

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

DAISY MITCHELL;
REBECCA MELENDEZ,

Petitioners,

vs.

KAMEHAMEHA SCHOOLS (BISHOP ESTATE);
HAWAI‘I 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;
DOE GOVERNMENTAL UNITS 1-20;

Respondents.

CIVIL NO. 3CCV-25-0000438

PETITIONERS’ RESPONSE TO ANSWER OF DEFENDANTS
RESPONDENTS G70 AND KAWIKA MCKEAGUES’ MOTION TO DISMISS

Petitioners respectfully submit that the Motion filed by G70 and Kawika McKeague improperly attempts to characterize the First Amended Petition as asserting only a narrow statutory challenge directed exclusively toward the formal act of FEIS acceptance while disregarding the broader constitutional, public trust, fiduciary, environmental review, and unlawful FEIS advancement allegations expressly contained throughout the First Amended Petition. Petitioners further allege that the FEIS prepared, coordinated, transmitted, and advanced by G70 and Kawika McKeague failed to comply with HRS Chapter 343, HAR Chapter 11-200.1, Article XI and Article XII of the Hawai‘i Constitution, the Ka Pa‘akai framework, and public trust obligations articulated under Waiāhole.

Petitioners further allege that the FEIS omitted or inadequately analyzed cumulative impacts, impaired water conditions, baseline environmental conditions, traditional and customary Native Hawaiian rights, endangered species impacts, stormwater runoff, wastewater impacts, and cumulative coastal intensification affecting Keauhou Bay, yet was nevertheless signed, transmitted, and advanced as legally sufficient despite those alleged deficiencies. See First Amended Petition, pp. 1-22, 30-31, and 77-88.

The First Amended Petition expressly alleges that G70 and Kawika McKeague were not passive third parties with no involvement in the challenged conduct, but instead actively prepared, coordinated, approved, transmitted, and advanced the Final Environmental Impact Statement (“FEIS”) forming the basis for continued governmental reliance, discretionary processing, and advancement of the proposed Keauhou Bay development. See First Amended Petition, pp. 28-38.

Petitioners further alleged that G70 bore direct responsibility for preparation and advancement of the FEIS and that the FEIS omitted material environmental analysis, failed to adequately disclose cumulative impacts, failed to adequately analyze impaired water conditions, failed to satisfy constitutional obligations involving traditional and customary Native Hawaiian rights, failed to adequately evaluate endangered species impacts, and failed to satisfy the disclosure and analytical requirements imposed under HRS Chapter 343 and HAR Chapter 11-200.1. See First Amended Petition, pp. 9-19, 30-31, and 77-88.

G70’s Motion repeatedly attempts to characterize the FEIS preparer as legally insulated from judicial review merely because G70 acted as a consultant for the applicant. However, Petitioners respectfully submit that HRS Chapter 343 requires preparation of a legally adequate FEIS before discretionary approvals may lawfully proceed, and the First Amended Petition specifically alleges that G70 and Kawika McKeague directly participated in preparation, coordination, approval, execution, transmission, and advancement of the FEIS alleged to be materially deficient and unlawful, including execution and transmittal of FEIS materials submitted in support of acceptance and continued governmental reliance. Petitioners further respectfully submit that entities and individuals retained to prepare, coordinate, certify, and sign off upon Environmental Impact Statements under HRS Chapter 343 are expected to understand, follow, and comply with the legal disclosure, analytical, completeness, and environmental review requirements governing FEIS preparation under Hawai‘i law.

Petitioners further allege that Hawai‘i law recognizes that shoreline resources, access rights, and coastal uses carry heightened constitutional and public trust protections and may not be disregarded through incomplete environmental review or misleading disclosure practices. As further discussed in the First Amended Petition, Hawai‘i courts have recognized protections involving shoreline access and public rights associated with coastal lands, including principles identified in *Gold Coast Neighborhood Association v. State of Hawai‘i*. Petitioners respectfully submit that preparation and advancement of an FEIS affecting culturally and environmentally sensitive shoreline areas such as Keauhou Bay therefore required heightened accuracy, full disclosure, meaningful cumulative analysis, and lawful compliance with constitutional, public trust, shoreline, and environmental review obligations prior to advancement of discretionary approvals. See First Amended Petition, pp. 28-52.

