IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAIʻI

Electronically Filed
THIRD CIRCUIT
3CCV-25-0000438
14-JUL-2026
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Dkt. 111 MOT

REBECCA MELENDEZ,

Petitioner,

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 GOVERNEMENT ENTITIES 1-20;

Respondents.

Civil No. 3CCV-25-0000438

(Declaratory Judgment)

PETITIONERS' MOTION FOR RECONSIDERATION OF ORDER GRANTING RESPONDENTS G70 AND KAWIKA MCKEAGUE'S MOTION TO DISMISS

CERTIFICATE OF SERVICE

NON-HEARING MOTION

JUDGE: Honorable Kauanoe Jackson

TRIAL DATE: None

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PETITIONERS' MOTION FOR RECONSIDERATION

Petitioners respectfully move this Court to reconsider its July 10, 2026 Order (Dkt. 106) granting Respondents G70 and Kawika McKeague's Motion to Dismiss (Dkt. 55). The Order dismissed G70 and McKeague on a single ground: that they are not proper parties to a judicial review action under HRS § 343-7(c).

Reconsideration is appropriate to allow the Court a further opportunity to consider evidence already in the record. Exhibit B-20 was before the Court when it issued the Order, and Petitioners respectfully ask the Court to take a longer look at that letter before finally deciding whether G70 and Kawika McKeague are proper parties to this case.

This case remains pending against the remaining Respondents, including Kamehameha Schools and the County. Because the Order did not resolve the entire case, this Court retains the authority to revisit and correct it now, without requiring an appeal. HRCP Rule 54(b).

Petitioners respectfully ask this Court to take a closer look at the transmittal letter at Exhibit B-20 and reconsider whether G70 and Kawika McKeague are proper parties in light of what that letter actually says: that the phrase "on behalf of the Applicant" identifies who hired G70, but does not by itself resolve who is accountable for **the statements** McKeague personally signed in that same letter.

Without accountability under judicial review, neither the accepting authority nor the applicant has any assurance that the statements a consultant makes "on behalf of" the applicant are true. A consultant who states his own work is compliant, even while signing "on behalf of" its client, must be subject to judicial review to ensure full accountability for what the consultant is stating as true.

I. WHY THIS CASE IS THE FIRST OF ITS KIND

No court has ever held that the statute's cause of action extends to a consultant hired by an applicant, as G70 itself has acknowledged. But no Hawaiʻi court has been asked to decide the narrower question this case presents: whether a consultant who prepares a FEIS and personally states its legal compliance to a state agency can be held accountable under judicial review when those statements are alleged to be false. The Order grants dismissal on the sole ground that G70 and McKeague "are not proper parties to a judicial review action under Hawai'i Revised Statutes Section 343-7(c)," without further explanation, and finds the remaining grounds in the Motion moot. Petitioners respectfully submit that the absence of prior Chapter 343 cases naming a consultant exists precisely because no court has previously examined what a consultant actually states in a transmittal letter and compared those statements to the document itself — a question the Order does not address.

The transmittal letter at Exhibit B-20 is why this case is different from a routine Chapter 343 case. On August 26, 2025, Mr. Mark Kawika McKeague signed a letter to the State of Hawai'i Office of Planning and Sustainable Development. The letter begins: "On behalf of the Applicant, Kamehameha Schools, G70 submits the Final Environmental Impact Statement." That opening clause identifies who hired G70. It does not identify who made the three statements that follow, because the letter already answers that question by itself: each statement is signed by McKeague, under his own name, his own professional credential (AICP), and his own company, GROUP 70 INTERNATIONAL, INC., dba G70.

"On behalf of" appears in the first sentence of the letter. It identifies the client. It tells the State of Hawai'i who hired G70. That is what "on behalf of" does. It does not transfer responsibility for the statements that follow from the person who made them to the person who hired them.

The letter is not signed by Kamehameha Schools. It is not on Kamehameha Schools' letterhead. No one at Kamehameha Schools made these statements in this letter. Kamehameha Schools did not prepare the FEIS. Kamehameha Schools is not an EIS expert. Kamehameha Schools hired G70 precisely because McKeague holds himself out as an expert in environmental planning. He holds the AICP professional credential. He is the President of an environmental planning firm. He is the person with the expertise to know whether the FEIS complied with the law. He is the person who told the State that it did.

