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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DAISY MITCHELL; REBECCA
MELENDEZ,

Petitioners,

v.

KAMEHAMEHA SCHOOLS (BISHOP
ESTATE); HAWAII COUNTY
PLANNING, JEFF DARROW IN HIS
OFFICIAL CAPACITY AS DIRECTOR;
MARISSA HARMAN, IN HER
PROFESSIONAL & OFFICIAL
CAPACITY; G70; KAWIKA
MCKEAGUE, IN HIS OFFICIAL
CAPACITY; JANE DOES 1-20; DOE
ENTITIES 1-20; DOE
GOVERNMENTAL UNITS 1-20,

Respondents.

Civil No. 3CCV-25-0000438
(Declaratory Judgment)

**RESPONDENTS G70 AND KAWIKA
MCKEAGUE'S MOTION TO
DISMISS PETITIONERS' FIRST
AMENDED PETITION FOR
JUDICIAL REVIEW OF
ENVIRONMENTAL IMPACT
STATEMENT ACCEPTANCE**

**MEMORANDUM IN SUPPORT OF
MOTION**

**DECLARATION OF KEOLA R.
WHITTAKER**

EXHIBIT "A"

**NOTICE OF HEARING ON
MOTION**

CERTIFICATE OF SERVICE

(Caption continued on next page)

Hearing:

Date: June 15, 2026

Time: 2:00 pm

Judge: Honorable Kauano'e Jackson

Trial Date: None

**RESPONDENTS G70 AND KAWIKA MCKEAGUES' MOTION TO DISMISS
PETITIONER'S FIRST AMENDED PETITION FOR JUDICIAL
REVIEW OF ENVIRONMENTAL IMPACT STATEMENT ACCEPTANCE**

Respondents G70 and KAWIKA MCKEAGUE (collectively the “**G70 Respondents**”) move to dismiss Petitioners DAISY MITCHELL and REBECCA MELENDEZ’s First Amended Petition for Judicial Review of Environmental Impact Statement Acceptance, filed April 8, 2026 [Dkt. 16]. This motion is brought pursuant to Rules 3, 7, and 8 of the Circuit Court Rules of the State of Hawai‘i, Rules 8, 12(b)(1), and 12(b)(6) of the Hawai‘i Rules of Civil Procedure and is supported by the attached memorandum, declaration, and exhibit, and by the pleadings and records of the case herein. The G70 Respondents respectfully request that this Motion be granted and that all claims against them be dismissed with prejudice.

DATED: Honolulu, Hawai‘i, May 12, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Calvert G. Chipchase
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KEOLA R. WHITTAKER

Attorneys for Respondents
G70 and KAWIKA MCKEAGUE

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

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DAISY MITCHELL; REBECCA
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**MEMORANDUM IN SUPPORT OF
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MEMORANDUM IN SUPPORT OF MOTION

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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

The First Amended Petition for Judicial Review of Environmental Impact Statement Acceptance (“**FAP**”) names a private environmental-planning consultant and that consultant’s president as Respondents in a judicial-review action brought under Hawai‘i Revised Statutes (“**HRS**”) § 343-7(c). Two independent grounds require dismissal.

First, neither G70 nor Mr. McKeague is a proper party. HRS Chapter 343 (the Hawai‘i Environmental Policy Act, or “**HEPA**”) is a statutory framework imposing duties on agencies and applicants, not on the consultants those applicants retain. The cause of action under HRS § 343-7(c) is a challenge to the acceptance of an environmental impact statement (“**EIS**”) by an accepting authority. The relief authorized by that statute—vacatur of acceptance and injunctive and declaratory relief against further reliance on the EIS—runs only against the agency that issued the acceptance and, derivatively, the applicant whose action is at issue. The statute does not authorize a private right of action against the consultant who assisted in document preparation, and Petitioners cite no authority to the contrary. Indeed, Petitioners themselves concede the point: they expressly disclaim any monetary or other relief against the G70 Respondents and explain that G70 is named “solely because of its integral and foundational role in preparing and advancing the FEIS.” FAP at 37. That is not a basis for joinder under HRS Chapter 343.

Second, the claims against the G70 Respondents are time-barred. HRS § 343-7(c) requires that any judicial proceeding challenging the acceptance of an EIS be

“initiated within sixty days after the public has been informed pursuant to section 343-3 of the acceptance of such statement.” The Hawai‘i Supreme Court has held that this sixty-day window is jurisdictional. *Waianae Coast Neighborhood Bd. v. Hawaiian Elec. Co.*, 64 Haw. 126, 129, 637 P.2d 776, 778 (1981).

Here, the Hawai‘i County Planning Department’s (the “**County**”) acceptance of the Final Environmental Impact Statement (“**FEIS**”) for the Keauhou Bay Management Plan was published in the September 23, 2025, issue of The Environmental Notice, and Petitioners plead September 23, 2025, as the formal acceptance date. Ex. A. The original Complaint, filed October 22, 2025, did not name G70 or Mr. McKeague. Those parties were named for the first time in the FAP filed on April 8, 2026—197 days after acceptance or more than three times the statutory limit. The amendment does not relate back under Hawai‘i Rule of Civil Procedure (“**HRCP**”) 15(c) because Petitioners did not make any “mistake concerning the identity of the proper party.” They simply did not sue G70 or Mr. McKeague within the time the Legislature allowed.

As to Mr. McKeague specifically, the FAP’s allegations are even more attenuated – Petitioners allege only that he, as President of G70, signed and transmitted the FEIS on behalf of the Applicant. FAP at 29. Hawai‘i law permits a corporate officer to be held personally liable when he actively participates in tortious conduct. *E. Star, Inc., S.A. v. Union Bldg. Materials Corp.*, 6 Haw. App. 125, 134, 712 P.2d 1148, 1155 (1985). But Petitioners plead no tort, disclaim any monetary recovery against Mr. McKeague (FAP at 37), and allege nothing beyond his ministerial signing

of a transmittal letter in his corporate role. The doctrine that supports officer liability in tort cases has no application to a statutory-review action under HRS § 343-7(c) in which no tort is alleged.

Each ground is dispositive. Together, they confirm that this action cannot proceed against the G70 Respondents. The G70 Respondents respectfully request that the FAP be dismissed as to them with prejudice.

II. RELEVANT FACTS

A. The Project and FEIS

Kamehameha Schools (Bishop Estate) is the applicant for the Keauhou Bay Management Plan (“**Project**”), an action affecting approximately 29 acres at Keauhou Bay, North Kona, Hawai‘i Island. FAP ¶¶ 1–2. The Project triggers HRS Chapter 343 environmental review because, among other things, it proposes uses within a shoreline area and within historic sites. *See* HRS §§ 343-5(a)(3), (a)(4).

As the FAP itself alleges, “Respondent G70 is the environmental planning and architectural firm **retained by Kamehameha Schools** to prepare, compile, coordinate, and submit the Final Environmental Impact Statement (‘FEIS’) for the Keauhou Bay Bungalow Resort Project.” FAP at 28 (emphasis added). The FAP further alleges that “G70 prepared the FEIS **on behalf of Kamehameha Schools, the identified Applicant,**” and that Mr. McKeague is the President of G70, who signed and transmitted the FEIS in that capacity. FAP at 29 (emphasis added).

B. Acceptance and Publication

The County, as accepting authority under HRS § 343-5(c), accepted the FEIS on September 23, 2025. Petitioners plead that date in the original Complaint and the

FAP. *See* Complaint ¶ 7 (“On September 23, 2025, the County of Hawai‘i Planning Department formally accepted the Kamehameha Schools Keauhou Bay Management Plan Final Environmental Impact Statement.”); *see also* FAP at 8–16 (allegations directed to the Planning Department’s acceptance). Notice of acceptance was published in the September 23, 2025, issue of The Environmental Notice, the periodic bulletin published by the State Office of Planning and Sustainable Development’s Environmental Review Program pursuant to HRS § 343-3. *See* The Environmental Notice, September 23, 2025, *available* at https://files.hawaii.gov/dbedt/erp/The_Environmental_Notice/2025-09-23-TEN.pdf (also attached as **Exhibit A** of the Declaration of Keola Whittaker).¹

C. The Original Complaint Did Not Name the G70 Respondents

Petitioners filed their original Complaint for Declaratory and Injunctive Relief and Petition for Judicial Review on October 22, 2025. The original Complaint named only three Respondents: (1) the County of Hawai‘i Planning Department; (2) the Office of Environmental Quality Control; and (3) Kamehameha Schools/Bishop Estate. *See* Complaint at 1, ¶¶ 4–6. Neither G70 nor Mr. McKeague were named as a party in any capacity or identified as a Doe defendant connected to any specific allegation.

¹ The G70 Respondents respectfully request that the Court take judicial notice of Exhibit A pursuant to Hawai‘i Rules of Evidence 201(b)(2) and 902(5). Exhibit A is the September 23, 2025 issue of The Environmental Notice, the official semi-monthly bulletin published by the State Office of Planning and Sustainable Development pursuant to HRS § 343-3(d). The Environmental Notice is a publication “issued by public authority” within the meaning of HRE Rule 902(5), and its contents are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned” within the meaning of HRE Rule 201(b)(2). The document is the very instrument by which HRS § 343-7(c)’s sixty-day limitations clock began to run, and Petitioners themselves plead September 23, 2025 as the formal acceptance date. Complaint ¶ 7; FAP at 8–16.

