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**Electronically Filed**
**THIRD CIRCUIT**
**3CCV-25-0000438**
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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

DAISY MITCHELL; REBECCA MELENDEZ,

Petitioners,

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
(ENVIRONMENTAL COURT ACTION)

**RESPONDENTS TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP DBA KAMEHAMEHA SCHOOLS' AND MARISSA HARMAN'S MOTION FOR SUMMARY JUDGMENT**; DECLARATION OF MARISSA HARMAN; EXHIBITS "1"- "7"; DECLARATION OF COUNSEL; EXHIBITS "8" - "10"; NOTICE OF HEARING ON MOTION; 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

**RESPONDENTS TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP DBA KAMEHAMEHA SCHOOLS' AND MARISSA HARMON'S MOTION FOR SUMMARY JUDGMENT**

Respondents CRYSTAL KAUILANI ROSE, JENNIFER NOELANI GOODYEAR-KAʻŌPUA, MICHELLE M. KAʻUHANE, ERIC K, YEAMAN, and ELLIOT KAWAIHOʻOLANA MILLS, as Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools ("**KS**"), and MARISSA HARMAN, in her professional and official capacity (collectively, "**Respondents**") move for summary judgment on all claims asserted in the *First Amended Petition for Judicial Review of Environmental Impact Statement Acceptance*, filed on April 8, 2026 [Dkt. 16] (the "**FAC**") by remaining Petitioner REBECCA MELENDEZ ("**Petitioner**"). All claims in the 107 page Complaint should be dismissed under Haw. R. Civ. P. ("**HRCP**") Rules 12 and/or 56, as follows:

(1) Petitioner's FAC fails to properly state a claim, and summary judgment is appropriate on all claims under Hawaiʻi Revised Statutes ("**HRS**") Chapter 343 ("**HEPA**"), Hawaiʻi Administrative Rules, Title 11, Chapter 200.1 (2019), and controlling Hawaiʻi case law precedent in *Price v. Obayashi*, 81 Hawaiʻi 171, 914 P.2d 1364 (1996) and *Kaupiko v. Bd. of Land & Natural Res*., 154 Hawaiʻi 456, 555 P.3d 143 (2024), based on Petitioner's efforts seeking to invalidate the County of Hawaiʻi's acceptance of KS's Final Environmental Impact Statement ("**FEIS**") for the Keauhou Bay Management Plan ("**KBMP**") in Keauhou, Hawaiʻi (the "**Project**"). The FEIS satisfies the content and procedural requirements of HEPA.

(2) Petitioner fails to state a claim and has not satisfied the requirements under Hawaiʻi law to show that her comments submitted during the public review period were not fully included and considered in the FEIS; therefore, summary judgment is appropriate on Melendez's claims as a matter of law under HEPA.

(3) Petitioner cannot assert claims on behalf of non-party third persons (such as Jeffrey Caufield), for any comments timely submitted or not during the 45 day public comment period, under HRS § 343-7(c), as confirmed by legal precedent in *Sensible Traffic Alternatives v. FTA*, 307 F.Supp.2d 1149, 1160 (D. Haw. 2004) and *Price*, 81 Hawaiʻi at 183, 914 P.2d at 1376.

(4) Petitioner has not and cannot pursue an actionable claim or viable private cause of action related to the FEIS based on FAC allegations citing to Haw. Const. Art. XI (clean and healthful environment); Article XII (public trust doctrine, traditional and customary practices), and *Ka Paʻakai* consultation. The FEIS includes sections that detail extensive environmental

disclosures, including impacts to cultural resources and practices; and otherwise the FEIS and KS has not restricted or prevented any alleged traditional and customary practices or taken any action other than disclosing the anticipated impacts of the Project as required under HRS Chapter 343 in the FEIS.

(5) Petitioner has no right, standing, or legitimate claim to demand, nor does this Court have the authority, to remove individuals Marissa Harman, Kawika McKeague, and Jeff Darrow from their employment positions. Petitioner has not stated a viable private cause of action outside of HEPA to allege direct personal claims against those individual Respondents based on the preparation, sufficiency, and acceptability of the FEIS as an environmental disclosure document.

(6) To the extent Petitioner's claims in the FAC [Dkt. 16] assert new or amended claims based on HEPA that were not asserted in the original complaint filed on October 22, 2025 [Dkt. 1], such claims are untimely as violating the 60 day rule to assert such claims under HRS § 343-7(c), or by November 22, 2025, so any new FEIS allegations or claims under HEPA in the amended FAC should be dismissed.

(7) Because the FEIS does not itself approve any permits, uses, or formal authorizations for the Project, Petitioner's claims seeking to enjoin or halt the proposed educational and cultural center, 150 unit low-impact lodging, and other elements of the KBMP are not actionable under HEPA, and no separate private cause of action can be maintained outside this Court's FEIS sufficiency review of the claims alleged in the original complaint [Dkt. 1] under HRS § 343-7(c).

(8) Petitioner has no standing, fails to state a viable claim, and otherwise summary judgment is appropriate on all alleged HRS Chapter 554D claims involving the administration of the Will of Princess Bernice Pauahi Bishop, arising out of the preparation and submission of the FEIS as an environmental disclosure document for the KBMP. Petitioner has no private right of action and cannot maintain an action to pursue claims for a trust "accounting," or alleged violations of duty, fiduciary or otherwise, based on the Will of Princess Bernice Pauahi Bishop, and HRS Chapter 554D, as a beneficiary, private litigant, or in any capacity. This Circuit Court lacks jurisdiction over these alleged claims, and venue is improper under HRS § 554D-204.

(9) Petitioner has not stated and cannot maintain a private right of action against Respondents to halt the Project or invalidate the FEIS, under HRS § 264-1, or any claim about the Project area being used as a public trail or highway.

(10) Petitioner has no standing to assert any title issues in an FEIS sufficiency action under HEPA, and there are no comments submitted by Melendez related to the FAC allegations about the Project's real property title rights. Petitioner has no separate private cause of action regarding title to the Project area.

(11) Petitioner has no separate right or private cause of action to enjoin, halt, restrict, remove, or invalidate the FEIS based on prior attempts to organize an event near the Project area under HEPA or otherwise. The FEIS does not approve any uses, permits, or governmental actions; it is simply an environmental disclosure document for use and consideration by decision makers.

(12) None of the stated "Counts" in the FAC at pages 98-102 directly implicate any violation of HRS Chapter 343 by the FEIS, so Petitioner has not properly pled and asserted claims for relief based on HEPA under HRCP Rule 12 in those Counts, and otherwise such claims should be dismissed as a matter of law under HRCP Rule 56.

(13) Petitioner has no standing or private right of action to allege any violation of the public trust doctrine, water rights, or alleged Article XII, Section 7 claims under the Hawai‘i Constitution based on the FEIS. Such claims are subsumed and a part of the statutory framework for FEIS sufficiency review under HRS § 343-7(c), as confirmed by the Hawai‘i Supreme Court in *Maui Lani Neighbors*, *Inc. v. State*, 156 Hawai‘i 520, 524-25, 575 P.3d 610, 614-15 (2025) and *Punohu v. Sunn*, 66 Haw. 485, 666 P.2d 1133 (1983).

(14) Under Hawai‘i case law precedent, claims for declaratory, injunctive, and HRS Chapter 91 administrative relief are not available to Petitioner based on the County of Hawai‘i's acceptance of the FEIS pursuant to HEPA under *Punohu* and *Maui Lani Neighbors*.

(15) Under this Court's *Order Granting Respondents on G70 and Kawika McKeague's Motion to Dismiss Petitioners' First Amended Petition for Judicial Review of Environmental Impact Statement Acceptance filed May 12, 2026 [Dkt 55]*, filed July 10, 2026 [Dkt. 106], Marissa Harman is not a proper party to this litigation and should be dismissed as a party.

This Motion is made pursuant to Rules 7, 12 and 56 of the Hawai‘i Rules of Civil Procedure and Rules 7 and 8 of the Rules of the Circuit Courts of the State of the Hawai‘i, and is supported by the attached Memorandum, Declaration, Exhibits, and the records and files.

DATED: Honolulu, Hawai‘i, September 4, 2026.