When a professional signs a statement to a government agency under his own name and his own credentials, the professional is personally standing behind what he said. If the statement is false, "on behalf of" does not make it someone else's problem. An accountant who signs a letter to the IRS saying "on behalf of my client, this return is accurate" cannot avoid responsibility when the return contains errors the accountant put in. The accountant made the statement. The accountant prepared the document. "On behalf of" tells the IRS who the client is; it does not make the accountant's false statement the client's responsibility.

That is what happened here. McKeague told the State of Hawai'i that the FEIS complied with HRS Chapter 343 and HAR Chapter 11-200.1. McKeague stated that the FEIS included responses to all substantive comments. The First Amended Petition alleges both statements are false.

This is the first case of its kind because no one has previously asked a court to examine what a consultant actually states in a transmittal letter and whether those statements are true. Petitioners are asking this Court to do exactly that.

This is not about suing every consultant on every EIS. A consultant who prepares a compliant FEIS and makes truthful statements has nothing to fear. This is about one consultant who made specific statements that the First Amended Petition alleges are contradicted by the FEIS itself — the very document those statements describe. The question is simple: when a professional states that a document is legally compliant and the First Amended Petition alleges it is not, should there be accountability? Petitioners respectfully submit that there should be — for the law itself. HRS § 343-7(c) exists to review exactly this: whether an FEIS follows the laws it claims to follow, including HRS Chapter 343 and HAR Chapter 11-200.1 — the same laws McKeague's statements say this FEIS follows.

II. THE STATUTE, THE STATEMENTS, AND THE LAW

A. HRS § 343-7(c) Does Not Exclude Consultants

HRS § 343-7(c) defines who may bring a judicial review action. It does not limit who may be named as a respondent. It does not say consultants are excluded. The Legislature knew how to identify specific parties — subsection (a) names "the office, any agency responsible for approval of the action, or the applicant." In subsection (c), the Legislature chose not to limit respondents. G70 asked this Court to read an exclusion the Legislature did not write.

HRS § 343-5(c) assigns the applicant the duty to prepare the FEIS. That duty does not create immunity for anyone else. A consultant does not become immune from judicial review simply because it submitted a document "on behalf of" the applicant it was hired by. This Court's review under § 343-7(c) exists to determine whether McKeague's statements that the FEIS complied with the law were true. McKeague is the person who made those statements about the FEIS — dismissing him removes the one party who shares accountability for it alongside the applicant and the accepting authority. Accountability protects the system.

B. The Three Statements McKeague Made

The FEIS transmittal letter, to advance the FEIS at Exhibit B-20, signed by Mr. McKeague and transmitted to Ms. Mary Alice Evans, Director of the State of Hawaiʻi Office of Planning and Sustainable Development, contains three statements:

Statement 1: 'The FEIS has been prepared pursuant to Chapter 343, Hawaiʻi Revised Statutes (HRS), and Title 11, Chapter 200.1, Hawaiʻi Administrative Rules (HAR).' This is a direct statement of legal compliance to a state agency. The evidence presented in the First Amended Petition alleges this statement is not true.

Statement 2: 'The FEIS includes copies of all written comments received during the 45-day public consultation period for the Draft EIS, as well as responses to all substantive comments.' This is a specific factual statement regarding the completeness of the document. The evidence presented in the First Amended Petition alleges this statement is not factual.

Statement 3: 'The Final EIS document package has been simultaneously filed with the County of Hawaiʻi Planning Department as the accepting authority.' McKeague told the County the FEIS was ready for its review, on the strength of Statements 1 and 2 — the same statements the First Amended Petition alleges are false.

The First Amended Petition alleges Statements 1 and 2 are false, and that specific sections of the FEIS show blank response columns where Statement 2 says responses exist.

