

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

DAISY MITCHELL;
REBECCA MELENDEZ,

Petitioners,

vs.

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

Respondents.

CIVIL NO. 3CCV-25-0000438

PETITIONERS’ RESPONSE TO ANSWER OF DEFENDANTS
TRUSTEES OF THE ESTATE OF BERNICE PAUHI BISHOP
DBA KAMEHAMEHA SCHOOLS AND MARISSA HARMAN

Petitioners respectfully submit that the Answer filed by KS and Marissa Harman does not materially rebut the substantial factual, constitutional, statutory, environmental, and public trust deficiencies identified throughout the First Amended Petition, but instead repeatedly relies upon generalized denials, assertions that statutes and exhibits “speak for themselves,” procedural objections, and standing arguments that fail to address the underlying environmental review deficiencies alleged under HRS Chapter 343 and the Hawai‘i Constitution. See First Amended Petition, pp. 1-19, 30-31, 65, 77-88.

Most significantly, KS expressly admits within its Answer that the FEIS published through the Environmental Review Program omitted six pages from Chapter 2, including portions of Sections 2.6, 2.7, and 2.8. Petitioners specifically alleged within the First Amended Petition that the FEIS Table of Contents listed these sections while the body of Chapter 2 ended prematurely and omitted them. See First Amended Petition, pp. 30-31 and 88.

KS attempts to characterize the omission as a mere “technical error.” However, the omitted sections included the “Purpose and Need” discussion repeatedly relied upon throughout FEIS responses to public comments and project justification. Petitioners specifically alleged that the FEIS repeatedly cited and relied upon Section 2.7 in responses to public concerns while the publicly available FEIS distributed through the Environmental Review Program did not actually contain that section. See First Amended Petition, pp. 30-31 and 88.

The omission therefore was not insignificant, harmless, or purely clerical. Rather, it directly affected the completeness, transparency, and integrity of the environmental review process required under HRS Chapter 343, which depends upon full public disclosure and meaningful opportunity for review and comment. Petitioners alleged that portions of the FEIS repeatedly relied upon to justify the Project and address environmental concerns were omitted from the publicly accessible FEIS itself, depriving the public of the ability to fully evaluate the underlying rationale, assumptions, environmental disclosures, and purported project justifications contained within the FEIS.

Petitioners further alleged that the FEIS repeatedly cited and relied upon Section 2.7 in purported responses to public comments even though Section 2.7 was omitted from the publicly available FEIS, meaning the public was directed to a response and explanatory section that was unavailable for review. See First Amended Petition, pp. 30-31 and 88.

Petitioners respectfully submit that a FEIS cannot simultaneously rely upon missing sections as substantive support for project justification while dismissing the omission of those same sections as immaterial. The omitted sections were incorporated into the FEIS response framework itself and repeatedly invoked in addressing environmental objections raised by the public. Their absence therefore goes directly to whether the FEIS satisfied the disclosure, transparency, and informed review requirements mandated under HRS Chapter 343 and HAR Chapter 11-200.1. See First Amended Petition, pp. 30-31 and 88.

Petitioners further respectfully submit that the omission is especially significant where the FEIS concerns development affecting constitutionally protected public trust resources, shoreline ecosystems, nearshore marine habitat, and traditional and customary Native Hawaiian rights, all of which require heightened scrutiny, full disclosure, and meaningful analysis before discretionary approvals may lawfully proceed. See First Amended Petition, pp. 4-5, 12-15, 30-31, and 88.

KS repeatedly argues that Petitioners lack standing or possess “no separate cause of action” outside HRS §343-7(c). Petitioners respectfully disagree.

The First Amended Petition expressly pleads standing and aggrieved-person status under HRS §343-7, including direct use of Keauhou Bay, reliance upon shoreline and marine resources, participation in the environmental review process, exercise of traditional and customary practices, and documented environmental concerns presented directly to KS representatives prior to FEIS acceptance. See First Amended Petition, pp. 3-8.

Petitioner Daisy Mitchell currently resides within the Keauhou Bay area and exercises constitutionally protected Kanaka Maoli protocols at specific shoreline and marine areas within Keauhou Bay, where her daily life, cultural practices, and continued use of the Bay directly depend upon clean nearshore waters, healthy marine ecosystems, shoreline access, and preservation of the Bay’s cultural and historical landscape. The First Amended Petition further alleges that impairment of water quality, marine habitat, ecological balance, shoreline access, and other public trust resources would directly interfere with her ability to exercise those traditional and customary practices and fulfill her cultural kuleana. See First Amended Petition, pp. 3-4.

