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JEFF DARROW, IN HIS OFFICIAL
CAPACITY AS DIRECTOR

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DAISY MITCHELL;
REBECCA MELENDEZ,

Petitioners,

vs.

KAMEHAMEHA SCHOOLS (BISHOP ESTATE); 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; AND DOE GOVERNMENTAL UNITS 1-20;

Respondents.

Civil No. 3CCV-25-0000438

COUNTY RESPONDENTS' MOTION FOR SUMMARY JUDGMENT; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF SHERILYN TAVARES; EXHIBITS "1"-"2"; DECLARATION OF JEFFREY W. DARROW; EXHIBIT "3"; NOTICE OF HEARING; CERTIFICATE OF SERVICE

HEARING:
Date: November 9, 2026
Time: 9:00 a.m.
Judge: Hon. Kauanoe Jackson

COUNTY RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

Respondents HAWAIʻI COUNTY PLANNING ("**Planning**") and JEFF DARROW, in his official capacity as Director, (collectively "**County**"), by and through their undersigned counsel, respectfully move for summary judgment against remaining Petitioner REBECCA MELENDEZ ("**Petitioner**") on all claims asserted against the County contained in the *First Amended Petition for Judicial Review of Environmental Impact Statement Acceptance*, filed April 8, 2026 [Dkt. 16] ("**FAC**").

The County is entitled to summary judgment in their favor and against Petitioner as a matter of law. Under Hawaiʻi Revised Statutes ("**HRS**") Chapter 343 ("**Chapter 343**"), its implementing regulations under Hawaiʻi Administrative Rules ("**HAR**") Title 11, Chapter 200.1 (2018), and as articulated in *Price v. Obayashi*, 81 Hawaiʻi 171, 914 P.2d 1364 (1996), the subject Final Environmental Impact Statement ("**FEIS**") satisfies the "rule of reason" and fulfills all statutory mandates for the County's valid issuance of its acceptance.

This Motion is made pursuant to Rules 7, 12, and 56 of the Rules of Civil Procedure, Rules 7 and 8 of the Rules of the Circuit Courts of the State of Hawaiʻi, and is supported by the attached Memorandum in Support of Motion, Declaration, and Exhibits, the records and files of the case herein, and such further and additional matters as may be presented at the hearing on this Motion.

Dated: Hilo, Hawai‘i, October 22, 2026.

HAWAI‘I COUNTY PLANNING and
JEFF DARROW, IN HIS OFFICIAL
CAPACITY AS DIRECTOR
Respondents

By: */s/ Sherilyn K. Tavares*
SHERILYN K. TAVARES
Deputy Corporation Counsel
Their Attorney

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAIʻI

DAISY MITCHELL; REBECCA MELENDEZ, Petitioners, vs. KAMEHAMEHA SCHOOLS (BISHOP ESTATE); HAWAIʻI COUNTY PLANNING; JEFF DARROW, IN HIS OFFICIAL CAPACITY AS DIRECTOR; MARISSA HARMAN, IN HER PROFESSIONAL & OFFICIAL CAPACITY; G70; KAWIKA MCKEAGUE, IN HIS OFFICIAL CAPACITY; JANE DOES 1-20; DOE CORPORATIONS 1-20; DOE ENTITIES 1-20; AND DOE GOVERNMENTAL UNITS 1-20; Respondents	Civil No. 3CCV-25-0000438 **MEMORANDUM IN SUPPORT OF MOTION**

MEMORANDUM IN SUPPORT OF MOTION

The County is entitled to summary judgment as a matter of law because the FEIS prepared and submitted by Respondent KAMEHAMEHA SCHOOLS ("**KS**") for its Keauhou Bay Management Plan ("**KBMP**") satisfies the applicable requirements of HRS Chapter 343 and its implementing regulations under HAR Chapter 11-200.1.

Acting in its capacity as the accepting authority, the County thoroughly reviewed the FEIS, determined it satisfied the applicable content requirements, and properly issued its acceptance. Consistent with the "rule of reason" articulated by the Hawai'i Supreme Court in *Price v. Obayashi*, 81 Hawai'i 171, 914 P.2d 1364 (1996), the FEIS is legally sufficient.

Accordingly, the County is entitled to judgment in its favor. A true and correct copy of the complete FEIS, including all appendices, is attached hereto as Exhibit 1 ("Ex. 1").