*/s/ John P. Manaut*
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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

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|---|---|
| DAISY MITCHELL; REBECCA MELENDEZ,<br>Petitioners,<br><br>vs.<br><br>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;<br><br>Respondents. | CIVIL NO. 3CCV-25-0000438<br>(ENVIRONMENTAL COURT ACTION)<br><br>MEMORANDUM IN SUPPORT OF MOTION |

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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## I. SUMMARY OF BACKGROUND AND LEGAL POSITION

In 2016, Respondent Kamehameha Schools ("**KS**")[1] began developing the Keauhou Bay Management Plan ("**KBMP**") for its property at Keauhou Bay, Hawai‘i (the "**Project**") to better manage the various uses of the Project area, including commercial and recreational uses close to valued cultural sites such as King Kamehameha III's birth stone and Mō‘īkeha cave. An Environmental Impact Statement ("**EIS**") under Haw. Rev. Stat. ("**HRS**") Chapter 343 ("**HEPA**") was required because implementation of the KBMP within the shoreline area requires a Special Management Area ("**SMA**") use permit under HRS Chapter 205A and includes the partial use of an historic site. *See* HRS § 343-5(a)(3), (4); **Exh. 1** (FEIS) at 1-2. The Project is specifically designed to best address the environmental, cultural, and site specific uses in the Keauhou Bay area, as KS's stewardship is to fulfill the wishes of the estate's benefactor to: (1) educate Hawai‘i's children by implementing appropriate cultural and educational programming to the Keauhou area, (2) reorient commercial activities and parking away from culturally sensitive areas to alleviate congestion and resource conflicts, and (3) to establish a new place-based cultural educational center. **Exh. 1** (FEIS) at 1-15 to 1-16.

Petitioner's *First Amended Petition For Judicial Review of Environmental Impact Statement Acceptance* [Dkt. 16] ("**FAC**") challenges the Final Environmental Impact Statement ("**FEIS**")[2] for the KBMP, alleging that the FEIS does not comply with HEPA. FAC [Dkt. 16] at 1-2. Petitioner Rebecca Melendez ("**Petitioner**")[3] seeks to invalidate Respondent County of Hawai‘i Planning Department's ("**County**") September 16, 2025 acceptance of the FEIS as a HEPA compliant environmental disclosure document for the Project. As set forth below, none of Petitioner's claims state a viable cause of action and the claims cannot survive dismissal or

---

[1] Respondent Kamehameha Schools/Bishop Estate is incorrectly named and is more accurately identified as Crystal Kauilani Rose, Jennifer Noelani Goodyear-Ka‘ōpua, Michelle M. Ka‘uhane, Eric K, Yeaman, and Elliot Kawaiho‘olana Mills, as Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools, referred to as "**KS**" herein.

[2] A copy of the FEIS and its appendices is attached hereto as **Exh. 1**. KS's property located at Keauhou is described at pages 1-2 and 1-14 of the FEIS.

[3] Petitioner Daisy Mitchell was dismissed as a party to this case on all claims brought by her without prejudice in the *Order Granting Motion To Dismiss Daisy Mitchell As A Petitioner Without Prejudice Due To Health Concerns*, dated September 3, 2026 [Dkt. 148]. Mitchell never submitted any comments on the Draft EIS during the statutory time period, so Mitchell does not have standing to challenge the sufficiency of the FEIS under HRS § 343-7(c) and should be dismissed as a party, with prejudice, as a matter of law.

summary judgment under the review standards established for judicial review of the FEIS.

It is important at the outset to acknowledge the purpose of an EIS, which is defined as:

> … an ***informational document*** prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

HRS § 343-2 (emphasis added). Neither the EIS nor the acceptance of an EIS is a development permit or otherwise authorizes the proposed action to proceed. The EIS simply discloses the anticipated impacts of the proposed action so any future discretionary permit or approval can consider the environmental implications of a project during decision making. In this case, KS still needs to obtain its SMA approval from the County before it can implement the KBMP.

It is also crucial to separate and properly categorize Petitioner's claims. As confirmed by Petitioner,[4] the instant action is brought pursuant to HRS § 343-7(c), which challenges the sufficiency of the FEIS. Petitioner's primary HEPA claims argue that the FEIS was not properly accepted by the County because: (1) the FEIS purportedly fails to include and respond to public comments, including non-parties to this action; and (2) the FEIS allegedly fails to analyze significant environmental and cultural impacts of the KBMP, including, among other things, lacking a *Ka Pa'akai* analysis, considering public access to the Project, and water availability (collectively, the "**HEPA Claims**").

Petitioner also seeks to improperly conflate the HEPA Claims with additional improper and baseless allegations arising outside of the scope of HEPA, some of which were not raised in Petitioner's Draft EIS comments as required by HRS § 343-7(c), and which cannot be maintained as a separate private cause of action, including: (1) to terminate or remove from employment Respondents Harman and McKeague[5] based on their roles in assisting KS in the preparation of the FEIS as an environmental disclosure document, and Respondent Darrow in his role in accepting the FEIS; (2) claims asserted in the amended FAC filed April 8, 2026 [Dkt. 16] that were not timely raised in the original complaint filed on October 22, 2025 [Dkt. 1], or within the

[4] At a July 8, 2026 hearing, Petitioner confirmed her claims are based on a HRS Chapter 343 sufficiency challenge of the FEIS under HEPA. *See* **Exh. 10**, Tr. 7/8/26 at 41:8-43:8; 48:9-16.
[5] Respondents G70 and Kawika McKeague's *Motion to Dismiss Petitioners' First Amended Petition for Judicial Review of Environmental Impact Statement Acceptance* [Dkt. 55] was granted by the Order dated July 10, 2026 [Dkt. 106], dismissing them from the case.

60 day period to challenge the FEIS by November 22, 2025, as required by Haw. Rev. Stat. § 343-7(c); (3) to seek an "accounting" or maintain claims alleging HRS Chapter 554D violations under the Will of Princess Bernice Pauahi Bishop (the "**Will**"), based on alleged violations of duty, fiduciary or otherwise, either as a beneficiary, private litigant, or in any capacity; (4) claims based on HRS § 264-1, or for any alleged use of the Project area as a public trail or highway; and (5) to enjoin or halt the Project for any alleged violation of the public trust doctrine, Haw. Const. Article XI (clean and healthful environment, public trust) or Article XII, Section 7 (traditional and customary practices, public trust), as such claims are subsumed and a part of the statutory framework for this Court's FEIS sufficiency review governed by HRS § 343-7(c), as confirmed by *Maui Lani Neighbors*, *Inc. v. State*, 156 Hawai‘i 520, 524-25, 575 P.3d 610, 614-15 (2025) and *Punohu v. Sunn*, 66 Haw. 485, 666 P.2d 1133 (1983) (collectively, the "**Other Claims**").

While Petitioner is unhappy with certain proposed elements of the KBMP, the County correctly concluded that the FEIS meets all statutory requirements as a properly prepared, satisfactory, and legally compliant HEPA environmental disclosure statement. *See* **Exh. 2**. Petitioner's FAC does not properly state a credible challenge to the sufficiency and acceptability of the FEIS under HEPA, and should be dismissed as a matter of law on summary judgment because the FEIS satisfies all content and procedural requirements of HEPA. Therefore, any order requiring the County to withdraw its acceptance of the FEIS is improper; and the Court cannot enjoin KS from implementing the KBMP or otherwise invalidate the FEIS as it is an informational document. No further environmental review is required for the FEIS under HEPA.

Petitioner is also unhappy with certain aspects of the KBMP, such as the low-impact lodging proposed on the existing Resort-zoned mauka portion of the Property. The FAC falsely argues that the FEIS fails to address impacts on general topics like water quality, traffic, cultural concerns, noise, drainage, public access, recreational uses, manta ray plankton feeding, pollution, natural hazards, or project alternatives, etc. *See* FAC [Dkt. 16] at 11-12. A chart attached hereto as **Exhibit 9** details each of the FAC allegations, and identifies the section(s) of the FEIS where each of those topics is addressed. If there is any doubt about inclusion, all of Melendez's comments were reproduced verbatim in the FEIS. *See* **Exh. 1** (FEIS) Vol II; **Exh. 8**, Row 2. Petitioner's FAC also falsely alleges that the EIS process excluded meaningful public participation and lacked community consultation. FAC at 19-20. Extensive consultation was conducted as described in Chapter 7 and Appendix H (Cultural Impact Assessment ("**CIA**")) of

the FEIS. **Exh. 1** (FEIS) at 7-1 to 7-30, App. H. Based on its review of the FEIS, the County correctly concluded that the FEIS met all statutory requirements as a properly prepared, satisfactory and legally compliant environmental disclosure document under HEPA. *See* **Exh. 2**.

**Summary Judgment is Appropriate for a Chapter 343 Challenge**. Under clearly established Hawai'i Supreme Court legal precedent, an FEIS challenge under HEPA is reviewed by the trial Court through a motion for summary judgment, as set forth in *Price v. Obayashi*, 81 Hawai'i 171, 182, 914 P.2d 1364, 1375 (1996), and confirmed by *Kaupiko v. Bd. of Land &Natural Res*., 154 Hawai'i 456, 467, 555 P.3d 143, 155 (2024).

For purposes of this FEIS review, it is indisputable that all comments that were timely received during the statutory public comment period from Petitioner were in fact included *verbatim* and considered within the FEIS in Vol. II, Appendices D and E. Responses to Petitioner's substantive comments are included in the FEIS Vol. II, Appendices B and C. Under HEPA and HAR § 11-200.1-28(b)(3), responses to Petitioner's comments in the FEIS were deemed satisfactory to the County accepting authority as part of its review and approval process. Based on a plain reading of the four corners of the FEIS, this Court can confirm under a "rule of reason" standard of review that the FEIS met all content and procedural requirements required by HEPA, as set forth in *Price* and *Kaupiko*.

