IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

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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 CORPORATIONS 1-20; DOE ENTITIES 1-20; AND DOE GOVERNMENTAL UNITS 1-20; Respondents.	)	CIVIL NO. 3CCV-25-0000438 FIRST AMENDED PETITION FOR JUDICIAL REVIEW OF ENVIRONMENTAL IMPACT STATEMENT ACCEPTANCE CERTIFICATE OF SERVICE UPON COMPLETION OF SERVICE

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FIRST AMENDED PETITION

FOR JUDICIAL REVIEW OF AGENCY ACTIONS TAKEN IN RELIANCE ON AN UNLAWFUL ENVIRONMENTAL IMPACT STATEMENT**

(Filed Under HRS §343-7(c) — 60-Day Agency Action Rule)

Petitioners, appearing pro se, respectfully submit this First Amended Petition for Judicial Review pursuant to HRS §343-7(c), HAR Chapter 11-200.1, the Hawai'i Constitution, and all environmental, cultural, public-trust, and trust-law protections under Hawai'i law.

Petitioners proceed under the 60-day agency-action rule because Respondents continue to take administrative and planning steps in reliance on a Final Environmental Impact Statement ("FEIS") that is unlawful, misleading, incomplete, and in violation of mandatory legal requirements.

Petitioners incorporate by reference Exhibit A, which sets forth the controlling constitutional, statutory, administrative, and judicial authorities governing environmental review, public trust obligations, shoreline regulation, and Native Hawaiian traditional and customary rights under Hawai'i law.

Relief Requested

Petitioners request judicial review pursuant to HRS §343-7(c) and seek relief necessary to prevent further reliance upon the Final Environmental Impact Statement ("FEIS") and to halt advancement of the proposed Keauhou Bay development.

Petitioners respectfully request that this 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.

In addition, Petitioners seek equitable relief addressing the administration and use of Kamehameha Schools trust lands implicated in this action, including judicial review of fiduciary compliance with the express terms of Princess Bernice Pauahi Bishop's Will, production of trust accounting and title documentation where authority is contested, and remedial orders necessary to prevent continued violations of public trust, constitutional protections, and fiduciary obligations.

Petitioners further request that this Court order the removal, disqualification, or prohibition from further exercise of authority of Jeff Darrow, Marissa Harman, and Kawika McKeague to the extent the record demonstrates abuse of discretion, action in excess of lawful authority, unlawful advancement of an invalid FEIS, or breach of mandatory constitutional or statutory duties. Such relief is necessary to protect Keauhou Bay, preserve public trust resources, and prevent continued infringement upon land, cultural, and community rights through unlawful exercise of public authority.

Such relief is necessary to halt unlawful conduct and to ensure meaningful enforcement of Hawai'i's constitutional protections for public trust resources and traditional and customary rights.

Petitioners request such additional relief as may be necessary to protect Keauhou Bay, Native Hawaiian beneficiaries, and public trust resources, and such other and further relief as this Court deems just and proper.

Clarification of Intent

Petitioners further clarify that this action is NOT in opposition to an Educational Center or any lawful effort to restore, revitalize, and protect Keauhou Bay for the community and the endangered species that inhabit it.

Petitioners oppose the unlawful FEIS and the commercial resort it supports.

Terminology Clarification Regarding Project Description

Petitioners acknowledge that the applicant formally titles the proposed action the "Keauhou Bay Management Plan." However, as described throughout the Final Environmental Impact Statement, the project includes the development of overnight visitor lodging within a resort-zoned area, together with associated commercial and visitor-oriented uses.

For purposes of clarity and consistency, Petitioners use the term "bungalow resort development" as a descriptive shorthand to refer to the project's functional reality as disclosed in the FEIS, including its lodging component, visitor accommodations, and commercial use of shoreline resources. This terminology is Petitioners' characterization based on the project's disclosed features and impacts, and is not asserted to be the applicant's formal title for the project.

I. PARTIES AND STANDING

1. Petitioner Daisy Mitchell, Pro Se

Petitioner Daisy Mitchell will suffer a concrete, particularized, and imminent injury-in-fact as a direct result of the proposed development at Keauhou Bay. Daisy is a lineal descendant with deep ancestral ties to Keauhou Bay and maintains an active and ongoing relationship with the land, shoreline, and nearshore marine environment through the exercise of traditional and customary Kanaka Maoli protocols.

Daisy exercises constitutionally protected Kanaka Maoli protocols at specific, identifiable shoreline and marine areas within Keauhou Bay. These Kanaka Maoli protocols depend upon clean and unpolluted nearshore waters, healthy coral reef and marine ecosystems, continued shoreline access, and preservation of the Bay's cultural and historical landscape. Any impairment

of water quality, marine habitat, ecological balance, or shoreline access would directly interfere with her ability to exercise these Kanaka Maoli protocols and fulfill her cultural kuleana.

The environmental risks associated with the proposed development, including increased runoff, marine stress, shoreline intensification, and cumulative impacts, present a reasonably foreseeable threat to the public trust resources upon which her Kanaka Maoli protocols depend. Daisy's injury is not a generalized grievance. It arises from her lineage, her active exercise of traditional and customary rights, and her reliance upon specific public trust shoreline and marine resources at Keauhou Bay. Accordingly, Daisy Mitchell satisfies the injury-in-fact requirement for standing under Hawai'i law.

II. CONSTITUTIONAL FRAMEWORK

This action arises under self-executing provisions of the Hawai'i Constitution that impose affirmative fiduciary duties upon state agencies.

A. Article XII, Section 7 – Traditional and Customary Rights

Article XII, Section 7 of the Hawai'i Constitution mandates protection of traditional and customary Kanaka Maoli rights. In Ka Pa'akai o Ka 'Āina v. Land Use Commission, 94 Hawai'i 31 (2000), the Hawai'i Supreme Court held that, at a minimum, agencies must make specific findings regarding the identity and scope of valued cultural, historical, or natural resources in the affected area; the extent to which traditional and customary rights will be affected or impaired; and the feasible action required to reasonably protect those rights. See Exhibit A-4-13.

The Court further held that generalized preservation language is insufficient and that agencies must identify specific Kanaka Maoli protocols and locations rather than rely on blanket assurances. See Exhibit A-4-14. The Court also made clear that protection of Kanaka Maoli rights must occur before approval and may not be delegated or deferred to future planning stages. See Exhibit A-4-15. Failure to complete a project-specific cultural impact analysis and make enforceable protective findings at the environmental review stage constitutes noncompliance with Article XII, Section 7 and the Ka Pa'akai framework.

B. Article XI – Public Trust Doctrine

Article XI, Sections 1 and 7 of the Hawai'i Constitution declare that all public natural resources are held in trust by the State for the benefit of present and future generations and impose an obligation to protect, control, and regulate water resources. See Exhibit A-4-1 and Exhibit A-4-2.

The Hawai'i Supreme Court has reaffirmed that the public trust doctrine applies to all water resources without exception or distinction. See Exhibit A-4-3.

In In re Water Use Permit Applications (Waiāhole Ditch), 94 Hawai'i 97 (2000), the Court held that the State bears an affirmative duty to take the public trust into account in planning and allocation decisions and to protect public trust uses whenever feasible. See Exhibit A-4-5. The Court further confirmed that adequate provision must be made for traditional and customary KANAKA MAOLI rights and ecological balance, and that the public trust doctrine is fiduciary in nature. See Exhibit A-4-6. The Court emphasized that agencies must consider impacts to base flows and mitigation measures and may not ignore effects on public trust purposes. See Exhibit A-4-17. These duties are ongoing and cannot be abdicated.

C. Heightened Scrutiny and Precautionary Obligation

Under Waiāhole, the State's public trust duty requires active protection. Agencies must apply heightened scrutiny when public trust resources are implicated, and the burden rests upon the applicant to justify uses that may impair those resources. Public trust protection is not a passive balancing test; where impairment of water resources is not justified consistent with constitutional obligations, protection must prevail. Where uncertainty exists regarding environmental harm to public trust resources, agencies must proceed in a manner consistent with their fiduciary obligation to protect those resources.

An environmental review that fails to fully assess impacts to nearshore waters and marine ecosystems, omits specific findings regarding traditional and customary Kanaka Maoli, defers protective measures beyond the approval stage, or relies on generalized mitigation language without enforceable protections does not satisfy the constitutional standards articulated in Ka Pa'akai and Waiāhole.

III. ARBITRARY AND CAPRICIOUS ACCEPTANCE OF THE FEIS

Acceptance of a Final Environmental Impact Statement that fails to apply the Ka Pa'akai analytical framework, make specific findings regarding traditional and customary rights, satisfy the State's affirmative fiduciary obligations under Article XI, and apply the heightened scrutiny required under Waiāhole is contrary to self-executing constitutional mandates.

An agency decision that disregards these constitutional duties is arbitrary, capricious, and in violation of Article XI and Article XII of the Hawai'i Constitution. Because the proposed development implicates both constitutionally protected cultural Kanaka Maoli protocols and

public trust water resources at Keauhou Bay, strict compliance with these constitutional requirements is mandatory.

IV. TRANSITION TO STATUTORY CLAIMS

In addition to violating Article XI and Article XII of the Hawai'i Constitution, Respondents' acceptance of the Final Environmental Impact Statement also violates Hawai'i Revised Statutes Chapter 343, which requires full disclosure, meaningful analysis, and consideration of environmental and cultural impacts prior to approval. Petitioners therefore assert the following statutory claims.

2. REBECCA MELENDEZ, Pro Se

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STANDING AND AGGRIEVED PERSON STATUS (HRS §343-7)

Petitioner Rebecca Melendez is an aggrieved person within the meaning of HRS §343-7. She has been involved with Keauhou Bay for more than twenty years, worked on vessels operating in the Bay, and resided in the immediate bay area for over eleven years. She continues to regularly visit, monitor, and rely upon Keauhou Bay's shoreline access, nearshore waters, marine ecosystem, and environmental quality for recreational, cultural, and community uses.

Rebecca engaged directly with representatives of Kamehameha Schools during the environmental review process and prior to advancement of the Final Environmental Impact Statement. She met with Marissa Harman on two separate occasions — once at the Kamehameha Schools office and once at Keauhou Bay. During those meetings, Ms. Harman advocated in favor of the proposed bungalow resort development, and Rebecca presented detailed environmental concerns supported by data and analysis, explaining that the project would likely increase runoff, degrade nearshore waters, impair marine habitat, diminish shoreline access, and disrupt longstanding community and cultural uses of Keauhou Bay. Rebecca further met with Kā'eo Duarte, Vice President of 'Āina Pauahi, in a meeting lasting approximately two hours, during which she presented scientific documentation and infrastructure analyses demonstrating the risk of pollution and long-term ecological harm to the Bay. She also provided documentation

of the public petition opposing the development, reflecting thousands of signatures from community members and visitors concerned about the project's environmental and cultural impacts. These direct communications demonstrate meaningful participation in the environmental review process and establish that Respondents were placed on notice of substantial environmental and community concerns prior to acceptance and reliance upon the FEIS.

The Final Environmental Impact Statement ("FEIS") challenged herein governs a proposed development that directly affects the shoreline, nearshore waters, drainage patterns, ecological balance, and cultural resources of Keauhou Bay. The acceptance and advancement of the FEIS threaten increased runoff, degradation of marine habitat, impairment of water quality, interference with shoreline access, and disruption of cultural and traditional practices. These impacts directly and adversely affect Rebecca's personal and legally protected interests.

Article XI of the Hawai'i Constitution provides that all public natural resources are held in trust by the State for the benefit of the people. See Exhibit A-1-10. Article XI further obligates the State to protect, control, and regulate Hawaii's water resources and guarantees each person the right to a clean and healthful environment enforceable in court. See Exhibits A-1-12 and A-1-13.

The Hawai'i Supreme Court has confirmed that Article XI establishes a constitutional public trust applicable to all water resources of the State and imposes an affirmative duty upon agencies to take the public trust into account in planning and allocation decisions and to protect public trust uses whenever feasible. See In re Water Use Permit Applications (Waiāhole Ditch), 94 Hawai'i 97 (2000), Exhibits A-4-1, A-4-3, A-4-5, and A-4-6. The threatened degradation of Keauhou Bay's waters and ecological balance constitutes injury to interests protected by the public trust doctrine and Article XI.

Rebecca further relies upon Article XII, Section 7 of the Hawai'i Constitution, which mandates that the State protect traditional and customary rights exercised for subsistence, cultural, and religious purposes. See Exhibit A-1-14. In Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission (PASH), the Hawai'i Supreme Court held that traditional and customary practices are distinguishable from generalized public interests and must be meaningfully considered in coastal permitting decisions. See Exhibits A-4-31 and A-4-32.

In Ka Pa'akai O Ka 'Āina v. Land Use Commission, 94 Hawai'i 31 (2000), the Court clarified that agencies must identify cultural resources and practices affected, determine the extent of impact, and specify feasible protective measures before approving land use changes. See Exhibits A-4-27, A-4-28, and A-4-13. The Court further held that agencies may not delegate

their constitutional obligation to protect traditional and customary rights to private developers. See Exhibits A-4-14 and A-4-15.

The FEIS challenged herein fails to adequately disclose, analyze, and protect water quality, shoreline access, marine resources, and cultural practices at Keauhou Bay. As a result, Rebecca's personal use and enjoyment of these resources are adversely affected, and the statutory purposes of HRS Chapter 343 — to ensure informed decision-making and environmental protection — are impaired.

Rebecca actively participated in the environmental review process. She reviewed the FEIS, compiled documentary evidence, gathered community testimony, and presented environmental and cultural concerns directly to representatives of Kamehameha Schools and decision-makers. Her participation in the administrative process further establishes her aggrieved status.

Rebecca is also the creator of BigIslandSupport.com/SaveKBay and the organizer of a public petition opposing the proposed development, which has garnered more than 7,400 signatures from community members, cultural practitioners, residents, and visitors who use and rely upon Keauhou Bay. She has received voluntary community donations enabling her to dedicate substantial time to researching and pursuing this matter. These facts demonstrate that the threatened harm is concrete, organized, and community-based, not abstract or speculative.

The relief sought herein — declaratory and injunctive relief setting aside the acceptance of the FEIS and preventing further reliance upon it — would redress the injury by requiring compliance with HRS Chapter 343 and ensuring proper disclosure and analysis of environmental and cultural impacts.

Accordingly, Rebecca Melendez qualifies as an aggrieved person under HRS §343-7, has suffered and faces concrete and particularized injury from the challenged FEIS acceptance, and has standing to seek judicial review and appropriate relief.

Respondents:

1. **HAWAI'I COUNTY PLANNING DEPARTMENT AND JEFF DARROW, PLANNING DIRECTOR**
   Respondent Hawai'i County Planning Department is the governmental land-use authority responsible for development review, SMA regulation, and determining whether Environmental Impact Statements ("EIS") comply with the Hawai'i Environmental Policy Act ("HEPA"), HRS Chapter 343.