Petitioners further respectfully submit that the Motion improperly ignores the constitutional and public trust dimensions of this action, including allegations arising under Article XI and Article XII of the Hawai‘i Constitution, *Ka Pa‘akai O Ka ‘Āina v. Land Use Commission*, *In re Water Use Permit Applications (Waiāhole Ditch)*, and HRS Chapter 343. The First Amended Petition alleges ongoing reliance upon a materially deficient FEIS affecting public trust resources, shoreline ecosystems, nearshore marine habitat, traditional and customary Native Hawaiian rights, longstanding community rights and use associated with Keauhou Bay, shoreline access, and culturally sensitive shoreline areas at Keauhou Bay. See First Amended Petition, pp. 4-15 and 30-31.

Petitioners further respectfully submit that the Motion’s characterization that Petitioners seek “no relief” against G70 or Kawika McKeague is incomplete and misleading. The First Amended Petition expressly seeks declaratory, injunctive, equitable, and remedial relief necessary to halt continued advancement and reliance upon the challenged FEIS and further seeks relief associated with alleged unlawful FEIS preparation, coordination, execution, transmission, and advancement under HRS Chapter 343 and the Hawai‘i Constitution. Petitioners further seek judicial review and remedial relief concerning alleged continued governmental reliance upon a materially deficient FEIS, actions exceeding lawful authority under HRS Chapter 343, alleged constitutional violations involving Article XI and Article XII of the Hawai‘i Constitution, and protection of public trust resources associated with Keauhou Bay.

Petitioners further seek declaratory, injunctive, equitable, and remedial relief associated with the alleged unlawful preparation, coordination, execution, transmission, and advancement of the challenged FEIS by G70 and Kawika McKeague under HRS Chapter 343, HAR Chapter 11-200.1, Article XI, and Article XII of the Hawai‘i Constitution. Petitioners further seek relief

necessary to halt continued reliance upon and advancement of the allegedly unlawful FEIS, including relief associated with continued governmental reliance upon FEIS materials allegedly prepared, coordinated, transmitted, and advanced by G70 and Kawika McKeague despite the substantial environmental, constitutional, cumulative impact, shoreline, public trust, and disclosure deficiencies identified throughout the First Amended Petition. See First Amended Petition, pp. 1-3 and 28-38.

Petitioners further expressly request the removal from further exercise of authority of Kawika McKeague to the extent the record demonstrates abuse of discretion, unlawful advancement of an invalid FEIS, action in excess of lawful authority, or breach of mandatory constitutional or statutory duties. Petitioners allege that Kawika McKeague participated in the preparation, coordination, execution, transmission, sign-off, and advancement of the challenged FEIS despite the substantial environmental, constitutional, cumulative impact, shoreline, public trust, cultural, endangered species, impaired water quality, baseline analysis, and disclosure deficiencies identified throughout the administrative record and First Amended Petition, including allegations concerning omitted FEIS sections repeatedly relied upon within FEIS responses and project justification materials despite those sections being omitted from the publicly accessible FEIS itself. See First Amended Petition, pp. 2, 28-38, 30-31, and 88.

With respect to timeliness, Petitioners expressly proceed under the continuing agency action and continued reliance framework identified throughout the First Amended Petition, including allegations that Respondents continue to take administrative, planning, discretionary, and project advancement actions in reliance upon the challenged FEIS. See First Amended Petition, pp. 1-2, 9, and 13-15. Petitioners further respectfully submit that continued reliance upon and advancement of actions premised upon an allegedly unlawful FEIS constitutes continuing conduct subject to judicial review under HRS §343-7(c).

Petitioners further respectfully submit that the Motion improperly attempts to isolate FEIS preparation from FEIS reliance and advancement where the First Amended Petition expressly alleges that the challenged FEIS itself remains the foundational document being used to support continuing governmental processing, discretionary approvals, shoreline development advancement, and environmental review compliance for the proposed Keauhou Bay development.

Accordingly, Petitioners respectfully submit that dismissal of G70 and Kawika McKeague is not warranted at this stage because the First Amended Petition alleges direct involvement in

preparation and advancement of the challenged FEIS, continuing reliance upon the FEIS, ongoing environmental and constitutional harm, and unresolved factual and legal questions concerning compliance with HRS Chapter 343, Article XI, Article XII, public trust obligations, and protection of traditional and customary Native Hawaiian rights.

DATED: Kailua-Kona, Hawai‘i, _____, 2026.

Respectfully submitted,

DAISY MITCHELL
Petitioner, Pro Se

REBECCA MELENDEZ
Petitioner, Pro Se