Rebecca Melendez has been involved with Keauhou Bay for more than twenty years, worked on vessels operating within the Bay, resided in the immediate Keauhou Bay area for over eleven years, and regularly relies upon the Bay’s shoreline, marine resources, environmental quality, community access, and the ability to utilize and experience the Bay without the intensified crowding, congestion, and commercialization associated with large-scale tourist resort development.

Rebecca Melendez also created and circulated a public petition informing the public of Kamehameha Schools’ actions involving Keauhou Bay and seeking public support in opposition

to the proposed Keauhou Bay bungalow resort development, which has now received approximately 7,441 signatures reflecting substantial public concern regarding the Project and its potential impacts upon Keauhou Bay, surrounding marine resources, marine life, shoreline access, cultural resources, environmental quality, and community use. See First Amended Petition, pp. 6-8 and associated petition exhibits.

Rebecca Melendez directly met with Marissa Harman and Kā‘eo Duarte, Vice President of Kamehameha Schools’ real estate division, prior to FEIS advancement in an effort to personally explain concerns regarding the proposed bungalow resort development and its anticipated impacts upon Keauhou Bay. Rebecca Melendez sought an opportunity to meet directly with the Kamehameha Schools Trustees regarding the Project and the serious environmental and cultural concerns associated with the development; however, rather than permitting Rebecca Melendez to directly present those concerns to the Kamehameha Schools Trustees themselves, the requested meeting was instead conducted with Kā‘eo Duarte.

During that meeting, Rebecca Melendez presented environmental concerns, scientific documentation, infrastructure analyses, and evidence regarding runoff, marine degradation, US EPA -recognized impaired water quality, cumulative impacts, and long-term ecological harm to Keauhou Bay, including concerns that intensified coastal development and resort activity have historically resulted in serious pollution and degradation of nearby marine waters.

Rebecca Melendez further explained concerns regarding the foreseeable interference with traditional and customary Native Hawaiian practices, shoreline access, cultural use, and longstanding community activities associated with intensified tourist occupation within the confined and culturally sensitive Keauhou Bay area. Rebecca Melendez additionally raised concerns regarding the foreseeable displacement and relocation of traditional outrigger canoes, proposed within the project, from their longstanding shoreline storage and access areas in order to accommodate increased tourist-oriented use of the shoreline, including concerns that requiring movement of large canoes over greater distances away from their historic shoreline staging areas would create unnecessary safety risks, interfere with customary canoe practices, burden community users, and disrupt longstanding cultural and operational patterns that have existed within Keauhou Bay for years. See First Amended Petition, pp. 6-7.

KS repeatedly characterizes portions of the Petition as untimely. However, Petitioners expressly alleged that Respondents continue to take administrative and planning steps in reliance upon the FEIS and therefore proceed under the 60-day agency-action rule based upon continuing agency

reliance and advancement of discretionary approvals dependent upon FEIS acceptance. See First Amended Petition, pp. 1-2, 9, and 13-15.

The Petition further alleges that HRS §343-5(c) expressly makes lawful acceptance of a Final Environmental Impact Statement a condition precedent to discretionary approval and implementation of the proposed action. See First Amended Petition, pp. 9 and 13-15. Accordingly, Petitioners respectfully submit that continued reliance upon a materially deficient FEIS constitutes continuing agency action subject to judicial review under HRS §343-7.

KS repeatedly states throughout its Answer that statutes, constitutional provisions, case law, FEIS materials, and exhibits “speak for themselves.” Petitioners agree that the Court may directly review the cited authorities, administrative record, environmental review documents, exhibits, trust authorities, and constitutional provisions incorporated throughout the First Amended Petition. However, generalized statements that documents “speak for themselves” do not rebut Petitioners’ specific allegations that the FEIS failed to adequately disclose, analyze, and evaluate significant environmental impacts, cumulative impacts, impaired water conditions, public trust obligations, traditional and customary Native Hawaiian rights, cultural impacts, and the heightened constitutional scrutiny required under Article XI, Article XII, Ka Pa‘akai, and Waiāhole. See First Amended Petition, pp. 1-2, 4-5, 7-15, 17-22, 30-31, 65, and 77-88.

Petitioners further respectfully submit that generalized denials and assertions that exhibits “speak for themselves” do not address the specific allegations that the FEIS improperly deferred cultural analysis and protective measures to future permitting stages, failed to adequately analyze interference with traditional and customary Native Hawaiian practices, failed to meaningfully evaluate cumulative impacts upon public trust resources, and failed to adequately disclose existing baseline environmental conditions necessary to evaluate long-term impacts to Keauhou Bay. See First Amended Petition, pp. 4-5, 7-15, 19-22, and 77-88.