D. The FAP Adds the G70 Respondents 197 Days After Acceptance

On April 8, 2026, more than five and a half months after the original Complaint and 197 days after the September 23, 2025 acceptance and publication, Petitioners filed the First Amended Petition. The FAP, for the first time, named “G70” and “Kawika McKeague, in his official capacity” as Respondents. FAP at 1 (caption); *see also* FAP at 28–38 (Section 5, allegations against G70 and Mr. McKeague).

E. The FAP’s Theory and Concession Regarding the G70 Respondents

The theory of liability against the G70 Respondents is that, as preparer of the FEIS, G70 “bore the professional and statutory responsibility to ensure that the document complied with the disclosure, analytical, completeness, and accuracy requirements of the Hawai‘i Environmental Policy Act (‘HEPA’), HRS Chapter 343, and HAR Chapter 11-200.1.” FAP at 28. Petitioners nonetheless expressly state, twice in their pleading, that:

Petitioners do not seek monetary damages from G70 or McKeague. 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, and McKeague is named in his professional and official capacity because of his direct role in overseeing, coordinating, approving, and advancing the FEIS that Petitioners allege is legally deficient.

FAP at 37. The FAP seeks no claim-specific relief against the G70 Respondents that operates differently from the relief sought against the accepting authority or applicant. The only relief specific to the G70 Respondents is a request that the Court “order the removal of Respondent Kawika McKeague from his position as President of G70 based on abuse of authority.” FAP at 37.

III. LEGAL STANDARD

This Motion is brought under Rules 12(b)(1) and 12(b)(6) of the Hawai‘i Rules of Civil Procedure.

Under HRCP Rule 12(b)(1), a court must dismiss claims over which it lacks subject-matter jurisdiction. A facial challenge asserts that the absence of jurisdiction can be established by considering only the allegations of the complaint itself. “The standard applicable to a facial challenge to jurisdiction under HRCP Rule 12(b)(1) is basically the same as that applied for failure to state a claim under HRCP Rule 12(b)(6)—the allegations of the complaint must be accepted as true and construed in the light most favorable to the plaintiff.” *State v. One Love Ministries*, 142 Haw. 197, 206, 416 P.3d 918, 927 (Ct. App. 2018). The Hawai‘i Supreme Court has held that the time limits in HRS § 343-7 are jurisdictional. *Waianae Coast Neighborhood Bd. v. Hawaiian Elec. Co.*, 64 Haw. 126, 129, 637 P.2d 776, 778 (1981).

Under HRCP Rule 12(b)(6), courts assume the facts alleged in the complaint are true and view them in the light most favorable to the plaintiff to see if they warrant relief under any legal theory. *Kealoha v. Machado*, 131 Hawai‘i 62, 74, 315 P.3d 213, 225 (2013). The court is not required to accept conclusions about the legal effect of the facts alleged. *Id.*

IV. ARGUMENT

A. Neither G70 Nor Mr. McKeague is a Proper Party to a Judicial Review Action Under HRS § 343-7(c)

HRS Chapter 343 is the statutory framework for environmental review. It is not, and was not enacted as, a tort statute. The cause of action in HRS § 343-7(c) is a

narrow one: it permits judicial review of an agency action, in this case the formal acceptance of an EIS by an accepting authority. The duties imposed by Chapter 343, and the parties properly subject to suit under it, are defined by the statute itself. Under any plausible reading of the statute, neither a private consultant retained by an applicant nor that consultant's officer is a proper Respondent.

1. HRS Chapter 343 Imposes Duties on Agencies and Applicants, Not Consultants

The statutory framework distinguishes carefully between three categories of actors: the agency, the applicant, and the accepting authority. HRS § 343-2 defines each:

Agency means any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.

Applicant means any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action.

Acceptance means 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.

HRS § 343-2. The statute does not define, mention, or impose duties upon the consultant that prepares the EIS document.

The operative substantive provision, HRS § 343-5(c), confirms this allocation of responsibility. Where an applicant proposes a triggering action, “[t]he draft and final statements, if required, shall be prepared by **the applicant**, who shall file these statements with the office.” HRS § 343-5(c) (emphasis added). “The agency receiving the request, within thirty days of receipt of the final statement, shall notify the

applicant and the office of the acceptance or nonacceptance of the final statement.”
Id. In short, the applicant prepares, the agency accepts, and notice is given to the applicant. The statute does not speak of the consultant because the consultant merely assists the applicant.

Consistent with that structure, HRS § 343-7 limits who may be “adjudged an aggrieved party” for purposes of bringing a judicial action under each of its three subsections to specifically enumerated entities. As relevant here, subsection (c) provides: “Affected agencies and 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....” The statute does not contemplate the consultant as a party in any scenario.

2. The Remedies Authorized by HRS § 343-7(c) Cannot be Granted Against a Consultant

HRS § 343-7(c) authorizes “judicial proceeding[s], the subject of which is the acceptance or nonacceptance of an environmental impact statement.” The remedies available in such a proceeding follow from that subject matter: vacatur of the acceptance, declaratory relief regarding the validity of the acceptance, and injunctive relief preventing the agency and applicant from acting in reliance upon a deficient EIS. Acceptance, by definition, is the formal determination of the accepting authority. HRS § 343-2. Only that authority can vacate or revisit it. Reliance, similarly, is an act of the agency or the applicant, not the consultant who long since completed its document-preparation work.

Petitioners’ prayer for relief confirms this. They request that the Court “declare the FEIS unlawful and not in compliance with Article XI and Article XII of the Hawai‘i Constitution and HRS Chapter 343; vacate and set aside all agency actions taken in reliance upon the FEIS; enjoin Respondents from further reliance upon or advancement of actions premised upon the FEIS; and grant appropriate injunctive and declaratory relief.” FAP at 2. Each of these requested forms of relief operate on the agency’s acceptance or on agency or applicant action. None of these requests operates on G70 or Mr. McKeague. A declaration that the FEIS is unlawful does not require the consultant’s presence to bind the parties whose conduct will be regulated. Vacatur of the acceptance regulates the agency. An injunction against further reliance regulates the agency and the applicant. The G70 Respondents are not necessary or appropriate parties to obtain any of that relief.

3. Petitioners Themselves Concede They Seek No Relief That Runs Against the G70 Respondents

The clearest evidence that the G70 Respondents are not proper parties comes from the FAP itself. Petitioners state, in unmistakable language repeated twice in the same pleading:

Petitioners do not seek monetary damages from G70 or McKeague. G70 is named as a Respondent **solely** because of its integral and foundational role in preparing and advancing the FEIS

FAP at 37. That concession is dispositive. “Integral and foundational role in preparing” the FEIS describes the role of every consultant on every applicant-driven EIS in Hawai‘i. If that role were a basis for being sued under HRS § 343-7(c), every environmental consultant retained by every applicant would be a presumptive

defendant in every challenge to every accepted EIS. That is not the law, and Petitioners cite no authority to the contrary.

Counsel for the G70 Respondents has been unable to identify any reported Hawai'i decision in which a consultant retained by an applicant has been treated as a proper party-defendant in an action under HRS § 343-7. The absence of such authority in the more than five decades since HEPA's enactment is itself telling. The settled rule of practice has been to name the accepting agency and the applicant, the entities whose conduct the statute regulates and against whom statutory relief may be granted. The FAP departs from that rule without statutory or doctrinal warrant.

4. The Claims Against Mr. McKeague Fail on the Same Grounds

Petitioners plead no facts supporting personal liability of Mr. McKeague, such as individual tortious conduct outside the corporate role. The only conduct alleged is that Mr. McKeague “signed and transmitted the FEIS on behalf of the Applicant.” FAP at 29. While Hawai'i recognizes that a corporate officer who actively participates in tortious conduct may be held personally liable, *E. Star, Inc., S.A. v. Union Bldg. Materials Corp.*, 6 Haw. App. 125, 134, 712 P.2d 1148, 1155 (1985), that doctrine has no work to do here. Petitioners assert no tort, expressly disclaim any monetary recovery (FAP at 37), and plead no act by Mr. McKeague beyond signing a transmittal letter in his corporate role. The ministerial signature of a corporate officer on a document prepared and submitted on behalf of the corporation is not the kind of participation in tortious conduct that *E. Star* contemplates.

5. The Removal Relief Petitioners Seek Against Mr. McKeague is Unavailable Under HRS Chapter 343

The only relief Petitioners seek specifically against G70 and Mr. McKeague, as distinct from the agency and applicant, is a court ordered “removal” of McKeague “from his position as President of G70 based on abuse of authority.” FAP at 37-38. HRS Chapter 343 does not authorize that relief.

