodations will result in an increase in water consumption, wastewater disposal, and solid waste generation," and "[t]herefore, there will be increased demand on existing utilities and infrastructure." FEIS Vol. I, p. 4-188 (PDF p. 338). Petitioner's FAP documents existing islandwide infrastructure concerns, supported by news articles concerning landfill limitations, electrical shortages, power outages, water restrictions, and traffic safety. FAP pp. 70–73; *see, e.g.*, Exs. M-1–M-17, M-30–M-31. KS responded that it "has thoroughly assessed the existing capacity of utilities and infrastructure and has collaborated with local agencies to verify that Hawai'i Island's infrastructure systems can accommodate the proposed KBMP." FEIS Vol. II, App. C, p. 88 (PDF p. 387). But its own engineering report states that "DWS will need to determine whether the system in the Keauhou region has enough capacity to honor the credits." FEIS Vol. III, App. N, p. 5-10 (PDF p. 385); *see* Section IV.D. Petitioner contends that the County's reliance on the existence of these sections does not establish that the FEIS adequately evaluated the Project's combined infrastructure demands and cumulative impacts before acceptance. HAR §§ 11-200.1-24(l), 11-200.1-28(b)(2).

**H. Inadequate Marine Environmental Baseline.** The County relies on the FEIS's existing-conditions descriptions and biological studies as evidence of adequate review. County Mem. at 14–15. Yet the FEIS's description of conditions in Keauhou Bay rests on "past studies conducted for other projects," including a 2016 draft environmental assessment prepared for a DLNR offshore mooring project. FEIS Vol. I, p. 4-103 (PDF p. 253); *id.*, References, p. 8-1 (PDF p. 445) (Anchor QEA, LLC (2016), *Keauhou Bay Offshore Moorings DEA*). The FEIS documents a biological survey of Ho'okūkū Pond, but that survey does not establish current conditions for the bay's coral, fish populations, sedimentation, nutrients, or marine water quality. *Id.*, pp. 4-98–4-103 (PDF pp. 248–253). The FEIS includes a "baseline assessment" for

Ho'okūkū Pond, FEIS Vol. I, p. 4-98 (PDF p. 248), but no baseline assessment of Keauhou Bay itself. Marine environmental scientist Nick Buhbe, M.S., a senior scientist with 30 years of experience, submitted technical comments identifying "the substantial lack of the necessary foundational studies upon which to base an assessment of the Project impacts and appropriate mitigation measures." FEIS Vol. II, App. D (PDF pp. 868, 870). He recommended that "[s]urveys before development should be undertaken (to confirm 2016 conditions)," together with comparison to "a nearby reference site," and warned that "without the foregoing analysis, it is nearly impossible to determine the extent of project impacts on Keauhou Bay marine resources." *Id.* (PDF p. 869); FAP pp. 73–74, Ex. M-21 p. 347 PDF p. 398 and FEIS Vol. II PDF p. 869. KS's response addressed the bay's impaired-water listing, sewer connection, and drainage, but did not address his recommendation for a pre-development marine survey or reference-site comparison. FEIS Vol. II, App. C, pp. 134–136 (PDF pp. 433–435). HAR § 11-200.1-24(i) requires a description of the environment "as it exists before commencement of the action." Petitioner contends that, without an adequate current marine baseline, the FEIS cannot sufficiently evaluate the Project's foreseeable marine impacts or support its proposed mitigation, and that the response to this substantive technical comment was not satisfactory. HAR §§ 11-200.1-24(i), (l), 11-200.1-27(a), 11-200.1-28(b)(2)–(3).