KS’s Answer likewise does not meaningfully rebut Petitioners’ allegations that the FEIS consultation materials and cultural consultation record created a misleading impression of cultural concurrence or support for the proposed bungalow resort development that is not supported by the administrative record itself. Petitioners specifically alleged that consultation records involving cultural practitioners, lineal descendants, and community members consistently emphasized preservation of Keauhou Bay, protection of fishing practices, shoreline access, cultural stewardship, and continued community use rather than support for intensified commercial shoreline development. Petitioners further alleged that the FEIS consultation record

reflected internal inconsistencies regarding cultural practitioner Barbara Nobriga, including representations that no approved interview summary was obtained while the administrative record simultaneously contained her written testimony opposing shoreline commercialization and additional development at the culturally active bayfront area. See First Amended Petition, pp. 19, 32, and 85-87. Petitioners further alleged that none of the documented cultural consultation statements expressed support for bungalow resort construction, resort-style lodging, or increased commercial intensity within Keauhou Bay, and that the FEIS presentation of consultation materials therefore created a misleading impression regarding the nature and substance of community and cultural consultation reflected in the record.

Petitioners further respectfully submit that KS's Answer does not meaningfully address the fiduciary and trust-law obligations identified throughout the First Amended Petition, including allegations that Kamehameha Schools, as trustee of the Bishop Estate, remains legally bound to administer trust lands in accordance with the express terms of Princess Bernice Pauahi Bishop's Will and the fiduciary duties imposed under HRS Chapter 554D. See First Amended Petition, pp. 1-2 and 17-18.

Petitioners further alleged that Princess Bernice Pauahi Bishop's Will directs the trustees "to devote a portion of each years income to the support and education of orphans and others in indigent circumstances, giving the preference to Hawaiians of pure or part aboriginal blood." Petitioners further alleged that this directive requires both "support and education," including care and well-being in addition to educational instruction. KS's Answer does not meaningfully rebut or address those express trust-purpose allegations. See First Amended Petition, p. 52.

Petitioners further alleged that the Will expressly limits use of trust lands to "the purposes aforesaid," namely the support and education of beneficiaries, with preference to Native Hawaiians, and further requires trustees to "annually make a full and complete report" of receipts, expenditures, and investments. See First Amended Petition, p. 17. Petitioners respectfully submit that KS's Answer does not meaningfully rebut or address these express trust-purpose and reporting obligations contained within the Will, and instead primarily responds through generalized denials and assertions that the cited documents and authorities "speak for themselves."

Petitioners further respectfully submit that KS's Answer does not specifically rebut Petitioners' allegations that the Will creating Kamehameha Schools establishes that the trust and its endowed lands are to be administered for the support and education of the Hawaiian beneficiaries

identified within the trust, and that actions involving trust lands remain subject to fiduciary obligations, good faith administration, protection of trust property, and compliance with the purposes for which the trust was created. See First Amended Petition, pp. 17-18.

Petitioners further alleged that Respondents repeatedly justified the proposed bungalow resort development by asserting that resort-generated revenue and project activities would support educational and cultural components associated with the Keauhou Bay Management Plan, while simultaneously failing to identify any enforceable educational facility, binding educational program, or required cultural education component as part of the defined Proposed Action itself. Petitioners further alleged that the FEIS relied upon generalized references to education and cultural stewardship to justify intensified tourist-oriented commercial development, despite the absence of any guaranteed or enforceable educational obligations tied to the proposed bungalow resort. KS's Answer does not meaningfully rebut these allegations concerning the speculative, discretionary, and non-binding nature of the purported educational justifications advanced throughout the FEIS. See First Amended Petition, pp. 23, 90-93, and 104.

Petitioners further note that during a meeting concerning the proposed Keauhou Bay development, Respondent Marissa Harman informed Rebecca Melendez that visitors staying within the proposed bungalow resort would be provided broad access to Kamehameha Schools' Hawaiian endowed lands and would receive educational and cultural experiences relating to Hawaiian culture. Petitioners respectfully submit that such representations further reinforce Petitioners' allegations that the proposed project is fundamentally structured as a tourism-oriented commercial development advanced through generalized references to education and cultural stewardship.

Petitioners respectfully submit that the generalized nature of KS's Answer fails to materially rebut the detailed allegations presented throughout the First Amended Petition concerning constitutional protections, public trust duties, traditional and customary rights, cumulative environmental impacts, cultural interference, fiduciary obligations, and the adequacy and lawfulness of the FEIS under HRS Chapter 343.