I. FACTUAL BACKGROUND

A. The Proposed Project and Initial Scoping

KS proposes to revitalize its land holdings at Keauhou Bay by relocating commercial activities away from culturally sensitive areas and establishing a cultural education center and low-impact lodging. Ex. 1, Vol. 1 at 1-13. KS, with the assistance of its environmental consultant, Respondent G70, undertook an extensive environmental review process pursuant to HRS Chapter 343 and its implementing regulations under HAR Chapter 11-200.1. *Id.*

During the initial scoping period, KS received numerous comments from members of the public—including Petitioner—as well as federal, state, and county agencies. Ex. 1, Vol. II, App. B. KS addressed the substantive comments in accordance with the applicable statutory and regulatory requirements. *Id.*

B. DEIS Publication, Public Comment, and Designation of Accepting Authority

Following publication of the Draft Environmental Impact Statement ("**DEIS**"), KS received additional extensive public comments addressing thirty-seven distinct topics. Ex. 1, Vol. II, App. C. Petitioner again participated in the process by submitting timely written comments during the DEIS comment period. *Id.* KS considered and addressed all substantive comments, including Petitioner's, in the Final Environmental Impact Statement ("**FEIS**"). *Id.*

In accordance with HRS § 343-5(e) (Supp. 2022), the Planning Department was the appropriate accepting authority for the FEIS based on its ability to oversee the environmental review process, its expertise and access to relevant information, and its anticipated role in issuing ministerial permits for the proposed project.

C. FEIS Evaluation and Acceptance

Pursuant to HAR § 11-200.1-28 (2018), Planning evaluated the FEIS for compliance with HRS Chapter 343 and HAR Chapter 11-200.1, including the sufficiency of its disclosures regarding identifiable environmental impacts and its responses to public and agency comments. The administrative record demonstrates the review included substantial opportunities for public

participation, consideration of agency input, and rigorous responses to substantive concerns. *E.g.*, Ex. 1, Vol. II, Apps. B, C, & D.

Upon completing its evaluation, Planning properly accepted the FEIS by letter dated September 16, 2025, attached hereto as Exhibit 3 ("Ex. 3"). Public notice of Planning's acceptance was published in *The Environmental Notice* on September 23, 2025. *Id.*[1]

D. Procedural History

Publication of the acceptance notice in *The Environmental Notice* commenced the sixty-day period to file a judicial challenge under HRS § 343-7(c) (2022). Petitioners timely filed their original Complaint on October 22, 2025 [Dkt. 1], and subsequently filed the operative FAC on April 8, 2026 [Dkt. 16].

Since the filing of the FAC, this Court has dismissed Respondents G70 and KAWIKA MCKEAGUE as improper parties under HRS § 343-7(c) [Dkt. 106], and has dismissed Petitioner DAISY MITCHELL without prejudice [Dkt. 148]. Rebecca Melendez is the sole remaining Petitioner.

The FEIS fulfilled all statutory and regulatory requirements of Chapter 343 by adequately disclosing and describing identifiable environmental impacts and responding to substantive comments throughout the review process. As demonstrated below, the FEIS satisfies the applicable legal standard, including

[1] The official publication is located at: https://files.hawaii.gov/dbedt/erp/Doc_Library/2025-09-23-HA-FEIS-Acceptance-KS-Keauhou-Bay-Management-Plan.pdf

the "rule of reason" articulated in *Price v. Obayashi*, 81 Hawai‘i 171, 914 P.2d 1364 (1996), and the County is therefore entitled to summary judgment.

II. STANDARD OF REVIEW FOR AGENCY DETERMINATIONS UNDER HRS CHAPTER 343

Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." *Stanford Carr Dev. Corp. v. Unity House, Inc.*, 111 Hawai‘i 286, 295, 141 P.3d 459, 468 (2006) (citation omitted). The legal sufficiency of an environmental impact statement ("**EIS**") under HRS Chapter 343 is a question of law "properly addressed through the summary judgment procedure" because "[t]here are no factual determinations to be made regarding EIS adequacy." *Price,* 81 Hawai‘i at 182, 914 P.2d at 1375; *accord Kaupiko v. Bd. of Land & Nat. Res.*, 154 Hawai‘i 456, 467–68, 555 P.3d 143, 154–55 (2024). Hawai‘i courts review EIS sufficiency under the " 'rule of reason' " to determine whether the document "adequately disclos[es] facts to enable a decision-making body to render an informed decision." *Price*, 81 Hawai‘i at 182, 914 P.2d at 1375 (quoting *Life of the Land v. Ariyoshi*, 59 Hawai‘i 156, 164, 577 P.2d 1116, 1121 (1978)). An EIS need not be exhaustive to the point of discussing every possible detail. *Price*, 81 Hawai‘i at 183, 914 P.2d at 1376 (quoting *Ariyoshi*, 59 Haw. at 164-165). Rather, it is adequate if compiled in good faith and with sufficient detail to allow the decision-maker to fully consider environmental factors, balance risks against benefits, and make a reasoned choice among alternatives. *Id.*