**Petitioner Cannot Pursue Claims of Non-Party Third Persons**. Petitioner improperly seeks to assert claims on behalf of third persons who are not named as parties to this action and who have not themselves filed an action to challenge the sufficiency of the FEIS. While any timely submitted comments from these other non-parties were in fact included in the FEIS, under HRS § 343-7(c), Petitioner lacks standing and any legal authority to prosecute alleged claims for other persons who are not named party plaintiffs to this action. As a matter of law, all claims in the FAC on behalf of third persons who are not named party plaintiffs, or EIS insufficiency arguments based on comments not specifically included within Petitioner's own timely submitted comments, are not actionable under HEPA. *See* HRS § 343-7(c) (". . . persons who provided written comment to an accepted statement during the designated review period shall be adjudged aggrieved parties for the purpose of bringing judicial action under this subsection; provided that for aggrieved parties, the contestable issues shall be limited to those issues identified and discussed in the written comment[.]")

**The FAC States No Other Viable Claims**. Because the FEIS satisfies the procedural

and content requirements of HEPA, its implementing regulations, HAR Title 11, Chapter 200.1, and the *Price* standard for sufficiency of an EIS under HEPA, and because Petitioner confirmed her claims are limited to challenging the sufficiency of the FEIS under HEPA, *see* **Exh. 10**, Tr. 7/8/26 at 41:8-43:8; 48:9-16, all Other Claims, including claims for declaratory relief or unspecified rights under Haw. Const. Article XI, Section 9 that seek to enjoin or restrain the KBMP should be dismissed as a matter of law. The FAC fails to state or properly articulate any claim separate or different from a Chapter 343 sufficiency challenge. Any claim under Article XI, Section 9 (right to a clean and healthful environment) is already subsumed within a HEPA challenge. *See Maui Lani*, 156 Hawai‘i at 525, 575 P.3d at 615 ("[T]o the extent that neighbors seek to assert their HRS chapter 343 claims in circuit court pursuant to article XI, section 9, they may do so given the statutory grant of jurisdiction reflected in HRS § 343-7."). There is no other stand alone right to declaratory, injunctive, or Chapter 91 administrative relief because Petitioner's FAC is based on Chapter 343. *See Punohu*, 66 Haw. 485, 666 P.2d 1133, affirmed by *Maui Lani*, 156 Hawai‘i at 538-39, 575 P.3d at 628-29.

Similarly, Petitioner's claims based on: (a) Haw. Const. Article XII, such as *PASH* or public trust claims; (b) claims for an accounting, alleged violations of Chapter 554D, or alleged fiduciary violations under the Will; (c) termination or removal of individual Respondents from their work positions based on their involvement with the FEIS preparation and acceptance process; (d) alleged cultural or *Ka Pa‘akai* consultation claims; and (e) claims based on HRS § 264-1 as a public trail and property title claims to the Project property, are all claims based on the disclosures in the FEIS and are not separately actionable claims outside the statutory framework of HEPA environmental disclosure information required in an EIS. The Hawai‘i Supreme Court's *Maui Lani* precedent confirms that claims purporting to challenge FEIS sufficiency are to be resolved within the jurisdiction of this Court under HRS § 343-7(c).

## II. RELEVANT PROCEDURAL BACKGROUND

The KBMP was developed over a three-year period through extensive consultation with members of the public, including key stakeholders in and lineal descendants of the Project area. **Exh. 1** (FEIS) at 1-15. Since 2016, KS has held approximately 160 outreach meetings, including a required public scoping meeting for the Project as part of the EIS Preparation Notice ("**EISPN**") scoping process. *See id.* at 1-22 to 1-23; Harman Decl. ¶ 7. Approximately 130 agencies and individuals commented on the EISPN; and 300 agencies, organizations and

individuals provided comments on the Draft EIS. *Id.* at 1-23; *see also* **Exh. 1** (FEIS) Chapter 7 (Agencies and Parties Consulted); FEIS Vol. 2, Appendix G (KBMP Stakeholder Consultation Meetings); Harman Decl. ¶¶ 7-9.

On March 23, 2022, the EISPN for the Project was published in *The Environmental Notice* (the "***Notice***"), commencing a 30-day public review and comment period (scoping period), from March 23, 2022 to April 22, 2022, pursuant to HAR § 11-200.1-23. *See* **Exh. 3** (March 23, 2022 edition of the *Notice*); *see also* **Exh. 1** (FEIS) at 1-14. Scoping materials, including comments received during the scoping period and responses to those comments, are included in Volume II of the FEIS. *See* **Exh. 1** (FEIS) at 1-14; Vol. II. On April 11, 2022, a public scoping meeting was also held during the 30-day scoping period, where written and oral comments were received. *See* **Exh. 1** (FEIS) Vol. II, App. A. Written public comments were to be submitted by mail or electronically to the County or G70, as set forth in the *Notice*. **Exh. 3** at 3. Public comments and consultation letters that were timely received, were considered and included in the Draft EIS. *See* **Exh. 1** (FEIS) Vol. II, Apps. B and C. A total of 130 agencies and individuals provided written submissions during the 30-day public scoping period. **Exh. 1** (FEIS) at 7-1; Vol. II. Apps. B and C. Comments received during the scoping period were reproduced verbatim and included within Appendix B of the FEIS. *See* **Exh. 1** (FEIS) Vol. II, App. B. Written responses to those comments are set forth in App. C to the FEIS. *See* **Exh. 1** (FEIS) Vol. II, App. C. In addition, oral comments from the public scoping meeting were summarized in Chapter 7 of both the Draft EIS and FEIS. *See* **Exh. 1** (FEIS) at 7-27 to 7-29; **Exh. 4** (DEIS Vol. I) at 7-10 to 7-13.

On June 23, 2024, the Draft EIS ("**DEIS**") for the Project was published in the *Notice*. **Exh. 5** (June 23, 2024 edition of the *Notice*); *see also* **Exh. 1** (FEIS) at 7-1. This triggered a 45-day public review and comment period, which ended on August 7, 2024. HAR § 11-200.1-25(b). As detailed in the *Notice*, public comments could be submitted electronically to the accepting authority. **Exh. 5** at 4; s*ee* HAR §§ 11-200.1-4(b)(7), -5(b) and § 11-200.1-25. During the DEIS comment review period, 300 agencies, organizations and individuals submitted written comment letters. All substantive comments that were timely received within the 45-day period were included and responded to in the FEIS. *See* **Exh. 1** Vol. II, Apps. D and C.

In addition to the required public scoping meeting during the EISPN comment period, KS held 45 voluntary pre-consultation meetings with various stakeholders. **Exh. 1** (FEIS) at 7-1;

Harman Decl. ¶ 8. KS held an additional approximately 116 stakeholder consultation meetings following the required Chapter 343 public scoping meeting. *See* **Exh. 1** (FEIS) Vol. II, App. G (Stakeholder Consultation List); Harman Decl. ¶¶ 8-9.

The FEIS was submitted to the County for review and acceptance on August 26, 2025.[6] On September 8, 2025, the FEIS was published in the *Notice*. **Exh. 6** (Sept. 8, 2025 *Notice*). By letter dated September 16, 2025, the County notified the Office of Planning and Sustainable Development ("**OPSD**") Environmental Review Program ("**ERP**") that the County had accepted the FEIS. The County acceptance letter concluded that "[t]he Final EIS adequately discloses all identifiable environmental impacts and satisfactorily responds to review comments. The procedures for assessment, consultation, review, and the preparation and submission of the Final EIS have all been completed satisfactorily as specified in the environmental impact statement regulations. The content requirements of those regulations have been satisfied." **Exh. 2** at 1.

On September 23, 2025, the County's acceptance of the FEIS was published in the *Notice*, starting a 60-day challenge period under HRS § 343-7(c). On October 22, 2025, while Petitioner timely filed her initial complaint [Dkt. 1] with the Circuit Court of the Third Circuit, it was not served on any of the named Respondents. On October 23, 2025, Petitioner filed a Notice of Correction [Dkt. 10], amending the original complaint. The *First Amended Petition for Judicial Review of Environmental Impact Statement Acceptance* was filed on April 8, 2026 [Dkt. 16]. Petitioner failed to seek leave of court to file a *second* amended complaint, under Haw. R. Civ. P. 15(a)(2), so it should be stricken. Any amended or new claim asserted after the initial 60-day window to pursue such claims under HRS § 343-7(c) are untimely and should be stricken.

## III. STANDARD OF REVIEW ON SUMMARY JUDGMENT FOR AN EIS

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Haw. R. Civ. P. Rule 56(c);

[6] Petitioner cites to a six page section of the FEIS (pages 2-9 through 2-14, corresponding to Sections 2.6.2 through 2.8 of the "Purpose and Need" section) that was included in the DEIS for public review and comment. Melendez submitted no specific timely comments about those pages to be actionable under HRS § 343-7(c). The County reviewed those pages and considered them in the completed FEIS version, however, a technical error occurred when transmitting the FEIS to ERP for publication. *See* errata correcting the inadvertent missing pages as published in the *Notice* on July 23, 2026, attached hereto as **Exh. 7**. As confirmed by the County in the errata, the County reviewed the missing pages prior to accepting the FEIS, and the fact that they were missing from the published version of the FEIS has no impact on the County's acceptance.