Under HRS §343-2 , "Acceptance" means a formal determination that the document required under §343-5 fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during review. "Approval" means a discretionary consent required from an agency prior to actual implementation of an action. (See Ex. A-1-3)

Under Hawai'i Revised Statutes §343-7, the acceptance of a Final Environmental Impact Statement constitutes an agency action subject to judicial review when the document fails to comply with the requirements of HRS Chapter 343. Because acceptance of a legally sufficient EIS is a statutory condition precedent to discretionary approvals, an agency's reliance upon a materially deficient FEIS renders subsequent project advancement unlawful and subject to review and reversal by this Court. (See Ex. A-1-10.)

HRS §343-2 further defines "Significant effect" as:
"the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State." (Ex. A-1-15.)

As reflected in the statutory case notes accompanying §343-2, the sufficiency of an environmental impact statement is a question of law. (Ex. A-1-15.)

HRS §343-5(c) expressly provides that "[a]cceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action." (Exs. A-1-5 through A-1-7.)

The Planning Department's processing of Special Management Area ("SMA") applications constitutes discretionary agency action. Because "approval" under §343-2 includes discretionary consent prior to implementation, the Department may not lawfully process, advance, or grant SMA-related approvals unless a legally adequate FEIS has first been accepted in compliance with Chapter 343.

HEPA further requires early consultation (Ex. A-2-1), application of significance criteria including impacts to endangered species, water quality, environmentally sensitive coastal areas, and cumulative effects (Ex. A-2-2), formal acceptance prior to implementation (Ex. A-2-3), and evaluation of cumulative impacts with prohibition against improper segmentation (Ex. A-2-4).

Petitioners allege that the FEIS accepted for the proposed Keauhou Bay development does not satisfy these statutory requirements.
Specifically:

• Although the FEIS discusses general beach monitoring and isolated bacterial exceedances (Vol. I, pp. 4-81–4-82), it does not clearly disclose or analyze Keauhou Bay's designation as a U.S. EPA impaired water body identified in the State's Integrated Report under Clean Water Act §303(d). (Exs. B-19-2; B-19-3.) Publicly available assessment data identify Keauhou Bay (Assessment Unit HI713293) as "Impaired (Issues Identified)" and 303(d) listed. (Ex. B-19-1.) The FEIS contains no meaningful evaluation of how this impaired status affects baseline environmental conditions, cumulative water quality degradation, or the Project's potential contribution to existing impairment. (Exs. B-15-1 through B-15-5.)

The FEIS itself acknowledges the presence of stormwater drainage infrastructure associated with the project area (Vol. II, p. 440; Ex. B-15-1), yet the document does not meaningfully analyze how increased impervious surfaces, expanded parking areas, roadway use, and site disturbance associated with the proposed development may increase stormwater runoff or transport pollutants into Keauhou Bay.

Independent observational evidence further demonstrates that stormwater runoff reaches the Bay during rain events. Screenshots from video recorded by Petitioner Rebecca Melendez on August 27, 2024 show stormwater accumulation, roadway runoff, and drainage flows moving toward and entering Keauhou Bay along the north shoreline area. (Ex. B-5-8-1 through B-5-8-6.)

• The FEIS does not adequately analyze documented endangered and threatened marine species use within Keauhou Bay and associated habitat areas. (Exs. B-14-1; B-14-2; B-14-3; B-16-1 through B-16-4; B-17-1; B-17-2; B-18-4; B-18-5; B-18-6.) The FEIS further fails to meaningfully evaluate impacts to federally protected marine species known to occur in Hawaiian waters and associated with the Kona coast, including species protected under the Endangered Species Act ("ESA") and Marine Mammal Protection Act ("MMPA"). Federal sources identify multiple ESA-listed marine mammals, sea turtles, fish, and invertebrates occurring in Hawaiian waters, including the endangered Hawaiian monk seal (Neomonachus schauinslandi). (Exs. B-18-4 through B-18-6.) Federal law declares that agencies shall seek to conserve endangered and threatened species and utilize their authorities in furtherance of the purposes of the ESA, and prohibits actions that jeopardize listed species or adversely modify critical habitat. (Exs.

B-18-1, B-18-7; B-18-8; B-18-9; B-18-10.) The State of Hawai'i likewise recognizes conservation obligations toward marine protected species. (Ex. B-18-3.) These deficiencies are further detailed in Section II.I(1).

• Although the FEIS references manta rays associated with the Keauhou Bay area, it does not meaningfully evaluate the potential impacts of the proposed development on reef manta rays (Mobula alfredi) or the plankton feeding conditions that support the well-known "Manta Village" aggregation site offshore of the former Sheraton Kona Resort (now the Outrigger Kona Resort). Publicly available information documents that manta rays congregate in this area where artificial lighting attracts plankton and supports consistent nighttime feeding activity. (Exs. B-18-2; B-18-11.) Scientific and governmental sources further recognize that land-based pollution and terrestrial runoff can alter plankton communities and marine food webs in coastal environments, affecting species that rely on plankton concentrations for feeding. (Exs. B-18-12; B-18-13.)

• The FEIS does not meaningfully analyze the Project's potential impacts on manta ray behavior, aggregation patterns, lighting effects, vessel activity, or long-term coastal intensification within this known habitat area. Nor does the FEIS adequately evaluate how construction-related runoff, land disturbance, shoreline alteration, and long-term sedimentation associated with the proposed bungalow resort development may affect nearshore plankton productivity and water clarity. Increased sediment loads can reduce water quality, alter nutrient balance, and disrupt plankton availability—the foundational food source that sustains manta ray feeding activity in Keauhou Bay. The FEIS also fails to conduct a meaningful cumulative analysis of how sedimentation, stormwater discharge, wastewater risk, and coastal intensification may affect plankton dynamics and, in turn, manta ray use of this habitat area.

Taken together, these sources demonstrate that the receiving environment is already environmentally sensitive and impaired. Under HRS Chapter 343, such conditions require careful evaluation by the FEIS of baseline environmental stressors and cumulative water quality impacts before additional development may proceed. The FEIS's failure to disclose and analyze these existing environmental conditions — including the U.S. EPA impaired water status of Keauhou Bay, observable stormwater runoff pathways into the Bay, and the presence of federally protected marine species — prevents meaningful evaluation of whether the Project may cause a "significant effect" on the environment as defined under HRS §343-2, which includes actions that degrade water quality, adversely affect ecological systems, or curtail beneficial uses of the environment.

Despite these documented protections and the recognized ecological and economic significance of marine megafauna in Keauhou Bay, the FEIS relies primarily on limited project-area observations and characterizes potential impacts as minimal or unlikely, without conducting a robust cumulative analysis of shoreline lighting, increased vessel activity, construction runoff, sedimentation, or long-term water quality degradation affecting ESA-listed species, manta rays, and associated marine habitat.

• The FEIS does not adequately evaluate the combined cumulative impacts of phased development, infrastructure expansion, wastewater loading, shoreline alteration, aquifer interaction, and long-term coastal intensification associated with the proposed project. Under Hawai'i's public trust doctrine, as articulated in *In re Water Use Permit Applications (Waiāhole Ditch)*, the State bears an affirmative duty to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people, and must consider cumulative impacts and long-term resource sustainability before authorizing actions that may affect trust resources. The FEIS evaluates impacts in segmented categories and does not meaningfully assess the combined effects of increased water demand, wastewater generation, stormwater runoff, energy consumption, shoreline modification, and intensified coastal use on already constrained island systems. Publicly documented drought conditions, water conservation notices, power generation shortages, and aquifer oversight concerns demonstrate that baseline resource stress exists, yet the FEIS does not integrate these system-wide conditions into a comprehensive cumulative analysis. By failing to evaluate how incremental development pressure may affect public trust resources—including nearshore waters and groundwater—the FEIS does not satisfy the heightened analytical duty required under Hawai'i law. (Exs. M-1; M-2; M-3; M-4; M-5; M-6; M-7; M-8; M-9; M-10; M-11; M-12; M-13; M-15; M-16; M-17; M-22 through M-25.)

These documented deficiencies implicate multiple statutory elements of "significant effect," including potential irreversible commitment of coastal resources, degradation of water quality, curtailment of beneficial shoreline uses, and adverse effects upon cultural practices.

At minimum, the deficiencies identified in Exhibits B-12, B-14, B-17, B-18, B-19, and M-5 through M-7 raise substantial questions as to whether the proposed action may have a significant effect on the environment within the meaning of HRS §343-2. The record includes evidence of deferred mitigation analysis, inadequate endangered species evaluation, impaired water status under Clean Water Act §303(d), and cumulative

infrastructure and resource strain. Chapter 343 does not require proof of actual environmental harm; it requires adequate environmental review whenever the record presents credible evidence of potential significant effects. Where such substantial questions are raised, the accepting authority may not lawfully deem the FEIS complete or technically adequate.

Because the proposed action affects coastal waters and other public trust resources, the adequacy of environmental review is informed by Article XI of the Hawai'i Constitution. Agencies exercising discretionary authority over public trust resources must ensure compliance with statutory environmental review requirements before advancing approvals. (See Ex. A-1-10.)

Despite these identified deficiencies, the Planning Department proceeded with SMA-related processing and discretionary action in reliance upon the FEIS.
Petitioners therefore allege that the Department exercised discretionary approval authority in violation of HRS §343-5(c) by advancing agency action without satisfaction of a statutory condition precedent. HRS §343-5(c) expressly provides that acceptance of a required final environmental impact statement is a condition precedent to approval and commencement of the proposed action. (Exs. A-1-5 through A-1-7.) Where the administrative record raises substantial questions as to whether the proposed action may have a significant environmental effect within the meaning of HRS §343-2—including deficiencies concerning cumulative impacts, impaired water status, and public trust resource protection—the accepting authority may not lawfully deem the FEIS complete or technically adequate. (Exs. B-12; B-19; M-19; M-20; M-24; M-25.) Because the statutory condition precedent was not satisfied, the Department's advancement of discretionary approvals is subject to judicial review and reversal pursuant to HRS §343-7. (Ex. A-1-9.)
Under HRS Chapter 343, the Planning Director for Hawai'i County serves as the accepting authority for environmental impact statements concerning actions within the County. Respondent Jeff Darrow, in his official capacity as Planning Director, is therefore responsible for determining whether a Final Environmental Impact Statement ("FEIS") satisfies the statutory definition of "Acceptance" under HRS §343-2 and the condition precedent requirement under HRS §343-5(c). (Exs. A-1-3; A-1-5 through A-1-7.)

Because the statutory definition of "acceptance" under HRS §343-2 requires that the FEIS adequately disclose environmental impacts and respond to public comments, and

because HRS §343-5(c) makes acceptance of a legally sufficient FEIS a condition precedent to approval and implementation of the proposed action, an accepting authority's determination that a deficient FEIS satisfies these requirements constitutes agency action subject to judicial review under HRS §343-7. (Exs. A-1-3; A-1-5 through A-1-7; A-1-9.)

The accepting authority's role under HRS Chapter 343 is not ministerial. Before accepting a Final Environmental Impact Statement, the accepting authority must independently determine whether the FEIS satisfies the statutory requirements of disclosure, analysis, and response to public comments set forth in HRS §343-2 and §343-5. Where the administrative record demonstrates that material environmental impacts, cumulative effects, or public trust resource concerns were not adequately disclosed or analyzed, acceptance of the FEIS exceeds the accepting authority's lawful discretion and renders the decision subject to judicial review under HRS §343-7. (Exs. A-1-3; A-1-5 through A-1-7; A-1-9.)

Petitioners allege that Director Darrow accepted and permitted reliance upon an FEIS that was materially deficient under Chapter 343 and its implementing rules.
Specifically, the accepted FEIS:

• Deferred mitigation measures and cultural impact protections to future permitting stages rather than completing project-specific analysis at the FEIS stage. (Exs. B-12-1 through B-12-4.)

• Failed to meaningfully disclose and analyze Keauhou Bay's US EPA impaired water designation under Clean Water Act §303(d), despite record evidence identifying the Bay as impaired. (Exs. B-19-1 through B-19-3.)

• Relied upon limited biological observations while characterizing impacts to marine species as minimal or unlikely, without conducting a comprehensive cumulative analysis of shoreline lighting, sedimentation, vessel activity, and coastal intensification. (Exs. B-14-3; B-17-1; B-17-2; B-18-4 through B-18-6.)

• Failed to take the requisite "hard look" at cumulative environmental impacts as required under HRS Chapter 343. The administrative record reflects that comments submitted during FEIS review identified concerns regarding increased impervious surface coverage, sediment transport, nutrient loading, wastewater generation, and hydrological connectivity between upland development and nearshore waters. (Exs. M-18; M-19; M-

20.) These comments further identified the absence of necessary baseline data to evaluate cumulative effects. (Ex. M-21.) The administrative record reflects that no documented baseline comparison between existing and proposed impervious surface coverage was provided and that no baseline study measuring existing sedimentation rates, nutrient conditions, or cumulative marine impacts was identified in the FEIS. Accordingly, the FEIS does not present a quantified comparison between existing and proposed impervious surface coverage, does not measure existing sedimentation or nutrient conditions, and does not model cumulative runoff or wastewater loading within the coastal system.

• Instead, the FEIS evaluates impact categories in isolation and relies upon future permitting stages, regulatory compliance assurances, and later design refinements to address impacts that must be disclosed and analyzed prior to acceptance. The record further reflects that a Ka Pa'akai analysis addressing traditional and customary practices was deferred to the SMA permitting phase rather than completed as part of environmental review. (Exs. B-11-1 through B-11-3.) By deferring baseline assessment, cumulative loading analysis, and cultural impact evaluation to future approvals, the FEIS fails to provide the integrated environmental review required before discretionary agency action is taken.

Petitioners further allege that, under Hawai'i's public trust doctrine as articulated in In re Water Use Permit Applications (Waiāhole Ditch), agencies exercising discretionary authority over water and coastal resources bear an affirmative duty to consider cumulative impacts and long-term resource sustainability. (Exs. M-24; M-25.) Acceptance of an FEIS that fails to conduct such analysis does not satisfy this heightened obligation.

Because the administrative record raises substantial questions regarding significant environmental effects within the meaning of HRS §343-2—including impaired water status, cumulative coastal impacts, deferred mitigation, and public trust resource protection—the statutory condition precedent to approval was not satisfied. Director Darrow's acceptance and subsequent advancement of agency processes therefore constitute discretionary agency action taken in violation of HRS §343-5(c), and are subject to judicial review and reversal under HRS §343-7(c). (Ex. A-1-9.)