Chapter 343 regulates the preparation, review, and acceptance of EIS documents. It does not regulate who an applicant or agency may engage as a consultant, and it provides no mechanism for a court, on judicial review of an acceptance, to remove a corporate officer from his position. The relations between an applicant and its chosen consultant are matters of private contract. The Court’s authority under § 343-7(c) reaches the acceptance and reliance upon it, not the prospective business choices of those who participated in document preparation. Petitioners cite no authority, and there is none, for a court-ordered disqualification of a consultant from future HEPA work under Chapter 343.

B. The Claims Against the G70 Respondents are Time-Barred Under HRS § 343-7(c)

Even if the G70 Respondents were proper parties, the claims against them would still be barred by the strict, jurisdictional sixty-day limitation period in HRS § 343-7(c).

1. The Time to File is a Jurisdictional Bar

Section 343-3 requires the Office of Planning and Sustainable Development (OPSD) to inform the public of the availability of an Environmental Assessment and

an EIS for review and of the acceptance or nonacceptance of an EIS. *See* HRS § 343–3(b).

HRS § 343-7(c) provides that “[a]ny judicial proceeding, the subject of which is the acceptance or nonacceptance of an environmental impact statement required under section 343-5, shall be initiated within sixty days after the public has been informed pursuant to section 343-3 of the acceptance of such statement.” The Hawai‘i Supreme Court has held that this limitation is “mandatory and jurisdictional” in nature. *Waianae Coast Neighborhood Bd. v. Hawaiian Elec. Co.*, 64 Haw. 126, 129, 637 P.2d 776, 778 (1981); *1000 Friends of Kauai v. Dep’t of Transp.*, 120 Haw. 49, 200 P.3d 418 (Ct. App. 2009).

In this case, on September 23, 2025, the Office of Environmental Quality Control informed the public that the State FEIS had been accepted. (Ex. A). Petitioners do not dispute this. To the contrary, they affirmatively pleaded the date of acceptance in both pleadings. Original Complaint ¶ 7 (“On September 23, 2025, the County of Hawai‘i Planning Department formally accepted the Kamehameha Schools Keauhou Bay Management Plan Final Environmental Impact Statement.”); FAP at 8–16.

Sixty days after September 23, 2025, was November 22, 2025. Any judicial proceeding challenging the acceptance had to be initiated against any party against whom relief was sought no later than that date.

2. The G70 Respondents Were Named for the First Time on April 8, 2026—197 Days After Acceptance

The original Complaint, filed October 22, 2025, named only three Respondents: the County of Hawai‘i Planning Department, the Office of Environmental Quality Control, and Kamehameha Schools/Bishop Estate. *See* Complaint at 1, ¶¶ 4–6. G70 and Mr. McKeague were not named in any capacity, and no allegations were made against any Doe defendant.

The FAP, filed April 8, 2026, was the first pleading to name the G70 Respondents. That filing came 197 days after the September 23, 2025, acceptance. On the face of the FAP, the claims against the G70 Respondents were initiated long after HRS § 343-7(c)’s sixty-day window closed.

3. The Amendment Does Not Relate Back Under HRCP Rule 15(c)

Rule 15(c) governs whether an amendment naming a new party “relates back” to the date of the original pleading. The Rule’s requirements are strict. With respect to the addition of a new party, Rule 15(c) requires that within the period provided by law for commencing the action against the party to be brought in by amendment, the new party must have (i) received such notice of the institution of the action that it will not be prejudiced in maintaining its defense on the merits **and** (ii) “knew or should have known that, but for a **mistake concerning the identity of the proper party**, the action would have been brought against the party.” HRCP 15(c)(3) (emphasis added).

Neither requirement is met here. As to the second requirement, there was no “mistake concerning the identity of the proper party.” Petitioners did not misidentify

or misname the G70 Respondents in October 2025. They did not name them at all in any form or by any name. The FAP itself confirms that the G70 Respondents were added because Petitioners decided, months later, to expand the scope of their lawsuit to include the consultant. That is a strategic decision to add new defendants, not a mistake about identity.

The first requirement of Rule 15(c) likewise fails. The Rule requires that the new party have received notice of the action within the period provided by law for commencing the action. HRCP 15(c)(3)(A). Here, that period was the sixty-day window of HRS § 343-7(c), which closed on November 22, 2025. The FAP pleads no facts suggesting that G70 or Mr. McKeague received notice of this action before that date. They are not service recipients on the original Complaint; they are not mentioned anywhere in it; and Petitioners have not alleged any informal communication of the lawsuit to them within the limitations period. Mere general awareness that some lawsuit may exist (even if alleged) does not satisfy the rule, which requires notice tied to the institution of the action against the new party. The G70 Respondents would be prejudiced if forced to defend a case in which they were not on notice during the period the Legislature provided for parties to come into the litigation.

Federal courts construing the parallel federal Rule 15(c) have repeatedly held that a plaintiff's decision to expand the suit to a new party does not satisfy the "mistake" requirement.² *See, e.g., Barrow v. Wethersfield Police Dep't*, 66 F.3d 466,

² Hawaii courts have considered pertinent federal decisions interpreting FRCP Rule 15(c) as they are deemed "to be highly persuasive" in the construction of HRCP Rule 15(c). *Kest v. Hana Ranch, Inc.*, 7

470 (2d Cir. 1995) (“[Plaintiff’s] amended complaint ... did not correct a mistake in the original complaint, but instead supplied information [plaintiff] lacked at the outset. Since the new names were added not to correct a mistake but to correct a lack of knowledge, the requirements of Rule 15(c) for relation back are not met.”); *Wilson v. United States Gov’t*, 23 F.3d 559, 563 (1st Cir. 1994) (holding that there was “no ‘mistake concerning the identity of the proper party,’ as required by Rule 15(c)(3). Rather, [plaintiff] merely lacked knowledge of the proper party.”); *Western Contracting Corp. v. Bechtel Corp.*, 885 F.2d 1196, 1201 (4th Cir. 1989) (noting that Rule 15(c) “does not permit relation back where ... there is a lack of knowledge of the proper party”).

Because relation back is unavailable, the action against the G70 Respondents commenced when they were named in the FAP on April 8, 2026, well outside HRS § 343-7(c)’s sixty-day window. Accordingly, the Court lacks jurisdiction over the claims against them under HRS § 343-7(c). *Waiānae Coast*, 64 Haw. at 129, 637 P.2d at 778.

C. The Claims Against Mr. McKeague Should Be Dismissed for the Same Reasons

An additional point bears emphasis as to Mr. McKeague personally. The FAP alleges only that Mr. McKeague, in his role as President of G70, “signed and transmitted the FEIS on behalf of the **Applicant**.” FAP at 29 (emphasis added). That is the entire factual basis for his inclusion in this lawsuit. Petitioners do not allege

Haw. App. 565, 570, 785 P.2 1325 (1990) citing *Ellis v. Crockett*, 51 Haw. 45, 61, 451 P.2d 814, 824 (1969).

that Mr. McKeague personally authored the FEIS; do not allege that he made any individual misrepresentation regarding its contents outside his corporate role; do not allege fraud or other tortious conduct; and do not plead any basis for piercing the corporate veil. As noted above, Hawai'i law recognizes personal liability for a corporate officer who actively participates in tortious conduct, *see E. Star*, 6 Haw. App. at 134, 712 P.2d at 1155, but Petitioners disclaim any tort theory and seek no monetary damages against Mr. McKeague (FAP at 37). The lone allegation that he signed a transmittal letter in his corporate role is, on its face, not the kind of active participation in tortious conduct to which *E. Star* speaks. Even if HRS Chapter 343 reached corporate consultants (which, as established above, it does not) it would not reach the consultant's officer based on the ministerial act of signing and transmitting a document on the corporation's behalf.

V. CONCLUSION

For the foregoing reasons, the G70 Respondents respectfully request that the Court grant this Motion and dismiss the First Amended Petition as to G70 and Kawika McKeague with prejudice.

DATED: Honolulu, Hawai‘i, May 12, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

 /s/ Calvert G. Chipchase
CALVERT G. CHIPCHASE
LINDSAY N. MCANEELEY
KEOLA R. WHITTAKER

Attorneys for Respondents
G70 and KAWIKA MCKEAGUE

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAI‘I

DAISY MITCHELL; REBECCA
MELENDEZ,

Petitioners,

v.

KAMEHAMEHA SCHOOLS (BISHOP
ESTATE), et al.,

Respondents.

Civil No. 3CCV-25-0000438
(Declaratory Judgment)

**DECLARATION OF KEOLA R.
WHITTAKER**

DECLARATION OF KEOLA R. WHITTAKER

I, Keola R. Whittaker, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of Hawai‘i and represent G70 and KAWIKA MCKEAGUE (collectively the “**G70 Respondents**”) in the above captioned action. I make this declaration based upon personal knowledge and am competent to testify to the matters set forth herein.

2. Attached as **Exhibit A** is a true and correct copy of the September 23, 2025 issue of The Environmental Notice, downloaded on May 11, 2026 from the State of Hawai‘i Office of Planning and Sustainable Development’s Environmental Review Program website at:


https://files.hawaii.gov/dbedt/erp/The_Environmental_Notice/2025-09-23-TEN.pdf.