*Stanford Carr Dev. Corp. v. Unity House, Inc.*, 111 Hawai‘i 286, 295, 141 P.3d 459, 468 (2006).

Hawai‘i law is clear about the legal review standard for challenging the sufficiency of an EIS: "the sufficiency of an environmental impact statement is a question of law, which is properly addressed through the summary judgment procedure." *Price,* 81 Hawai‘i at 182, 914 P.2d at 1375. "This is because the only question presented is whether the EIS complies with applicable statutory mandates, such as HRS chapter 343 and EIS Rules chapter [11-200.1]. There are no factual determinations to be made regarding EIS adequacy." *Id.*; *see also Kaupiko*, 154 Hawai‘i at 467, 555 P.3d at 154 (quoting *Price*, 81 Hawai‘i at 182, 914 P.2d at 1375).

HRS § 343-5 gives the accepting authority final authority to accept the FEIS. HRS § 343-2 defines "acceptance" (emphasis added), as:

> a formal determination that the document required to be filed pursuant to Section 343-5 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**.

HAR § 11-200.1-2 likewise defines "acceptance" as:

> a formal determination that the document required to be filed pursuant to chapter 343, HRS, fulfills the requirements of an EIS, as prescribed by section 11-200.1-28. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter[.]

Courts use the "rule of reason" analysis to review an accepted EIS:

> In reviewing a challenge to an accepted EIS, this court "uses the 'rule of reason' to determine whether an EIS is legally sufficient in adequately disclosing facts to enable a decision-making body to render an informed decision." Under the "rule of reason," an EIS need not be exhaustive to the point of discussing all possible details bearing on the proposed action but will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives.

*Kaupiko*, 154 Hawai‘i at 463, 555 P.3d at 150 (citations omitted); *see also Life of the Land v. Ariyoshi*, 59 Haw. 156, 164-65, 577 P.2d 1116, 1121 (1978).

"The court should ensure that 'the agency has taken a hard look at environmental factors, and, if the agency has followed the proper procedures, its action will only be set aside if the court

finds the action to be arbitrary and capricious, given the known environmental consequences.'" *Kaupiko*, 154 Hawai‘i at 471, 555 P.3d at 158 (quoting *Unite Here! Local 5 v. City & Cnty. of Honolulu*, 123 Hawai‘i 150, 171, 231 P.3d 423, 444 (2010) (quoting *Price*, 81 Hawai‘i at 182 n.12, 914 P.2d at 1375 n.12)). "Additionally, 'courts are reluctant to second guess the decision-making body regarding the sufficiency of an EIS.'" *Kaupiko*, 154 Hawai‘i at 471, 555 P.3d at 158 (quoting *Kaleikini v. Yoshioka*, 128 Hawai‘i 53, 67, 283 P.3d 60, 74 (2012) (quoting *Price*, 81 Hawai‘i at 182 n.12, 914 P.2d at 1375 n.12)).

Review of the four corners of an EIS for sufficiency purposes expressly includes all appendices which "should be considered part of a complete document." *Kaupiko*, 154 Hawai‘i at 472, 555 P.3d at 159. "Confining an environmental court's analysis to non-appended information is arbitrary when the decision-making body . . . makes its decision based on the entirety of the EIS." *Kaupiko*, 154 Hawai‘i at 474, 555 P.3d at 161.

A "court's role, in evaluating whether the EIS complies with statutory requirements, is very narrow." *Price*, 81 Hawai‘i at 182 n.12, 914 P.2d at 1375 n.12. Ultimately, a Court does "not wish to substitute its judgment for that of an agency within the executive branch of government…." *Id.* Citing *Stop H-3 Ass'n v. Lewis*, 538 F. Supp. 149, 159 (D. Haw. 1982), the Hawai‘i Supreme Court stated:

> A court is not to substitute its judgment for that of the agency as to the environmental consequences of its action. Rather, the court must ensure that the agency has taken a "hard look" at environmental factors.
>
> If the agency has followed the proper procedures, its action will only be set aside if the court finds the action to be "arbitrary and capricious," given the known environmental consequences.
>
> The court should not be used as a quasi-legislative or quasi-executive forum by those who are dissatisfied with policy decisions made by governing bodies. The environmental laws were neither meant to be used as a "crutch" for chronic fault-finding, nor as a means of delaying the implementation of properly [accepted] projects.
>
> Accordingly, courts are reluctant to "second guess" the decision-making body regarding the sufficiency of an EIS.

*Price*, 81 Hawai‘i at 182-83 n.12, 914 P.2d at 1375-76 n.12; *see also Citizens for Prot. of N. Kohala Coastline v. Cnty. of Hawai‘i,* 91 Hawai‘i 94, 107, 979 P.2d 1120, 1133 (1999) (the court will not substitute its judgment for decision-making body's determination of EIS sufficiency).

"Neither HRS Chapter 343, nor the applicable rules, 'indicate the level of detail or

specificity that should be included [in an EIS] on any given subject. The statute and rules were designed to give latitude to the accepting agency as to the content of each EIS.' [*Price*] at 183, 914 P.2d at 1376." *Hanabusa v. Dep't of Envtl. Servs. of City & Cnty. of Honolulu*, 133 Hawai‘i 452, 330 P.3d 390, 2014 WL 2440222, at *7 (App. May 30, 2014) (mem. op.); *see also Kaleikini*, 128 Hawai‘i 53, 283 P.3d 60 (confirming trial court finding that the EIS was sufficient under HRS Chapter 343 judicial review standards).

Circuit Court Jurisdiction; Standing. This Court's jurisdiction over contestable issues is clearly "limited to issues identified and discussed in the written comment" from that individual commenter only. *See* HRS § 343-7(c); *Sensible Traffic Alternatives v. FTA*, 307 F.Supp.2d 1149, 1160 (D. Haw. 2004) ("[R]eview of the sufficiency of an EIS is limited to concerns that a person raised in his or her comments.") (*citing to Price*, 81 Hawai‘i at 183, 914 P.2d at 1376 ("our review of the EIS is limited to those concerns that Price listed in his comments to the draft EIS") (citing to HRS § 343-7(c)). Jurisdiction does not extend to review the FEIS on the basis of comments from other submitters who do not participate as named party plaintiffs. *See id.* As set forth in HRS § 343-7, an "affected" "person" or "aggrieved party" allowed to sue is one who "provided written comment to an accepted statement during the designated review period." HRS § 343-7(c). The Court's review is limited to those timely submitted comments from a plaintiff, and provides that "for aggrieved parties, the contestable issues shall be limited to issues identified and discussed in the written comment." *Id.*

Deference to Agency Determinations. Hawai‘i law confirms the well-recognized standard that there is a presumption of validity for an agency determination. S*ee, e.g.*, *Nakamura v. State*, 98 Hawai‘i 263, 273, 47 P.3d 730, 740 (2002) (courts afford presumption of validity to agency in making technical, scientific, or policy determinations that the legislature specifically has left to the agency to make); *Konno v. Cnty. of Hawai‘i*, 85 Hawai‘i 61, 77, 937 P.2d 397, 413 (1997) (court's review of agency decision is "qualified by the principle that the agency's decision carries a presumption of validity"; challenging party has "heavy burden of making a convincing showing that the decision is invalid because it is unjust and unreasonable in its consequences"); *Dole etc. v. Ramil*, 71 Haw. 419, 424, 794 P.2d 1115, 1118 (1990) (courts must give deference to agency's expertise and experience in particular field). In Hawai‘i, we defer to those agencies with the na‘auao (knowledge/ wisdom) on particular subject matters to get complex issues right. “Ku‘ia ka hele a ka na‘au ha‘aha‘a (hesitant walks the humble hearted).” *City & Cnty. of*

*Honolulu v. Sunoco LP*, 153 Hawai‘i 326, 363, 537 P.3d 1173, 1210 (2023) (Eddins, J., concurring). "A court's domain is the law, and judges should recognize the limits of their expertise." *Rosehill Tr. of Linda K. Rosehill Revocable Tr. dated August 29, 1989 v. State*, 155 Hawai‘i 41, 59, 556 P.3d 387, 405 (2024).