Petitioners further allege that the acceptance of a legally deficient FEIS, despite substantial record evidence identifying unresolved environmental impacts and statutory deficiencies, constitutes an abuse of discretionary authority and a failure to comply with mandatory duties

imposed under HRS Chapter 343. Petitioners therefore request that the Court vacate the FEIS acceptance and request the removal of Director Jeff Darrow from his position as accepting authority due to abuse of power and failure to perform the statutory duties required under Hawai'i law.

In addition, Petitioners request that this Court order the removal of Respondent Jeff Darrow from his position as Planning Director based on abuse of discretionary authority.

Petitioners allege that Darrow, in his official capacity as Planning Director and accepting authority, approved and permitted reliance upon an FEIS that failed to satisfy the mandatory requirements of HRS Chapter 343 despite substantial record evidence identifying material deficiencies, including incomplete environmental disclosure, deferred analysis, and failure to evaluate cumulative and public trust impacts. Such actions constitute an abuse of authority and a failure to perform the statutory duties required under Hawai'i law.

Where a public official vested with discretionary authority exercises that authority in disregard of mandatory legal requirements, such conduct constitutes an abuse of power that is incompatible with continued service. Petitioners allege that the actions taken in this matter demonstrate a failure to carry out the obligations of the office, and that allowing continued exercise of that authority presents a risk of further unlawful agency action. Accordingly, removal from office is necessary to protect the integrity of governmental decision-making and to ensure compliance with Hawai'i law.

Petitioners further allege that the record reflects ongoing and increasing strain on Hawai'i Island's finite resources, including water supply, wastewater capacity, infrastructure, and environmental systems. Where substantial questions exist regarding the ability of these systems to support additional development without causing degradation of public trust resources and environmental harm, Petitioners request that this Court exercise its equitable authority to prohibit or stay further discretionary approvals of large-scale commercial development projects on Hawai'i Island unless and until adequate resource capacity, cumulative impacts, and environmental protections are properly evaluated and demonstrated in compliance with Hawai'i law.

3. RESPONDENTS KAMEHAMEHA SCHOOLS AND MARISSA HARMAN — TRUST PURPOSE, FIDUCIARY DUTIES, AND AUTHORITY TO PROCEED

Respondent Kamehameha Schools ("KS"), as trustee of the Bishop Estate, is legally bound to administer trust lands strictly in accordance with the Last Will and Testament of Princess Bernice Pauahi Bishop and the fiduciary duties imposed under HRS Chapter 554D.

The Will expressly limits the leasing and use of trust lands to uses "for the purposes aforesaid," namely the support and education of beneficiaries, with preference to Native Hawaiians. (Ex. C-1.) The Will further mandates that trustees "shall annually make a full and complete report" of receipts, expenditures, and investments. (Ex. C-1.) These provisions define and constrain trustee authority.

KS is also bound by statutory fiduciary obligations under HRS Chapter 554D:

- HRS §554D-404 (Trust Purposes) (Ex. A-3-5),
- §554D-801 (Duty to Administer Trust) (Ex. A-3-10),
- §554D-802 (Duty of Loyalty) (Ex. A-3-6),
- §554D-804 (Prudent Administration) (Ex. A-3-7),
- §554D-805 (Costs of Administration) (Ex. A-3-8), and
- §554D-809 (Control and Protection of Trust Property) (Ex. A-3-9).

These statutes require trustees to act in good faith, in accordance with the trust's purposes, solely in the interests of beneficiaries, while exercising prudence and protecting trust property.

Respondent Marissa Harman served as planner and project representative for the Kamehameha Schools Keauhou Bay development and participated in the preparation and advancement of the Final Environmental Impact Statement ("FEIS") submitted for acceptance under HRS Chapter 343 and was involved in coordinating and advancing the Final Environmental Impact Statement ("FEIS") relied upon to move the proposed bungalow resort project forward.

Petitioners allege that Harman submitted and promoted a FEIS that was materially incomplete and misleading with respect to water allocation, project scale, cultural resources, archaeological review, community consultation, and other material environmental and procedural matters identified throughout this Petition.

Petitioners incorporate by reference the material inconsistencies identified in Section II.I. The following allegations address the roles, responsibilities, and conduct of Respondents in advancing, submitting, and relying upon the FEIS despite those documented inconsistencies within the administrative record.

Specifically:

• **Material Project Description Inconsistency – Water Allocation and Unit Count.** HRS §343-2 requires that an accepted FEIS adequately describe the proposed action and its identifiable environmental impacts. HRS §343-5(c) further provides that acceptance of a required final statement is a condition precedent to approval and commencement of the proposed action. (Exs. A-1-3; A-1-5 through A-1-7.)

The Department of Water Supply confirmed that the applicant had assigned 101 units of water to TMK 7-8-010:044 pursuant to an executed Water Agreement dated April 4, 2012. (Exs. B-6-1 through B-6-2.) The administrative record reflects acknowledgment of this 101-unit allocation during agency consultation. (Exs. B-7-1; B-7-2.)

However, the FEIS advances a project configuration of up to 150 bungalow units, without demonstrating secured water allocation for that expanded scale of development. The FEIS does not reconcile the discrepancy between the documented 101-unit water assignment and the 150-unit proposal analyzed for environmental impact purposes. (Ex. B-8.)

Because water demand, wastewater generation, runoff volume, and cumulative aquifer impacts scale directly with unit count, a material inconsistency between documented water entitlements and the project description undermines the adequacy of environmental analysis under HRS Chapter 343. The inconsistency between documented water allocation and the expanded project intensity further implicates constitutional protections requiring the State to regulate and protect water resources and environmental quality for the benefit of the public. (Ex. A-1-12.) A FEIS that analyzes impacts based on a project intensity not supported by demonstrated water allocation does not fully or accurately describe the proposed action as required by §343-2.

Accordingly, acceptance of a FEIS that advances a 150-unit development absent reconciliation with the 101-unit water agreement raises substantial questions as to whether the statutory condition precedent to approval under HRS §343-5(c) was satisfied.

The FEIS further acknowledges projected water demand and wastewater generation associated with the proposed development. It states that the Project will result in an average water demand of approximately 97,466 gallons per day and corresponding wastewater flows based on unit counts and population estimates. (Exs. A-5-2; A-5-3.) These projections are expressly tied to the scale and intensity of the proposed development, yet the FEIS does not reconcile these demand estimates with the documented 101-unit water allocation, nor does it demonstrate that sufficient water resources have been secured to support the expanded 150-unit project configuration.

• **King Kamehameha III Birthplace & Cultural Significance.** Publicly documented information identifies Keauhou as the birthplace of King Kamehameha III and an area of exceptional historical and cultural significance. (Exs. B-10-1; B-10-2.) Petitioners allege that the FEIS fails to provide a heightened, site-specific cultural resource and archaeological analysis commensurate with that significance (Ex. B-11-1 through B-11-3).

• **Archaeological & DLNR Consultation Deficiencies.** Agency consultation materials reflect the identification of historic and cultural features requiring verification and coordination. (Exs. B-12-1 through B-12-4.) Rather than completing a comprehensive archaeological and cultural impact analysis at the FEIS stage, the document defers substantive evaluation and protective measures to later permitting phases (Ex. B-11-1 through B-11-3).

• **Deferral of Ka Pa'akai Analysis.** The record reflects that a Ka Pa'akai analysis addressing traditional and customary Native Hawaiian practices was stated to be required at the SMA stage rather than as part of FEIS acceptance. (Ex. B-11-1.) Petitioners allege that deferral of constitutional cultural analysis to post-acceptance permitting stages undermines the purpose of environmental review under HRS Chapter 343.

• **Barbara Nobriga Testimony.** The FEIS reflects that project representatives sought to obtain consultation testimony from cultural practitioner Barbara Nobriga but reported difficulty contacting her during the consultation process. (Ex. B-2-1.) The administrative record reflects that Ms. Nobriga subsequently submitted written testimony during the comment period stating that she does not support the bungalow resort. (Exs. B-2-12; B-2-13.) Petitioners allege that the FEIS presentation of consultation results creates the misleading impression of cultural concurrence that is not supported by the record.

• **Misrepresentation of Cultural Consultation.** The FEIS identifies Marissa Harman as the primary contact for consultation regarding the project. Consultation records reflect communications with cultural practitioners and lineal descendants (Exs. B-2-1 through B-2-11). However, none of the documented consultation statements express any support for construction of a bungalow resort in Keauhou Bay. Instead, consultation testimony consistently emphasizes protection of the Bay, preservation of fishing practices, shoreline access, and community use.

Petitioners allege that the FEIS presentation of cultural consultation results creates the misleading impression that cultural practitioners and lineal descendants concur with or support the proposed bungalow resort. The administrative record does not support such an implication. The consultation materials instead reflect concerns regarding protection of Keauhou Bay, preservation of fishing practices, shoreline access, and continued community use. Petitioners

allege that the FEIS characterizes consultation in a manner that suggests cultural concurrence where the documented consultation testimony reflects opposition or calls for protection of the Bay.

• **Scientific Submissions, Petition Evidence, and FEIS Misrepresentation of Public Comments** Petitioners further allege that Respondent Harman had actual notice of substantial scientific evidence and documented public concern prior to submission of the FEIS, thereby triggering a mandatory duty to conduct deeper cumulative and baseline analysis under HRS Chapter 343.

Respondent Harman met personally with Petitioner Rebecca Melendez on two occasions—once in her office and once at Keauhou Bay—and received multiple email communications from Melendez transmitting scientific documentation demonstrating how sediment discharge and upland coastal development have historically resulted in increased turbidity, nutrient loading, coral stress, degradation, and long-term ecological decline in bays and nearshore environments worldwide, including impacts relevant to baseline environmental conditions that the FEIS acknowledges were not fully quantified or established. (Ex. M-21.)

Petitioners allege because meaningful environmental impact analysis requires an understanding of existing baseline conditions, the absence of quantified baseline data for turbidity, sediment loading, and nearshore ecosystem health prevents a reliable assessment of how the proposed development may alter those conditions. Where credible scientific documentation identifying potential sedimentation and water-quality degradation was transmitted during the comment period, the FEIS was required to evaluate those concerns against established baseline conditions and analyze cumulative marine impacts before acceptance, rather than relying on generalized descriptions or deferring analysis to later permitting stages.

During the DEIS comment period, Harman received Melendez's formal written comment letter transmitting two public petitions opposing the proposed bungalow resort. Prior to the close of the comment period, project representatives had also received early notice of the petition when it already contained almost 5,000 signatures. (Ex. R-1-1.) The first petition, titled "Save Keauhou Bay From Becoming a Big Crowded Resort," contained 6,198 signatures at the time of submission (and has since grown to over 7,400), together with many of the signatories' written comments and two scientific reports addressing sediment transport, runoff impacts, wastewater loading, endangered species concerns, and cumulative coastal effects. (Exs. R-2-1 through R-2-2; R-4-1 through R-4-56.)

The second petition, titled "Help Prioritize Big Island Developments to Keep Island's Resources Safe for All," contained 444 signatures at the time of submission (and has since exceeded 708 signatures) and addressed island-wide resource constraints, including landfill capacity, water restrictions, wastewater discharge, power grid instability, and infrastructure strain relevant to the Project's cumulative impacts. (Exs. R-4-1 through R-4-56.)

Scientific Reports Submitted With Comment Letter. Melendez's DEIS comment submission included two scientific reports addressing coastal water quality and ecosystem impacts associated with upland development and sediment runoff. The first report analyzes sediment transport, turbidity increases, and coral stress associated with coastal construction and land disturbance (Exs. R-4-132 through R-4-140). The second report evaluates broader environmental consequences of coastal development, including nutrient loading, wastewater impacts, and long-term degradation of nearshore marine ecosystems (Exs. R-4-141 through R-4-152). These reports were transmitted as supporting scientific documentation accompanying the petitions and written comments submitted during the DEIS comment period. Additional supporting documentation identifying Keauhou Bay as an impaired waterbody was also included as part of the submitted materials (Ex. B-19-1).

However, the FEIS characterizes the formal comment submission as containing only 1,681 signatures and having been active for only eight days, which is not accurate. (Exs. R-6-2 through R-6-7.) The email sent to Marissa Harman by Petitioner Melendez during the DEIS comment period reflects that the submission included petitions containing 6,198 and 444 signatures, together with written comments and supporting scientific attachments transmitted with the email addressing coastal sediment transport, runoff impacts, wastewater loading, and nearshore ecosystem degradation (Exs. R-4-132 through R-4-140; R-4-141 through R-4-152). The FEIS therefore omits or misrepresents at least 4,517 signatures that were part of the petition materials transmitted during the DEIS comment period (Exs. R-4-1 through R-4-56), and further omits the separate petition containing 444 signatures addressing island-wide resource constraints, and further omits or fails to acknowledge the attached scientific reports. Petitioners allege that the FEIS does not accurately represent the full scope of the materials transmitted with the comment submission, including the attached scientific reports and supporting documentation.

Petitioners allege that under HRS §343-2, an agency may accept a Final Environmental Impact Statement only if the document adequately describes the proposed action and its environmental consequences and satisfactorily responds to substantive comments received during the review process. The record described above reflects that the DEIS comment submission included extensive public input and supporting scientific materials addressing environmental impacts

associated with the proposed bungalow resort development. When an FEIS characterizes or summarizes those submissions in a manner that omits not only signatures, but also significant portions of the materials transmitted during the comment period, the document fails to provide the full and accurate disclosure required under the Hawai'i Environmental Policy Act. Such incomplete characterization of substantive comments undermines the statute's core purpose of ensuring informed agency decision-making and meaningful public participation in environmental review. Accordingly, Petitioners allege that acceptance of the FEIS under these circumstances is inconsistent with the requirements of HRS Chapter 343 and renders the document legally inadequate for purposes of environmental review.

Where the administrative record contains credible scientific submissions and documented public testimony identifying potential sedimentation, water-quality degradation, impaired baseline conditions, and cumulative marine impacts, Chapter 343 requires more than generalized assurances or reliance upon future permitting stages. The presence of this record evidence obligated the preparer to evaluate baseline conditions, quantify projected loading, and analyze cumulative effects in an integrated manner prior to FEIS acceptance.

Despite receiving this information, the FEIS does not provide quantified sediment modeling, does not measure or compare baseline marine conditions against projected runoff and wastewater inputs, and does not conduct a cumulative coastal system analysis sufficient to inform decision-makers and the public. The failure to meaningfully address record evidence raising substantial questions of significant environmental effect constitutes a failure to take the requisite "hard look" required under HRS Chapter 343.