KS's Answer does not meaningfully rebut Petitioners' allegations that the FEIS failed to adequately disclose and analyze Keauhou Bay's impaired water status under Clean Water Act §303(d), despite publicly available assessment data identifying Keauhou Bay as an impaired water body under the U.S. EPA. See First Amended Petition, pp. 10-11, 14, and 77.

KS's Answer likewise does not materially address Petitioners' allegations that the FEIS acknowledged stormwater infrastructure associated with the project area yet failed to meaningfully analyze how increased impervious surfaces, expanded parking areas, roadway use, and site disturbance associated with the proposed development may increase stormwater runoff and pollutant transport into Keauhou Bay. See First Amended Petition, pp. 10 and 77.

KS's Answer further does not meaningfully rebut Petitioners' allegations that independent observational evidence documented stormwater accumulation, roadway runoff, and drainage flows moving toward and entering Keauhou Bay during rain events. See First Amended Petition, p. 10.

KS's Answer likewise does not materially address Petitioners' allegations that the FEIS failed to adequately analyze endangered and threatened marine species use within Keauhou Bay and failed to meaningfully evaluate impacts upon federally protected marine species associated with Hawaiian waters, including ESA-listed species and marine habitat. See First Amended Petition, pp. 10-12 and 31.

KS's Answer also does not meaningfully rebut Petitioners' allegations concerning the FEIS's incomplete and misleading treatment of Petitioner Rebecca Melendez's DEIS comment submission, the public petitions, the attached scientific reports, and expert comments identifying the absence of baseline environmental analysis. The First Amended Petition specifically alleged that Rebecca Melendez submitted formal comments transmitting petitions containing 6,198 signatures and 444 signatures, together with written community responses and scientific reports addressing sediment transport, runoff impacts, wastewater loading, endangered species concerns, impaired water quality, and cumulative coastal effects. Petitioners further alleged that the FEIS inaccurately characterized the submission as containing only 1,681 signatures and being active for only eight days, thereby omitting or misrepresenting thousands of signatures, the separate petition addressing island-wide resource constraints, and the scientific reports submitted with the comment materials. See First Amended Petition, pp. 20-21, 32-35.

Petitioners further alleged that expert comments submitted by Jeff Caufield, Esq., an environmental attorney with over thirty years of experience in environmental impact analysis, identified the absence of necessary baseline environmental analysis, including the lack of reliable baseline data needed to evaluate cumulative impacts, sedimentation, turbidity, nutrient loading, runoff, wastewater effects, and nearshore ecosystem impacts. KS's Answer does not specifically rebut these record-based allegations, but instead relies on generalized assertions that Melendez's

timely comments were addressed in the FEIS and that the FEIS adequately disclosed all implicated impacts. Petitioners respectfully submit that such generalized assertions do not address the specific alleged omissions, mischaracterizations, and failures to meaningfully respond to substantive public and expert comments identified in the First Amended Petition. See First Amended Petition, pp. 20-21, 32, through 35.

KS's Answer further fails to meaningfully address Petitioners' allegations that the FEIS did not adequately evaluate impacts upon reef manta rays, plankton feeding conditions, shoreline lighting, vessel activity, sedimentation, land disturbance, wastewater risk, and long-term coastal intensification associated with the proposed development. See First Amended Petition, pp. 11-12.

Petitioners further alleged that the FEIS failed to conduct a meaningful cumulative analysis of increased runoff, wastewater loading, infrastructure strain, shoreline alteration, aquifer interaction, intensified coastal use, and long-term impacts upon already constrained island systems and public trust resources. See First Amended Petition, pp. 12-15 and 77-78.

KS's Answer does not meaningfully rebut Petitioners' allegations that the FEIS failed to provide baseline comparisons necessary to evaluate cumulative impacts, including the absence of quantified comparisons between existing and proposed impervious surface coverage, absence of baseline sedimentation studies, absence of nutrient-condition measurements, and failure to model cumulative runoff and wastewater loading within the coastal system. See First Amended Petition, pp. 14-15 and 31.

KS's Answer likewise does not materially address Petitioners' allegations that the FEIS improperly relied upon future permitting stages, future regulatory compliance, and later design refinements rather than completing project-specific environmental and cultural analysis during the FEIS stage itself. See First Amended Petition, pp. 15, 19, and 31.