In evaluating Chapter 343 compliance, the court's role is "very narrow." *Id.* at 182 n.12, 914 P.2d at 1375 n.12. Courts do not "flyspeck" an EIS, nor do they substitute their judgment for the accepting agency's. *Kaupiko v. Bd. of Land & Nat. Res.*, 154 Hawai‘i 456, 471, 555 P.3d 143, 158 (2024). Instead, the court’s inquiry is limited to ensuring the agency followed proper procedures and took a "hard look" at environmental factors. *Id.* An agency’s acceptance will be set aside only if found to be "arbitrary and capricious, given the known environmental consequences." *Id.* (citation and internal quotation marks omitted). Public disagreement or conflicting authorities do not measure EIS sufficiency; the sole metric is whether the EIS permitted informed decision-making. *Price*, 81 Hawai‘i at 181–82, 914 P.2d at 1374–75.

Crucially, judicial review examines the EIS as a complete document, including its attached technical studies and appendices. *Kaupiko*, 154 Hawai‘i at 472, 555 P.3d at 159. Confining review to non-appended information is error where the agency accepted the document based on the entirety of the record. *Id.* at 474, 555 P.3d at 161.

Finally, "a presumption of validity is accorded to decisions of administrative bodies acting within their sphere of expertise and one seeking to upset the order bears the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." *Sierra Club v. D.R. Horton-Schuler Homes, LLC*, 136 Hawai‘i 505, 516, 364 P.3d 213, 224 (2015) (citation and internal quotation marks omitted); *see also In re Water Use Permit Applications*, 94 Hawai‘i 97, 118, 9 P.3d 409, 430 (2000).

III. LEGAL ARGUMENT

Despite Petitioner's contentions, the FEIS is legally sufficient and the County's acceptance of the FEIS complies with Chapter 343. Petitioner alleges the County accepted the FEIS without ensuring that: (1) KS followed proper procedures; (2) KS adequately disclosed and described the project's environmental impacts; and (3) comments received adequate responses. FAC [Dkt.16]. Petitioner's allegations lack merit.

As a threshold matter, the Court's review is confined to the sufficiency of the FEIS as to the comments Petitioner herself timely submitted, and Petitioner's many non-HEPA claims are not cognizable in this proceeding. On the merits, KS fully complied with all environmental statutory requirements, and the County, finding the FEIS more than sufficient, properly accepted it.

The County also joins in and incorporates by reference the arguments of co-Respondents KS and MARISSA HARMAN, in her professional and official capacity, set forth *Respondents Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools' and Marissa Harman's Motion for Summary Judgment*, filed September 4, 2026 [Dkt. 150], concurrently pending.

A. The Court's Review is Confined to the Sufficiency of the FEIS, and Petitioner's Contestable Issues Are Limited to the Comments She Timely Submitted

HRS § 343-7(c) both defines and confines this action. Only "persons who provided written comment" on the statement "during the designated review period shall be adjudged aggrieved parties for the purpose of bringing judicial action," and "the contestable issues shall be limited to issues identified and

discussed in the written comment." HRS § 343-7(c). The Hawai‘i Supreme Court has accordingly held "review of the EIS is limited to those concerns that [the petitioner] listed in his comments to the draft EIS." *Price*, 81 Hawai‘i at 183, 914 P.2d 1376. Indeed, this comment-scope limitation is "[t]he only express restriction on an action brought under HEPA." *Kilakila 'O Haleakala v. Univ. of Hawai'i & David Lassner*, 138 Hawai‘i 364, 376 n.27, 382 P.3d 176, 189 n.27 (2016). A reviewing court's jurisdiction thus "is limited to concerns that a person raised in his or her comments." *Sensible Traffic Alts. & Res., Ltd. v. Fed. Transit Admin. of U.S. Dep't of Transp.*, 307 F. Supp. 2d 1149, 1160 (D. Haw. 2004).