The Environmental Notice is the official semi-monthly bulletin published by the State Office of Planning and Sustainable Development pursuant to HRS § 343-3(d) to inform the public of, among other things, the acceptance of environmental impact statements under HRS Chapter 343. The September 23, 2025 issue announces the

Hawai'i County Planning Department's acceptance of the Final Environmental Impact Statement for the Keauhou Bay Management Plan.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Kahului, Hawai'i, May 12, 2026.



KEOLA R. WHITTAKER

Exhibit A



The Environmental Notice

September 23, 2025

JOSH GREEN, M.D., GOVERNOR
MARY ALICE EVANS, DIRECTOR

The Environmental Notice provides public notice for projects undergoing environmental review in Hawai'i as mandated under Section 343-3, Hawai'i Revised Statutes, the Environmental Impact Statement Law. Along with publishing Environmental Assessments (EAs) and Environmental Impact Statements (EISs) for projects in Hawai'i. The Environmental Notice also includes other items related to the shoreline, coastal zone, and federal activities.



HDOT proposes to remove and replace the Waipilopilo Stream Bridge in Ko'olauloa, O'ahu.

photo from the [project's draft EA](#)

235 South Beretania Street, Suite 702 • Honolulu, Hawai'i 96813 • (808) 586-4185 • dbedt.opsd.erp@hawaii.gov • <https://planning.hawaii.gov/erp/>

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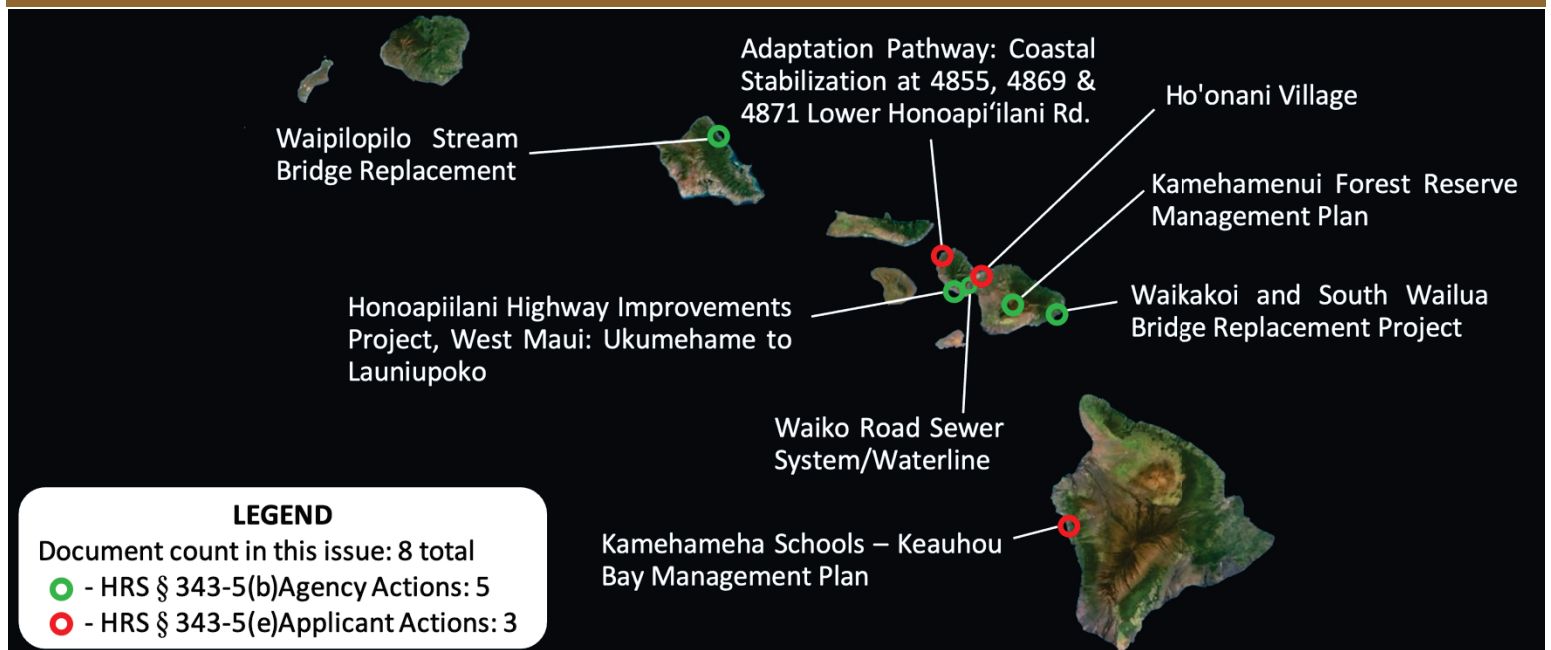
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ANNOUNCEMENTS

- The Environmental Advisory Council (EAC) is still seeking new members. To learn more about the work of the EAC, visit their [webpage](#). To apply to be on the EAC, submit this [online application](#) under Department of Business, Economic Development & Tourism - Environmental Advisory Council.
- Please work toward ensuring that all submittals are Americans with Disabilities Act (ADA) compliant. Our website has an [ADA accessibility page](#) with further information.

STATEWIDE MAP OF EA/EIS DOCUMENTS AND DETERMINATIONS



HAWAII EAS/EISS

Kamehameha Schools – Keauhou Bay Management Plan – (Acceptance of Final EIS)

HRS §343-5(a) Trigger	(3) Propose any use within a shoreline area (4) Propose any use within any historic site as designated in the National Register or Hawai'i Register
District(s)	North Kona
TMK(s)	(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
Permit(s)	Various Site, Grading, Building and Infrastructure Approvals; Special Management Area Use Permit (Major); Shoreline Setback Variance
Approving Agency / Accepting Authority	County of Hawai'i, PLANNING DEPARTMENT Alex Roy, (808) 961-8140, planning@hawaiicounty.gov 101 PAUAAHI STREET, SUITE 3, Hilo, HI 96720
Applicant	Kamehameha Schools; 567 S King Street, Honolulu, HI 96813 Marissa Harman, (808) 982-0830, Keauhoubay@ksbe.edu
Consultant	G70; 111 S. King Street, Ste. 170, Honolulu, HI 96813 Kawika McKeague, (808) 523-5866, Keauhoubay@g70.design
Status	The FEIS has been accepted by the Accepting Authority.

Kamehameha Schools proposes to implement the Keauhou Bay Management Plan (KBMP) on approximately 29 acres at Keauhou Bay. The objective of the KBMP is to reinvigorate and transform the Keauhou Bay area to become a place where culture and education is celebrated and highlighted amidst viable commercial operations, which are essential to fund the cultural and educational programming within the immediate area. The KBMP proposes to reorient commercial activities away from culturally sensitive areas to alleviate congestion and establish a new place-based cultural educational center. Existing commercial operations and parking areas will be relocated to new facilities in more appropriate locations away from cultural resources. The KBMP also proposes to create a new low-impact lodging on the resort-zoned plateau mauka of the bay. The new reconfiguration will focus on place-based cultural stewardship, enhance and encourage bayfront access for kama'āina and kupa'āina, and promote high quality educational experiences for all.

If you are experiencing any ADA compliance issues with the above project, please contact the County of Hawai'i, PLANNING DEPARTMENT planner, Alex J. Roy, at alex.roy@hawaiicounty.gov.

MAUI EAs/EISS

Adaptation Pathway: Coastal Stabilization at 4855, 4869 & 4871 Lower Honoapiʻilani Rd. – Draft EA (AFNSI)

HRS §343-5(a) Trigger	(3) Propose any use within a shoreline area
District(s)	Lahaina
TMK(s)	(2) 4-3-015:002; (2) 4-3-015:003, and (2) 4-3-015:052
Permit(s)	Grading and Grubbing Permit approval from the Department of Public Works (DPW).
Approving Agency	County of Maui, Planning Department James Buika, (808) 270-6271, james.buika@co.maui.hi.us One Main Plaza, 2200 Main St, Suite 315, Wailuku, HI 96793
Applicant	Walter F Hester, III; Janice Barto; Warner Lusardi; 4869 Lower Honoapiʻilani Road, Lahaina, HI 96761 Eric Barto, (808) 283-3452, ekbarto@gmail.com
Consultant	G70; 111 S. King St., Suite 170, HONOLULU, HI 96813 Jeffrey Overton, (808) 523-5866, keonenuibay@g70.design
Status	Statutory 30-day public review and comment period starts. Comments are due by October 23, 2025. Please click on title link above to read the document, then send comments to keonenuibay@g70.design .

The objectives of the project are protection of the public in the nearshore waters below the bluff from catastrophic failure, protection of the nearshore water quality, and protection of the subject properties and furthermore protection of the County’s Lower Honoapiʻilani Road from eventual erosion failure. The project consists of excavation of the bluff in the mauka direction, followed by the stabilization of the bluff through the application of the shotcrete reinforcing materials and the anchoring of this material to the new face of the bluff. Existing properties have faced increased coastal erosion and episodic avulsion and mass wasting of the coastal bluff, which has adversely affected these properties and threatened each of these homes over the past several years. Geotextile sandbags have previously been installed along the Hester and Barto shoreline as a temporary measure to slow erosion. However, coastal erosion has persisted, posing increased threats to public shoreline access, properties, and homes.