KS's Answer further does not meaningfully rebut Petitioners' allegations that Ka Pa'akai analysis and constitutionally required protections for traditional and customary rights were improperly deferred to future permitting stages rather than completed during environmental review as required under Article XII, Section 7 of the Hawai'i Constitution and *Ka Pa'akai O Ka 'Āina v. Land Use Commission*, 94 Hawai'i 31 (2000). See First Amended Petition, pp. 4-5, 7-8, 15, 19, and 31.

KS's Answer additionally does not materially address Petitioners' allegations that the accepting authority's role under HRS Chapter 343 is not ministerial and requires an independent determination regarding whether the FEIS adequately disclosed environmental impacts, cumulative effects, public trust implications, and cultural impacts prior to acceptance. See First Amended Petition, pp. 9 and 13-15.

Petitioners respectfully submit that KS's Answer does not rebut the statutory language cited throughout the First Amended Petition establishing that "acceptance" under HRS §343-2 requires adequate disclosure of environmental impacts and satisfactory response to public comments, nor does KS's Answer rebut that HRS §343-5(c) makes lawful FEIS acceptance a condition precedent to approval and implementation of the proposed action. See First Amended Petition, pp. 9 and 13-15.

KS's Answer does not meaningfully rebut Petitioners' allegations that the FEIS failed to satisfy Article XI and Article XII obligations under the Hawai'i Constitution, including public trust protections, protection of traditional and customary Native Hawaiian rights, and the heightened scrutiny required under *In re Water Use Permit Applications (Waiāhole Ditch)*, 94 Hawai'i 97 (2000). See First Amended Petition, pp. 4-6, 7-8, 12-15, and 31.

Petitioners respectfully submit that KS's Answer likewise does not materially address Petitioners' allegations that constitutional obligations under *Ka Pa'akai* and *Waiāhole* cannot lawfully be deferred to future permitting stages through generalized mitigation language, future-study assurances, or conditional future review. See First Amended Petition, pp. 4-5, 7-8, 15, 19, and 31.

As further reflected by the administrative record and allegations contained throughout the First Amended Petition, KS's Answer does not meaningfully address Petitioners' allegations that although the FEIS includes discussion of cultural resources and consultation materials, the FEIS fails to adequately analyze how intensified visitor-oriented commercial activity associated with the proposed bungalow resort development would interfere with the actual exercise of traditional and customary Native Hawaiian practices within Keauhou Bay.

The First Amended Petition specifically alleges that constitutionally protected Kanaka Maoli protocols presently occur within identifiable shoreline and marine areas of Keauhou Bay and

depend upon clean nearshore waters, healthy marine ecosystems, shoreline access, and preservation of the Bay's cultural and historical landscape. See First Amended Petition, pp. 3-5.

KS's Answer further does not materially rebut Petitioners' allegations that the FEIS improperly deferred Ka Pa'akai analysis and cultural protections to future permitting stages rather than completing project-specific cultural analysis during the FEIS process itself. See First Amended Petition, pp. 4-5, 15, and 19.

KS's Answer further does not meaningfully rebut Petitioners' allegations that consultation testimony contained within the administrative record emphasized protection of shoreline access, fishing practices, community use, and preservation of Keauhou Bay rather than support for intensified resort development. See First Amended Petition, pp. 19-20.

KS's Answer likewise does not materially address Petitioners' allegations that the FEIS fails to meaningfully evaluate how intensified tourist occupancy, shoreline crowding, increased vessel activity, commercial coastal use, noise, runoff, wastewater generation, and continual resort-related visitor presence within the confined and culturally sensitive Keauhou Bay area may substantially interfere with the practical ability to safely and meaningfully exercise traditional and customary Native Hawaiian practices.

Petitioners further respectfully submit that KS's Answer does not rebut Petitioners' allegations that continual intensification of commercial tourist activity within a small and historically significant bay area threatens not only degradation of environmental conditions and public trust resources, but also the continued ability to carry out customary cultural practices without substantial interference, congestion, disruption, and loss of meaningful cultural access.

Petitioners therefore respectfully submit that KS's Answer does not meaningfully rebut Petitioners' allegations that the FEIS fails to satisfy the constitutional and analytical requirements articulated under Article XII, Section 7, Ka Pa'akai O Ka 'Āina v. Land Use Commission, 94 Hawai'i 31 (2000), and HRS Chapter 343 because the FEIS fails to adequately analyze, disclose, and protect against foreseeable interference with presently exercised traditional and customary Native Hawaiian practices at Keauhou Bay.