Two consequences follow. First, Petitioner may not litigate the adequacy of the FEIS's treatment of comments she did not herself submit, including the comments of non-party Jeffrey Caufield. *Id.* Moreover, as a self-represented litigant, Petitioner has no authority to prosecute claims on behalf of, or press the comments of, persons who are not parties and who did not themselves bring suit. *Oahu Plumbing & Sheet Metal, Ltd. v. Kona Const., Inc.*, 60 Hawai‘i 372, 377, 590 P.2d 570, 573 (1979) ("natural persons are not permitted to act as 'attorneys' and represent other natural persons in their causes"); *see* HRS 605-14 (2016). More broadly, a litigant "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499–500 (1975).

Second, Petitioner may not raise issues she did not identify and discuss in her own timely written comments on the DEIS—including her constitutional,

public trust, trust-administration, title, and public-trail theories. Because those issues appear nowhere in her timely comments, they are not "contestable issues" and must be dismissed. HRS § 343-7(c); *see Price*, 81 Hawai‘i at 183, 914 P.2d at 1376.

In addition, HRS § 343-7(c)'s sixty-day period in which to commence a challenge is jurisdictional. A judicial proceeding challenging an EIS acceptance "shall be initiated within sixty days after the public has been informed" of the acceptance, and compliance with HEPA's challenge-period limitation "is . . . mandatory and jurisdictional." *Waianae Coast Neighborhood Bd. v. Hawaiian Elec. Co.*, 64 Hawai‘i 126, 129, 637 P.2d 776, 778 (1981). Where a plaintiff files "more than sixty days after" the public was informed of acceptance, the claims are "time-barred." *Sensible Traffic Alternatives & Res., Ltd.*, 307 F. Supp. 2d at 1162. Notice of the County's acceptance was published in *The Environmental Notice* on September 23, 2025. Ex. 3; *see Supra,* fn.1. To the extent the FAC asserts new theories of FEIS insufficiency that were not raised in the original complaint and were first advanced well beyond the sixty-day window, those claims are untimely and the Court lacks jurisdiction over them. HRS § 343-7(c); *Waianae Coast Neighborhood Bd.*, 64 Haw. at 129, 637 P.2d at 778 (1981).

B. Petitioner's Non-HEPA Claims Are Not Separately Actionable and Must Be Dismissed

Beyond challenging the FEIS, Petitioner seeks relief unauthorized by HEPA: a declaration invalidating the FEIS under Articles XI and Article XII of the Hawai‘i Constitution, an injunction halting the project, the removal of

Director Darrow from office, a trust accounting and relief under HRS Chapter 554D, and determinations regarding title and public trails under HRS § 264-1 (Supp. 2025). None of these claims is cognizable against the County in this proceeding.

Judicial review of an EIS acceptance is a specific statutory remedy, and where "a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed." HRS § 632-1(b) (2016). The Hawai‘i Supreme Court treats that limitation "as a bar to jurisdiction": "where such a statutory remedy exists, declaratory judgment does not lie." *Maui Lani Neighbors, Inc. v. State*, 156 Hawai‘i 520, 538, 575 P.3d 610, 628 (2025) (citation and internal quotation marks omitted). A claim framed as one for declaratory or injunctive relief that in substance seeks the same result as the statutory challenge "is still subject to the jurisdictional limitations of its chosen remedy." *Id.* at 541, 575 P.3d at 631. Courts look to "the substance of the entire pleading . . . rather than . . . the formal language employed." *Id.* (citation and internal quotation marks omitted). A claim invoking the constitutional right to a clean and healthful environment does not change the analysis. The Article XI, section 9 enforcement right is meant "to complement, rather than supplant, other existing tools," and only a genuine Chapter 343 sufficiency challenge receives original circuit court jurisdiction under HRS § 343-7. *Id.* at 525, 575 P.3d at 615. Petitioner’s declaratory, injunctive, and constitutional claims are therefore subsumed within, and limited to, the sufficiency review this motion addresses. *Id.* at 542–43, 575 P.3d at 632–33.