C. What the Law Requires — and How the FEIS Fails Under HRS § 343-7(c)

Petitioners filed this judicial review proceeding under HRS § 343-7(c), challenging the acceptance of the FEIS. McKeague's statements in Exhibit B-20 — that the FEIS was "prepared pursuant to" HRS Chapter 343 and HAR Chapter 11-200.1 and included "responses to all substantive comments" — are what the acceptance record shows. He is the one who told the accepting authority this document was ready for acceptance. Under HRS § 343-7(c), this Court reviews whether that acceptance was lawful. The person who said the document was ready for acceptance should not be dismissed from the proceeding that reviews whether that acceptance was proper. Those laws require the following:

HRS § 343-2 defines "Acceptance" as a determination that the FEIS "fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement." The evidence presented in the First Amended Petition alleges the FEIS fails all three. HRS § 343-2 also defines "Environmental impact statement" as a document that discloses, in relevant part, "effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State." The FAP alleges the FEIS at Exhibit B-11-1, FEIS VOL. I p. 274, defers the cultural analysis to a future SMA permit.

HAR § 11-200.1-13(b)(1) requires evaluation of whether an action may "irrevocably commit a natural, cultural, or historic resource." The evidence in the First Amended Petition alleges this required evaluation was not completed in the FEIS.

HAR § 11-200.1-13(b)(4) requires evaluation of whether an action may 'have a substantial adverse effect on the economic welfare, social welfare, or cultural practices of the community and State.' The evidence in the First Amended Petition alleges this required evaluation was not completed in the FEIS.

HAR § 11-200.1-13(b)(9) requires evaluation of whether an action may 'have a substantial adverse effect on a rare, threatened, or endangered species, or its habitat.' The FAP alleges the FEIS does not adequately analyze endangered marine species in Keauhou Bay (FAP p. 10; Exs. B-14-1 through B-18-6).

HAR § 11-200.1-24(j) requires the EIS to "include a description of the relationship of the proposed action to land use and natural or cultural resource plans, policies, and controls for the affected area." The FAP alleges the FEIS defers this to a future SMA permit, page 274 of the FEIS Vol. I.

HAR § 11-200.1-26(a) requires the proposing agency or applicant to respond within the final EIS to all substantive written comments. McKeague said the FEIS included 'responses to all substantive comments.' Three sections of expert environmental attorney Jeff Caufield's comment letter — freshwater cultural resources, traffic into culturally sensitive areas, and his conclusion — have blank response columns (Exs. R-7-1 through R-7-8). Either the responses are there or they are not. The First Amended Petition alleges they are not, and this is only one example.

McKeague said this document was prepared pursuant to these laws. The evidence in the First Amended Petition alleges it was not. This Court's review under HRS § 343-7(c) is precisely the mechanism to determine whether the FEIS satisfies the requirements McKeague said it met. McKeague is the individual who made those statements. Dismissing him and G70 removes the person and the company who made those statements from the proceeding that reviews them. Without accountability under judicial review, neither the accepting authority nor the applicant who hires a consultant has any assurance that the professional statements they rely upon are truthful.

D. G70's Foundational Role Includes McKeague's Statements

Respondents seize on the FAP's statement that "G70 is named as a Respondent solely because of its integral and foundational role in preparing and advancing the FEIS upon which subsequent governmental approvals and actions are based." FAP at 37. Respondents argue that if an "integral and foundational role in preparing" a FEIS were sufficient grounds for suit, every consultant on every EIS in Hawaiʻi would be a proper Respondent in every Chapter 343 challenge. Motion to Dismiss, Dkt. 55, at 9-10; Reply, Dkt. 81, at 6.

That argument mischaracterizes the basis for the claim against G70 and Mr. McKeague. Petitioners do not ask this Court to hold that a consultant may be sued merely for having prepared a FEIS. The FAP's allegations, and the transmittal letter itself at Exhibit B-20, identify a narrower and more specific basis: McKeague personally stated, under his own name, professional credential, and corporate title, that the FEIS he prepared complied with Chapter 343 and HAR Chapter 11-200.1 and contained responses to all substantive comments. Those are not allegations about preparation in the generic sense that would apply to any consultant on any project. Within that same foundational role, McKeague personally made specific representations to a state agency that the First Amended Petition alleges are false, including sections of the FEIS with blank response columns where responses were represented to exist.