If you are experiencing any ADA compliance issues with the above project, please contact the Walter F Hester, III; Janice Barto; Warner Lusardi consultant, Jeffrey Seastrom, at keonenuibay@g70.design.

Ho'onani Village – (Withdrawal of EIS Preparation Notice)

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds (9)(A) Propose any wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent
District(s)	Wailuku
TMK(s)	(2)-3-8-006:004
Permit(s)	None
Approving Agency / Accepting Authority	County of Maui, Planning Department Kate Blystone, (808) 270-7735, planning@mauicounty.gov 2200 Main Street, Suite 315, Wailuku, HI 96793
Applicant	Ho'onani Development LLC; 21 Hansen Road, Kahului, HI 96732 Greg Sado, (808) 873-3883, greg@alphahawaii.com
Consultant	Pioneer Design Group - Hawaii, LLC; 711 Kapiolani Blvd., Suite 1450, Honolulu, Hawaii 96813 Tyler Christian Campbell, (808) 400-5959, tccampbell@pdg-hawaii.com
Status	The Agency is withdrawing the EISPN published on March 8, 2025 .

The withdrawal of the Ho'onani Village EISPN that was submitted in February 2025. This submittal includes the official letter from the County of Maui’s planning department to withdraw the EISPN. The withdrawal is due to a change in the official accepting authority of the EIS from the County of Maui’s planning department to the State Land Use Commission. An EISPN will be submitted at a later time to restart the process with the SLUC as the accepting authority.

If you are experiencing any ADA compliance issues with the above project, please contact the Ho'onani Development LLC consultant, Tyler Christian Campbell, at tccampbell@pdg-hawaii.com.

MAUI EAS/EISs (CONTINUED)

Honoapiilani Highway Improvements Project, West Maui: Ukumehame to Launiupoko – Final EIS Vol 1, Vol 2, Vol 3, Vol 4, & Vol 5

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds (2) Propose any use within any land classified as a conservation district (3) Propose any use within a shoreline area (4) Propose any use within any historic site as designated in the National Register or Hawai'i Register
District(s)	Lāna'i
TMK(s)	Portions of TMK Plats (2) 4-7-001, 4-8-001, 002, 003, 004, and Honoapi'ilani Highway Rights-of-Way
Permit(s)	Numerous – see EIS
Proposing/Determining Agency	State of Hawai'i, Department of Transportation, Highways Division Ken Tatsuguchi, (808) 566-2228, ken.tatsuguchi@hawaii.gov 869 Punchbowl Street, Room 301, Honolulu, Hawaii 96813-5097
Accepting Authority	State of Hawaii, Office of the Governor Josh Green, (808) 566-2228, https://governor.hawaii.gov/contact-us/contact-the-governor/ 415 South Beretania Street, State Capitol, Executive Chambers, Honolulu, Hawaii 96813
Consultant	WSP USA Inc.; 1001 Bishop Street, Suite 2400, Honolulu, Hawaii 96813 Matthew Small, (808) 566-2228, matthew.small@wsp.com
Status	Final EIS has been submitted and is pending acceptance by the accepting authority

Honoapi'ilani Highway (State Route 30) provides the main access between communities along the west coast of Maui and the rest of the island and is subject to periodic flooding and coastal erosion. The primary purpose of this project is to provide a reliable transportation facility in West Maui by reducing the highway's vulnerability to coastal hazards. Specifically, the project proposes to relocate about 6 miles of the highway away from the coastline from approximately milepost 11, in the vicinity of Pāpalaua Wayside Park to Launiupoko, at milepost 17, the existing southern terminus of Lāhainā Bypass.

If you are experiencing any ADA compliance issues with the above project, please contact the State of Hawai'i, Department of Transportation, Highways Division consultant, Matthew Small, at matthew.small@wsp.com.

Kamehamenui Forest Reserve Management Plan – Draft EA (AFNSI)

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds (2) Propose any use within any land classified as a conservation district
District(s)	Makawao
TMK(s)	(2) 2-3-005:002; (2) 2-3-005:014
Permit(s)	Board of Natural Resources approval, HRS Chapter 6E-8 review
Proposing/Determining Agency	State of Hawai'i, Department of Land and Natural Resources Scott Fretz, (808) 984-8100, scott.fretz@hawaii.gov 685 Haleakala Hwy, Kahului, HI 96732
Consultant	H. T. Harvey & Associates Ecological Consultants; P.O. Box 2143, 91-760 Papipi Road, Ewa Beach, HI 96706-9998 Shahin Ansari, (808) 441-2082, reserveplanning@harveyecology.com
Status	Statutory 30-day public review and comment period starts. Comments are due by October 23, 2025. Please click on title link above to read the document, then submit comments at https://forms.cloud.microsoft/r/Ue6DHc5P8i .

The Proposed Action is implementation of the Kamehamenui Forest Reserve (the Reserve) Management Plan. To enhance watershed functions and protect natural and cultural resources Department of Land and Natural Resources Division of Forestry and Wildlife (DOFAW) proposes to take a balanced and phased approach to systematically remove ungulates and minimize soil erosion and compaction. Revegetation efforts will restore the native forest and provide suitable habitat for a suite of native plant and animal species. Unique subalpine habitats will be preserved through the mitigation of ongoing threats from invading non-native plants, predators, and feral ungulates. Proposed public use and limited recreational activities of hiking, biking, horseback riding, archery, and permit-based camping will be consistent with the natural and cultural resource values and remote backcountry character of the Reserve. Access to the Reserve is proposed at multiple locations. The Reserve will be closed at night and DOFAW staff will enforce compliance. Public safety measures to protect the community involve managing fire risk by managing fuel loads and strategically installing fuel breaks/firebreaks.

If you are experiencing any ADA compliance issues with the above project, please contact the State of Hawai'i, Department of Land and Natural Resources consultant, Shahin Ansari, at sansari@harveyecology.com.

MAUI EAs/EISs (CONTINUED)

Waikakoi and South Wailua Bridge Replacement Project – Final EA (FONSI)

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds (2) Propose any use within any land classified as a conservation district (4) Propose any use within any historic site as designated in the National Register or Hawai‘i Register
District(s)	Hāna
TMK(s)	Hāna Highway right-of-way; (2) 1-5-009:009; (2) 1-5-009:010; (2) 1-5-009:011; (2) 1-5-009:012; (2) 1-5-008:001; (2) 1-5-008:002; (2) 1-5-008:004; (2) 1-5-010:008
Permit(s)	Numerous – see EA
Proposing/ Determining Agency	County of Maui, Department of Public Works Ty Takeno, (808) 270-7745, ty.takeno@co.maui.hi.us 200 S. High Street, Room 410, Wailuku, Hawaii 96793
Consultant	HDR, Inc.; 1001 Bishop Street, Suite 400, Honolulu, Hawaii 96813 Noelle Besa Wright, (808) 697-6297, noelle.wright@hdrinc.com
Status	Finding of No Significant Impact (FONSI) determination

The Proposed Action consists of replacing the existing structurally deficient Waikakoi and South Wailua Bridges along Hāna Highway on Maui with new bridges consistent with current design standards. Each bridge will accommodate a single-lane configuration and be designed to current structural and safety standards. The new Waikakoi Bridge is anticipated to span approximately 48.5 feet long and 18.0 feet wide, and the new South Wailua Bridge is anticipated to span approximately 60.0 feet long and 18.0 feet wide. The new bridges would be of a similar size, scale, location, and design to the existing structures. To accommodate traffic during construction, temporary bypass bridges would be installed makai of each bridge. The Proposed Action also includes improvements to grading, drainage, and roadway approaches at the bridge sites. The purpose of the Project is to address the structural deterioration and load capacity deficiencies of both bridges by replacing them with new structures that meet current design standards. The Project is needed to ensure that the bridges, and therefore the Hāna Highway, remain safe and functional for highway users.

If you are experiencing any ADA compliance issues with the above project, please contact the County of Maui, Department of Public Works consultant, Noelle Besa Wright, at noelle.wright@hdrinc.com.

Waiko Road Sewer System/Waterline Improvements – Draft EA (AFNSI)

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds
District(s)	Wailuku
TMK(s)	Numerous – see EA
Permit(s)	Chapter 6E-8 HRS, archaeology; Chapter 11-46 HRS, Community Noise control, as applicable; Chapter 11-60.1-33, Fugitive Dust, as applicable; National Pollutant Discharge Elimination System Permit, as applicable; State and County Roadway Permits; Maui County Construction permits (i.e., building and grading permits)
Proposing/ Determining Agency	County of Maui, Department of Environmental Management Juan Rivera, (808) 270-8230, Juan.Rivera@co.maui.hi.us 200 South High Street, Wailuku, Hawaii 96793
Consultant	Munekiyo Hiraga; 305 High Street, Suite 104, Wailuku, Hawaii 96793 Adam Strubeck, (808) 983-1233, planning@munekiyohiraga.com
Status	Statutory 30-day public review and comment period starts. Comments are due by October 23, 2025. Please click on title link above to read the document, then send comments to planning@munekiyohiraga.com .