Petitioner's public trust claims fail independently because the project lands are privately owned. The public trust under Article XI, section 1 of the Hawai'i Constitution reaches "public natural resources," including "conservation district lands owned by the State." *Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai'i 379, 400, 431 P.3d 752, 773 (2018). The Supreme Court has expressly reserved whether and how trust principles apply to other types of public lands and has never extended the doctrine to privately held property. *Id.* at 400 n.23, 431 P.3d at 773 n.23. The KBMP sits on privately owned Kamehameha Schools land, which is not subject to the public trust doctrine. *See id.*; Ex. 1, Vol. I at 1-13.

Petitioner's demand for a *Ka Pa'akai* analysis likewise does not defeat the County's acceptance. The *Ka Pa'akai* framework requires an agency to make findings protecting traditional and customary Native Hawaiian rights when it makes a discretionary land-use approval, such as a reclassification or a conservation district use permit. *Ka Pa'akai O Ka'Aina v. Land Use Comm'n, State of Hawai'i*, 94 Hawai'i 31, 47, 7 P.3d 1068, 1084 (2000); *Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai'i at 395–96, 431 P.3d at 768–69. This obligation attaches to the discretionary-approval stage, not to the acceptance of an informational EIS. Acceptance of the EIS authorizes nothing; KS must still obtain its discretionary permits, at which point any required cultural analysis can be performed. *See Price*, 81 Hawai'i at 181, 914 P.2d at 1374 ("an 'acceptance' of the EIS is not an 'approval' of the project").

Finally, the Court lacks authority to remove Director Darrow, or any official, from office based on the handling of an EIS. HRS § 343-7(c) authorizes judicial review of the sufficiency of the EIS—nothing more. Petitioner identifies no legal basis, and none exists, for this Court to order the removal of a public official as a remedy in a HEPA sufficiency action. These claims must also be dismissed.

C. The County's Acceptance of the FEIS Was Proper Under HAR § 11-200.1-28

Under HRS § 343-2 (2022), acceptance is "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. HRS § 343-5 provides, in relevant part, that the accepting authority has the final authority to accept the FEIS. HRS §§ 343-5(d)(2), -5(e).

Pursuant to HAR § 11-200.1-28(a), the "[a]cceptability of a final EIS shall be evaluated on the basis of whether the final EIS, in its completed form, represents an informational instrument that fulfills the intent and provisions of Chapter 343, HRS, and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments." As such, an EIS is acceptable if:

> 1) The procedures for assessment, consultation process, review, and the preparation and submission of the statement, have all been completed satisfactorily as specified in this chapter;

2) The content requirements described in this chapter have been satisfied; and

3) Comments submitted during the review process have received responses satisfactory to the accepting authority, including properly identifying comments as substantive and responding in a way commensurate to the comment, and have been appropriately incorporated into the final EIS.

HAR § 11-200.1-28(b).

1. Compliance with Procedural Requirements Under HAR § 11-200.1-28(b)(1)

KS indisputably followed the procedures set forth in HAR sections 11-200.1-23 through 11-200.1-27, which contain all procedures for assessment, consultation, preparation, and submission of the FEIS. Petitioner broadly alleges the consultation process was insufficient. FAC [Dkt. 16] at 19. However, Petitioner's actual issue with the consultation process appears to be dissatisfaction with the project itself, not its consultation process. FAC [Dkt. 16] at 19 ([T]he FEIS presentation of cultural consultation results creates the misleading impression that cultural practitioners and lineal descendants concur with or support the [KBMP]."). Petitioner herself therefore acknowledges KS engaged in consultation. *Id.* Moreover, KS disclosed the contrary viewpoints it received during consultation. Ex. 1, Vol. III, App. H.

Petitioner fails to establish any procedural deficiencies and her non-procedural allegations about KS's misrepresentation of concurrence are unsupported by the record. *See id.* The County correctly concluded KS complied with all relevant procedural requirements, and Petitioner offers no

meaningful argument for disturbing the County's acceptance. *See* HAR § 11-200.1-28(b)(1).

2. Adequate Environmental Impact Disclosures Under HAR § 11-200.1-28(b)(2)

Petitioner's comments and corresponding FAC allegations advance multiple criticisms of the FEIS's content, none of which have merit. Here, the FEIS's content wholly satisfies the requirements of HAR Chapter 11-200.1 and *Price's* "rule of reason" because the FEIS devotes ample analysis to each area Petitioner alleges is deficient.