## IV. ARGUMENT

### A. THE ADEQUACY OF AN FEIS UNDER HEPA IS A QUESTION OF LAW

In a challenge brought pursuant to HRS § 343-7(c), a reviewing court is required to determine whether the FEIS complied with the procedural and content requirements of HEPA, including whether the FEIS contains and responds to timely submitted comments. *See* HRS § 343-7(c) ("the contestable issues shall be limited to issues identified and discussed in the written comment"). HAR § 11-200.1-28(a) describes acceptability of a final EIS, as follows: "Acceptability of a final EIS shall be evaluated on the basis of whether the final EIS, in its completed form, represents an informational instrument that fulfills the intent and provisions of chapter 343, HRS, and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments." HAR § 11-200.1-28(b) includes 3 criteria for acceptance of the FEIS, all of which are met here and not properly challenged by Petitioner. The County's proper acceptance of the FEIS can be confirmed by the Court based on the standard of review for summary judgment under the seminal Hawai‘i Supreme Court case of *Price v. Obayashi*, and as confirmed in *Kaupiko v. Bd. of Land and Natural Res*.

Petitioner falsely alleges in the FAC [Dkt. 16] that the FEIS fails to satisfy both procedural and content requirements under HEPA and its implementing regulations.

#### *1. The FEIS Satisfies all Procedural Requirements*

As described on pages 5-7 above, the FEIS not only satisfies all procedural requirements of HEPA, KS went far beyond what is required. *See* HAR §§ 11-200.1-23, -25. In addition to holding the required public scoping meeting following the publication of the EISPN, KS held 45 voluntary pre-consultation meetings with various stakeholders. **Exh. 1** (FEIS) at 7-1. After the EISPN was published, KS also organized approximately 116 stakeholder consultation meetings. Harman Decl. ¶¶ 7-9. *Id.*; **Exh. 1** Vol. II, App. G (Stakeholder Consultation List). Hundreds of individuals and organizations commented on the EISPN and DEIS. *See* **Exh. 1** at 7-1.

#### *2. The FEIS Satisfies all Content Requirements*

The content requirements for the DEIS and FEIS set forth in HAR §§ 11-200.1-24, -26,

and -27 have also been satisfied. The FEIS thoroughly assesses the reasonably foreseeable environmental impacts from the implementation of the KBMP, including impacts to: (i) cultural, archaeological, and historic resources (FEIS § 4.1, which includes discussion of the *Ka Pa'akai* analysis along with an inventory of historic, archeological, and cultural resources and traditional and customary native Hawaiian practices, potential impacts to such resources and practices, and potential mitigation measures); (ii) atmospheric and meteorological environment (FEIS § 4.2); (iii) geology and topography (FEIS § 4.3); (iv) soils (FEIS § 4.4); (v) groundwater, surface water, and drainage (FEIS § 4.5); (vi) biological resources (FEIS § 4.6); (vii) natural hazards (FEIS § 4.7); (viii) hazardous materials (FEIS § 4.8); (ix) public services (FEIS § 4.9); (x) recreation (FEIS § 4.10); (xi) traffic and circulation (FEIS § 4.11); (xii) infrastructure and utilities (FEIS § 4.12); (xiii) noise (FEIS § 4.13); (xiv) economic conditions (FEIS § 4.14); and (vx) visual and open space resources (FEIS § 4.15). *See* HAR § 11-200.1-24(a), (i), (l), (o). The studies prepared to support the analysis in the FEIS include: a CIA (App. H); Archaeological Reconnaissance Survey (App. I); Historic Architecture Reconnaissance Level Survey (App. J); Biological Assessment (App. K); Biological Survey of Hoʻokūkū Pond (App. L); Mobility [traffic and congestion] Analysis Report (App. M); Preliminary Engineering Report (App. N); Acoustic Study (App. O); and Economic Impact Report (App. P). *See* **Exh. 1** (FEIS) Vol. 3.

The FEIS also includes a robust discussion of alternatives to the Proposed Action described in Chapter 3 of the FEIS (implementation of the full KBMP), as well as several alternatives to the Proposed Action, including the No-Action Alternative, Higher Density Development Alternative, Housing Alternative, and Conveyance Alternative. *See* **Exh. 1** (FEIS) Chapter 6; HAR § 11-200.1-24(h). Chapter 5 of the FEIS describes the relationship of the KBMP to applicable land use, natural or cultural resource plans, policies and controls for the Project area. *See also* HAR § 11-200.1-24(j). As required by HAR § 11-200.1-24(k), Section 1.9 of the FEIS includes a list of required approvals for the Project. Section 4.16 of the FEIS describes the relationship between short term and long term uses of the environment, the irretrievable and irreversible commitments of resources resulting from the Proposed Action, and adverse effects that cannot be avoided. HAR § 11-200.1-24 (m), (n) and (o). Mitigation measures for significant impacts are discussed throughout Chapter 4 of the FEIS. *See* HAR § 11-200.1-24(p). Unresolved issues are addressed in Section 4.17 of the FEIS. *See* **Exh. 1** (FEIS) § 4.17; HAR § 11-200.1-24(q). Chapter 7 of the FEIS sets forth the list of all governmental

agencies, organizations, and individuals that were consulted as part of the FEIS process. *See* **Exh. 1** (FEIS) Chapter 7; HAR §§ 11-200.1-24(r), -27(b). Lastly, the FEIS includes copies of all comments submitted during the consultation period and DEIS comment period, and responses thereto. **Exh. 1** (FEIS) Vol. II, Apps. B, C, and D; HAR § 11-200.1-24(s); HAR § 11-200.1-27.

The FEIS content and responses to public comments satisfy the "rule of reason" standard for review on summary judgment and the requirements of HAR § 11-200.1-28(b). It is indisputable that the County, through its Planning Director, properly accepted the FEIS, because the FEIS met all procedural and content requirements of HEPA. **Exh. 2**. Summary Judgment in favor of KS and Harman is therefore appropriate.

**B. MELENDEZ'S COMMENTS WERE INCLUDED AND RESPONDED TO**

Petitioner argues the FEIS did not respond to certain of her comments, or analyze significant environmental and cultural impacts she raised, and excluded public participation and opposing viewpoints. *See generally* FAC. Petitioner submitted written comments during the scoping and DEIS comment periods. HAR § 11-200.1-27(b) provides that the FEIS must include "reproduction of all comments and responses to substantive written comments." As required by HAR § 11-200.1-28, all of Melendez's comments on the DEIS were included *verbatim*, in Vol. II of the FEIS. *See* **Exh. 1** (FEIS) Vol. II, Apps. B, C and D; **Exh. 8**, Row 2 (chart identifying Melendez's comments and responses). Melendez's comments were addressed with point-by-point responses in accordance with HAR § 11-200.1-28(b)(3) to the accepting authority's (*i.e.*, the County's) satisfaction. *See* **Exh. 8**, Row 2; **Exh. 2** (County acceptance letter). All comments submitted during the comment periods were reproduced *verbatim* in the FEIS (Apps. B and D) with detailed responses to DEIS comments (App. C).

Based on a review of the four corners of the FEIS, this Court can reasonably determine that each of the timely submitted comments from Melendez are included in FEIS Appendices B through E, with written responses to her comments set forth in Appendices B and C. *See* **Exh. 1** and page references for comments and responses detailed in Volume II, Appendices B and C, as summarized in **Exh. 8** identifying page numbers for her comments. Because Melendez's comments were included *verbatim* and responded to in the FEIS, there is no credible basis to claim that her comments were not included or considered in the FEIS as a matter of law. Also, Melendez's submitted petition, even though the petition itself did not provide comments on the DEIS, was indisputably attached to the FEIS. *See* **Exh. 1** Vol. II, Apps. C & D; **Exh. 8**, Row 2.

### C. THIS COURT'S REVIEW IS LIMITED TO THE COMMENTS RAISED ON THE DEIS BY MELENDEZ ONLY AND NOT THIRD PERSONS

HRS § 343-7(c) expressly restricts the jurisdiction and scope of a reviewing Court in an EIS sufficiency challenge to issues raised by a party who timely submitted written comments *during* the public comment period on the DEIS. A party who does not follow the procedural process has no legal basis or standing to challenge the sufficiency of an FEIS. Furthermore, "the contestable issues shall be limited to issues identified and discussed in the written comment." HRS § 343-7(c). To the extent Petitioner seeks to prosecute claims based on comments from other commentors who are not parties to this action, Petitioner is barred from doing so. Only "persons who provided written comment to an accepted [FEIS] statement **during the designated review period**" can be considered "aggrieved parties for the purpose of bringing judicial action" and otherwise "for aggrieved parties, the contestable issues shall be limited to issues identified and discussed in the written comment[.]" *See* HRS § 343-7(c) (emphases added). Therefore, Petitioner cannot assert claims on behalf of other persons to challenge the inclusion of, or responses to, comments from other persons as noncompliant with HRS Chapter 343. *See Sensible Traffic Alternatives*, 307 F.Supp.2d at 1160 ("[R]eview of the sufficiency of an EIS is limited to concerns that a person raised in his or her comments.") (*citing to Price*, 81 Hawai‘i at 183, 914 P.2d at 1376 ("our review of the EIS is limited to those concerns that Price listed in his comments to the draft EIS") (citing to HRS § 343-7(c)). In addition, Petitioner cannot represent others as that would constitute the unauthorized practice of law under HRS § 605-14.