Petitioners further respectfully submit that KS's Answer does not meaningfully address or rebut allegations concerning KS's denial and restriction of Petitioners' use of Keauhou Bay after Petitioners publicly opposed the proposed bungalow resort development, including restrictions

affecting efforts to hold community events and educational gatherings intended to inform the public regarding the proposed development and its anticipated impacts upon Keauhou Bay. Petitioners further allege through the Declaration of Daisy Mitchell that planned community gathering activities intended to educate the public regarding the Project were denied after Petitioners opposed the development, raising concerns regarding unequal treatment, viewpoint-based exclusion, and restriction of community use of Keauhou Bay. Petitioners further allege that Daisy Mitchell, who maintains a longstanding relationship with and regularly uses Keauhou Bay for community and shoreline activities, was subsequently denied use of the Bay in connection with those planned gatherings. KS's Answer does not specifically address or materially rebut those allegations. See First Amended Petition, pp. 3-5 and 60-64.

With respect to fiduciary duties and trust-purpose allegations, KS's Answer likewise does not materially rebut Petitioners' allegations that Kamehameha Schools, as trustee of the Estate of Bernice Pauahi Bishop, remains bound by fiduciary obligations associated with trust administration and use of trust lands. See First Amended Petition, pp. 17-18.

According to the official Kamehameha Schools description of Princess Bernice Pauahi Bishop's Will, the trust was established for the education and benefit of Native Hawaiian children.

Kamehameha Schools – Pauahi's Will

Petitioners respectfully submit that KS's Answer does not meaningfully rebut the fiduciary, trust-purpose, and title-related allegations identified throughout the First Amended Petition. Rather than substantively addressing those allegations, KS primarily asserts that Petitioners allegedly lack standing to question trust administration, fiduciary compliance, or title-related issues associated with the Keauhou Bay lands. See KS Answer, pp. 6-7.

Rebecca Melendez, as an aggrieved person directly affected by the proposed Keauhou Bay development and the challenged FEIS, together with the First Amended Petition, expressly alleges that Kamehameha Schools, as trustee of the Estate of Princess Bernice Pauahi Bishop, remains legally bound to administer Hawaiian endowed trust lands in accordance with the express purposes set forth within Princess Bernice Pauahi Bishop's Will and the fiduciary duties imposed under Hawai'i law. Petitioners further allege that these trust-purpose and fiduciary issues are directly relevant where Kamehameha Schools seeks to advance large-scale commercial

shoreline development upon culturally and environmentally sensitive trust lands at Keauhou Bay. See First Amended Petition, pp. 16-18.

Petitioners further respectfully submit that Daisy Mitchell, as a lineal descendant with longstanding ancestral, cultural, and community ties to Keauhou Bay, possesses a direct and particularized interest in the protection, preservation, and lawful administration of lands and shoreline resources associated with Keauhou Bay, including protection against actions alleged to conflict with constitutional protections, public trust obligations, and the purposes governing administration of Hawaiian trust lands.

Petitioners respectfully submit that the Hawaiian people should have received extraordinary educational benefit from the vast Hawaiian endowed lands placed into trust through Princess Bernice Pauahi Bishop's Will over more than a century of trust administration. Petitioners further respectfully submit that where KS repeatedly represents throughout the FEIS process that additional commercial development and revenue generation are necessary to support its mission, legitimate questions arise regarding how trust assets, land sales, revenue streams, and prior commercial development of Hawaiian endowed lands have been administered in relation to the educational and beneficiary purposes expressly identified within the Will. Petitioners further respectfully submit that where Kamehameha Schools seeks to advance a large-scale commercial bungalow resort development within culturally and environmentally sensitive Keauhou Bay, the Hawaiian community and affected members of the public possess a legitimate interest in understanding how Hawaiian endowed trust lands are being utilized, administered, and developed, particularly where the proposed use appears commercial in nature and raises substantial questions regarding consistency with the educational and beneficiary purposes set forth within Princess Bernice Pauahi Bishop's Will.

The First Amended Petition additionally alleges that unresolved title and authority questions exist regarding lands associated with Keauhou Bay, including concerns involving Royal Patent No. 7844, Land Commission Award-derived interests, and the absence of complete title clarification within the administrative record. See First Amended Petition, pp. 17-22. KS's Answer does not substantively rebut those title-related allegations, but instead primarily argues that Petitioners allegedly lack standing to raise them. See KS Answer, pp. 6-7.