Petitioner's allegations are analogous to those advanced and rejected in *Price*. To be sure, "what is required in one EIS may not be required in another, based upon the circumstances presented by the particular project." *Price*, 81 Hawai'i at 183, 914 P.2d at 1376. However, *Price* provides a helpful illustration of the depth and nature of the information necessary for a "decision-making body to render an informed decision." 81 Hawai'i at 182, 914 P.2d at 1375 (cleaned up). Like the EIS held legally sufficient in *Price*, the FEIS at issue here reflects a good-faith effort to investigate and disclose potential impacts of the project and rigorous consideration of potential mitigation measures. *See id.*

a. The County Properly Concluded the FEIS Adequately Addresses All Relevant Topics

Petitioner's argument that the FEIS fails to discuss multiple topics in the requisite level of detail is meritless. Like the plaintiff in *Price*, Petitioner alleges

the FEIS inadequately addresses resource and infrastructure constraints,[2] including island wide "known and recurring strain on electrical generation and grid reliability, potable water supply, wastewater treatment systems, solid waste and landfill capacity, roadway safety, traffic congestion, and emergency response access, thereby masking cumulative impacts . . . ." FAC [Dkt. 16] at 39. Here, like the FEIS held adequate in *Price*, "there is an entire section devoted to each of these topics."[3] *Price*, 81 Hawai'i at 184, 914 P.2d at 1377. Additionally, as in *Price*, "[w]ithin each of these sections is a discussion of existing conditions, anticipated impacts, and mitigating measures." *Id.*

For example, FEIS Volume I Section 4.5 (Groundwater, Surface Water, and Drainage) identifies the sustainable yield, existing usage, and other limitations of the Keauhou Aquifer System, specifies the additional use will not push the aquifer to 90% of its sustainable yield, and proposes a new water supply system to accommodate the new water demand.[4] Ex. 1, Vol. 1, Section 4.5. Further, the FEIS contains a Preliminary Engineering Report analyzing the existing conditions of both site infrastructure and broader systems, calculating additional demand from the project, and proposing infrastructure for each

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[2] "Price states that the draft EIS provides an inadequate discussion of the infrastructure in the neighborhood, specifically, a lack of discussion on the fresh water supply, wastewater treatment facilities, and transportation facilities." *Price*, 81 Hawai'i at 184, 914 P.2d at 1377.

[3] Ex. 1, Vol. I, Sections 4.1 (Power); 4.5 (Groundwater, Surface Water, and Drainage); 4.12.1 (Water Supply); 4.12.2 (Wastewater Treatment and Disposal); 4.12.3 (Solid Waste); 4.11 (Traffic and Circulation); 4.9.1 (Police Protection); 4.9.2 (Fire Protection, Emergency Medical Services, and Hospital Services).

[4] Ex. 1 Vol I. at 4–85.

category Petitioner mentions except traffic and access concerns. Ex. 1, Vol. III, App. N. The FEIS also contains a draft Mobility Analysis Report extensively analyzing current traffic, roadway safety, and access concerns. Ex. 1, Vol. III, App. M. The FEIS is therefore "compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved." *Price*, 81 Hawai‘i at 184, 914 P.2d at 1377 (citation omitted).

Petitioner's allegations that the FEIS lacks adequate discussion of stormwater drainage infrastructure and runoff impacts, the potential effects of the development on endangered and threatened species and the manta rays of Keauhou Bay, the cumulative impacts of the project, and cultural impacts fail for the same reason. The FEIS devotes an entire section, complete with discussion of existing conditions, potential impacts, and mitigation strategies, to each concern of Petitioner's.[5]

The rule of reason does not require the FEIS to discuss the impact on manta rays exhaustively. It requires only sufficient information to enable an informed decision. *Kaupiko*, 154 Hawai‘i at 463, 555 P.3d at 150. The FEIS satisfies this standard. Because the project proposes no direct near-shore activities, the principal threat to manta rays Petitioner identifies—runoff—is addressed at length. Ex. 1, Vol. 1, Section 4.5. For example, Section 4.5

[5] Ex. 1, Vol. I, Sections 4.5 (Groundwater, Surface Water, and Drainage) (addressing runoff and pollution concerns and proposing mitigation strategies); 4.6 (Biological Resources) (discussing endangered and threatened species); 4.16.1 (Cumulative Impacts); 4.1 (Cultural, Archaeological, and Historic Resources).

pinpoints current areas of excessive runoff and outlines targeted mitigation solutions, integrates a low-impact development approach to minimize pollution via a comprehensive "drainage masterplan," and affirms the project's statutory obligation to comply with all applicable federal, state, and county laws. *Id.*

The County's acceptance of the FEIS is proper because the FEIS sets forth ample information on potential environmental impacts. Under *Price*, a FEIS must only set forth "sufficient information to enable the decision-maker to consider fully the environmental factors involved" to be acceptable. 81 Hawai'i at 184, 914 P.2d at 1377. Here, the FEIS set forth ample information on each topic Petitioner claims lack adequate discussion.

