

CADES SCHUTTE
A Limited Liability Law Partnership

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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
MEMORANDUM IN OPPOSITION
TO PETITIONERS' MOTION FOR
RECONSIDERATION OF ORDER
GRANTING RESPONDENTS G70
AND KAWIKA MCKEAGUE'S
MOTION TO DISMISS [DKT. 111]**

CERTIFICATE OF SERVICE

Non-Hearing Motion

Judge: Honorable Kauanoe Jackson
Trial Date: None

**RESPONDENTS G70 AND KAWIKA MCKEAGUE’S MEMORANDUM IN
OPPOSITION TO PETITIONERS’ MOTION FOR RECONSIDERATION
OF ORDER GRANTING RESPONDENTS G70 AND KAWIKA
MCKEAGUE’S MOTION TO DISMISS [DKT. 111]**

Respondents G70 and Kawika McKeague oppose Petitioners’ Motion for Reconsideration of Order Granting Respondents G70 and Kawika McKeague’s Motion to Dismiss, filed July 14, 2026 [Dkt. 111] (the “**Motion**”).¹ The Motion does not comport with the requirements for a motion for reconsideration or the rules of the Court.² The arguments advanced in the Motion lack merit. For each reason, the Motion should be denied.

I. INTRODUCTION

On July 10, 2026, the Court granted the Motion to Dismiss the First Amended Petition on the ground that G70 and McKeague “are not proper parties to a judicial review action under Hawai‘i Revised Statutes Section 343-7(c).” Order (Dkt. 106) at

¹ Although the case caption names two *pro se* Petitioners—Daisy Mitchell and Rebecca Melendez (together, “**Petitioners**”)—and the Motion is titled “Petitioners’ Motion for Reconsideration,” the Motion was brought by Rebecca Melendez alone. Daisy Mitchell did not join it. *See* Mot. at 10. While this Memorandum uses the term “Petitioners” for consistency with the caption and language used in the Motion, Ms. Melendez is the only party seeking reconsideration. *See* HRS § 605-2 (permitting a self-represented party to prosecute or defend only that party’s “own cause”); Court’s Notice of the Parties’ Expected Conduct in this Case (Dkt. 63) at ¶ 1 (The right of self-representation “does not allow a person to act as an attorney for another party. . . . A motion or other filing signed by one self-represented party generally applies only to that party.”).

² The Court previously informed Petitioners that the Court does “not have different rules for attorneys and self-represented litigants.” All parties, including *pro se* parties, are “required to substantially comply with the court rules.” Court’s Notice of the Parties’ Expected Conduct in this Case (Dkt. 63) at ¶ 12.

2. The Court held the remaining grounds for dismissal argued in the Motion are moot. *Id.*

Petitioners ask the Court to reconsider that ruling. Their Motion identifies no new evidence and no argument that could not have been raised earlier. Instead, the Motion asks the Court to “take a longer look” and “a closer look” at the Exhibit B-20, a document that Petitioners concede “was before the Court when it issued the Order.” Mot. at 2. A motion for reconsideration is not an opportunity to reargue an issue or invite the Court to reexamine evidence that it already considered.

Because the Motion does not follow the rules, it should be denied. Because Petitioners’ arguments lack merit, it is time to confirm the dismissal of G70 and McKeague.

II. LEGAL STANDARD

The purpose of a motion for reconsideration “is to allow the parties to present **new** evidence and/or arguments that **could not have been presented** during the earlier adjudicated motion.” *Amfac, Inc. v. Waikiki Beachcomber Inv. Co.*, 74 Haw. 85, 114, 839 P.2d 10, 27 (1992) (emphases added). Reconsideration “is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding.” *Sousaris v. Miller*, 92 Hawai‘i 505, 513, 993 P.2d 539, 547 (2000); accord *Ass’n of Apartment Owners of Wailea Elua v. Wailea Resort Co.*, 100 Hawai‘i 97, 110, 58 P.3d 608, 621 (2002).

The movant bears the burden of demonstrating that reconsideration is warranted. A Court is within its discretion to deny reconsideration where the movant’s arguments “could have and should have” been raised in opposing the

original motion. *First Ins. Co. of Hawai‘i, Ltd. v. Lawrence*, 77 Hawai‘i 2, 881 P.2d 489 (1994); *Amfac*, 74 Haw. at 114, 839 P.2d at 27.

III. ARGUMENT

The Motion does not meet the legal requirements for reconsideration. It presents no evidence or argument that could not have been raised in opposing the Motion to Dismiss. The Motion also fails to show that the Court erred. Each point is addressed in turn.