Furthermore, the FEIS identifies 2021 as its existing traffic conditions baseline and 2035 as its projected future baseline. FEIS Vol. I, p. 4-124 (PDF p. 274). Appendix M reveals that traffic counts were collected in September 2019 and September–October 2021, approximately four to six years before FEIS acceptance in September 2025. FEIS Vol. III, App. M, p. 5 (PDF p. 278). KS acknowledged that "the month the counts were conducted was not selected based on the time of year." FEIS Vol. II, App. C, p. 57 (PDF p. 356). The FEIS does not clearly demonstrate that these counts adequately reflect traffic conditions at the time of acceptance, including seasonal visitor activity and existing congestion. Director Darrow accepted the FEIS despite its reliance on traffic counts collected four to six years earlier, even as Hawai'i Island's population and traffic demands continued to grow. This raises a substantial question whether he ensured that the County had a sufficiently reliable and current traffic baseline to evaluate the Project's foreseeable impacts before acceptance. HAR §§ 11-200.1-24(i), (l), 11-200.1-28(b)(2).

## V. CONSULTATION OCCURRED, BUT ITS FINDINGS WERE NOT CARRIED INTO THE ANALYSIS (HAR § 11-200.1-28(b)(1); County Mem. at 12–13)

The County characterizes Petitioner's objection as "dissatisfaction with the project itself" and argues that KS "disclosed the contrary viewpoints it received during consultation." County Mem. at 12. But the issue is whether the FEIS adequately evaluated the concerns consultation revealed. The CIA expressly warned that failure to conduct appropriate studies and implement stormwater measures "would likely result in an adverse impact on the practice of marine resource collection, healing and cleansing rituals, and on the culturally valued marine resources that inhabit the bay." FEIS Vol. III, App. H, p. 114 (PDF p. 132). Yet detailed drainage analysis was deferred until after acceptance. *See* Section IV.C. Petitioner's evidence concerning consultation, differing viewpoints, cultural practices, and the incomplete account of her scoping-meeting statements is detailed in Dkt. 236, Ground (2), p. 9, and Ground (4), pp. 10–12. The County's reliance on the occurrence of consultation does not establish that these substantive concerns were adequately evaluated before FEIS acceptance.

## VI. THE RESPONSES TO PETITIONER'S COMMENTS ARE NOT COMMENSURATE (HAR § 11-200.1-28(b)(3); County Mem. at 19)

HAR § 11-200.1-28(b)(3) requires responses "commensurate to the comment," and the question is whether "the final EIS actually address[ed] the substantive feedback it received." *Kaupiko*, slip op. at 31. The County characterizes KS's responses as "thorough, topical responses." County Mem. at 19. But the adequacy of those responses cannot be established merely by their existence or organization by topic. Petitioner's specific objections concerning water supply, impaired marine waters, protected species, traffic, and cultural practices, together with the deficiencies in KS's responses, are detailed in Dkt. 236, Ground (1), pp. 5–7; Ground (2), pp. 7–9; Ground (3), pp. 9–10; Ground (4), pp. 10–12; and Ground (13), pp. 22–23.

The County further asserts that Petitioner's attached petition "did not actually comment on the DEIS." County Mem. at 19. But the petition and accompanying substantive comments were included in Petitioner's timely DEIS submission, and it showed community voices that is required to be heard by law. FAP Exs. R-4-1–R-4-56 (FAP pp. 380–435), R-4-132–R-4-152 (FAP pp. 436–456); *see* Dkt. 236, Ground (2), pp. 7–9. The petition's own text identifies the

existing uses the Project would affect, including "a local canoe club that uses the bay daily, local volleyball groups that play there daily," and families who "hold funeral services, baptisms." FAP Ex. R-4-2 p. 381 PDF p. 442. Petitioner does not contend that every signature required an individual response. Rather, HAR § 11-200.1-26 permits appropriate grouping of comments without excusing the obligation to address their substantive environmental concerns. The County's reliance on reproducing the petition and providing topical responses does not, by itself, establish tthat KS satisfactorily addressed the specific concerns submitted or that Director Darrow properly accepted the FEIS. HAR §§ 11-200.1-26(a)–(d), 11-200.1-27(a), 11-200.1-28(b)(3).