The County of Maui, Department of Environmental Management (DEM) is proposing the construction of the Waiko Road Subdivision Sewer System improvements. The proposed project will include the construction of approximately 5,800 linear feet of gravity sewerline and service laterals to connect approximately 100 lots in the Waikapū area, and it will be located within the County of Maui owned roads: West Waiko Road, Wilikona Place, Kemoa Place, Keilio Place, Honua Place, Nuna Place, Kilohi Street, Old Waikapu Road and a portion of the State of Hawai‘i owned Honoapi‘ilani Highway. DEM also coordinated with the Department of Water Supply for proposed waterline replacement work in the vicinity of the project area to be done in conjunction with the subject sewer system improvements project. The proposed sewerline improvements will provide the homes with connections to the County wastewater system, while the waterline improvements will replace and improve the existing waterlines in the area as well as allow for the installation of fire hydrants in the area.

If you are experiencing any ADA compliance issues with the above project, please contact the County of Maui, Department of Environmental Management consultant, Adam Strubeck, at adam@munekiyohiraga.com.

O’AHU EAs/EISS

Waipilopilo Stream Bridge Replacement – Draft EA (AFNSI)

HRS §343-5(a) Trigger	(1) Propose the use of state or county lands or the use of state or county funds
District(s)	Ko’olauloa
TMK(s)	Kamehameha Highway ROW
Permit(s)	Section 4(f) regarding the use of publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites; Section 106 of the National Historic Preservation Act; Section 10 of the Rivers and Harbors Act of 1899; Section 404 of the Clean Water Act; Section 7 of the Endangered Species Act; Essential Fish Habitat; Coastal Zone Management (CZM) Federal Consistency Review; National Pollutant Discharge Elimination System; Section 401 of the CWA; Noise Permit Application; Noise Variance Application; Stream Channel Alteration Permit; Shoreline Certification; Hawaii Revised Statutes Chapter 6E Historic Preservation; City and County of Honolulu Grading, Grubbing, and Stockpiling Permit; Shoreline Setback Variance
Proposing/ Determining Agency	State of Hawai’i, Department of Transportation Andrew Hirano, (808) 692-7546, andrew.j.hirano@hawaii.gov 601 Kamokila Boulevard Room 688, Suite 2400, Kapolei, Hawaii 96707
Consultant	WSP USA; 1001 Bishop Street, Suite 2400, Honolulu, HI 96813 Dennis Silva Jr, (808) 566-2274, Dennis.SilvaJr@wsp.com
Status	Statutory 30-day public review and comment period starts. Comments are due by October 23, 2025. Please click on title link above to read the document, then send comments to Dennis.SilvaJr@wsp.com .

The Hawaii Department of Transportation (HDOT) proposes the removal of the existing bridge superstructure, railings, and pedestrian walkway. The new single span bridge superstructure will consist of concrete girders and concrete surface.

The existing 12-inch and 16-inch waterlines will be relocated onto the bridge deck. The replacement bridge will have a span that is 56 feet in length and 49 feet wide. The bridge will accommodate two 11-foot travel lanes (one lane in each direction) with shoulders on both sides and a protected 6-foot walkway on the mauka side of the bridge. The bridge deck is being widened to accommodate wider shoulders and improve traffic safety, this widening will not increase capacity or add additional lanes. The new bridge abutments will consist of drilled shafts connected to a cast-in-place reinforced concrete cap beam. The concrete girders will be supported by the cap beams and the concrete surface will be placed on the girders forming the riding surface. No in-water work will be done.

If you are experiencing any ADA compliance issues with the above project, please contact the State of Hawai’i, Department of Transportation consultant, Ethan Lau, at ethan.lau@wsp.com.

PREVIOUSLY PUBLISHED DOCUMENTS OPEN FOR COMMENT

Status: The comment period for these projects began previously. Please click on the links below to read a document, then send comments to the relevant agency and copy any relevant applicant and/or consultant identified in the submission form that follows the initial agency letter.

COMMENTS DUE OCTOBER 7, 2025

MAUI

[Kaheawa Wind Power I Habitat Conservation Plan \(Draft HCP\)](#)

KAUAI

[Kaua’i Island Utility Cooperative Habitat Conservation Plan – Draft EIS](#) and [Public Scoping Meeting Video](#)

COMMENTS DUE OCTOBER 22, 2025

KAUAI

[Kaua’i Island Utility Cooperative Habitat Conservation Plan \(2nd Draft HCP\) Vol I](#) and [Appendices Vol II](#)

COASTAL ZONE MANAGEMENT NOTICES

FEDERAL CONSISTENCY REVIEWS

The following federal actions are being reviewed for consistency with the enforceable policies of the Hawai'i Coastal Zone Management (CZM) Program, including [the CZM objectives and policies in Hawai'i Revised Statutes, Chapter 205A](#). Federal consistency, pursuant to Section 307 of the Coastal Zone Management Act of 1972 (CZMA), as amended, generally requires that federal actions, within and outside of the coastal zone, which have reasonably foreseeable effects on any coastal use (land or water) or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program. Federal actions include federal agency activities, federal license or permit activities, and federal financial assistance activities. This public notice is being provided in accordance with § 306(d)(14) of the CZMA, and federal regulations at 15 CFR § 930.2, § 930.42, and § 930.61. General information about federal consistency is available at the [Hawai'i CZM Program website](#), or call (808) 587-2878.

For specific information or questions about an action listed below, contact the CZM staff person identified for each action. The CZM Program is required to adhere to federal review deadlines, therefore, comments must be received by the date specified. Comments may be submitted by mail or electronic mail, to the addresses below.

Mail: Office of Planning and Sustainable Development
Department of Business, Economic Development and Tourism
P.O. Box 2359, Honolulu, HI 96804

Email: Debra.L.Mendes@hawaii.gov

Native Seaweed & Shellfish Growth Study in Hilo Bay

Proposed Action: Authorization of a federal permit to the University of Hawaii at Hilo, Pacific Aquaculture and Coastal Resources Center to deploy a small research project for the study of growth and environmental conditions related to native seaweed and shellfish. The project will consist of two (2) vertical lines suspended with submerged buoys and anchored by cement blocks, like State approved mooring buoys. A horizontal line connecting the two buoys will have twelve to fifteen (12-15) cages affixed to it. Monitoring and data collection will occur with this multitrophic mariculture system. The project would be located in Hilo Bay, inside the breakwall at a depth of approximately 30 feet. The total area of proposed use would be less than 80 square feet inside the Bay.

Location: Hilo Bay, Island of Hawaii

Applicant: University of Hawaii at Hilo

Federal Action: Federal Permit

Federal Agency: U.S. Army Corps of Engineers

CZM Contact: Debra Mendes, Debra.L.Mendes@hawaii.gov

Comments Due: October 8, 2025

Microgrid at the State Department of Transportation Oahu District Office

Proposed Action: Authorization of federal financial assistance to the State Department of Transportation (HDOT) for the installation of a microgrid at the Oahu District office. The project would involve installing electric vehicle charging stations, photovoltaic panels mounted on new parking area canopies, and a Tesla Megapack battery energy storage system at HDOT's Oahu district office.

Location: 727 Kakoi Street, Honolulu, Island of Oahu

TMK: (1) 1-1-064:026

Applicant: Hawaii Department of Transportation

Federal Action: Federal Assistance

Federal Agency: Federal Highway Administration

CZM Contact: Debra Mendes, Debra.L.Mendes@hawaii.gov

Comments Due: October 8, 2025

COASTAL ZONE MANAGEMENT NOTICES (CONTINUED)

SPECIAL MANAGEMENT AREA (SMA) MINOR PERMITS

The SMA Minor permits below have been approved ([HRS § 205A-30](#)). For more information, contact the relevant county/state planning agency: Honolulu [(808) 768-8015]; Hawai‘i [East (808) 961-8288], [West (808) 323-4770]; Kaua‘i [(808) 241-4050]; Maui [(808) 270-7735]; Kaka‘ako or Kalaeloa Community Development District [(808) 587-2846]

Location (TMK)	Description (File No.)	Applicant/Agent
Kaua‘i: Keālia (4-7-007:026 and 027 CPR Unit 1)	Fire remediation plan-Install new fence, relocating boulders, and minor grading. (SMA(M)-2026-5)	NC World Holdings c/o The Keane Group LLC
Maui: Wailuku (3-2-010: 001)	Hawaiian Islands Land Trust improvements to existing farm dwelling (SM2 2025-00030)	Thorne Abbott
Maui: Lāhainā (4-6-028: 001)	Puamana Community Association former clubhouse depression backfill left from fire cleanup of clubhouse structure (SM2 2025-00037)	Dustin Apana
Maui: Lāhainā (4-3-006: 043)	Fischer New Dwelling - construction of a new dwelling, sixth of the property (SM2 2025-00039)	Van Fischer
Maui: Pā‘ia (2-5-005: 063)	Pā‘ia Post Office Subdivision. Required subdivision improvements, and construction of retaining wall (SM2 2025-00040)	Kirk Tanaka
Maui: Lāna‘i (4-9-002: 001)	Nānāhoa Trail Restoration and Signage. Restore and install new wayfinding, interpretive, and danger warning signage and benches for respite (SM7 2025-00002)	Keiki Pua Dancil, Pūlama Lāna‘i

SHORELINE NOTICES

APPLICATIONS FOR SHORELINE CERTIFICATION

The shoreline certification applications below are available for review and comment at the Department of Land and Natural Resources offices on Kaua‘i, Hawai‘i, Maui, and Honolulu, 1151 Punchbowl Street, Room 220 ([HRS § 205A-42](#) and [HAR § 13- 222-12](#)). **Maps and photos of each application file can be viewed [here](#). All comments shall be submitted in writing to the State Land Surveyor, 1151 Punchbowl Street, Room 210, Honolulu, HI 96813 and postmarked no later than 15 calendar days from the date of this public notice of the application.** For more information, contact Rebecca Anderson at rebecca.l.anderson@hawaii.gov.