That distinction defeats Respondents' "every consultant" objection on its own terms. A consultant who prepares a compliant FEIS and makes truthful statements has nothing to answer for under Petitioners' theory, no matter how integral or foundational its role in preparation was. Only a consultant whose integral and foundational role in preparing and advancing the FEIS includes personally stating compliance that does not exist faces the accountability Petitioners seek. The FAP's description of G70 as a Respondent solely because of its integral and foundational role in preparing and advancing the FEIS does not narrow or waive that theory. The letter at Exhibit B-20 is the act of advancing the FEIS — it is the document that submits the FEIS to the State and moves it toward acceptance. The statements in that letter are therefore part of that same foundational role, not separate from it.

III. Dismissal Permanently Forecloses Relief

G70's own Motion to Dismiss at Docket 55, page 11, acknowledges that the FAP requests this Court "order the removal of McKeague from his position as President of G70 based on abuse of authority." FAP at 37-38. That is relief that operates uniquely on both G70 and Mr. McKeague Respondent. Dismissing G70 permanently forecloses this Court's ability to consider whether that relief is warranted, before this Court has examined the merits. This relief also directly affects G70 as a company, as the removal of its President based on conduct in this matter has consequences for the firm itself.

Dismissal at this stage is particularly inappropriate because a plaintiff need not even correctly identify the relief to which they are entitled for a claim to survive. "[A] party shall be granted the relief to which he is entitled even if he has not demanded that relief in his pleadings." Ravelo v. County of Hawai'i, 66 Haw. 194, 198–99, 658 P.2d 883, 886 (1983) (quoting Waterhouse v. Capital Investment Co. and citing HRCP Rule 54(c)). The Court's task is instead to view the allegations in the light most favorable to Petitioners and determine whether they could give rise to recovery under any theory. Id.; Au v. Au, 63 Haw. 210, 221, 626 P.2d 173, 181 (1981) (a complaint may be dismissed only where "it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief"). Taking Petitioners' allegations as true, as the Court must at this stage, dismissal of the G70 Respondents before any merits determination would improperly foreclose relief to which Petitioners may be entitled.

IV. CONCLUSION

This case presents a question no Hawai'i court has previously answered: whether a consultant who personally states compliance with Hawai'i's environmental review laws can avoid judicial review of that statement because it opens with the words "on behalf of the Applicant." It cannot. That phrase identifies who hired G70. It does not say who made the statements that follow — the letter already answers that: it is signed by Mark Kawika McKeague, in his own name, under his own AICP credential, as President of G70, not by Kamehameha Schools, which signed nothing.

McKeague told the State that the FEIS was prepared pursuant to HRS Chapter 343 and HAR Chapter 11-200.1, and that it included responses to all substantive comments. The First Amended Petition alleges both statements are false: that the FEIS fails numerous requirements of Chapter 343 and HAR Chapter 11-200.1, and that substantive comments, including sections of Jeff Caufield's comment letter, received blank response columns.

Respondents' "every consultant" objection fails for the reasons explained above: G70's foundational role in preparing and advancing the FEIS includes the statements McKeague personally made, not just the fact that G70 touched the document. Nor does the absence of a tort claim remove McKeague from this proceeding — this Court's review under HRS § 343-7(c) exists to determine whether his statements were true, regardless of whether a separate tort theory is also available.

Dismissal of G70 and McKeague would foreclose relief that operates uniquely on them, before the merits have been reached.

Under Hawai'i's "beyond doubt" standard, dismissal is proper only if it appears beyond doubt that Petitioners can prove no set of facts entitling them to relief. Accepting the allegations as true, as the Court must at this stage, Petitioners can: that McKeague personally stated compliance and completeness for a FEIS the Petition alleges lacks both.

For these reasons, Petitioner Rebecca Melendez respectfully request that this Court reconsider its Order granting the Motion to Dismiss, and deny the Motion to Dismiss as to Respondents G70 and Kawika McKeague.

DATED: Kailua-Kona, Hawaiʻi, July 14, 2026.