Petitioners respectfully submit that where a trustee seeks continued commercial development of culturally and environmentally sensitive Hawaiian trust lands, including shoreline bungalow resort development at Keauhou Bay, questions concerning fiduciary compliance, lawful

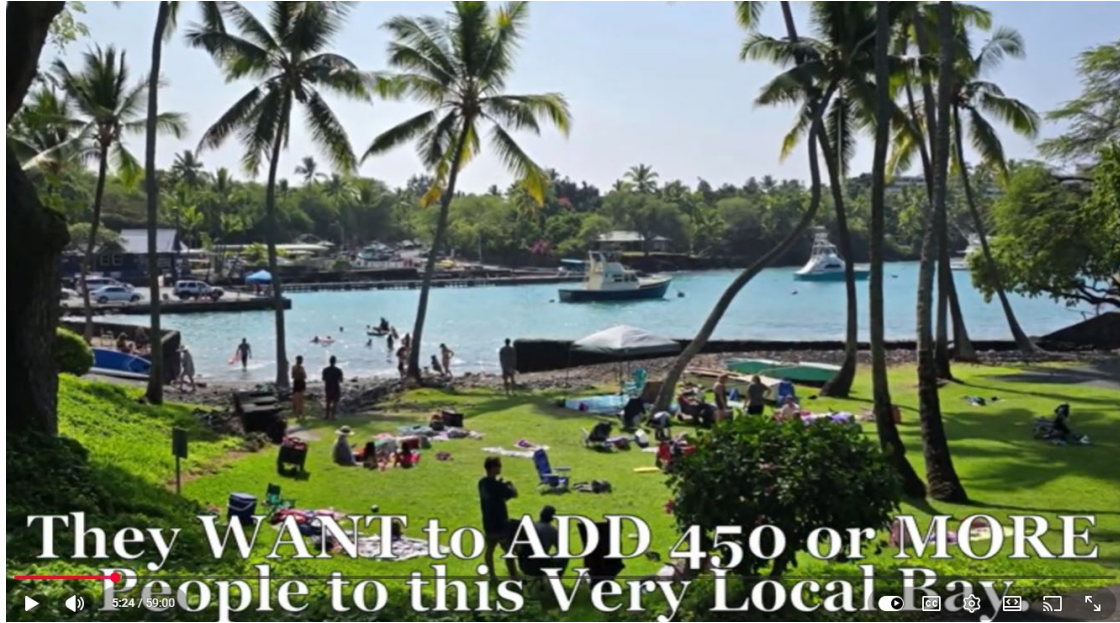
authority, trust administration, title integrity, and consistency with the express educational purposes of the trust cannot simply be dismissed through generalized standing objections without substantive response.

Petitioners respectfully submit that the Answer filed by KS and Marissa Harman does not materially rebut or resolve the substantial constitutional, environmental, fiduciary, public trust, cultural, and statutory deficiencies identified throughout the First Amended Petition and administrative record, including unresolved issues concerning cumulative impacts, impaired coastal waters, traditional and customary Native Hawaiian rights, deferred analysis, endangered species impacts, FEIS completeness, fiduciary obligations, and compliance with HRS Chapter 343. Petitioners further respectfully submit that where substantial environmental, cultural, and public trust concerns remain unresolved, HRS Chapter 343 does not permit continued reliance upon or advancement of discretionary approvals based upon an incomplete or legally deficient FEIS. See First Amended Petition, pp. 9-19, 30-31, 65, and 77-88.

Petitioners further respectfully submit that KS's Answer does not meaningfully address Petitioners' allegations concerning Respondents' acknowledged failure of stewardship and environmental management at Keauhou Bay. The First Amended Petition specifically identified FEIS admissions stating that portions of KS properties at Keauhou Bay are 'unmanaged and susceptible to runoff and erosion' and that the Project Area 'lacks active management and does not contain infrastructure to capture or treat stormwater.' See First Amended Petition, pp. 93-98. Petitioners respectfully submit that KS's generalized denials do not rebut these express administrative-record admissions concerning existing unmanaged conditions, runoff vulnerability, and lack of basic stormwater infrastructure at Keauhou Bay.

Petitioners further submit the following illustrative screenshots, together with the associated video footage from which the screenshots were captured, recorded in connection with a community event concerning Keauhou Bay that was denied from being held at Keauhou Bay by Kamehameha Schools. Petitioners are additionally submitting the associated video titled, 'Endangered Species Habitat, Cultural Practices are in Danger! Locals Speak Out!' as part of this Reply and supporting materials. These materials are provided in support of Petitioners' allegations concerning the confined physical nature of Keauhou Bay, existing shoreline, community and Hawaiian support in opposition of Kamehameha Schools proposed bungalow resort development, marine use intensity, canoe activity, cumulative impacts, public trust resource pressures, shoreline access concerns, endangered species habitat concerns, and interference with traditional and customary Native Hawaiian practices discussed throughout the First Amended Petition and administrative record.