Furthermore, any claim by an aggrieved party must be timely sued upon within 60 days of published notice of the acceptance of the FEIS under HRS § 343-7(c). Here, publication in the *Notice* was on September 23, 2025. The deadline to sue expired on November 24, 2025. Therefore, the Court's jurisdiction on summary judgment is narrow and limited to a review of the sufficiency of responses to a specific party's ***timely*** submitted written comments that were timely sued upon. *Id.*; *see also Sensible Traffic Alternatives*, 307 F.Supp.2d at 1160. To the extent the FAC asserts new arguments well after the 60-day period, they should be dismissed as untimely to the extent they were not included in the original complaint [Dkt. 1]. In any event, the original complaint claims only alleged a failure to include certain comments from Melendez that were in fact included verbatim in the FEIS, as addressed in Section IV.B above.

Under Haw. R. Civ. P. Rule 15(c), Petitioner cannot amend her Complaint to assert new arguments or claims that were not timely pursued within the 60-day window of HRS § 343-7(c)

in her original complaint. All new claims in the FAC that differ from the original complaint filed well beyond the 60-day statutory challenge period (135 days later) must be dismissed. Petitioner cannot show that the claims in the FAC [Dkt. 16] relate back to her original complaint [Dkt. 1]. Nothing in HRS § 343-7(c) provides that relation back is permitted or timely because HRS § 343-7(c) sets a strict 60-day statute of limitations.

Melendez's real grievance is her dissatisfaction that her comments critical of the Project were not adopted. While HAR §§ 11-200.1-24 and -27 require that "responsible opposing views" be included in the FEIS, there is no obligation for the applicant to reconcile differing personal opinions or policy perspectives, as the EIS is an informational disclosure document. *Price*, 81 Hawai‘i at 183 n.12, 914 P.2d at 1376 n.12 ("The court should not be used as a quasi-legislative or quasi-executive forum by those who are dissatisfied with policy decisions made by governing bodies. The environmental laws were neither meant to be used as a 'crutch' for chronic fault-finding, nor as a means of delaying the implementation of properly [accepted] projects.") (quoting *Stop H-3 Ass'n v. Lewis*, 538 F.Supp. at 159). Courts are not showrooms to air philosophical and political differences. *See Bremner v. City & Cnty. of Honolulu*, 96 Hawai‘i 134, 142, 28 P.3d 350, 358 (Haw. App. 2001) ("[W]e abhor the use of courtrooms as political forums to vindicate individual value preferences[.]") (quoting *Hawaii's Thousand Friends v. Anderson*, 70 Haw. 276, 284, 768 P.2d 1293, 1299 (1989)).

Here, Petitioner disagrees with the County's acceptance of the FEIS which does not adopt her own divergent beliefs that are fundamentally opposed to the implementation of portions of the KBMP, namely, the potential low-impact lodging use. Petitioner simply opposes development by KS in this area of Keauhou. It is not the role of the FEIS to conclude broad policy matters, but only to disclose the potential impacts to the environment from the proposed action. All other policy related issues or conclusions are not environmental review challenges cognizable under HEPA, because the "content requirements" of the FEIS only require the environmental statement to *include* "responsible opposing views, if any, on <u>significant environmental issues</u> raised by the proposal." HAR § 11-200.1-27(a) (emphasis added). Melendez has not credibly shown any procedural deficiency occurred because her timely comments on the DEIS were entirely copied and included in the FEIS and responded to.

Petitioner also alleges that information from <u>Jeff Caufield</u> ("**Caufield**") was not included or responded to. In fact, comment letters from Caufield are reproduced in full in App. D to the

FEIS with responses to these comment letters in App. C. *See* **Exh. 1** (FEIS), Vol II Apps. B, C and D (Caufield comments on EISPN and DEIS) (at PDF pages 118-125, 352-357, 381-82, 405-08, 459-61, 506-07, 509-11, 540-42, 614-15, 621-23, 648-51, 661-65, and 891-96, 898; s*ee also* **Exh. 8**, Row 3. While comments from non-party Caufield were in fact included in the FEIS, (see **Exh. 8** and **Exh. 1**, Vol. II), under HRS § 343-7(c), Petitioner lacks standing and has no legal authority to prosecute claims on behalf of Caufield or others who are not party plaintiffs to this action. *See Sensible Traffic Alternatives*, 307 F.Supp.2d at 1160 ("[R]eview of the sufficiency of an EIS is limited to concerns that a person raised in his or her comments.").

Petitioner also falsely alleges that the FEIS fails to address impacts from stormwater runoff, and to native Hawaiian traditional and customary practices and resources, public access to the shoreline, that the FEIS does not include a proper analysis of water requirements for the Project, that the FEIS does not adequately consider statewide impacts of the Project, and that the FEIS improperly defers a *Ka Pa'akai* analysis to the SMA permitting stage. *See* FAC at 4, 6-8, 10, 12, 15, 18, 25. Each of these issues is in fact addressed in the FEIS.

**Section 4.5** of the FEIS specifically addresses how stormwater and drainage will be managed and impacts to nearby surface and marine waters. **Exh. 1** (FEIS) at 4-85 to 4-88. This section of the FEIS also discusses the projected potable water requirements for the Project and water sources. *Id.* **Section 4.1.1** of the FEIS and App. H (CIA) document and analyze potential impacts to traditional and customary practices and resources. **Sections 4.10 and 4.11** of the FEIS detail existing and planned recreational uses of and access to and from the Project area and shoreline, and analyzes potential impacts and mitigation measures to those resources. **Exh. 1** at 4-118 to 4-140. While the FEIS is not required to address statewide impacts of the Project, **Section 4.16** of the FEIS addresses expected cumulative and secondary impacts of the Project, as required by HEPA. **Exh. 1** at 4-182 to 4-185.

It is noted that the *Applicant* is not required under HEPA or *Ka Pa'akai O Ka 'Āina v. Land Use Comm'n*, 94 Hawai'i 31, 7 P.3d 1068 (2000) to complete a *Ka Pa'akai* analysis. The obligation is on the *State and its agencies* to do this analysis prior to granting permit approvals that may impact valued cultural, historical, or natural resources, or native Hawaiian traditional and customary practices in order to protect those resources. *See Ka Pa'akai*, 94 Hawai'i at 35, 7 P.3d at 1072. An EIS does not grant any approval for the project to proceed. Nevertheless, Chapter 4 of the FEIS, and specifically **Section 4.1.1**, include a discussion of the *Ka Pa'akai*

analysis along with an inventory of valued historic, archaeological, natural and cultural resources and traditional and customary native Hawaiian practices, potential impacts to such resources and practices, and potential mitigation measures, which may be considered by the County in its future *Ka Pa'akai* analysis. KS also prepared a Cultural Impact Assessment (App. H), and as discussed throughout Chapters 2, 4 and 7 of the FEIS, KS conducted extensive consultation for the Project, including with cultural practitioners and lineal descendants.

**D. Claims Raised by Melendez that are Not Actionable in this HEPA Challenge**

Petitioner raises several claims that are not properly before this Court in this HEPA challenge, namely claims regarding: (i) purported public trust obligations of KS under Art. XI of the Hawai'i Constitution, (ii) administration of the Will, (iii) title to the Project property; (iv) public trails and highways (HRS § 264-1), and (v) claims raised for the first time in the FAC that were not raised by Melendez in her DEIS comments. *See* FAC [Dkt. 16] at 39-41, 52-55. As discussed above, HRS § 343-7(c) is unequivocal about the scope of a challenge to the sufficiency of an EIS that may be brought before this Court: "the contestable issues shall be limited to issues identified and discussed in the written comment[.]" *See* **Exh. 9** (chart comparison of FAC claims with Melendez's DEIS comments). Melendez's DEIS comments did not include any discussion of the public trust doctrine or any KS obligations thereunder, constitutional claims under Art. XI, Section 9, or Art. XII, Section 7, any claims related to the Project in terms of the administration of the Will, or title to the Project property. *See id.* Accordingly, those claims as a matter of law must be dismissed with prejudice pursuant to HRS § 343-7(c).

Public Trust Doctrine; Constitutional Claims. The public trust doctrine very clearly applies to lands owned by the State of Hawai'i. *See Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai'i 379, 400, 431 P.3d 752, 773 (2018) (holding the State's public trust obligations apply to public trust resources, i.e., lands owned by the State held in trust for the benefit of the public); *Frankel v. Bd. of Land & Nat. Res.*, 155 Hawai'i 358, 377, 564 P.3d 1157, 1176 (Ct. App. 2025), *as corrected* (Mar. 5, 2025) (holding that lands conveyed to the State of Hawai'i under section 5(b) of the Hawai'i Admission Act are ceded lands subject to the trust obligations in section 5(f) of the Admission Act or Article XII, section 4 of the Hawai'i Constitution). The public trust doctrine ***does not*** apply to privately owned lands. *See generally Pele Defense Fund v. Paty*, 73 Haw. 578, 611, 837 P.2d 1247, 1267 (1992) (concluding that imposition of a constructive trust to privately-owned property to restore the property to the

public land trust would be a taking and require the State to compensate the private property owner). KS is not a governmental entity and all of the lands subject to the KBMP are privately owned. Accordingly, the Project lands are not subject to the public trust doctrine. Additionally, Petitioner is not entitled to maintain any claims related to water rights based on Haw. Const. Article XI, Section 7 and *In re Water Use Permit Applications*, 94 Hawai'i 97, 9 P.3d 409 (2000), or clean and healthful environment claims under Haw. Const. Article XI, Section 9. Nevertheless, the FEIS does address public trust considerations with respect to water resources for the Project. *See* Exh. 1 (FEIS) § 5.3.4.