## VII. DIRECTOR DARROW'S DECLARATION DOES NOT IDENTIFY THE FEIS COPY HE REVIEWED (County Mem. at 18–19)

Although Director Darrow declares that the County reviewed a complete FEIS before acceptance, he does not identify the specific copy he personally reviewed by file name, date of receipt, or source. Dkt. 228, Darrow Decl. ¶¶ 4, 10–14 (PDF pp. 160–161). The County's own Exhibit 1 contains a Volume I that jumps from printed page 2-8 directly to Chapter 3, omitting six pages, 2-9 through 2-14. Dkt. 224, Ex. 1, Vol. I (PDF pp. 58–59). The record identifies two differently named Volume I files, "KBMP-FEIS-Vol-1-OCR1.pdf," Dkt. 224, Ex. 1 (PDF p. 4), and "KBMP-FEIS-Vol-11.pdf," Dkt. 236, Ex. A-20-5 (PDF p. 36); *see* Dkt. 236, Ground (1), p. 6. The acceptance and its attached Volume I file were submitted by reviewer Alex J. Roy, not Director Darrow. Dkt. 236, Ex. A-20-5 (PDF p. 36). Neither the submission record nor Darrow's declaration establishes which version he personally examined. Nor does the County's subsequent explanation of a publication error, based on "representations provided by the applicant," independently identify the copy Darrow reviewed. Dkt. 228, Ex. 2, Attach. B (PDF pp. 153–154). Petitioner has already addressed the omitted pages, their substantive importance, and the later errata in Dkt. 236, Ground (1), pp. 5–6; Ground (7), pp. 14–15; and Ground (8), pp. 15–17. The County has not produced or specifically identified the allegedly complete copy Director

Darrow personally reviewed, leaving unresolved whether the document underlying his acceptance determination contained the six omitted pages.

That question matters because a final EIS may be accepted "only if all of the following criteria are satisfied," including that "the preparation and submission of the EIS, from proposal of the action to publication of the final EIS, have all been completed satisfactorily." HAR § 11-200.1-28(b), (b)(1). Acceptability is evaluated on "the final EIS, in its completed form." *Id.* § 11-200.1-28(a); *see* Dkt. 236, Ground (1), p. 6. Petitioner contends that an FEIS published without six pages of its Purpose and Need chapter did not satisfy the requirement of satisfactory completion through publication, regardless of which copy Director Darrow separately reviewed. Furthermore, the July 2026 errata was issued approximately ten months after the September 2025 acceptance. Petitioner maintains that HAR § 11-200.1-28 provides no authority for a post-acceptance errata to retroactively cure deficiencies in the FEIS as published and accepted. The County has not established that the later errata rendered the September 2025 acceptance legally sufficient. *See* Dkt. 236, Ground (1), pp. 5–6.

The County argues that Petitioner submitted no timely comment "directed to those pages." County Mem. at 19. However, Petitioner's timely DEIS comments addressed the substance of the omitted sections. Section 2.6.2 concerns KS's claim that its lands are economically underperforming, while Petitioner's comments questioned KS's financial priorities and the proposed resort development in relation to the Bishop Estate's educational purposes. FAP Exs. R-4-50–R-4-51 (FAP pp. 429–430 PDF pp. 487-488); Dkt. 1 (PDF pp. 82–86); *see* Dkt. 236, Ground (8), pp. 15–17. Section 2.6.3 concerns incompatible bayfront uses, which Petitioner addressed through comments regarding canoe paddling, fishing, baptisms, funerals, and family gatherings. FEIS Vol. II, App. C, pp. 36–38 (PDF pp. 335–337); *see* Dkt. 236, Ground (4), pp. 10–12. These concerns fall within the subjects addressed by the omitted sections and were raised during the DEIS comment period. Petitioner therefore disputes the County's contention that her timely comments were unrelated to the omitted material. HRS § 343-7(c).