Petitioners further allege that Harman:

• advanced a FEIS that did not reconcile assigned water capacity with proposed development intensity;
• failed to complete site-specific archaeological and cultural impact analysis prior to acceptance;
• deferred constitutional Ka Pa'akai analysis to future permitting stages;
• presented consultation materials in a manner that implied cultural support not reflected in submitted testimony;
• failed to fully and accurately represent and respond to the substance of Petitioner Rebecca Melendez's formal DEIS comment submission, which transmitted two public petitions opposing the proposed bungalow resort — the first containing 6,198 signatures at the time of submission (and now exceeding 7,400), and the second containing 444 signatures at the time of submission (and now exceeding 708) — together with numerous signatory comments and extensive scientific reports and supporting documentation addressing sedimentation, runoff impacts,

wastewater loading, endangered species concerns, infrastructure strain, and cumulative coastal effects (Exs. R-4-1 through R-4-56); such omission and characterization fail to satisfy the requirement under HRS §343-2 that an FEIS adequately describe environmental impacts and satisfactorily respond to substantive comments contained in the administrative record; and
• minimized documented community opposition and cultural protection concerns reflected in the administrative record.

Petitioners assert that Harman's preparation, coordination, and advancement of the FEIS materially contributed to the progression of a document that did not satisfy the disclosure and analytical requirements of HRS Chapter 343. Because acceptance of a legally sufficient FEIS is a statutory condition precedent to discretionary approval, reliance upon a materially deficient FEIS renders subsequent project advancement subject to judicial review and reversal under HRS §343-7(c).

The FEIS demonstrates that Kamehameha Schools ("KS") advances the proposed Keauhou Bay bungalow resort as a revenue-generating strategy. In Volume II, the FEIS states that income generated from activities at Keauhou Bay, including the resort, "will be used to support KS' mission as well as the educational and cultural components of the Keauhou Bay Management Plan." (Ex. A-5-1.) The FEIS further states that the Project will "generate revenue that will go back into the long-term operations and maintenance of Keauhou Bay and as well as any excess revenue to support the general mission of Kamehameha Schools." (Ex. A-5-4.) The FEIS also acknowledges the need to "optimize and invest in revenue opportunities that provide long-term economic returns." (Ex. A-5-6.)

These statements confirm that the Project is justified and advanced as a commercial revenue-producing development. At the same time, the FEIS characterizes KS as "a large private landowner in the State of Hawai'i," without acknowledging that KS holds these lands in trust or is bound by fiduciary duties governing their use. (Ex. A-5-7.) The FEIS contains no analysis reconciling this revenue-driven resort development with the express limitations of the Bishop Estate trust or the fiduciary obligations imposed under HRS Chapter 554. (Exs. A-3-1 through A-3-4.)

Kamehameha Schools has held and controlled these trust lands for approximately 140 years for the benefit of Native Hawaiian education. Despite that extended period of stewardship, KS operates only a limited number of school campuses statewide, including three Kamehameha high school campuses, and continues to charge tuition for attendance. Petitioners allege that this long-standing pattern underscores that revenue generation alone does not constitute fulfillment of the trust's educational purpose. The FEIS fails to demonstrate— or even analyze—how converting

trust lands into a resort development directly advances educational access, expands beneficiary services, or satisfies the trust's core obligation to prioritize Native Hawaiian education.

By advancing a revenue-based resort project without addressing these fiduciary constraints, and by omitting the trust character of the lands while framing KS as a private landowner, the FEIS presents a materially incomplete and legally deficient description of both the applicant's authority and the Project's purpose under HRS Chapter 343.

Volume I further aligns the Project with statewide tourism objectives. Table 5-4 references the Hawai'i Tourism Strategic Plan (2020–2025), including objectives focused on "higher-spending" visitor segments. The FEIS states that the Land Use Designation Map in the Final General Plan 2045 designates the Project Area as "Resort," and concludes that the Proposed Project is consistent with that designation. (Ex. A-5-7; FEIS Vol. I p. 5-36.) In the same discussion, Kamehameha Schools describes itself as "a large private landowner in the State of Hawai'i." (Ex. A-5-7.)

While trustees hold legal title to trust property, KS's characterization of itself solely as a private landowner—without reference to its status as trustee of a charitable trust—omits material context regarding the fiduciary limitations governing its authority over these lands. The FEIS does not acknowledge that KS holds these lands subject to the Will of Princess Bernice Pauahi Bishop and the statutory duties imposed under HRS Chapter 554D.

The absence of that disclosure is significant because agencies reviewing the FEIS are not informed that the proposed commercial resort use is constrained by charitable trust purposes and fiduciary obligations.

The structural organization of the Proposed Action reinforces this revenue-centered framework. The FEIS identifies five Management Strategies, including "Reposition and Development of New Commercial Bayfront Areas & Appropriate Density Resort Area," which expressly includes the bungalow resort on the upper bluff. (Ex. B-1-2.) The educational component appears under a separate strategy titled "Maintain Existing and Establish New Place-Based Cultural Educational Areas." (Exs. B-1-2; B-1-4.)

Exhibit B-1-4 states that, "Upon relocation of the existing commercial tenants, the remaining facilities will be repurposed and renovated to establish a new cultural education heritage center." (Ex. B-1-4.) The FEIS further states that all five strategies must operate "in tandem" for the Management Plan to succeed. (Ex. B-1-3.) Read together, the FEIS presents an integrated commercial-resort redevelopment model in which the education center functions as a contingent,

subsequent repurposing following commercial relocation, rather than as the primary land use driving the Project. Critically, the FEIS does not identify the establishment of the educational center as a required or enforceable component of the Project, and does not impose any binding obligation that such a facility be constructed or completed. As structured, the bungalow resort and associated commercial development may proceed independently, while the educational component remains conditional and discretionary, and therefore may never occur even after resort construction is completed.

Kamehameha Schools has held these lands for approximately 140 years for the benefit of Native Hawaiian education, yet operates only a limited number of campuses statewide, including three Kamehameha high schools. Petitioners allege that, rather than prioritizing the direct expansion of educational infrastructure such as additional schools, the FEIS reflects a development framework in which resort and commercial activities are advanced as the primary use of trust lands, with educational components positioned as secondary, non-mandatory, and potentially unrealized features.

Additionally, the lands comprising Keauhou II are identified in the record as deriving from Royal Patent No. 7844, issued to Lota Kamehameha (Kamehameha V), confirming award of the ahupua'a following Land Commission proceedings. (Exs. B-4-1-1, B-4-1-2, B-4-1-3.) Contemporaneous land award indices, as reflected in the *Indices of Awards*, further confirm that Keauhou 2, North Kona, Hawai'i, was included within Land Commission Award 7715 and associated with Royal Patent 7844. (Exs. B-5-1 and B-5-2.) Spatial and mapping records maintained by the Office of Hawaiian Affairs nevertheless reflect that the present-day ahupua'a contains multiple discrete parcels and areas that are not affirmatively attributed to that Royal Patent, demonstrating fragmentation and gaps within the mapped land award boundaries. (Exs. B-4-6, B-4-7.)

Petitioners do not assert that title has been adjudicated in this proceeding; however, where trust lands originate from Kingdom-era Royal Patents and the record reflects unresolved or incomplete attribution within affected parcels, trustees bear a heightened duty of care, transparency, and lawful authority before committing such lands to private commercial resort use.

The FEIS contains no chain-of-title analysis, no parcel-by-parcel authority disclosure, and no examination of whether KS possesses clear and properly exercised authority over all lands implicated by the Proposed Action. Because trustee authority is derived from lawful title, the absence of such analysis further renders the FEIS materially incomplete.

The FEIS contains no trust-purpose analysis demonstrating that conversion of trust lands to private luxury lodging is strictly "for the purposes aforesaid" as required by the Will. (Ex. C-1.) Nor does it disclose how trustees determined that this revenue-optimization strategy satisfies their duties under HRS §554D-404, §554D-801, §554D-802, §554D-804, §554D-805, and §554D-809. (Exs. A-3-5 through A-3-10.)

Petitioners do not allege that revenue generation is per se unlawful. Rather, Petitioners allege that where trustees seek governmental approval for conversion of charitable trust lands to private commercial bungalow resort use on the basis of revenue generation, the FEIS must disclose and analyze whether such use is authorized under the governing trust instrument and fiduciary statutes.

Because agencies rely upon the FEIS to approve the Proposed Action under HRS Chapter 343, the absence of trust-purpose analysis, fiduciary evaluation, and authority disclosure renders the FEIS materially incomplete and legally deficient.

Publicly released materials from Kamehameha Schools reflect that the trust controls assets exceeding $15 billion and reports hundreds of millions of dollars in annual educational expenditures. (Exs. B-3-1 through B-3-5.) The FEIS nonetheless represents that construction of a private luxury bungalow resort is necessary to generate revenue to fund educational and cultural components of the Keauhou Bay Management Plan. (Exs. A-5-1; A-5-4.)

The Annual Report materials submitted as Exhibit B-3 consist of high-level summaries, graphics, and aggregate spending categories, but do not provide a detailed trust accounting demonstrating financial necessity for conversion of culturally significant shoreline trust lands to private luxury lodging.

Under the express terms of the Will, the trustees are subject to a mandatory annual reporting obligation requiring full disclosure of the Estate's financial and operational condition. Article 13, section 5 provides that the trustees "shall annually make a full and complete report of all receipts and expenditures, and of the condition of said schools... and shall also file... an inventory of the property in their hands and how invested... publish the same in some Newspaper published in said Honolulu." (Ex. C-1.)

Where trustees seek governmental approval to commercialize trust lands on the asserted basis of revenue need, transparency regarding trust finances is material to determining whether such action is truly "for the purposes aforesaid."

The FEIS contains no disclosure demonstrating that existing trust assets are insufficient to fulfill the Will's mandate without resort development, and provides no fiduciary analysis reconciling a $15-billion endowment with the claimed necessity of converting Keauhou Bay into a revenue-generating luxury bungalow resort; Petitioners further allege that the proposed development would diminish existing community activities through overcrowding and increased intensity of use, while contributing to additional pollution entering Keauhou Bay, and is inconsistent with the charitable purpose and mission established by Princess Bernice Pauahi Bishop in her Will.

Petitioners allege that these deficiencies are directly attributable, in part, to Harman's role in preparing, coordinating, and advancing the FEIS.

In addition, Petitioners request that this Court order the removal, disqualification, and prohibition of Respondent Marissa Harman from further participation in environmental review, planning coordination, or FEIS preparation for the Keauhou Bay Management Plan Project and any related agency proceedings arising from that Project. Petitioners further request that the Court prohibit Harman from serving in any capacity involving the preparation, coordination, or advancement of environmental review documents.

Petitioners allege that Harman, acting in her capacity as planner and project representative for Kamehameha Schools, participated in the preparation, coordination, and advancement of an FEIS that failed to comply with the mandatory requirements of HRS Chapter 343 despite substantial notice of material deficiencies contained in the administrative record. Such conduct constitutes an abuse of authority and a failure to fulfill the duty to ensure full, accurate, and transparent environmental disclosure required under HEPA.

Where a project representative responsible for coordinating environmental review proceeds in disregard of those statutory obligations, continued participation presents a substantial risk of further noncompliance and undermines the integrity of the environmental review process and the public trust. At a minimum, removal and disqualification from further participation in this Project and any related proceedings are necessary to prevent continued reliance on a legally deficient FEIS and to ensure compliance with Hawai'i law.

In addition, Petitioners request that this Court order the removal of Respondent Marissa Harman from her position as planner and project representative based on abuse of authority.

Petitioners allege that Harman, in her capacity as planner and project representative for Kamehameha Schools, participated in the preparation, coordination, and advancement of an FEIS that failed to comply with the mandatory requirements of HRS Chapter 343 despite

substantial record evidence identifying material deficiencies, including incomplete environmental disclosure, mischaracterization of public submissions, deferral of required analysis, and failure to evaluate cumulative and cultural impacts.

Where an individual responsible for coordinating and advancing environmental review proceeds in disregard of mandatory legal requirements, such conduct constitutes an abuse of authority incompatible with continued service in that role. Petitioners allege that Harman's actions demonstrate a failure to carry out the obligations of her position, and that allowing continued participation presents a risk of further unlawful environmental review and agency reliance on deficient documentation. Accordingly, removal is necessary to protect the integrity of the environmental review process and to ensure compliance with Hawai'i law.

5. RESPONDENTS G70 AND KAWIKA MCKEAGUE — FEIS PREPARATION, COORDINATION, AND SUBMISSION

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. As the 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. The statutory framework governing environmental review requires that an environmental impact statement adequately describe identifiable environmental impacts, respond to comments, and provide sufficient information for informed decision-making prior to acceptance and approval. (Exs. A-1-3 through A-1-6.) HRS §343-2 further requires that an environmental impact statement disclose effects on the economic welfare, social welfare, and cultural practices of the community and State; however, the FEIS does not adequately analyze or disclose these community-level impacts associated with the proposed development. (Ex. A-1-4.) Acceptance of a final statement is a condition precedent to approval and implementation of a proposed action, and therefore requires a complete and legally sufficient document at the time of submission. Acceptance of a final statement is a condition precedent to approval and implementation of a proposed action. (Ex. A-1-1.) Judicial review of an agency's acceptance of an environmental impact statement is expressly authorized under HRS §343-7. (Exs. A-1-8, A-1-9.)

HAR Chapter 11-200.1 further imposes mandatory duties on the preparer and accepting authority to ensure full disclosure, rigorous analysis, and meaningful response to public comments, including the obligation to address substantive concerns and incorporate relevant information into the final statement. (Exs. A-6-1 through A-6-10.) These requirements are not procedural

formalities but enforceable conditions designed to ensure that environmental review is complete, accurate, and reliable before agency decision-making occurs.

Respondent Kawika McKeague is the President of G70, the consulting firm retained in connection with the preparation of the Final Environmental Impact Statement ("FEIS") for the Keauhou Bay Management Plan. The record reflects that G70 prepared the FEIS on behalf of Kamehameha Schools, the identified Applicant. The FEIS transmittal letter, dated August 26, 2025, states that G70 submitted the FEIS on behalf of the Applicant for publication in *The Environmental Notice* and for agency review pursuant to HRS Chapter 343 and HAR Chapter 11-200.1. The transmittal letter is signed by McKeague in his capacity as President of G70. (Ex. B-20.)

As President of G70, McKeague signed and transmitted the FEIS on behalf of the Applicant, thereby submitting the document to reviewing agencies for publication and review under HRS Chapter 343 and HAR Chapter 11-200.1. By executing the transmittal letter, McKeague presented the FEIS as the final environmental impact statement prepared for agency consideration. The document he signed and transmitted is the statement provided to agencies for acceptance and subsequent reliance. To the extent the FEIS omits material baseline information, fails to disclose relevant environmental conditions, defers required analysis, or misrepresents the extent or significance of impacts, those deficiencies are contained within the document that McKeague signed and advanced for review in his capacity as President of G70.