HRS Chapter 554D and the Will. Claims related to the administration of the Will of Bernice Pauahi Bishop, including questioning whether and how any revenue from the KBMP will be used for KS trust purposes were raised for the first time in the FAC and there is no separate private right of action for Melendez to raise these claims now. FAC at 23, 52-55; **Exh. 9** at 94-99 (FAC Chart). Petitioner also has no legal right or standing to assert an "accounting" claim arising out of the preparation and submission of the FEIS, or any claims regarding alleged violations of duty, fiduciary or otherwise. Under HRS § 554D-204, venue here is also improper.

Title to the Project Property; Trails and Highways. Title or ownership issues related to the Project area were not raised in any timely comments from Melendez under HEPA, nor is there any requirement for title or ownership of the Project area to be disclosed in an EIS. *See* HRS Chapter 343, HAR Title 11, Chapter 200.1. Petitioner fails to state any actionable personal interest in the subject property and cannot sue on behalf of theoretical third persons who are not named parties. The same points relate to the HRS § 264-1 public highways or trail allegations made on FAC pages 32, 41-43. The FEIS discloses the Project location and identifies current access to and within the Project area, proposed access, and historic trails. *See* **Exh. 1**, §§ 4.11 (Traffic and Circulation), 4.1.2.2 (Historic Trails). There is no separate private right of action under HRS § 264-1 for Petitioner to assert her baseless claims regarding trails and highways.

Claims for injunctive relief and contested case proceedings are not available under HRS § 91-14 for a HEPA challenge. The Circuit Court has original jurisdiction over an EIS sufficiency challenge, and there is no permit or contested case to appeal from based on the County's acceptance of an EIS. *See Maui Lani*, 156 Hawai'i at 524, 575 P.3d at 614 (explaining that HRS § 343-7 gives the circuit court original jurisdiction to consider EIS sufficiency challenges).

Each of the claims discussed above should be dismissed with prejudice as they were

raised for the first time in the FAC and are not actionable under HRS § 343-7(c). Such claims are otherwise subsumed within an FEIS sufficiency review under HEPA alone and not through a separate private cause of action, as set forth in *Maui Lani*, *Sensible Traffic*, and *Price*.

**E. Petitioner is Not Entitled to Declaratory, Injunctive or Other Relief**

The FAC alleges claims for declaratory and injunctive relief. Neither of those claims, nor any other general constitutional claims, are adequately stated or pled, as required by Haw. R. Civ. P. Rule 12. No Haw. Const. Article XI, Section 9 claim is properly articulated, stated, or pled in the FAC. Declaratory and injunctive relief cannot provide an independent legal basis to challenge the FEIS outside of the HEPA statute, or support a separate private cause of action to invalidate acceptance of the FEIS, or to enjoin and stop the Project. The FEIS is simply an environmental disclosure document governed by HEPA; acceptance of the EIS does not permit or authorize the KBMP, so there is no approved activity to enjoin.

In Hawai‘i, general declaratory relief is not available where a statute (such as HEPA for an EIS sufficiency challenge) provides a specific form of legal review and remedy. *See* HRS § 632-1(b) ("Where, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed[.]"); *Punohu*, 66 Haw. at 487, 666 P.2d at 1134 (finding no declaratory relief or injunction action could be maintained in a Chapter 343 case which provides for a specific statutory remedy and statutory appeal rights). This legal principle was recently reaffirmed by the Hawai‘i Supreme Court in *Maui Lani*, 156 Hawai‘i at 524, 575 P.3d at 614 (holding that no separate declaratory relief available when specific statutory remedy like HEPA exists and that Chapter 343 is a standalone jurisdictional claim).

Here, Petitioner's state law claims arise from alleged violations of HEPA, a procedural statute that requires disclosure and consideration of environmental impacts before undertaking a project. HRS § 343-5(d). Judicial review of the County's acceptance of the FEIS is expressly governed by the "statutory grant of jurisdiction" within HRS § 343-7(c), which subsumes the obligation to safeguard a safe and healthy environment under Haw. Const. Article XI, Section 9. *Maui Lani*, 156 Hawai‘i at 525, 575 P.3d at 615. Petitioner cannot allege a separate cause of action or standing outside the mandates of the remedies provided for under HRS Chapter 343 in an FEIS sufficiency challenge. *Id.* Because HRS § 343-7(c) creates a specific statutory remedy for alleged violations of HEPA in the acceptance of the FEIS, general declaratory judgment jurisdiction under HRS § 632-1 is not available as a separate legal remedy. *See Punohu*, 66

Haw. at 487, 666 P.2d at 1134; *Maui Lani*, 156 Hawai‘i at 524-25, 575 P.3d at 614-15.

Petitioner's injunctive relief claim arises out of her EIS sufficiency challenge under HEPA. The exception to the rule of *Punohu* is when a specific statute expressly reserves other claims or provides that it is only an alternative remedy, such as noted in *Maui Lani*, 156 Hawai‘i at 538-39, 575 P.3d at 628-29. This exception is not applicable here because HRS § 343-7(c) leaves no doubt that this Court's sufficiency review is an exclusive specific remedy ("contestable issues shall be limited to issues identified and discussed in the written comment"). HEPA provides no alternative remedy beyond challenging the sufficiency of the EIS by proper party commenters, so Petitioner cannot seek injunctive relief under HRS § 343-7(c) and *Maui Lani.*

Respondents Harman and Darrow Are Not Proper Parties. Petitioner has no standing to request the termination of, and this Court has no authority to terminate, employment of Respondents Harman or Darrow from their respective positions with their respective employers based on their handling of the FEIS. Melendez did not raise these issues in her DEIS comments and no law exists to support such claims under HEPA. A Court has no remedial power to fire employees based on their involvement with an EIS, only to review its sufficiency. *See* HRS § 343-7(c). Respondent Harman in her individual capacity is not the "Applicant" (i.e., KS) under the FEIS. In any event, Respondent Harman's employment with KS ended on August 31, 2026. Harman Decl. ¶ 3. For the same reasons raised in G70's Motion and the reasons stated above, Respondent Harman should be dismissed as a party.

## V. CONCLUSION

The County properly accepted the FEIS for the KBMP and the FEIS complies as a matter of law with HEPA and its implementing regulations governing environmental disclosure statements. Accordingly, Respondents respectfully request that summary judgment be granted in favor of Respondents, dismissing with prejudice all claims for relief in Petitioner's FAC.

DATED: Honolulu, Hawai‘i, September 4, 2026.

*/s/ John P. Manaut*
JOHN P. MANAUT
PUANANIONAONA P. THOENE
KATHERINE A. GARSON
Attorneys for Respondents KAMEHAMEHA SCHOOLS and MARISSA HARMAN

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

| | |
|---|---|
| DAISY MITCHELL; REBECCA MELENDEZ,<br><br>Petitioners,<br><br>vs.<br><br>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;<br><br>Respondents. | CIVIL NO. 3CCV-25-0000438<br>(ENVIRONMENTAL COURT ACTION)<br><br>**DECLARATION OF MARISSA HARMAN; EXHIBITS "1" - "7"** |

## DECLARATION OF MARISSA HARMAN

I, Marissa Harman, hereby declare as follows:

1. As of the date of this Declaration, I am employed as the Director of Planning and Development for Respondents CRYSTAL KAUILANI ROSE, JENNIFER NOELANI GOODYEAR-KA'ŌPUA, MICHELLE M. KA'UHANE, ERIC K, YEAMAN, and ELLIOT KAWAIHO'OLANA MILLS, as Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools ("**KS**") and familiar with the preparation of the subject Final Environmental Impact Statement ("**FEIS**") prepared for KS.

2. I make this declaration on my personal knowledge and information and I am competent to testify to these matters.

3. My employment with KS ends on August 31, 2026.

4. G70 was retained by KS to prepare the subject FEIS pursuant to Haw. Rev. Stat. Chapter 343 ("**HEPA**") for KS's Keauhou Bay Management Plan ("**KBMP**") on approximately 29.12 acres of KS owned land located at Keauhou Bay, Keauhou, Hawai'i, as identified on pages 1-2 and 1-14 of the FEIS (the "**Project**").

5. My role with the Project involved coordinating with G70 and conducting public and stakeholder outreach and consultation meetings.

6. The KBMP was developed over a three-year period through extensive consultation with members of the public, including key stakeholders in, and lineal descendants of, the Project area.