**CONCLUSION**

Petitioner does not challenge the proposed development merely because she opposes it. She challenges whether the County lawfully accepted a Final Environmental Impact Statement

that adequately disclosed and evaluated the foreseeable environmental, cultural, and community impacts of the Project, as required by HRS chapter 343 and HAR chapter 11-200.1. The existence of studies, appendices, consultation records, and responses to comments does not, by itself, establish legal sufficiency. As demonstrated throughout this Opposition and in Dkt. 236, the FEIS leaves substantial questions concerning impacts on protected marine species, their Keauhou Bay habitat, stormwater runoff into an impaired bay, water-supply capacity, traffic, cumulative infrastructure demands, longstanding cultural practices, shoreline canoe access, and the adequacy of responses to Petitioner's timely substantive comments and petition.

Equally significant, the FEIS publicly released and submitted with the County's acceptance omitted six consecutive pages of its Purpose and Need chapter, including material concerning the Project's justification and evaluation of alternatives. Director Darrow's declaration does not identify the specific complete FEIS copy he claims was reviewed, and the County has not established that the July 2026 errata retroactively cured the incomplete September 2025 publication. HAR § 11-200.1-28 requires satisfactory completion of the EIS process through publication, compliance with applicable content requirements, and satisfactory responses to substantive comments. Petitioner maintains that these requirements must be satisfied before acceptance, not established afterward through explanations or corrections. *See* Dkt. 236, Ground (1), pp. 5–6; Section VII.

The issue before this Court is not whether the Project should be built, but whether the County's acceptance complied with HEPA. The Hawai'i Supreme Court held that, under the rule of reason, an EIS must contain "enough information to enable the decision-maker to make a reasoned decision concerning the environmental factors described in the rule." *Kaupiko v. Bd. of Land & Nat. Res.*, 154 Hawai'i 456, 555 P.3d 143 (2024), slip op. at 31. Identifying environmental concerns while leaving material analysis and mitigation to future proceedings does not meet that standard.

If an FEIS with these deficiencies can be accepted for Keauhou Bay, the birthplace of Kauikeaouli, the public has reason to question the level of scrutiny applied to other environmental impact statements accepted, or yet to be accepted, on Hawai'i Island by Director Darrow, if he is to remain in office.

Petitioner respectfully submits that the deficiencies identified in the record warrant denial of summary judgment and judicial review of the FEIS acceptance under HRS § 343-7(c).

WHEREFORE, Petitioner respectfully requests that this Court:

(1) DENY the County Respondents' Motion for Summary Judgment [Dkt. 223], including the relief sought through Respondents Kamehameha Schools' and Marissa Harman's joinder [Dkt. 232], and permit Petitioner's timely HRS § 343-7(c) challenge to the FEIS acceptance to proceed;

(2) DENY summary judgment concerning Petitioner's other requests for relief for the reasons presented in Dkt. 236, or, alternatively, sever any independently unavailable request under HRCP Rule 21 or dismiss it without prejudice, without affecting Petitioner's statutory challenge to the FEIS acceptance;

(3) DENY summary judgment concerning the completeness and legal sufficiency of the FEIS accepted by the County, based on the existing record, including the six omitted pages, the deficiencies identified throughout this Opposition, and the unresolved questions concerning Director Darrow's acceptance determination; and

(4) GRANT such other and further relief as the Court deems just and appropriate, consistent with "HRCP Rule 54(c)."

DATED: Kailua-Kona, Hawai'i, Oct. 30, 2026.

REBECCA MELENDEZ
Petitioner, Pro Se

**DECLARATION OF REBECCA MELENDEZ IN SUPPORT OF OPPOSITION TO COUNTY RESPONDENTS' MOTION FOR SUMMARY JUDGMENT [DKT. 223]**

I, Rebecca Melendez, declare as follows:

1. I am the Petitioner in this action, over eighteen years of age, and competent to testify. I make this declaration based on my personal knowledge, participation in the environmental review process, and examination of the records identified below, in support of my opposition to the County Respondents' Motion for Summary Judgment [Dkt. 223] and Kamehameha Schools' and Marissa Harman's joinder [Dkt. 232].
2. During the 2024 Draft Environmental Impact Statement (DEIS) comment period, I submitted written comments concerning the proposed Keauhou Bay development. My comments addressed water quality, stormwater runoff, marine life, water supply, traffic, cultural practices, canoe access, and longstanding community uses. My submission included a petition bearing 6,198 signatures. FAP Exs. R-4-1–R-4-56; FEIS Vol. II, App. C.
3. In reviewing the published Final Environmental Impact Statement (FEIS), I observed that Volume I proceeded from printed page 2-8 directly to Chapter 3, omitting pages 2-9 through 2-14, including portions of the Purpose and Need chapter and the Evaluation Criteria section. The FEIS submitted as the County's Exhibit 1 contains the same omission. Dkt. 224, Ex. 1, Vol. I (PDF pp. 58–59).
4. I examined Director Jeff Darrow's September 16, 2025 acceptance letter and his October 22, 2026 declaration. His acceptance letter states that the FEIS "satisfactorily responds to review comments." His subsequent declaration asserts that he reviewed the complete FEIS but does not identify the particular electronic file by name, date of receipt, or source. Dkt. 228, Darrow Decl. ¶¶ 4, 9–14; Dkt. 236, Exs. A-20-1–A-20-2.
5. I examined the Environmental Review Program submission records identifying two differently named Volume I files: "KBMP-FEIS-Vol-1-OCR1.pdf," associated with the August 27, 2025 submission, and "KBMP-FEIS-Vol-11.pdf," associated with the September 16, 2025 acceptance submission. Neither the submission records I examined

nor Director Darrow's declaration identifies which electronic file he personally reviewed before accepting the FEIS. Dkt. 224, Ex. 1; Dkt. 236, Ex. A-20-5.

6. I reviewed FEIS Volume I and observed that it identifies an increase of 340,919 square feet of non-permeable surface area, while stating that detailed drainage analysis and design would undergo review subsequent to the FEIS. I also observed that its discussion of Keauhou Bay marine conditions relies in part on past studies conducted for other projects. FEIS Vol. I, pp. 4-86–4-88, 4-103 (PDF pp. 236–238, 253).
7. I examined the FEIS's Cultural Impact Assessment, which records that conceptual plans did not show where canoes would be parked and launched following relocation of the canoe hālau. I also examined the FEIS's Unresolved Issues section, which identifies removal and possible relocation of the longstanding community volleyball court as unresolved. FEIS Vol. III, App. H, p. 103 (PDF p. 121); FEIS Vol. I, § 4.17, p. 4-189 (PDF p. 339).
8. I reviewed the technical comments submitted by marine environmental scientist Nick Buhbe, M.S., recommending surveys to confirm earlier marine conditions and comparison with a nearby reference site. His comments warned that without the recommended analysis, determining the extent of the Project's impacts on Keauhou Bay marine resources would be extremely difficult. FEIS Vol. II, App. D (PDF pp. 868–870).
9. I submit this declaration to identify the facts and records supporting my opposition, including my timely public comments, the six omitted pages, the FEIS's deferred analyses, and the unresolved questions concerning Director Darrow's acceptance determination. I request that the Court consider the existing record and deny the County Respondents' Motion for Summary Judgment [Dkt. 223], including the relief sought through the joinder [Dkt. 232].

I declare under penalty of perjury under the laws of the State of Hawai'i that the foregoing is true and correct.

DATED: Kailua-Kona, Hawai'i, October 30, 2026.

REBECCA MELENDEZ
Petitioner, Pro Se

**CERTIFICATE OF SERVICE**

I hereby certify that on Oct. 30, 2026, a true and correct copy of Petitioner Rebecca Melendez's Memorandum in Opposition to County Respondents' Motion for Summary Judgment Filed October 22, 2026 [Dkt. 223] and Respondents Kamehameha Schools' and Marissa Harman's Joinder Thereto [Dkt. 232], together with the Declaration of Rebecca Melendez in Support of Opposition, was served upon the following parties by U.S. Mail on the date stated above.

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I declare under penalty of perjury under the laws of the State of Hawai'i that the foregoing is true and correct.

DATED: Kailua-Kona, Hawai'i, Oct. 30, 2026.

REBECCA MELENDEZ
Petitioner, Pro Se