Petitioners allege that McKeague, acting in his capacity as President of G70, signed and transmitted the FEIS on behalf of the Applicant, thereby advancing the document for agency review and reliance under HRS Chapter 343. In that role, he authorized the submission of the FEIS prepared by G70 and presented it as complete for purposes of environmental review. Accordingly, the deficiencies identified herein—including omissions of material information, failure to disclose relevant conditions, and misrepresentation of impacts—are contained within the document that was submitted under his authority as President of G70.

Under HEPA, an environmental impact statement must provide full and accurate disclosure of environmental consequences sufficient to permit informed public participation and reasoned agency decision-making prior to approval of a proposed action. These requirements are reflected in established HEPA guidance requiring consultation, full disclosure of direct, indirect, and cumulative impacts, meaningful response to public and agency comments, and transparent presentation sufficient for public understanding and informed decision-making. (Exs. A-2-1 through A-2-4.) These requirements impose enforceable obligations of accuracy, completeness, and disclosure on the preparer of the FEIS. Petitioners allege that G70, through its agents and

responsible planners including Respondent McKeague, prepared and submitted an FEIS that failed to satisfy those requirements, despite being placed on notice of substantial contrary scientific, cultural, and community-based evidence during the DEIS comment period and agency consultation process.

Petitioners specifically allege that G70 and Respondent McKeague violated mandatory requirements of HAR Chapter 11-200.1, including but not limited to the following:

• **Improper Deferral of Ka Pa'akai Analysis, Reliance on Nonexistent FEIS Sections, and Internal Document Inconsistency.** The FEIS expressly states: *"Although not required for the acceptance of the EIS, a Ka Pa'akai analysis will be required for obtaining the SMA permit for the Project."* (Ex. B-11-1.) This statement confirms that constitutionally required cultural analysis under Article XII, Section 7 of the Hawai'i Constitution (Ex. A-1-14) and the framework established in *Ka Pa'akai o ka 'Āina v. Land Use Commission*, 94 Hawai'i 31 (2000) (Exs. A-4-13; A-4-14; A-4-15; A-4-27; A-4-28) was knowingly deferred to a future permitting stage rather than completed as part of the FEIS prior to acceptance. Such deferral is inconsistent with the environmental policy and purposes set forth in HRS §343-1 and violates HRS §343-2 (Exs. A-1-3; A-1-4), which requires identification and disclosure of impacts to cultural practices. It further violates HRS §343-5(b) (Ex. A-1-16), which provides that acceptance of a required final environmental impact statement shall be a condition precedent to implementation of the proposed action.

It further contravenes HAR §11-200.1-1 (Exs. A-6-1; A-6-2), which requires that environmental review ensure decision-makers are informed of environmental consequences prior to decision-making and prohibits superficial or self-serving analysis, HAR §11-200.1-13 (Ex. A-6-9), which requires agencies to evaluate the full scope of environmental impacts, including cultural and cumulative effects, and HAR §11-200.1-14 (Ex. A-6-10), which requires agencies to assess the significance of those impacts in determining the level of environmental review required. Deferral of cultural impact analysis to a later permitting stage is therefore inconsistent with governing law and controlling case authority requiring that such analysis be completed during the environmental review process.

• **FEIS Omission of "Purpose and Need" and Reliance on Nonexistent Section 2.7 Rendering Cultural Analysis Incomplete and Legally Deficient.**

The FEIS Table of Contents identifies Sections 2.6.2 through 2.6.5, 2.7, and 2.8 as included within Chapter 2 (Ex. B-1-16); however, the body of the FEIS reflects that Chapter 2 terminates at Section 2.6.2 and proceeds directly to Chapter 3 (Ex. B-1-15), and those sections do not

appear in the FEIS. Despite this omission, the FEIS repeatedly relies upon and cites "Section 2.7" as the stated "Purpose and Need" in responding to public comments, including representations that project justification, revenue generation, and development rationale are based on that section. (Exs. B-1-10; B-1-11; B-1-12; A-5-4.)

By invoking a section identified in the Table of Contents but omitted from the document itself, the FEIS relies upon a foundational component that is not part of the environmental review record. This inconsistency is not clerical; it reflects the absence of a disclosed project purpose within the FEIS itself, while that undisclosed purpose is used to justify the Project and respond to substantive public and cultural concerns.

The omission of Section 2.7 eliminates the framework through which project objectives, alternatives, and impact analysis are evaluated. Without a disclosed "Purpose and Need," Respondents have advanced and relied upon an environmental document that cannot support a complete or verifiable assessment of the proposed action, including its environmental and cultural impacts. This deficiency directly undermines the analytical requirements established in *Ka Pa'akai o ka 'Āina v. Land Use Commission*, 94 Hawai'i 31 (2000) (Exs. A-4-13; A-4-14; A-4-15; A-4-27; A-4-28), which require identification of cultural resources, evaluation of impacts, and determination of feasible protective measures prior to approval.

Where the FEIS omits the very section that defines the project's purpose and need, yet relies upon it to justify development and respond to cultural and community concerns, the required cultural impact analysis cannot be meaningfully performed. As set forth above regarding the statutory duties of the Hawai'i County Planning Department and its accepting authority, acceptance and continued reliance upon such a document constitutes approval of an environmental review that is incomplete on its face and incapable of satisfying the requirements of HRS Chapter 343. Deferral of cultural impact analysis to later permitting stages under these circumstances is not merely incomplete, but structurally impossible within the FEIS as presented.

• **Failure to Provide an Accurate Environmental Baseline and Adequately Analyze Endangered and Threatened Marine Species.** The FEIS fails to establish an accurate and complete environmental baseline for nearshore marine habitat, reef-dependent ecosystems, and endangered and threatened species known to utilize Keauhou Bay, and does not adequately analyze the presence, use, and ecological significance of these species within the Project area. (Exs. M-21; B-14-1; B-14-2; B-14-3; B-16-1 through B-16-4; B-17-1; B-17-2; B-18-4; B-18-5; B-18-6.)

Although the record contains documented evidence of protected marine species and known habitat use within Keauhou Bay, the FEIS relies on limited observations, generalized characterizations, and outdated or incomplete scientific information that understates baseline environmental conditions. The FEIS does not meaningfully evaluate impacts to endangered and threatened species or their habitat, including impacts associated with construction, runoff, sedimentation, lighting, vessel activity, and long-term coastal development and intensification.

By failing to adequately identify and analyze endangered and threatened species and by understating baseline environmental conditions, the FEIS does not provide a reliable foundation for assessing environmental impacts. Without an accurate baseline and meaningful species analysis, the FEIS cannot evaluate the extent to which the proposed action may affect protected marine resources, resulting in an incomplete and potentially misleading environmental review. These deficiencies are further demonstrated and detailed in Section II.I(1), which provides specific record evidence of species presence, habitat use, and analytical failures within the FEIS.

• **Failure to Resolve Identified Cultural Resources and Traditional and Customary Native Hawaiian Practices Within the FEIS.** The administrative record reflects that agency and community submissions identified specific cultural resources, historic trails, access routes, cultural landscapes, and ongoing traditional and customary Native Hawaiian practices requiring verification, consultation, and protection. (Exs. B-12-1 through B-12-4; see also Exs. B-1-6 through B-1-9.)

Rather than resolving these identified resources and practices within the environmental review process, the FEIS defers verification, consultation, and impact analysis to future permitting or implementation stages. The FEIS minimizes or incompletely addresses these matters despite record evidence establishing their existence and significance.

This is not a generalized omission, but a failure to meaningfully address specific, identified cultural resources and practices placed before Respondents during the environmental review process. By deferring analysis of known cultural resources and failing to incorporate required verification and consultation into the FEIS itself, the document does not provide a complete evaluation of impacts to traditional and customary Native Hawaiian practices.

• **Failure to provide legally sufficient responses to expert comments identifying absence of baseline environmental analysis.**

The record demonstrates that expert comments submitted by Jeff Caufield, Esq., an environmental attorney with over 30 years of experience in environmental impact analysis and

litigation, identified fundamental deficiencies in the DEIS, including the absence of baseline studies, lack of quantified existing conditions, and failure to support conclusions with substantial evidence, particularly regarding traffic, runoff, water quality, and cumulative coastal impacts. (Ex. R-5.) These comments expressly state that the DEIS provides no analysis of existing conditions and lacks the underlying data necessary to evaluate project impacts. (Exs. R-5-1 through R-5-16.) The FEIS itself likewise acknowledges that baseline conditions were not fully established or quantified. (Ex. M-21.)

HAR §11-200.1-25 (Ex. A-6-11) requires that the public review process provide a meaningful opportunity to evaluate whether environmental concerns have been adequately examined. HAR §11-200.1-26 (Exs. A-6-12; A-6-13) further requires that the proposing agency respond to all substantive written comments, give careful consideration to their validity, significance, and relevance, and provide responses that directly address the specific environmental concerns raised, including resolving conflicts and inconsistencies in the information presented. The rule requires that responses be commensurate with the substance of the comments and address the specific concerns, objections, and recommendations raised, including explaining in detail why such comments were not accepted or incorporated.

The FEIS responses do not satisfy these requirements. Rather than addressing the identified absence of baseline data, the responses rely on generalized, conclusory statements referencing project goals, planning documents, or future mitigation without providing the missing baseline analysis or resolving the deficiencies identified by the commenter. (Exs. R-7-1 through R-7-8.) The responses do not reconcile the lack of baseline data, do not explain why such data was not required, and do not demonstrate that the issues raised were meaningfully evaluated or resolved.

HAR §11-200.1-28 (Exs. A-6-14; A-6-15) requires that a final EIS incorporate all substantive comments and responses, disclose all identifiable environmental impacts, and may be accepted only if it satisfactorily responds to review comments and provides a complete informational basis for evaluation.

This failure is not limited to expert submissions. It is also reflected in the Hawai'i County Planning section addressing the omission and mischaracterization of Petitioner Rebecca Melendez's email submissions, petitions, and supporting scientific documentation. The repeated failure to meaningfully respond to both expert and community comments demonstrates a broader pattern of inadequate disclosure and response, and supports a reasonable inference that additional substantive comments were likewise not fully or accurately addressed in the FEIS.

The same FEIS record further reflects inaccuracies in the characterization of community input, including attribution to Petitioner Rebecca of the statement "I don't understand the educational point," which Petitioners allege was not made in any submission or communication. (Ex. R-6-1.) The FEIS further identifies Petitioner only as "Rebecca," omitting her last name, Melendez, in the official comment record. Petitioners allege that these inaccuracies and omissions further undermine the reliability of the FEIS comment-response process and reinforce that the record does not provide complete and accurate representation of public input, project justification, or relevant considerations. Petitioner Rebecca Melendez submitted formal, evidence-based DEIS comments raising environmental, cultural, and legal concerns (Ex. R-3).

A petition that Kamehameha Schools received before the draft period and during the draft period, see Ex. R-1-1 and R-1-2, titled "Save Keauhou Bay From Becoming a Big Crowded Resort" includes the statement:

"To have a cultural center where people can learn more about the land, and the Hawaiian people can have a place of their own at King Kamehameha III's birthplace would be great." (Exs. R-6-5; R-6-6; Ex. M-28-1; M-28-2.)

This statement reflects that Rebecca Melendez, and members of the public did not oppose educational or cultural uses of the site, but instead supported uses consistent with the cultural significance of Keauhou Bay and the trust's charitable purpose.

Petitioners further allege that the administrative record reflects substantial public concern and input directly addressing these fiduciary, cultural, and land use issues. Multiple public petitions submitted during the environmental review process document widespread and consistent community concern regarding Respondents' land use practices, the proposed conversion of Keauhou Bay to private commercial resort use, and the failure to adequately protect cultural resources, shoreline access, and longstanding community use of the bay. (Exs. M-26-1; M-26-2; M-27-1; M-27-2; M-28-1; M-28-2.)

However, the FEIS responses to comments mischaracterize and incompletely represent these submissions. The administrative record reflects that Petitioners submitted detailed written comments, petitions, and supporting materials; yet the FEIS summarizes and characterizes those submissions in a manner that omits material context, minimizes the scope of public opposition, and fails to accurately reflect the substance and intent of the comments provided. (Exs. R-6-2 through R-6-7.)

Where an FEIS inaccurately characterizes or omits the substance of public submissions addressing trust purpose, cultural use, and community impacts, it fails to satisfy the requirement under HRS §343-2 that the document adequately disclose environmental impacts and meaningfully respond to substantive comments contained in the administrative record.

As a result, the FEIS fails to provide a substantive response to evidence demonstrating that no reliable environmental baseline was established, preventing informed evaluation of project impacts and rendering the environmental review incomplete. (Exs. R-5; M-21; R-7-1 through R-7-8.)

Accordingly, the FEIS does not satisfy HRS §343-2 (Exs, A-1-3; A-1-4) and fails to comply with HAR §11-200.1-25 (Ex. A-6-15), §11-200.1-26 (Exs. A-6-12; A-6-13), and §11-200.1-28 (Exs, A-6-14 through A-6-16) which require that environmental review be complete, responsive, and sufficient to allow full evaluation of environmental impacts prior to acceptance.

• **Failure to make the specific findings required under** *Ka Pa'akai o ka 'Āina v. Land Use Commission*, including identification of traditional and customary Native Hawaiian practices, assessment of the extent to which those practices will be affected, and determination of feasible protective measures. See Exhibits A-4-13; A-4-14; A-4-15.

As reflected in the record, the FEIS does not complete this required analysis and instead expressly defers cultural impact evaluation and protection measures to future permitting stages, which *Ka Pa'akai* prohibits. Such deferral fails to satisfy statutory and constitutional obligations governing protection of traditional and customary practices. See Exhibits A-4-14; A-4-27; A-4-28; B-11-1.

• **Failure to adequately analyze cumulative and long-term impacts,** including the combined effects of increased water demand, wastewater generation, stormwater runoff, landfill capacity constraints, traffic and transportation strain, power system limitations, and aquifer resource pressures affecting Hawai'i Island.

Publicly documented conditions demonstrate that the island is already experiencing water restrictions, landfill management challenges, infrastructure strain, and energy system limitations, yet the FEIS does not integrate these existing baseline conditions into a comprehensive cumulative impact analysis. These system-wide constraints, as further detailed in the Hawai'i County Planning section, reflect that the receiving environment is already under stress, requiring integrated evaluation of how additional development pressure may affect public trust resources and long-term sustainability. By evaluating impacts in isolation and failing to assess their

combined effect within this existing context, the FEIS fails as a matter of law to satisfy the cumulative impact analysis required under HRS §§343-1 (Ex. A-1-3), 343-2 (Exs. A-1-3; A-1-4), and 343-5(c) (Ex. A-1-5), and HAR §11-200.1-24 (Ex. A-6-16; A-6-17), which require full disclosure of environmental effects and all reasonably foreseeable consequences before a final statement may lawfully be accepted; because acceptance of a required final statement is a condition precedent to approval and commencement of the proposed action, the FEIS's omission of integrated cumulative and long-term impact analysis renders it legally deficient and incapable of supporting agency action. (Exs. A-1-3; A-1-4; A-1-6; A-6-16; A-6-17.)See Exhibits M-1; M-2; M-3; M-4; M-5; M-6; M-7; M-8; M-9; M-10; M-11; M-12; M-13; M-15; M-16; M-17; M-22; M-23; M-25.