File No.	Location	ZIP Code	TMK	Applicant	Owner
OA-2157	57-145 & 57-275 Kamehameha Highway	96731	(1) 5-7-006:029 (1) 5-7-001:044	Engineers Surveyors Hawaii, Inc.	North Shore Bay TRS Development, LLC
OA-2158	82-120 Farrington Highway	96792	(1) 8-2-001:002 & 022	Ryan M. Suzuki	State of Hawaii Division of State Parks
OA-2159	4895 Kalanianaʻole Highway	96821	(1) 3-5-058:001	Engineers Surveyors Hawaii, Inc.	Robert P. Riggs Trust
OA-2160	4679 & 4679-B Kahala Avenue	96816	(1) 3-5-005:002 & 003	Austin Tsutsumi & Associates, Inc.	HHLH, LLC & Yamazaki Mazak Nederland, B.V.
MA-853	45 Kai Ala Drive	96761	(2) 4-4-006:011	AOAO Hale Kaanapali dba Maui Kaanapali Villas	AOAO Hale Kaanapali dba Maui Kaanapali Villas
MA-854	Lower Honoapiilani Road	96761	(2) 4-3-015:ROAD	Austin Tsutsumi & Associates, Inc.	County of Maui

PROPOSED SHORELINE CERTIFICATIONS AND REJECTIONS

The shoreline notices below have been proposed for certification or rejection by the Department of Land and Natural Resources ([HRS § 205A-42](#) and [HAR § 13-222-26](#)). Any person or agency who wants to appeal shall file a notice of appeal in writing with DLNR no later than 20 calendar days from the date of this public notice. Send the appeal to the Board of Land and Natural Resources, 1151 Punchbowl Street, Room 220, Honolulu, Hawai‘i 96813.

File No.	Status	Location	Zip Code	TMK	Applicant	Owner
OA-2133	Proposed	44-004 Aina Moi Place	96744	(1) 4-4-021:034	Leaps & Boundaries, Inc.	Robert & Cynthia Merriman

SMALL SCALE BEACH NOURISHMENT (SSBN) APPLICATIONS

Niulani Beach Nourishment

File No.	SSBN KA-25-03
Action	Application for Category II Small Scale Beach Nourishment
Island	Kaua'i
District(s)	Kapa'a
TMK(s)	(4) 4-3-009:026, (4) 4-3-009:027, (4) 4-3-009:028, (4) 4-3-009:003, and (4) 4-3-009:002 (seaward)
Permit(s)	OCCL Small Scale Beach Nourishment Permit
Applicant	Niulani Road Hui Bal Family Trust 968 Niulani Road Kapa'a, HI 96746
Approving Agency	State Department of Land and Natural Resources Office of Conservation and Coastal Lands (OCCL) 1151 Punchbowl Street, Room 131 Honolulu, HI 96813 Michael Cain, Administrator, (808) 587-0377 Point of Contact: Amy Wirts, (808) 587-0376; amy.e.wirts@hawaii.gov
Consultant	Catherine Hanna Oceanit Center 828 Fort Street Mall, Suite 600 Honolulu, HI 96813 Email: channa@oceanit.com Office: 808.531.3017 ext 174
Status	Please submit comments prior to the October 23, 2025 deadline to the Approving Agency.

The Office of Conservation and Coastal Lands (OCCL) staff has received a Small-Scale Beach Nourishment (SSBN) application for the beach fronting 938, 946, 950, 960 and 968 Niulani Road in Kapa'a, Kaua'i and has assigned the file number SSBN KA-25-03 to this project. According to the applicant's information, they are proposing to place up to 10,000 cubic yards of beach-quality sand on the shoreline as part of a beach nourishment project located seaward of the subject properties over a 15-year period. The project would utilize sand dredged from the Waipouli drainage canal. The application also proposes to build three short groin structures on state submerged lands seaward of the private properties.

If you are experiencing any ADA compliance issues with the above project, please contact DLNR Office of Conservation and Coastal Lands faculty, Amy Wirts, at amy.e.wirts@hawaii.gov.

EXEMPTION LIST REVIEW

The following agency exemption list, which serves as guidance for the agency in making exemptions, has been submitted to the Environmental Advisory Council (EAC) for review and concurrence. At the request of the EAC, this draft exemption list is being published for public review and comment. Please click on the following link to view the list and submit any comments by **October 8, 2025** to dbedt.opsd.erp@hawaii.gov.

[State of Hawai'i, Agribusiness Development Corporation](#)

FEDERAL NOTICES

As a courtesy, listed below are some relevant entries from the Federal Register published since the last issue of *The Environmental Notice*. For more information, click on the title link, also available at www.federalregister.gov.

Rule: [Hawaii: Amendment to Approval of State Underground Storage Tank Program Revisions, Codifications, and Incorporation by Reference](#) (published by the Environmental Protection Agency on 09/18/2025)

On March 7, 2022, the State of Hawaii (Hawaii or State) received final approval, from the Environmental Protection Agency (EPA), of revisions to its Underground Storage Tank Program (UST Program) under subtitle I of the Resource Conservation and Recovery Act (RCRA). Pursuant to RCRA, the EPA is taking direct final action, subject to public comment, to amend its final approval of the UST Program. The amendment clarifies the statutory provisions that are part of the approved UST Program and identifies some additional statutory provisions that are broader in scope and not part of the approved UST Program. This action also codifies the EPA's approval of Hawaii's revised UST Program and incorporates by reference those provisions of the State statutes and regulations that the EPA has determined meet the requirements for approval. This rule is effective November 17, 2025, unless the EPA receives adverse comment by October 20, 2025. If the EPA receives adverse comment, it will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 2025. Please click on the title link above for more information.

Proposed Rule: [Hawaii: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference](#) (published by the Environmental Protection Agency on 09/18/2025)

On March 7, 2022, the State of Hawaii (Hawaii or State) received Environmental Protection Agency (EPA) final approval of revisions to its Underground Storage Tank Program (UST Program) under subtitle I of the Resource Conservation and Recovery Act (RCRA). Pursuant to RCRA, the EPA is proposing to amend its final approval of the Hawaii UST Program to clarify the statutory provisions that are part of the approved UST Program and identify some additional statutory provisions that are broader in scope and not part of the approved UST Program. This action also proposes to codify the EPA's approval of Hawaii's revised UST Program and to incorporate by reference the State statutes and regulations that the EPA has determined meet the requirements for approval. **Comments on this proposed rule must be received on or before October 20, 2025.** For more information and to submit comments, please click on the title link above.

Notice: [Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 122 Species in Hawaii, Idaho, Oregon, and Washington](#) (published by the Fish and Wildlife Service on 09/11/2025)

The U.S. Fish and Wildlife Service is initiating 5-year status reviews for 122 species in Hawaii, Idaho, Oregon, and Washington under the Endangered Species Act of 1973. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, they are requesting submission of any new information on these species that has become available since the last reviews. To ensure consideration in our reviews, they are requesting the submission of new information no later than November 10, 2025. However, they will continue to accept new information about any species at any time. For more information, please click on the title link above.

Notice: [Native American Graves Protection and Repatriation Review Committee Notice of Public Meeting](#) (published by the National Park Service on 09/11/2025)

The National Park Service is hereby giving notice that the Native American Graves Protection and Repatriation Review Committee (Committee) will hold a virtual meeting as indicated below. **The Committee will meet via video conference on Tuesday, September 30, 2025, from 2:00 p.m. until approximately 6:00 p.m. (Eastern).** All meetings are open to the public. For more information, please click on the title link above.

GLOSSARY OF TERMS AND DEFINITIONS

Agency Actions

Projects or programs proposed by any department, office, board, or commission of the state or county government which is part of the executive branch of that government per [HRS 343-2](#).

Applicant Actions

Projects or programs proposed by any person who, pursuant to statute, ordinance, or rule, requests approval for a proposed action per [HRS 343-2](#).