7. Since 2016, KS has held approximately 160 outreach meetings, including a required public scoping meeting for the Project as part of the EIS Preparation Notice ("**EISPN**") scoping process. Approximately 130 agencies and individuals commented on the EISPN; and 300 agencies, organizations and individuals provided comments on the Draft EIS.

8. In addition to the required public scoping meeting during the EISPN comment period, KS held approximately 45 voluntary pre-consultation meetings with various stakeholders. KS held an additional approximately 116 stakeholder consultation meetings following the required Chapter 343 public scoping meeting.

9. Since submitting the FEIS to the County for review, KS has continued to meet with those requesting information on the Project.

10. A true and correct copy of the FEIS for the Project is attached hereto as **Exhibit 1**, obtained from the Office of Planning and Sustainable Development ("**OPSD**") Environmental Review Program ("**ERP**") website at https://files.hawaii.gov/dbedt/erp/Doc_Library/2025-09-08-HA-FEIS-KS-Keauhou-Bay-Management-Plan-Vol-I.pdf, https://files.hawaii.gov/dbedt/erp/Doc_Library/2025-09-08-HA-FEIS-KS-Keauhou-Bay-Management-Plan-Vol-II.pdf, and https://files.hawaii.gov/dbedt/erp/Doc_Library/2025-09-08-HA-FEIS-KS-Keauhou-Bay-Management-Plan-Vol-III.pdf on April 8, 2026.

11. The FEIS was approved and accepted by Respondent County of Hawai'i ("**County**") and its Director of the Planning Department, in a September 16, 2025 acceptance letter for the FEIS on for the Project.

12. Attached hereto as **Exhibit 2** is a true and correct copy of the September 16, 2025 letter from Jeffrey W. Darrow of the County of Hawai'i Planning Department to Director Mary

Alice Evans of the OPSD ERP, accepting the FEIS, which was published in the September 23, 2025 edition of *The Environmental Notice*, obtained from ERP's website at https://files.hawaii.gov/dbedt/erp/Doc_Library/2025-09-23-HA-FEIS-Acceptance-KS-Keauhou-Bay-Management-Plan.pdf on April 8, 2025.

13. Attached hereto as **Exhibit 3** is a true and correct copy of the March 23, 2022 edition of *The Environmental Notice*, noticing publication of the Environmental Impact Statement Preparation Notice ("**EISPN**"), obtained from ERP's website at https://files.hawaii.gov/dbedt/erp/The_Environmental_Notice/2022-03-23-TEN.pdf on April 8, 2026.

14. Attached hereto as **Exhibit 4** is a true and correct copy of the Draft Environmental Impact Statement for the Project ("**DEIS**") obtained from ERP's website at https://files.hawaii.gov/dbedt/erp/Doc_Library/2024-06-23-HA-DEIS-KS-Keauhou-Bay-Management-Plan-Vol-I.pdf and https://files.hawaii.gov/dbedt/erp/Doc_Library/2024-06-23-HA-DEIS-KS-Keauhou-Bay-Management-Plan-Vol-II.pdf on April 8, 2026.

15. Attached hereto as **Exhibit 5** is a true and correct copy of the June 23, 2024 edition of *The Environmental Notice* obtained from ERP's website at https://files.hawaii.gov/dbedt/erp/The_Environmental_Notice/2024-06-23-TEN.pdf.

16. The FEIS and appendices in Exhibit 1 were published by ERP in *The Environmental Notice* on September 8, 2025, a true and correct copy of which is attached as **Exhibit 6**, obtained from ERP's website at https://files.hawaii.gov/dbedt/erp/The_Environmental_Notice/2025-09-08-TEN.pdf on April 8, 2026.

17. Attached hereto as **Exhibit 7** is a true and correct copy of the Errata to the FEIS published in *The Environmental Notice* on July 23, 2026, obtained from ERP's website at https://files.hawaii.gov/dbedt/erp/Other_TEN_Publications/2026-07-23-HA-Errata-KS-Keauhou-Bay-Management-Plan.pdf.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawai'i, August 31, 2026.

MARISSA HARMAN

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAIʻI

| | |
|---|---|
| DAISY MITCHELL; REBECCA MELENDEZ,<br><br>Petitioners,<br><br>vs.<br><br>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;<br><br>Respondents. | CIVIL NO. 3CCV-25-0000438<br>(ENVIRONMENTAL COURT ACTION)<br><br>**DECLARATION OF COUNSEL; EXHIBITS "8" - "10"** |

## DECLARATION OF COUNSEL

I, JOHN P. MANAUT, hereby declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of Hawaiʻi, and I am a partner with Carlsmith Ball LLP, counsel for Defendants Kamehameha Schools/Bishop Estate ("**KS**") and Marissa Harman (collectively, "**KS Respondents**") in this action.

2. I am authorized and competent to testify to the matters set forth herein, and unless otherwise indicated, I make this declaration based upon personal knowledge.

3. This declaration is made in support of KS Respondents' Motion for Summary Judgment.

4. Attached hereto as **Exhibit 8** is a chart identifying the pincites of the Petitioner Rebecca Melendez's comments on the Environmental Impact Statement Preparation Notice and

Draft Environmental Impact Statement ("**DEIS**") and the responses to those comments.

5. Attached hereto as **Exhibit 9** is a chart which compares the FAC claims to comments made by Petitioner on the DEIS for the Project.

6. Attached hereto as **Exhibit 10** is a true and correct copy of the transcript of the July 8, 2026 continued hearing on G70's Motion to Dismiss [Dkt. 55].

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawai‘i, September 4, 2026.

*/s/ John P. Manaut*
JOHN P. MANAUT

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

| | |
|---|---|
| DAISY MITCHELL; REBECCA MELENDEZ,<br><br>Petitioners,<br><br>vs.<br><br>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;<br><br>Respondents. | CIVIL NO. 3CCV-25-0000438<br>(ENVIRONMENTAL COURT ACTION)<br><br>NOTICE OF HEARING MOTION<br><br>Hearing Date: November 9, 2026<br>Time: 9:00 am<br>Judge: Hon. Kauanoe A.D. Jackson<br>Division Three |

**NOTICE OF HEARING OF MOTION**

TO:

Daisy Mitchell
P.O. Box 2627
Kailua Kona, HI 96745

Rebecca Melendez
P.O. Box 2332
Kailua Kona, HI 96745

*Pro Se* Petitioners

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CADES SCHUTTE
1000 Bishop Street, Suite 1200
Honolulu, Hawai‘i 96813

Attorneys for Respondents G70 and
KAWIKA MCKEAGUE

NOTICE IS HEREBY GIVEN THAT the foregoing Motion for Summary Judgment shall come on for hearing before the Honorable Kauanoe A.D. Jackson, Judge of the above-entitled Court, Division 3, Circuit Court of the Third Circuit, State of Hawai‘i, in her courtroom located at 74-5451 Kamakaeha Avenue, Kailua-Kona, Hawai‘i 96740 on **November 9, 2026 at 9:00 a.m.**, or as soon after as counsel may be heard.

DATED: Honolulu, Hawai‘i, September 4, 2026.

*/s/ John P. Manaut*
JOHN P. MANAUT
PUANANIONAONA P. THOENE
KATHERINE A. GARSON

Attorneys for Respondents
CRYSTAL KAUILANI ROSE, JENNIFER NOELANI GOODYEAR-KA‘ŌPUA, MICHELLE M. KA‘UHANE, ERIC K. YEAMAN and ELLIOT K AWAIHO‘OLANA MILLS, as TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP DBA KAMEHAMEHA SCHOOLS, AND MARISSA HARMAN in her professional and official capacity

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

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| DAISY MITCHELL; REBECCA MELENDEZ,<br><br>Petitioners,<br><br>vs.<br><br>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;<br><br>Respondents. | CIVIL NO. 3CCV-25-0000438<br>(ENVIRONMENTAL COURT ACTION)<br><br>CERTIFICATE OF SERVICE |

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date, a true and correct copy of the foregoing was duly served upon the following parties via JEFS and by U.S. Mail to:

| | |
|---|---|
| DAISY MITCHELL<br>P.O. Box 2627<br>Kailua Kona, Hawai‘i 96745<br>Petitioner, pro se | VIA U.S. Mail<br>Postage Prepaid |
| REBECCA MELENDEZ<br>P.O. Box 2332<br>Kailua Kona, Hawai‘i 96745<br>Petitioner, pro se | VIA U.S. Mail<br>Postage Prepaid |

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DATED: Honolulu, Hawai‘i, September 4, 2026

*/s/ John P. Manaut*
JOHN P. MANAUT
PUANANIONAONA P. THOENE
KATHERINE A. GARSON
Attorneys for Respondents

CRYSTAL KAUILANI ROSE, JENNIFER NOELANI GOODYEAR-KA‘ŌPUA, MICHELLE M. KA‘UHANE, ERIC K. YEAMAN and ELLIOT K AWAIHO‘OLANA MILLS, as TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP DBA KAMEHAMEHA SCHOOLS, AND MARISSA HARMAN in her professional and official capacity