Petitioners allege that these omissions and characterizations were not the result of mere oversight. G70 and McKeague were repeatedly placed on notice of scientific, cultural, and community-based evidence contradicting the FEIS impact conclusions through formal written submissions, petition signatures, public testimony, meetings, and agency consultation materials. See Exhibits R-4-1 through R-4-56; B-12-1 through B-12-4. Despite that notice, G70, through its President McKeague, advanced and certified an FEIS that failed to incorporate, reconcile, or adequately disclose that contrary evidence.

Petitioners allege that, given McKeague's position as President and his role in authorizing and transmitting the FEIS for agency review, the advancement of a materially deficient environmental document under these circumstances constitutes noncompliance with HEPA's requirements for full, accurate, and transparent environmental disclosure, including the obligation to provide sufficient information for informed decision-making, meaningful public participation, and evaluation of direct, indirect, and cumulative impacts prior to acceptance. (Exs. A-2-1; A-2-2; A-2-3; A-2-4.)

Because the lands and coastal waters at issue implicate constitutionally protected public trust resources and traditional and customary Native Hawaiian practices, the adequacy of environmental disclosure carries heightened legal significance. An FEIS that omits, minimizes, or defers analysis of such impacts undermines the State's ability to fulfill its constitutional obligations under Article XI and Article XII of the Hawai'i Constitution, as interpreted and applied in governing case law. (Exs. A-1-10; A-1-12; A-1-14; A-4-5; A-4-6.)

Acceptance of a legally sufficient FEIS is a statutory condition precedent to approval and commencement of a proposed action under HRS §343-5(c), and is subject to judicial review under HRS §343-7. (Exs. A-1-6; A-1-9.) By preparing, coordinating, and submitting an FEIS that materially omitted, minimized, or deferred analysis of significant environmental and cultural

impacts, G70, through its President McKeague, played a direct and proximate role in enabling agency reliance on a legally deficient environmental document.

Petitioners allege that McKeague, in his capacity as President of G70 and as the individual who executed and transmitted the FEIS on behalf of the Applicant, is individually accountable for professional decisions that facilitated agency acceptance of a legally deficient environmental document, and that those actions materially contributed to continued agency reliance subject to judicial review under HRS §343-7(c), alongside the independent duties and responsibilities of the Applicant and the County accepting authority under HRS Chapter 343.

Under HRS §343-7(c), this Court reviews whether the agency's acceptance of the FEIS complied with HRS Chapter 343. Petitioners allege that the FEIS prepared and advanced by G70 and McKeague contains material omissions, deferrals, inaccuracies, and mischaracterizations, as demonstrated throughout the administrative record before the Court. Because of these deficiencies, the agency's reliance on the FEIS does not comply with HRS Chapter 343. Accordingly, the acceptance of the FEIS must be set aside and declared invalid, and all reliance on that FEIS must be enjoined.

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.

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.

In addition, Petitioners request that this Court order the removal of Respondent Kawika McKeague from his position as President of G70 based on abuse of authority.

Petitioners allege that McKeague, acting in his capacity as President of G70 and as the individual with final authority over the FEIS, authorized and advanced a document that failed to comply with the mandatory requirements of HRS Chapter 343 despite substantial record evidence identifying material deficiencies, including incomplete environmental disclosure, deferral of required analysis, and failure to adequately evaluate cumulative and public trust impacts.

Where an individual vested with final decision-making authority over environmental review proceeds in disregard of those legal obligations, such conduct constitutes an abuse of authority incompatible with continued exercise of that role. Petitioners allege that McKeague's actions demonstrate a failure to fulfill the obligations of his position, and that continued involvement in environmental review presents a risk of further unlawful conduct and reliance on deficient environmental documentation. Accordingly, removal is necessary to protect the integrity of the environmental review process and to ensure compliance with Hawai'i law.

Petitioners further request that this Court grant injunctive relief prohibiting the continuation or approval of additional commercial development projects on Hawai'i Island unless and until Respondents and relevant agencies demonstrate, through competent evidence and full disclosure, that existing island-wide resource constraints—including water availability, wastewater capacity, landfill limitations, infrastructure strain, and cumulative environmental impacts—have been fully and adequately evaluated and addressed in compliance with HRS Chapter 343 and applicable law. Petitioners allege that where the receiving environment is already under demonstrable stress, the continued approval of additional large-scale commercial development without integrated, island-wide cumulative impact analysis poses a direct risk to public health, safety, environmental integrity, and the protection of public trust resources relied upon by residents and visitors alike.

II. Summary of Unlawful Actions and Public Trust Violations, Including Implied Dedication and Community Rights

Petitioners allege the FEIS is invalid because it:

• Omitted endangered and threatened species known to inhabit Keauhou Bay, in violation of HRS Chapter 343 and HAR §11-200.1-13.

• Failed to disclose Keauhou Bay's federal listing as a U.S. EPA Impaired Water Body, instead referring only to a "RI Impaired Water" designation, thereby misleading the public and withholding material environmental information required under HRS §343-2, §343-5, and HAR §11-200.1-23.

• Misrepresented or omitted public comments, including Petitioners' testimony and thousands of signatures opposing the resort, in violation of HAR §11-200.1-23.

• Omitted cultural impact assessments necessary to protect Native Hawaiian traditional and customary practices, in violation of Article XII, Section 7 of the Hawai'i Constitution and HAR §11-200.1-12.

• Ignored cumulative, secondary, and long-term marine impacts, contrary to HAR §11-200.1-14 (Ex. A-6-10).

• Failed to disclose and analyze islandwide infrastructure and resource capacity constraints, including 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 foreseeable cumulative impacts to public health, safety, and public trust resources, in violation of HRS Chapter 343 and HAR §11-200.1-14.

• Materially misrepresented and unlawfully expanded the project scope, by disclosing only 101 assigned units at the Environmental Impact Statement Preparation Notice stage while later advancing a 150-unit resort in the FEIS, constituting unlawful segmentation, understatement of development intensity, and deprivation of informed public participation, in violation of HAR §11-200.1-10 (Ex. A-6-18; A-6-19) and the disclosure requirements of HRS Chapter 343.

• Violated multiple state and constitutional laws, including the Public Trust Doctrine under Article XI of the Hawai'i Constitution, which requires the State and its subdivisions to conserve and protect natural resources and to err on the side of protection where information is incomplete, uncertain, or misleading.

Petitioners also seek an investigation into how many community comments were falsified, altered, minimized, or excluded in the FEIS.

II.A. Violation of Public Trust Duties (Waiāhole Ditch) (Supported by Ex. A-4-1 through A-4-6)

Petitioners allege that Respondents' approval and acceptance of the Final Environmental Impact Statement ("FEIS") violated the State's constitutional public trust obligations. The Hawai'i Supreme Court has made clear that "[t]he state also bears an 'affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.'" *In re Water Use Permit Applications (Waiāhole Ditch),* 94 Hawai'i 97 (2000), Ex. A-4 at A-4-5 (orig. p. 72). This duty is not discretionary and applies even where private interests are involved, because the court further held that "[a]part from any private rights that may exist… 'there is, as there always has been, a superior public interest in this natural bounty.'" *Id.*, Ex. A-4 at A-4-4 (orig. p. 55). Despite these constitutional mandates, the FEIS fails to meaningfully protect public trust resources and instead prioritizes private commercial

development over public, cultural, and environmental interests, rendering the agency's acceptance arbitrary, capricious, and contrary to law.

Petitioners further allege that *Waiāhole Ditch* establishes binding principles directly applicable here, including that:

1. Public trust protections are grounded in the Hawai'i Constitution and impose affirmative duties on the State and its agencies.

2. Agencies bear heightened responsibility when their actions affect public trust resources.

3. Environmental decision-making must be based on sufficient, reliable information, and agencies may not lawfully proceed where critical information necessary to protect public trust resources is missing.

4. Where uncertainty exists regarding environmental or cultural harm, agencies may not lawfully advance actions that risk impairment of protected resources.

5. Agencies may not lawfully rubber-stamp incomplete or misleading environmental review. As the Hawai'i Supreme Court held in *Ke Kauhulu O Mānā v. Board of Land & Natural Resources*, an agency's "existing record must include the information justifying its exemption declaration," and the agency "cannot rely on extra-record evidence as a substitute for the analysis it should have included in its record." 575 P.3d 13, 22–23 (Haw. 2025); see Exs. A-4-9, A-4-10. The court further confirmed that agencies are required to take a "hard look" at environmental factors before approving an exemption. *Id.*

Although this case does not involve an EA exemption, the same principle applies with even greater force where an agency requires and accepts a full FEIS. The environmental document itself must contain the analysis necessary to justify the agency's approval. An agency may not lawfully approve a deficient FEIS and later rely on missing materials, outside explanations, or post hoc rationalizations to cure defects in the record. As the Hawai'i Supreme Court has held, "an agency's existing record must include the information justifying its [environmental determination]," and the agency "cannot rely on extra-record evidence as a substitute for the analysis it should have included in its record." *Ke Kauhulu O Mānā v. Bd. of Land & Nat. Res.*; see Ex. A-4-10.

The Hawai'i Supreme Court further recognized that Hawai'i's statutory framework reinforces these constitutional obligations by requiring that public resources be managed for the benefit of

the people and that protection be afforded to traditional and customary Hawaiian rights, ecological balance, scenic and natural values, and the public interest. (*Waiāhole Ditch,* 94 Hawai'i at 146; Ex. A-4 at p. A-4-6.)

This authority strengthens Petitioners' claims because:

• Keauhou Bay constitutes a public trust resource whose waters and associated natural and cultural values must be protected for the benefit of present and future generations.
• The FEIS omits endangered species, cumulative impacts, impaired water quality status, cultural assessments, and contains misrepresented public comments, meaning the agency lacked the information necessary to fulfill its constitutional and legal obligations.
• Where critical information is missing or uncertainty exists, agencies may not lawfully proceed in a manner that risks harm to public trust resources.

Because Respondents accepted and relied upon an FEIS that is incomplete, misleading, and lacking critical cultural and environmental disclosures, Petitioners allege that their actions fail to meet the constitutional and legal standards articulated in *Waiāhole Ditch*, rendering the FEIS and any reliance upon it unlawful.

II.B. Failure to Disclose Public Rights Arising from Longstanding Public Use, Public Thoroughfare Access, and Statutory Public Trail Classification (Gold Coast Neighborhood Ass'n v. State; HRS §264-1)
(Supported by Exs. A-4-7, A-4-8, A-4-11, A-4-12, A-4-16; A-4-18; B-12-1 through B-12-4)

Hawai'i law expressly recognizes that trails and nonvehicular access routes used by the public are legally protected public rights-of-way. HRS §264-1 provides that:

"All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-way by the Highways Act of 1892… are declared to be public trails."

The statute further provides that:

"All highways, roads, alleys, streets, ways, lanes… and trails in the State, opened, laid out, or built by private parties and dedicated or condemned to the public use, are declared to be public highways or public trails."
(Ex. A-4-18.)

In *Gold Coast Neighborhood Ass'n v. State*, the record establishes that a shoreline structure originally constructed for private purposes became, through longstanding and continuous public use, a "thoroughfare for public travel" used by the general public for shoreline and ocean access.

(Ex. A-4-7.) Testimony confirmed that the public used the seawall as a walkway for decades for access along the coastline and to ocean resources. (Ex. A-4-8.)

Hawai'i case law further confirms that where a structure is used as a public thoroughfare, it falls within the statutory framework governing public ways and trails. Specifically, the court recognized that a seawall "used as a public thoroughfare is included in the term 'public highway'" under HRS §264-1. (Ex. A-4-11.) The court reaffirmed that such structures, when used for public travel, fall within the ambit of "ways and trails" under Hawai'i law. (Exs. A-4-12, A-4-16.)

The record in *Gold Coast* also reflects governmental involvement consistent with public use, including State-funded repair, maintenance, and improvement efforts, and legislative appropriations directed toward shoreline infrastructure used by the public. (Ex. A-4-8.) These actions further demonstrate recognition of the public character of such access routes.

Here, the record contains direct confirmation from the Department of Land and Natural Resources that Keauhou Bay includes historic access trails that have served as primary mauka-makai access routes "for centuries," and that, pursuant to the Highways Act of 1892—codified in HRS §264—these trail alignments "continue to be owned by the State of Hawai'i." (Ex. B-12-1.) Additional DLNR documentation confirms that these trails are historically established, publicly accessible, and integral to movement and access within the ahupua'a. (Exs. B-12-2 through B-12-4.)

As in *Gold Coast*, the shoreline and nearshore areas of Keauhou Bay have been continuously, openly, and extensively used since the Hawaiian Kingdom era—and without interruption to the present—for shoreline access, canoe hālau activities and shoreline canoe storage, ocean access, cultural practices, including fishing, net fishing, subsistence and recreational activities, and community gatherings, including celebrations, celebration of life services, baptisms, playing volleyball, and other recurring community and cultural practices conducted at the Bay.

Under Hawai'i law, longstanding and continuous public use of access routes for shoreline and ocean access may establish public rights-of-way or reflect implied dedication to public use, particularly where such routes function as public thoroughfares.

The FEIS references shoreline access and connectivity in general terms, including public concerns regarding access and statements that access will be maintained or improved; however, it does not identify or analyze the specific historic mauka–makai access routes within the project area as distinct features of the affected environment. The FEIS contains no evaluation of whether

these routes constitute public trails or rights-of-way, no analysis of their legal status under HRS §264-1, and no assessment of how the proposed development would affect these established access corridors. As a result, while access is addressed at a generalized level, the FEIS omits any site-specific or legally grounded analysis of these known access routes and their significance.

This omission is material. Where access routes function as established pathways for shoreline and ocean access, and where such routes may fall within Hawai'i's statutory framework governing public trails and rights-of-way under HRS §264, they constitute legally significant features of the affected environment. HRS Chapter 343 requires that such features be identified, disclosed, and analyzed as part of the environmental review process. The FEIS's failure to evaluate these access corridors in their legal and functional context results in an incomplete and misleading analysis and does not satisfy the disclosure and analytical requirements mandated by HRS Chapter 343.