Screenshot from video titled ‘Endangered Species Habitat, Cultural Practices are in Danger! Locals Speak Out!’ <https://www.youtube.com/watch?v=TQw4Ew5Xr6A> depicting existing shoreline intensity, community and visitor swimming activity, recreational use, canoe presence, and limited shoreline space within Keauhou Bay.



Screenshot from video titled ‘Endangered Species Habitat, Cultural Practices are in Danger! Locals Speak Out!’ <https://www.youtube.com/watch?v=TQw4Ew5Xr6A> depicting fishing activity at far end of bay, active canoe use, shoreline recreation, marine activity, and the confined physical characteristics of Keauhou Bay.



Photograph depicting longstanding community recreational use of the shoreline volleyball court, shoreline gathering activity, canoe shoreline storage and activity, and open public use areas within Keauhou Bay. Petitioners further allege that the proposed Kamehameha Schools bungalow resort development would result in removal of the longstanding shoreline volleyball court and further reduction of existing open community use space within the Bay.



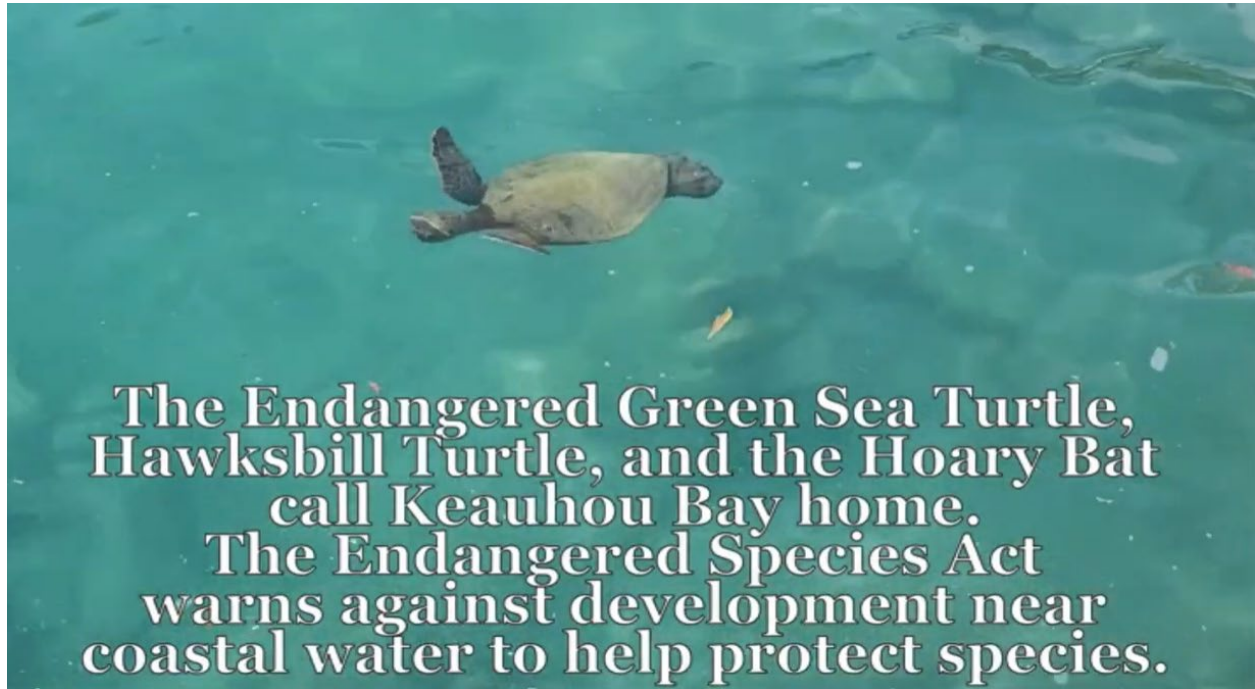
Screenshot from video titled 'Endangered Species Habitat, Cultural Practices are in Danger! Locals Speak Out!' <https://www.youtube.com/watch?v=TQw4Ew5Xr6A>.



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Screenshot from video titled 'Endangered Species Habitat, Cultural Practices are in Danger! Locals Speak Out!' <https://www.youtube.com/watch?v=TQw4Ew5Xr6A>.



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

Respectfully submitted,

DAISY MITCHELL
Petitioner, Pro Se

REBECCA MELENDEZ
Petitioner, Pro Se