Rebecca Melendez

REBECCA MELENDEZ, Pro Se

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served upon the following parties by depositing the same in the United States mail, postage prepaid, on July 14, 2026:

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DATED: Kailua-Kona, Hawaiʻi, July 14, 2026.

Rebecca Melendez

REBECCA MELENDEZ, Pro Se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

REBECCA MELENDEZ,

Petitioner,

vs.

KAMEHAMEHA SCHOOLS (BISHOP ESTATE); HAWAI‘I COUNTY PLANNING DEPARTMENT; JEFF DARROW, in his official capacity as Director; MARISSA HARMAN, in her professional and official capacity; G70; KAWIKA MCKEAGUE, in his official capacity; JANE DOES 1–20; DOE ENTITIES 1–20; DOE GOVERNMENT ENTITIES 1–20,

Respondents.

Civil No. 3CCV-25-0000438

(Declaratory Judgment)

[PROPOSED] ORDER ON PETITIONERS' MOTION FOR RECONSIDERATION

Petitioner's Motion for Reconsideration came before this Court for consideration. After reviewing the motion, the record in this case, and any memoranda and arguments submitted, the Court orders as follows:

☐ GRANTED

OR

☐ DENIED

If GRANTED, the Court's July 10, 2026 Order Granting Respondents G70 and Kawika McKeague's Motion to Dismiss (Docket No. 106) is VACATED, and Respondents G70 and Kawika McKeague's Motion to Dismiss (Docket No. 55) is DENIED.

IT IS SO ORDERED.

DATED: Kailua-Kona, Hawaiʻi, ______________________, 2026.

____

HONORABLE KAUANOE JACKSON

Judge of the Above-Entitled Court

EXHIBIT B-20 – FEIS TRANSMITTAL LETTER

This exhibit is the August 26, 2025 transmittal letter signed by Mark Kawika McKeague, President of G70. Although the letter begins, **"On behalf of the Applicant,"** that phrase identifies G70's client—it does not change who made the statements that follow. Mr. McKeague personally signed and represented that the FEIS complied with HRS Chapter 343 and HAR Chapter 11-200.1, contained responses to all substantive comments, and was ready for governmental acceptance. Petitioners respectfully submit that these signed representations are central to the Motion for Reconsideration because they were submitted in support of the FEIS acceptance challenged in this HRS § 343-7(c) judicial review proceeding.

G70

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August 26, 2025

Ms. Mary Alice Evans, Director
State of Hawai'i
Office of Planning and Sustainable Development
Environmental Review Program
235 South Beretania Street, Room 702
Honolulu, Hawai'i 96813

Subject: Kamehameha Schools, Keauhou Bay Management Plan
Final Environmental Impact Statement
Tax Map Keys (3) 7-8-012:098; (3) 7-8-012:101; (3) 7-8-012:048; (3) 7-8-010:044; (3) 7-8-012:027; (3) 7-8-012:004; (3) 7-8-012:013; (3) 7-8-012:014; (3) 7-8-012:054; (3) 7-8-012:061; (3) 7-8-012:065; (3) 7-8-012:007; (3) 7-8-010:049; (3) 7-8-012:103
Keauhou, Island of Hawai'i, Hawai'i

Dear Ms. Evans:

On behalf of the Applicant, Kamehameha Schools, G70 submits the Final Environmental Impact Statement (EIS) for the Keauhou Bay Management Plan for publication in the September 8, 2025, edition of *The Environmental Notice*.

The FEIS consists of three volumes and has been prepared pursuant to Chapter 343, Hawai'i Revised Statutes (HRS), and Title 11, Chapter 200.1, Hawai'i Administrative Rules (HAR). The FEIS includes copies of all written comments received during the 45-day public consultation period for the Draft EIS, as well as responses to all substantive comments.

In accordance with HAR §11-200.1-5(e)(6)(C), the Final EIS document package has been simultaneously filed with the County of Hawai'i Planning Department as the accepting authority.

Should you have any additional questions, please contact me at (808) 523-5866.

Sincerely,

GROUP 70 INTERNATIONAL, INC., dba G70

Mark Kawika McKeague, AICP
President

cc:
Mr. Alex Roy, Planning Department