The existence and use of these mauka–makai access routes are inseparable from the exercise of traditional and customary Native Hawaiian practices, which depend upon physical access to shoreline and nearshore resources. Article XII, Section 7 of the Hawai'i Constitution protects these practices. Under *Ka Pa'akai o ka 'Āina v. Land Use Commission*, the agency must, at a minimum, make specific findings and conclusions regarding the identity and scope of valued cultural resources, the extent to which traditional and customary Native Hawaiian rights are exercised in the affected area, the extent to which those resources and rights will be affected or impaired by the proposed action, and the feasible action, if any, required to reasonably protect those rights. (Exs. A-4-13 through A-4-15.) Because the FEIS does not identify or evaluate these access corridors, it does not assess the extent to which the practices that rely upon them will be affected, and it does not identify any measures to protect those practices. The absence of these required findings and conclusions demonstrates that the FEIS does not satisfy the mandatory *Ka Pa'akai* framework.

HRS §343-5(c) provides that acceptance of a final environmental impact statement is a condition precedent to the approval and commencement of a proposed action. An environmental impact statement that omits legally significant access routes, fails to analyze their potential status under HRS §264, and does not evaluate resulting impacts to traditional and customary practices protected under Article XII, Section 7 is incomplete and legally insufficient. Accordingly, the FEIS cannot lawfully support approval of the proposed development. Any acceptance of the FEIS, and any agency actions taken in reliance upon it, are invalid as a matter of law and should be vacated.

II.C. Violation of Article XII, Section 7 of the Hawai'i Constitution (Native Hawaiian Traditional and Customary Rights – PASH)
(Supported by Exhibit A-4; A-1-20, A-4-41; A-4-42)

In addition to the public rights arising from implied dedication, Native Hawaiian traditional and customary practices are independently protected under the Hawai'i Constitution and the laws of the State of Hawai'i. HRS §1-1 expressly recognizes Hawaiian usage as a source of law, confirming that traditional and customary practices are legally protected and must be considered in the application of state law. (Exhibit A-1-20.)

The Hawai'i Supreme Court has confirmed that agencies violate constitutional and statutory duties when they disregard these protections. In the underlying proceedings of Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission, 79 Hawai'i 425 (1995), (See Exhibit A-4-40.) the Intermediate Court of Appeals found that the Planning Commission "disregarded the rules regarding the gathering rights of native Hawaiians and its obligation to preserve and protect those rights." (Exhibit A-4-41.)

The court further clarified that protection of traditional and customary Native Hawaiian practices is grounded in Hawai'i law and depends upon whether such practices have been established and continued in a particular area. It explained that the determination of whether such practices are protected requires evaluation of their continued exercise and the impacts upon them. (Exhibit A-4-42.)

The Hawai'i Constitution provides that the State "reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes..." (Exhibit A-1-14.)

Taken together, this authority establishes that agencies must affirmatively identify, evaluate, and protect traditional and customary practices when considering or advancing development approvals. These duties are constitutional in nature and are not discretionary.

Here, Respondents relied upon a Final Environmental Impact Statement that does not adequately identify, evaluate, or protect long-standing Native Hawaiian and community practices at Keauhou Bay, including fishing, canoe hālau use, shoreline canoe storage and maintenance, shoreline access, cultural gatherings, and regular community volleyball practices. The record confirms that these practices occur at specific, identifiable shoreline locations within the project area, yet the FEIS fails to analyze how they will be affected or to provide enforceable measures ensuring their continued exercise. By advancing agency action without first completing this

required analysis and protection, Respondents violated Article XII, Section 7 and relied upon a legally insufficient environmental review.

The FEIS record further reflects that existing shoreline and community practices may be displaced or relocated rather than preserved. In response to community concerns regarding longstanding recreational and shoreline uses, the Applicant stated that such activities "can be planned in more appropriate areas," and confirmed that no agreements or protections currently exist to ensure their continued use at Keauhou Bay. (Exhibit A-5-3.)

The record further reflects longstanding community reliance on the Bay for cultural, recreational, and shoreline practices extending over decades. (Exhibit A-5-6.) Visual documentation within the FEIS confirms that volleyball, and canoe-related practices are presently conducted along the shoreline in specific, identifiable locations, including canoe storage and launch areas at the Keauhou Canoe Club. (Exs. B-22-1; B-22-2.)

These statements and exhibits demonstrate that shoreline-based practices are location-specific and integral to continued use of the Bay, yet the FEIS contemplates their relocation or alteration without completed analysis or enforceable safeguards.

Petitioner Rebecca Melendez further attests, based on direct meetings with project representatives, that relocation of shoreline canoe storage to higher inland areas was discussed. Such relocation would make access more difficult and create increased safety risks due to the weight and handling requirements of canoes. This concern is not addressed or analyzed anywhere in the FEIS.

Consistent with the Applicant's acknowledgment that existing uses "can be planned in more appropriate areas," the FEIS reflects that shoreline and community practices may be relocated or displaced, while failing to identify or provide enforceable protections for shoreline-based practices, including those involving canoe use. (Exhibit A-5-3.)

Although the FEIS includes visual documentation identifying the Keauhou Canoe Club and associated shoreline canoe use at specific locations within the project area (Exs. B-22-1; B-22-2), it does not identify these activities as traditional and customary practices, does not assess how they will be affected by the proposed development, and does not provide any site-specific impact analysis or enforceable measures to protect shoreline-based practices, including canoe hālau activities, shoreline canoe storage, and maintenance areas. These omissions demonstrate that the FEIS does not fully identify the scope of traditional and customary practices occurring within the project area.

Failure to Identify, Assess, and Protect Traditional and Customary Practices (Ka Pa'akai Framework)

The Hawai'i Supreme Court has established that the constitutional protections recognized in PASH must be implemented through a specific analytical framework requiring agencies to identify cultural resources, assess the extent to which traditional and customary practices will be affected, and specify feasible actions to reasonably protect those practices prior to approving land use decisions.

Accordingly, because the FEIS fails to identify, assess, and protect traditional and customary practices occurring at Keauhou Bay, it does not satisfy the mandatory requirements of the Ka Pa'akai framework and cannot support agency approval or implementation of the proposed development.

II.D. Failure to Perform Mandatory Ka Pa'akai Analysis (Procedural Violation of Article XII, Section 7 Duties)

Petitioners allege that Respondents advanced, submitted, accepted, and relied upon a Final Environmental Impact Statement ("FEIS") that does not satisfy the mandatory legal requirements established by *Ka Pa'akai o ka 'Āina v. Land Use Commission*, 94 Hawai'i 31 (2000), for the protection of Native Hawaiian traditional and customary practices.

The Hawai'i Supreme Court in *Ka Pa'akai* established a specific analytical framework that agencies must apply when such practices are implicated. The Court held:

"In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must, at a minimum, make specific findings and conclusions as to the following:
(1) the identity and scope of 'valued cultural, historical, or natural resources' in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
(2) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and
(3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist."
(Exhibit A-4-13, orig. PDF p. 25)

Ka Pa'akai A-4-13

The Court further held that where an agency fails to make findings sufficient to demonstrate compliance with these duties, the agency has failed as a matter of law. The Court stated:

"A review of the record and the LUC's decision leads us to the inescapable conclusion that the LUC's findings and conclusions are insufficient to determine whether it discharged its duty to protect customary and traditional practices of native Hawaiians to the extent feasible. The LUC, therefore, must be deemed, as a matter of law, to have failed to satisfy its statutory and constitutional obligations."
(Exhibit A-4-14, orig. PDF p. 27)

Ka Pa'akai A-4-14

The Court further explained that where development will curtail the exercise of Native Hawaiian rights, the agency has an affirmative obligation to address those impacts. The Court stated:

"If the practice of native Hawaiian rights being exercised will be curtailed to some extent by the land use reclassification and the resulting development, the LUC is obligated to address this."
(Exhibit A-4-15, orig. PDF p. 29)

Ka Pa'akai A-4-15

Applying the foregoing legal and factual record, the failure is dispositive: The record further demonstrates that traditional and customary Native Hawaiian practices at Keauhou Bay are directly tied to longstanding mauka-makai access routes and shoreline corridors, including historic trails recognized by the Department of Land and Natural Resources as having been used for centuries and governed under HRS §264. (Exs. B-12-1 through B-12-4.) As established above, these access routes function as public ways or trails used for shoreline and ocean access and fall within Hawai'i's statutory framework for public rights-of-way. (Exs. A-4-11, A-4-12, A-4-16; A-4-18.)

These same routes facilitate the exercise of traditional and customary practices, including gathering, fishing, cultural use, and access to nearshore resources. Despite this, the FEIS contains no identification, analysis, or findings addressing these access corridors, their role in supporting Native Hawaiian practices, or the extent to which those practices will be affected by the proposed development. This omission independently establishes that Respondents failed to satisfy all three mandatory prongs of the Ka Pa'akai framework.

Petitioners allege that the FEIS relied upon by Respondents fails all three mandatory Ka Pa'akai requirements:

- The FEIS does not make specific findings identifying the full identity and scope of traditional and customary practices exercised at Keauhou Bay.
- The FEIS does not make findings analyzing the extent to which those practices will be affected or impaired by the proposed bungalow resort development.
- The FEIS does not make findings identifying feasible actions necessary to reasonably protect those practices.

Despite the absence of these required findings and conclusions, Respondents nevertheless advanced, submitted, accepted, and relied upon the FEIS as legally sufficient.

Under *Ka Pa'akai*, where the record lacks the findings necessary to determine whether an agency discharged its duty to protect traditional and customary practices, the agency "must be deemed, as a matter of law, to have failed to satisfy its statutory and constitutional obligations." (Ex. A-4-14.)

Accordingly, Petitioners allege that the FEIS is legally deficient and cannot serve as a lawful basis for agency action under HRS §343-7(c).

II.E. Application of Legal Violations to FEIS Defects at Keauhou Bay

This subsection applies the legal violations established in Sections II.B–II.D to the specific deficiencies in the Final Environmental Impact Statement ("FEIS") for the Keauhou Bay Management Plan.

Petitioners do not challenge discretionary policy choices or the substance of agency judgment. Rather, Petitioners allege that Respondents violated mandatory legal duties by approving, submitting, and accepting an FEIS that does not contain the disclosures, analysis, and findings required by Hawai'i law.

As established in Section II.D above, Respondents were required to ensure that the FEIS contained findings identifying protected practices, analyzing impairment, and evaluating feasible protection measures. Petitioners allege that Respondents proceeded despite the absence of those mandatory findings. (Exs. A-4-13, A-4-14, A-4-15.)

Despite these binding legal obligations:

- **Kawika McKeague**, on behalf of G70, served as the preparer and coordinator of the FEIS and was responsible for the compilation and presentation of the environmental analysis contained therein;

- **Marissa Harman**, acted as a representative of Kamehameha Schools in connection with the preparation and advancement of the FEIS for agency review and acceptance;
- **Jeff Darrow**, as Planning Director for the County of Hawai'i and the designated accepting authority under HRS Chapter 343, was responsible for the review and acceptance of the FEIS;

yet none ensured that the FEIS identified protected practices, analyzed impacts, or evaluated feasible protection measures as required by law. Petitioners allege that each Respondent therefore acted without legal compliance at their respective stage of the process.

Where an environmental review document omits mandatory disclosures, fails to analyze impacts to legally protected interests, and disregards constitutional and statutory duties, agency reliance upon such a document is procedurally unlawful. Petitioners allege that Respondents' conduct reflects a failure of legal compliance at every stage of preparation, submission, and acceptance of the FEIS.

Violation Through Removal of Shoreline Canoe Storage and the Volleyball Court

By proposing to remove shoreline canoe storage and eliminate the long-standing community volleyball court, Respondents seek to displace uses that have existed openly and continuously for generations and that have given rise to legally cognizable public rights under the doctrine of implied dedication.

The record in *Gold Coast Neighborhood Ass'n v. State* reflects decades of continuous public use— including testimony of use exceeding forty years—supporting the principle that longstanding public use may establish public access rights through implied dedication. (Ex. A-4-8.)

Interference with, restriction of, obstruction of, or failure to disclose and protect these long-established public uses and access routes—recognized through continuous public use and reflected in statutory protections for public rights-of-way (HRS §264-1; Exs. A-4-11, A-4-12, A-4-16), and supported by *Gold Coast Neighborhood Ass'n v. State* (Ex. A-4-8)—would unlawfully impair public access rights established through longstanding use, and would:

• impair public trust resources protected under Article XI of the Hawai'i Constitution (Ex. A-1-12);

• interfere with constitutionally protected traditional and customary Native Hawaiian practices under Article XII, Section 7 (Ex. A-1-14; A-4-18); and

• violate Respondents' statutory duties under HRS Chapter 343 to disclose and evaluate impacts to cultural, recreational, and community resources prior to approval (Exs. A-1-3; A-1-4; A-1-5).

Accordingly, because the FEIS fails to disclose and evaluate the existence, extent, and legal protection of these established public access uses and associated constitutional and public trust interests, it cannot lawfully support agency approval, and acceptance of the FEIS—and any agency actions taken in reliance upon it—are subject to vacatur pursuant to HRS §343-5(c) and §343-7.

These shoreline areas are not discretionary amenities; they are long-established public trust and community use areas carrying legal protection that must be disclosed, evaluated, and protected in environmental review.

Impact of Bungalow Resort Development on Fishing, Canoe Use, and Cultural Practices

The FEIS further fails to analyze or disclose how the construction and operation of a bungalow resort in a small, enclosed bay will functionally impair protected uses by:

- restricting access to fishing areas relied upon for generations;
- interfering with long-standing subsistence, cultural, and customary practices protected under Article XII, Section 7 of the Hawai'i Constitution;
- obstructing canoe launching and shoreline operations due to increased private traffic, guest activity, and commercial use;
- degrading the safety and functionality of canoe hālau practices;
- displacing cultural gatherings, ceremonies, and community events;
- eliminating the quiet open space necessary for cultural and community practices; and
- overcrowding the shoreline such that public use becomes practically impossible, even if not formally prohibited.

Hawai'i law recognizes that functional impairment of protected rights is legally equivalent to outright prohibition. An FEIS that ignores these foreseeable impacts fails its most basic legal purpose.

Legal Deficiency of the FEIS

Because the FEIS fails to:

- disclose the existence of implied public rights;
- identify the full scope of traditional and customary practices exercised at Keauhou Bay;
- analyze the impacts of removing canoe shoreline storage and the volleyball court;
- evaluate how resort development will obstruct fishing, cultural practices, shoreline access, and community use; and
- assess feasible measures to protect these legally protected interests;

the FEIS does not fully or accurately disclose and evaluate the environmental, cultural, and community impacts of the proposed action, and therefore cannot support lawful acceptance or agency reliance under HRS Chapter 343, HAR §11-200.1, the Public Trust Doctrine, and constitutional protections for Native Hawaiian traditional and customary practices.

Respondents' reliance upon such a deficient environmental document is therefore unlawful as a matter of law.