Draft Environmental Assessment

When an Agency or Applicant proposes an action that [triggers](#) HRS 343, an Environmental Assessment shall be prepared at the earliest practicable time to determine whether the action's environmental impact will be significant, and thus whether an environmental impact statement shall be required per [HRS 343-5\(b\)](#), for Agency actions and [HRS 343-5\(e\)](#), for Applicant actions. For actions for which the proposing or approving agency anticipates a Finding of No Significant Impact (AFNSI), a Draft EA (DEA) shall be made available for public review and comment for 30 days and public notice is published in this periodic bulletin.

Final Environmental Assessment and Finding of No Significant Impact

The action's proponent shall respond in writing to comments on a DEA received during the 30-day review period and prepare a Final EA (FEA) that includes those responses to determine whether an environmental impact statement shall be required. If there are no significant impacts, then the Agency will issue a Finding of No Significant Impact (FONSI). An Environmental Impact Statement (EIS) will not be required and the project has cleared HRS 343 requirements. The public has 30 days from the notice of a FONSI in this bulletin to challenge the FONSI in the Environmental Court and seek a ruling to require the preparation of an EIS.

Final Environmental Assessment and Environmental Impact Statement Preparation Notice

An EIS shall be required if the Agency finds that the proposed action may have a significant effect on the environment. The Agency shall file notice of such determination with OPSD called an EIS Preparation Notice (EISPN) along with the supporting Final EA. After the notice of the FEA-EISPN is published in this bulletin, the public has 30 days to request to become a consulted party and to make written comments. The public (including the Applicant) has 60 days from the notice of the EISPN in this bulletin to ask a court to not require the preparation of an EIS.

Act 172-2012, Direct-to-EIS, Environmental Impact Statement Preparation Notice (with no EA)

Act 172 in 2012 amended HRS 343 by providing for an agency to bypass the preparation of an environmental assessment for various actions that in the experience of the agency would clearly require the preparation of an EIS. The agency must submit its determination that an EIS is required for an action (Act 172-2012, EISPN) with a completed publication form detailing the specifics of the action. This starts a 30-day scoping period in which the agency or applicant must hold a public scoping meeting for the preparation of the Draft EIS. Written comments and responses on the EISPN must be incorporated into the subsequent Draft EIS and oral comments from the public scoping meeting must be recorded and submitted to OPSD with the Draft EIS.

HEPA

While technically there is no "Hawai'i Environmental Policy Act," HRS 343 is often referred to by this term.

Act 312-2012, Secondary Actions in the Highway or Public Right Of Way

Act 312-2012, amended HRS 343, by adding a new section ([HRS 343-5.5](#), entitled "Exception to applicability of chapter"). HEPA allows for a statutory exception for "secondary actions" (those that involve infrastructure in the highway or public right-of-way) provided that the permit or approval of the related "primary action" (those outside of the highway or public-right-of-way and on private property) is not subject to discretionary consent and further provided that the applicant for the primary action submits documentation from the appropriate agency confirming that no further discretionary approvals are required. An aid to understanding this is to visualize residential driveway improvements in the public right-of-way, versus, retail outlet driveway improvements in the public right-of-way.

Draft Environmental Impact Statement

After receiving the comments on the EISPN, the Agency or Applicant must prepare a Draft Environmental Impact Statement (DEIS). The content requirements of the DEIS shall contain an explanation of the environmental consequences of the proposed action including the direct, indirect and cumulative impacts and their mitigation measures. The public has 45 days from the first publication date in this bulletin to comment on a DEIS.

Final Environmental Impact Statement

After considering all public comments filed during the DEIS stage, the Agency or Applicant must prepare a Final EIS (FEIS). The FEIS must respond in a point-by-point manner to all comments from the draft and must be included in the FEIS. For Applicant projects, the Approving Agency is the Accepting Authority and must make a determination within 30 days or the FEIS is deemed accepted as a matter of law. For an Agency project, the Governor or the Mayor (or their designated representative) is the Accepting Authority, and unlike applicant actions, there is no time limit on the accepting authority reviewing the FEIS. Only after the FEIS is accepted may the project be implemented.

Acceptability

The Accepting Authority must be satisfied that the FEIS meets three criteria (process, content, response to comments) to accept it. Whether the FEIS is accepted or not accepted, notice of the Acceptance Determination is published in this bulletin. The public has 60 days from publication to legally challenge the acceptance of a FEIS. For both Applicant and Agency actions, the Applicant or the proposing Agency can prepare a Revised DEIS after a non-acceptance determination.



Maui Sunset

Photo by [Thomas Hawk](#)**National Environmental Policy Act**

The National Environmental Policy Act (NEPA) requires federal projects to prepare a Federal EA or EIS. In many ways it is similar to Hawai'i's law. Some projects require both a State and Federal EIS and the public comment procedure should be coordinated. Upon request by a federal agency, OPSD publishes NEPA notices in this bulletin to help keep the public informed of important federal actions.

Conservation District

Proposed uses of land in the State Conservation District require a Conservation District Use Application (CDUA). These applications are reviewed and approved/denied by the Department or Board of Land and Natural Resources. Members of the public may intervene in the permit process. This bulletin will include EAs & EISs for actions proposed within the Conservation District.

Special Management Area and Shoreline Setback Area

The Special Management Area (SMA) is along the coastline of all islands; development in this area is generally regulated by [HRS 205A](#), and county ordinance. A portion of the SMA that is addressed by HRS 343 is the [Shoreline Area](#), which includes land between the State-certified shoreline and the county-determined shoreline setback line. This bulletin will include EAs & EISs for actions proposed within the Shoreline Setback Area. Some projects going through the SMA permit process on O'ahu are also required to go through an environmental review process that mirrors HRS 343; these "ROH Chapter 25" EAs/EISs are included in this bulletin.

Shoreline Certifications

State law requires that Hawai'i shorelines be surveyed and certified when necessary to clearly establish the shoreline setback from the certified shoreline. The public may participate in the process to help assure accurate regulatory boundaries. Private land owners often petition to have their shoreline certified by the State surveyor prior to construction. This bulletin publishes notice from the Department of Land and Natural Resources of shoreline certification applicants and final certifications or rejections.

Environmental Advisory Council

The [Environmental Advisory Council](#) is a 15-member citizen board appointed by the Governor. They serve as a liaison between the Director of OPSD and the general public concerning ecology and environmental quality. Agendas of their regular meetings are posted on the Internet and the public is invited to attend.

Agency Exemption Lists

Government agencies may keep a list describing the minor activities they regularly perform that are exempt from the environmental review process. These lists and any amendments shall be submitted to the Council for review and concurrence ([HAR 11-200.1-16](#)). This bulletin will publish an agency's draft exemption list for public comment prior to Council decision making, as well as notice of the Council's decision on the list.

Endangered Species

This bulletin is required by [HRS 343-3\(c\)](#), to publish notice of public comment periods or public hearings for Habitat Conservation Plans (HCP), Safe Harbor Agreements (SHA), or Incidental Take Licenses (ITL) under the federal Endangered Species Act, as well as availability for public inspection of a proposed HCP or SHA, or a proposed ITL (as a part of an HCP or SHA).

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

DAISY MITCHELL; REBECCA
MELENDEZ,

Petitioners,

v.

KAMEHAMEHA SCHOOLS (BISHOP
ESTATE), et al.,

Respondents.

Civil No. 3CCV-25-0000438
(Declaratory Judgment)

NOTICE OF HEARING

NOTICE OF HEARING

TO: DAISY MITCHELL
P.O. Box 2627
Kailua Kona, Hawai'i 96745
Petitioner *pro se*

SHERILYN K. TAVARES, ESQ.
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TRUSTEES OF THE ESTATE
OF BERNICE PAUAHI
BISHOP DBA KAMEHAMEHA
SCHOOLS and MARISSA
HARMAN

NOTICE IS HEREBY GIVEN that the foregoing motion shall come on for hearing before the Honorable Kauano'e Jackson, Judge of the above-entitled Court, Division 3, located at 74-5451 Kamaka'eha Avenue, Kailua-Kona, Hawai'i 96740 on June 15, 2026 at 2:00 pm, or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai‘i, May 12, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Calvert G. Chipchase
CALVERT G. CHIPCHASE
LINDSAY N. MCANEELEY
KEOLA R. WHITTAKER

Attorneys for Respondents
G70 and KAWIKA MCKEAGUE

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

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Civil No. 3CCV-25-0000438
(Declaratory Judgment)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, a true and correct copy of the foregoing document was duly served upon the following parties in the manner indicated below:

DAISY MITCHELL
P.O. Box 2627
Kailua Kona, Hawai'i 96745

Petitioner, *pro se*

via USPS
Postage Prepaid

REBECCA MELENDEZ
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Petitioner, *pro se*

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COUNTY OF HAWAI'I

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via JEFS

Attorneys for Respondents
TRUSTEES OF THE ESTATE OF
BERNICE PAUAHI BISHOP DBA
KAMEHAMEHA SCHOOLS and
MARISSA HARMAN

DATED: Honolulu, Hawai'i, May 12, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership

/s/ Calvert G. Chipchase
CALVERT G. CHIPCHASE
LINDSAY N. MCANEELEY
KEOLA R. WHITTAKER

Attorneys for Respondents
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