Therefore, the County properly concluded that the FEIS fulfills all requirements of HAR § 11-200.1-28(b)(2).

b. The FEIS Properly Addresses Petitioner's Other Alleged Deficiencies

Petitioner additionally alleges the FEIS's content does not meet Chapter 343's requirements or its administrative rules because: (1) the FEIS does not clearly disclose Keauhou Bay's status as "impaired" under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* ("**FWPCA**"); (2) the FEIS does not contain a constitutional Native Hawaiian rights analysis; (3) the project will require more water than DWS has allocated for it; and (4) the FEIS lacks a purpose and need section. FAC [Dkt. 16] at 10; 15, 18, 30-31. Petitioner is mistaken.

First, the FEIS clearly discloses Keauhou Bay is considered impaired under the FWPCA, identifies the potential for stormwater runoff issues, and

proposes mitigation strategies. Ex. 1, Vol. I, at 4-81 ("The 2024 [State of Hawai‘i Water Quality Monitoring and Assessment Report] identifies Keauhou Bay as an impaired water body in need of a TMDL, assigning it a low priority."). Moreover, the FEIS thoroughly discusses current and expected sources of potential pollution and proposes both specific solutions for identified sources of pollution and a sitewide low-impact development strategy for pollution management. *Id.* at 4–85 to 4–88. The FEIS thus both clearly discloses Keauhou Bay's status as an impaired water body and provides ample information on the project's expected impact and on intended mitigation strategies, both specific and sitewide.

Second, the FEIS was not required to contain a standalone constitutional *Ka Pa‘akai* analysis, and its absence does not render the acceptance improper. The *Ka Pa‘akai* framework requires an agency to make protective findings regarding traditional and customary Native Hawaiian rights when it makes a discretionary land-use approval—not when it accepts an informational EIS. *Matter of Conservation Dist. Use Application HA-3568*, 143 Hawai‘i at 395–97, 431 P.3d at 768–70. Acceptance of the FEIS authorizes nothing, so no *Ka Pa‘akai* analysis was required at this stage. In all events, the FEIS does address these concerns. It includes a Cultural Impact Assessment, *see* Ex. 1, Vol. III, App. H, and in Section 4.1.1, an inventory of valued cultural, historic, and natural resources and traditional and customary practices, the project's potential impacts on them, and potential mitigation measures—material the County may draw upon in any future cultural analysis. Ex. 1, Vol. I, Section

4.1.1. Petitioner's constitutional theory is also outside the scope of this proceeding because she did not raise it in her timely DEIS comments. HRS § 343-7(c); *Price*, 81 Hawai'i at 183, 914 P.2d 1376.

Third, Petitioner's allegation regarding the sufficiency of the water allocation does not establish any deficiency in the FEIS. The adequacy of the FEIS as an informational document turns on whether it discloses the project's anticipated water demand and impacts—not on whether KS has yet secured a particular allocation from the Department of Water Supply ("**DWS**"). The FEIS discloses DWS initially allocated 101 units of water to the project and the project's actual anticipated demand is higher. Critically, it calculates both water usage and wastewater needs based on actual anticipated demand. Ex. 1, Vol. II, Table 7.2; Ex. 1, Vol. I, Section 4.12.1. Whether KS ultimately secures additional water is a matter for the permitting process and does not bear on the sufficiency of the FEIS's disclosures.