A. The Motion Presents No New Evidence.

Reconsideration requires “new evidence . . . that could not have been presented during the earlier adjudicated motion.” *Amfac*, 74 Haw. at 114, 839 P.2d at 27. The Motion presents none. Petitioners rely on Exhibit B-20. Petitioners acknowledge that this exhibit “was before the Court when it issued the Order.” Mot. at 2. They ask the Court to “take a longer look at that letter” and “take a closer look at the transmittal letter.” *Id.* A request to reexamine evidence is an admission that the evidence is not new. On that ground alone, the first avenue for reconsideration is closed. *Amfac*, 74 Haw. at 114, 839 P.2d at 27.³

³ Without leave from the Court, Petitioners filed a “Notice of Supplemental Filing” on July 24, 2026. [Dkt. 118] That Notice provides a letter dated July 16, 2026 signed by McKeague, on behalf of Kamehameha Schools, which Petitioners assert is relevant to the pending Motion. As Petitioner herself notes in the Notice: “Both letters are signed by the same individual, in the same role as President of Respondent G70, regarding the same FEIS.” In short, the arguments she makes regarding Exhibit B-20 apply equally to the exhibit attached to the Notice. Therefore, to the extent the Court considers Petitioners’ unauthorized filing in connection with the Motion, the arguments made in this response regarding Exhibit B-20 would apply equally to the correspondence attached to the Notice.

B. The Motion Presents No New Argument that Could Not Have Been Raised in Opposing the Motion to Dismiss.

Every argument in the Motion was available to Petitioners when they opposed the Motion to Dismiss. Reconsideration does not permit a party to relitigate those arguments or to refine them after an adverse ruling. *Sousaris*, 92 Hawai‘i at 513, 993 P.2d at 547.

First, the centerpiece of the Motion is Petitioners’ contention that, because McKeague signed the Exhibit B-20 transmittal letter under his own name and credential and made three “statements” about the FEIS, he and G70 are proper parties to this action. Mot. at 2-9. That theory rests entirely on a document that was available to Petitioners before the Motion to Dismiss was decided. Motions for reconsideration cannot be used to emphasize arguments that were or could have been made the first time. *First Ins.*, 77 Hawai‘i at 17, 881 P.2d at 504.

In any event, the letter confirms that G70 and McKeague acted “on behalf of the Applicant, Kamehameha Schools,” which in turn confirms that G70 and McKeague participated in the FEIS as the applicant’s consultant. As the Court has already held, Chapter 343 imposes its duties on agencies and applicants, not on consultants.

Second, Petitioners argue that HRS § 343-7(c) does not expressly exclude consultants and that the Court read in an exclusion the Legislature did not write. Mot. at 4. That misguided attempt at statutory interpretation was presented at length in the briefing on the Motion to Dismiss and at the hearing on the motion.

Repeating it a third or fourth time does not satisfy the reconsideration standard. It merely relitigates “old matters.” 92 Hawai‘i at 513, 993 P.2d at 547.

Third, Petitioners devote a section to answering G70 and McKeague’s argument about “every consultant.” In this section, Petitioners cite the Motion to Dismiss (Dkt. 55 at 9-10) and the Reply (Dkt. 81 at 6). Mot. at 7-8. An argument that engages the opposing party’s prior briefing obviously “could and should have been brought during the earlier proceeding.” *Sousaris*, 92 Hawai‘i at 513, 993 P.2d at 547.

Finally, Petitioners argue that dismissal “permanently forecloses relief” because the First Amended Petition requests removal of McKeague as G70’s President, citing *Ravelo v. County of Hawai‘i*, 66 Haw. 194, 658 P.2d 883 (1983). Mot. at 8-9. This argument, too, could have been made in Petitioners’ lengthy filings and long argument on the Motion to Dismiss. Indeed, the argument was made. *See* Dkt. 89 at § D.

Whether a party is a proper respondent under Section 343-7(c) is logically antecedent to what relief might be available. In other words, the desire for a particular remedy does not change an improper party into a proper one. If anything, the relief that Petitioners seek underscores the merits of Court’s ruling: an order “remov[ing] . . . McKeague from his position as President of G70” is not relief a court grants in reviewing whether an agency has lawfully accepted an FEIS under section 343-7(c).

C. The Court Was Right the First Time.

Petitioners disagree with the Court’s conclusion that a consultant is not a proper party under section 343-7(c). As Respondents explained in the briefing on the

Motion, no Hawai‘i court in the roughly five decades since the enactment of Chapter 343 has held that a consultant retained by an applicant is a proper respondent in an action challenging acceptance of an FEIS. Rather than refute this point, the Motion concedes that “[n]o court has ever held that the statute’s cause of action extends to a consultant hired by an applicant” and that this case “is the first of its kind.” Mot. at 2, 4. An acknowledged absence of supporting authority is not a reason to reconsider a prior ruling.

Chapter 343 assigns the duty to prepare and submit an FEIS to the applicant. Section 343-7(c) provides for review of an agency’s acceptance, not suits against the applicant’s consultant. Signing a transmittal letter “on behalf of the Applicant” confirms that G70 and McKeague were consultants to Kamehameha Schools, and not the applicant. As such, they fall outside of the framework for judicial review of the challenged FEIS.

IV. CONCLUSION

For the foregoing reasons, G70 and McKeague respectfully request that the Court deny the Motion.

DATED: Honolulu, Hawai‘i, July 24, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

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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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DATED: Honolulu, Hawai'i, July 24, 2026.

CADES SCHUTTE
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