Fourth, the inadvertent omission of Sections 2.6.2 through 2.8 of the purpose-and-need discussion from the published FEIS does not undermine the County's acceptance. Those pages were included in the DEIS that was circulated for public review and comment and were part of the complete FEIS the County reviewed before accepting it. A technical error occurred only when the FEIS was transmitted to the Environmental Review Program for publication, and the County promptly cured the error by jointly publishing an Errata in *The Environmental Notice* on July 23, 2026, attached hereto as Exhibit 2; *see also* Declaration of Jeffrey W. Darrow. The dispositive point is

the sufficiency review examines the EIS the decision-maker actually considered. The Hawai‘i Supreme Court has made clear the court reviewed the "complete document" on which the decision-making body makes its decision. *Kaupiko*, 154 Hawai‘i at 472, 555 P.3d at 259. Director Darrow attested the County reviewed the complete FEIS, including Sections 2.6.2 through 2.8, before accepting it, so the publication error had no effect on the County's determination. *See* Declaration of Jeffrey Darrow and Exhibit 3. A transmission error in the published copy is not a content deficiency under HRS Chapter 343, and Petitioner submitted no timely comment directed to those pages in any event. HRS § 343-7(c).

3. Proper Responses to Petitioner's Substantive Comments Under HAR § 11-200.1-28(b)(3)

KS provided thorough, topical responses to each of Petitioner's substantive comments. Ex. 1, Vol. II, Apps. B, C, & D. Petitioner's attached petition did not actually comment on the DEIS but was still attached verbatim to the FEIS. Ex. 1, Vol. II, Apps. C, & D.

The County properly concluded KS's responses were satisfactory.

IV. CONCLUSION

KS's FEIS was prepared in good faith and set forth sufficient information to fully consider all potential environmental impacts related to the KBMP. The County, satisfied that the FEIS meets the requirements of Chapter 343 and its implementing rules, correctly issued its acceptance, and the County's determination is entitled to a presumption of validity. Additionally, Petitioner's challenge is confined to the sufficiency of the FEIS as to her own timely

comments, and her non-HEPA claims are not cognizable in this proceeding.

Therefore, based upon the "rule of reason" in *Price v. Obayashi* and *Kaupiko v. Bd. of Land & Nat. Res.*, the County respectfully requests this Court grant summary judgment in its favor on all claims contained in Petitioner's FAC.

Dated: Hilo, Hawai'i, October 22, 2026.

HAWAI'I COUNTY PLANNING and JEFF DARROW, IN HIS OFFICIAL CAPACITY AS DIRECTOR
Respondents

By: */s/ Sherilyn K. Tavares*
SHERILYN K. TAVARES
Deputy Corporation Counsel
Their Attorney

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAIʻI

DAISY MITCHELL; REBECCA MELENDEZ, Petitioners, vs. KAMEHAMEHA SCHOOLS (BISHOP ESTATE); HAWAIʻI COUNTY PLANNING; JEFF DARROW, IN HIS OFFICIAL CAPACITY AS DIRECTOR; MARISSA HARMAN, IN HER PROFESSIONAL & OFFICIAL CAPACITY; G70; KAWIKA MCKEAGUE, IN HIS OFFICIAL CAPACITY; JANE DOES 1-20; DOE CORPORATIONS 1-20; DOE ENTITIES 1-20; AND DOE GOVERNMENTAL UNITS 1-20; Respondents.	Civil No. 3CCV-25-0000438 **DECLARATION OF SHERILYN K. TAVARES**

DECLARATION OF SHERILYN K. TAVARES

I, SHERILYN K. TAVARES, declare the following:

1. I am an attorney at law, licensed to practice before this Court, and am a Deputy Corporation Counsel for the County of Hawaiʻi and one of the attorneys for Respondents HAWAII COUNTY PLANNING and JEFF DARROW, in his official capacity as Director (collectively, the "County"), in the above-captioned matter.

2. I make this Declaration based on my personal knowledge and am competent to testify about the matters contained in this Declaration.

3. I make this Declaration in connection with the Declaration of Jeffrey W. Darrow filed herewith, to authenticate the exhibits referenced herein.

4. In my capacity as counsel of record for the County, I am familiar with the records of the County of Hawai‘i Planning Department relating to the Final Environmental Impact Statement ("FEIS") for the Keauhou Bay Management Plan ("KBMP"), including the documents attached hereto as Exhibits 1 and 2.

5. Attached hereto as Exhibit 1 is a true and correct copy of the FEIS for the KBMP, the acceptance of which is described in the Declaration of Jeffrey W. Darrow, published in *The Environmental Notice* on September 23, 2025.

6. Attached hereto as Exhibit 2 is a true and correct copy of the Errata to the FEIS for the KBMP, published in *The Environmental Notice* on July 23, 2026.

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

Dated: Hilo, Hawai‘i, October 22, 2026.

/s/ Sherilyn K. Tavares
SHERILYN K. TAVARES