As the Hawai'i Supreme Court has held:

Hawai'i law recognizes that private property may become subject to public use rights through longstanding and continuous public use. Where the public has used a property over many years as a pathway or access route for shoreline and ocean activities, that use may establish the property as a public thoroughfare or right-of-way under Hawai'i law. As reflected in *Gold Coast Neighborhood Ass'n v. State*, the Hawai'i Supreme Court recognized that a seawall originally constructed by private parties had, through decades of continuous public use for walking, shoreline access, and recreational purposes, come to function as a public thoroughfare subject to legal protection. (Exs. A-4-7; A-4-11; A-4-16.) Similarly, the canoe club and volleyball court at Keauhou Bay have been known to the local community and in continuous, open, and longstanding use for approximately fifty years, reflecting well-established patterns of public and community use of the area.

Because Keauhou Bay has hosted decades of open, continuous, and well-documented community use and cultural practice, such uninterrupted use supports longstanding public access and use patterns and implied public access rights that may be recognized under Hawai'i law. (Exs. A-4-16; A-4-11; B-12-1 through B-12-4.) Respondents were required under HRS Chapter 343 and HAR §11-200.1 to disclose, analyze, and protect these interests. Instead, the FEIS:

• omits any acknowledgment of implied dedication;
• fails to evaluate impacts on public shoreline access and cultural spaces;
• proposes reconfiguration and consolidation of existing shoreline canoe use areas without analyzing impacts on existing canoe storage, access, and community use;
• proposes elimination of the long-standing community volleyball court used regularly for generations; and
• proposes actions that would restrict or interfere with long-established public access and use patterns.

Accordingly, the FEIS is legally defective and materially incomplete because it fails to disclose, evaluate, and protect public access interests that may arise under Hawai'i's implied dedication doctrine, and omits legal and factual constraints that bear directly on the legality and permissibility of the Proposed Action.

II.F. Violation of the Will of Princess Bernice Pauahi Bishop and Breach of Fiduciary Duty

Petitioners allege that the Final Environmental Impact Statement ("FEIS") is legally deficient because it advances a proposed action that conflicts with the charitable trust purpose established by the Last Will and Testament of Princess Bernice Pauahi Bishop.

The Will expressly establishes that the Bishop Estate is to be held in trust and 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." (Ex. C-1.) This directive requires both "support and education," reflecting a combined obligation to provide for the care and well-being of beneficiaries in addition to educational instruction. Petitioners allege that this mandate reflects an intent that the trust itself bear responsibility for providing such support, rather than shifting that burden elsewhere. Petitioners further allege that this obligation encompasses not only educational instruction but also the broader care and well-being of beneficiaries consistent with the concept of "support" as expressed in the Will. The Will further limits the use and leasing of trust lands to actions taken "for the purposes aforesaid," thereby restricting the use of trust assets to those purposes expressly identified and prohibiting uses that are inconsistent with or unrelated to those purposes. (Ex. C-1.) The Will also imposes mandatory transparency obligations, requiring trustees to "make a full and complete report of all receipts and expenditures" and to provide an inventory of trust property and how it is invested, thereby ensuring accountability in the administration of trust assets. (Ex. C-1.)

Petitioners allege that these provisions impose binding fiduciary constraints on the trustees of the Bishop Estate, including duties of loyalty, prudence, and administration in accordance with the

purposes of the trust. See HRS §554D-801 (duty to administer the trust solely in the interests of the beneficiaries); HRS §554D-802 (duty to administer the trust as a prudent person would, considering the purposes, terms, and circumstances of the trust); and HRS §554D-404 (duty to administer the trust in good faith, in accordance with its terms and purposes). (Exs. A-3-5 through A-3-10.) Petitioners allege that these fiduciary duties require that the use of trust lands be consistent with the Will's directive to provide for the "support and education" of beneficiaries and limit the use of trust assets to purposes authorized by the trust instrument. Petitioners further allege that these duties prohibit the use of trust lands for purposes that do not directly advance or are not reasonably connected to the trust's charitable objectives as defined in the Will. Where trust lands are proposed for private commercial use, Petitioners allege that such use must be evaluated for consistency with these governing fiduciary obligations and the express purposes of the trust, including whether such use directly advances, is necessary for, or is reasonably related to fulfilling the trust's obligation to support and educate beneficiaries.

Petitioners allege that these provisions impose binding fiduciary constraints on the use of trust lands, including duties of loyalty, prudence, and administration in accordance with the trust's purposes under HRS Chapter 554D. (Exs. A-3-5 through A-3-10.)

Petitioners further allege that the publicly issued Kamehameha Schools Annual Report does not satisfy the Will's express reporting requirements. The materials produced as Exhibits B-3-1 through B-3-5 consist primarily of high-level summaries, graphics, and general financial categories, but do not provide a full accounting of receipts and expenditures, do not provide a complete inventory of trust assets, do not disclose how specific assets are invested, and do not demonstrate how trust funds are actually applied toward the required "support and education" of beneficiaries as mandated by the Will.

The FEIS record further reflects that Kamehameha Schools has asserted that there are "no existing revenue generating uses at [the] Bay to fund the needed stewardship" and that it does not wish "to drain on other endowment funds." (Ex. R-6-1; FEIS Vol. II, Appendix A, p. 2 [PDF p. 10].) Petitioners allege that this justification relies on a project-level revenue framing while omitting any disclosure of the broader financial condition of the trust, including the extent of its existing assets, revenues, and allocations. The FEIS contains no analysis demonstrating that the proposed resort development is necessary to fulfill the trust's obligations, nor does it reconcile the claimed need for project-generated revenue with the trust's existing resources or its duty to apply those resources toward the "support and education" of beneficiaries. Critically, this asserted financial justification appears only in comment-response materials and is not analyzed, quantified, or disclosed in the FEIS as part of the project's purpose and need, financial necessity,

or alternatives analysis, rendering the FEIS materially incomplete and misleading under HRS Chapter 343 and HAR §11-200.1.

Accordingly, because acceptance of a final environmental impact statement is a statutory condition precedent to agency approval under HRS §343-5(c), an FEIS that omits and fails to analyze the asserted financial justification relied upon to support the proposed development—and that otherwise fails to provide a complete and accurate record—cannot lawfully support agency approval or implementation and is subject to vacatur under HRS §343-5(c) and §343-7.

The FEIS contains no disclosure, analysis, or evaluation of whether the proposed conversion of trust lands at Keauhou Bay to private luxury bungalow resort use is consistent with these governing trust purposes or fiduciary obligations. It does not address whether such use directly advances the required support and education of beneficiaries, nor does it provide any trust-purpose analysis demonstrating compliance with the Will's express limitations. (Ex. C-1.)

The FEIS likewise omits any meaningful trust accounting or financial disclosure demonstrating that additional commercial development is necessary to fulfill the trust's charitable mandate, despite publicly available information reflecting substantial existing trust assets. (Exs. B-3-1 through B-3-5.) In the absence of such disclosure, the asserted reliance on revenue generation as justification for the proposed action remains unsupported.

Because the legality of the proposed action depends, in part, on whether Kamehameha Schools possesses lawful authority to use trust lands for the stated purpose, these omissions bear directly on the permissibility of the Project and the validity of agency reliance on the FEIS.

Accordingly, the FEIS is materially incomplete, misleading, and legally deficient where it advances a private commercial resort development on charitable trust lands without disclosing, evaluating, or reconciling: (1) the governing trust-purpose constraints imposed by the Will of Princess Bernice Pauahi Bishop (Ex. C-1); (2) the fiduciary obligations imposed under HRS Chapter 554D (Exs. A-3-5 through A-3-10); (3) the full scope of documented public input and community concern, including the petitions submitted as Exhibits M-26, M-27, and M-28; and (4) the accurate substance of comments contained in the administrative record, including those reflected in Exhibits R-6-2 through R-6-7.

Because an FEIS must provide full, accurate, and legally sufficient disclosure before it may serve as the basis for agency decision-making, these omissions and mischaracterizations preclude informed review and violate the requirements of HRS Chapter 343. Where an FEIS fails to disclose material legal constraints, fails to evaluate whether the proposed action is authorized

under governing trust law, and fails to accurately represent substantive public input contained in the administrative record, it cannot lawfully support approval or implementation of the Proposed Action.

Accordingly, acceptance of the FEIS—and any agency actions taken in reliance upon it—are subject to vacatur pursuant to HRS §343-5(c) and §343-7, and cannot lawfully support approval or implementation of the proposed development. Petitioners further request injunctive relief prohibiting any further development, land alteration, leasing, or commercialization of Keauhou Bay and the project area unless and until Respondents demonstrate, through competent evidence and full disclosure, compliance with the Will, applicable fiduciary duties, and the requirements of HRS Chapter 343.

Petitioners further request that, to the extent Respondents assert authority to develop, lease, or commercially utilize other trust lands, such activities be enjoined unless and until Respondents demonstrate, through competent evidence and full disclosure, that such actions are consistent with the Will and governing fiduciary obligations.

Petitioners further allege that where a charitable trust seeks to convert historically and culturally significant lands such as Keauhou Bay into private commercial resort use, its fiduciary duties require a demonstrated showing that such use is authorized by and consistent with the Will's mandate to provide for the "support and education" of beneficiaries. The FEIS contains no disclosure, analysis, or evidentiary support demonstrating that trust lands, including those at Keauhou II, have been or are being used in compliance with those purposes, nor does it provide any basis to conclude that the proposed development reflects lawful trust administration. The absence of such fundamental information raises serious concerns as to whether trust lands are being used in accordance with the Will and governing fiduciary obligations. Accordingly, Petitioners further request that lands held or administered by Kamehameha Schools be subject to appropriate investigation and review to determine whether such lands are being used in compliance with the Will and applicable fiduciary duties.

II.G. Unresolved Royal Patent and Title Concerns Regarding Keauhou II

Petitioners allege that unresolved historical and legal questions concerning title to Keauhou II preclude lawful advancement of development unless and until lawful ownership and authority are clearly established within the administrative record, because agencies may not approve land use, environmental impacts, or shoreline alterations based on incomplete or unverified title.

Historical land records demonstrate that title to Keauhou II originates from a Royal Patent issued to King Kamehameha V (Lot Kapuāiwa), granting land in North Kona known as Keauhou II to "Lota Kamehameha" in fee simple. (See Exs. B-4-1-1 through B-4-1-3.) Contemporaneous indices of Land Commission Awards further identify "Keauhou 2, N. Kona, Hawaii" as awarded to Kamehameha, Lota and associated with Royal Patent No. 7844. (See Ex. B-4-5-2.)

Petitioners further allege that spatial records maintained by the Office of Hawaiian Affairs ("OHA") KIPUKA Database identify the Land Award attributed to "Kamehameha, Lota" as located in North Kona within the ahupua'a of Keauhou II. (See Exs. B-4-6 and B-4-7.) The database records reflect that the Land Award is associated with Keauhou II; however, the mapped parcel representations consist of multiple non-contiguous areas and do not form a single, continuous land unit. (See Exs. B-4-6 and B-4-7.)

Petitioners further allege that these spatial records, while not themselves determinative of legal title, reflect that the lands associated with the Royal Patent appear as multiple separated parcels within the ahupua'a of Keauhou II, rather than a single continuous tract, and include areas within the ahupua'a that are not identified as part of the Land Award. (See Exs. B-4-6 and B-4-7.)

Petitioners allege that where the administrative record reflects incomplete or unverified title, agencies must disclose and examine those conditions before relying upon the land for purposes of approving development. Full, parcel-by-parcel chain-of-title disclosure is necessary to demonstrate lawful authority.

The FEIS does not include a chain-of-title analysis, parcel-level ownership disclosure, or reconciliation of the gaps reflected in the KIPUKA records, nor does it identify whether all lands implicated by the Proposed Action are supported by a clearly established chain of title. Petitioners allege that this omission renders the environmental review incomplete with respect to a foundational assumption underlying the Project.

Petitioners further allege that these title concerns are legally material under Hawai'i law. HRS Chapter 343 requires disclosure of underlying assumptions and legal constraints affecting a proposed action, and HRS § 1-1 preserves Hawaiian usage and common law principles requiring consideration of historical land tenure where relevant. Where title is uncertain or unexamined, meaningful environmental review cannot be completed.

Petitioners further allege that lands derived from Kingdom-era Royal Patents warrant careful and informed review. Congress has acknowledged through United States Public Law 103-150 that the overthrow of the Kingdom of Hawai'i was unlawful and did not extinguish Native Hawaiian

claims to their lands or sovereignty. (See Ex. A-4-20 and A-4-21.) President Grover Cleveland's Message to Congress of December 18, 1893 likewise recognized that a "substantial wrong" had been committed without the consent of the Hawaiian people. (See Exs. A-4-22 through A-4-26.) This historical context underscores the need for careful examination of asserted title where questions remain.

Petitioners further allege that, in light of these acknowledgments that the overthrow of the Kingdom of Hawai'i was unlawful and that Native Hawaiian claims were not extinguished, lands derived from Royal Patents require full investigation and verification of title, authority, and lawful succession before any reliance, development, or agency approval may proceed.

Petitioners further allege that agencies must complete required analysis prior to approval. In *Ka Pa'akai O Ka 'Āina v. Land Use Commission*, the Hawai'i Supreme Court held that agencies may not defer their obligations and must address them at the time of decision-making. (See Exs. A-4-27 through A-4-28.)

Consistent with that principle, while the United States Supreme Court in *Hawai'i v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009), held that the Apology Resolution does not itself create enforceable substantive rights or restrict the State's authority to alienate lands, the Court nevertheless recognized that the dispute arose from claims described as "unrelinquished" and grounded in the historical circumstances surrounding the overthrow. (See Exs. A-4-30 through A-4-33.) Petitioners do not rely on the Apology Resolution as an independent source of title or legal restraint; rather, it is presented, together with contemporaneous historical acknowledgments, as relevant context demonstrating that questions concerning the origin, status, and disposition of certain lands remain subject to dispute and therefore require careful and informed review before agency action is taken.

Petitioners further allege that Hawai'i courts recognize that lands derived from Royal Patents and Land Commission Awards may present questions of title, heirship, and ownership requiring examination. In *Makapono Partners, LLC v. Simeona*, the court addressed competing claims arising from a Land Commission Award and Royal Patent and required judicial resolution of competing claims of title and heirship arising from a Land Commission Award and Royal Patent.. (See Exs. A-4-34 through A-4-39.) Petitioners cite *Makapono* as persuasive authority illustrating that such claims do not establish ownership in perpetuity and may require proof through proper chains of title and competing interests where credible questions are present.

Petitioners further allege that modern Hawai'i law, including HRS §532-8 governing intestate succession, reflects a policy recognizing inheritance rights among descendants, demonstrating

that issues of heirship and succession are legally significant and cannot be disregarded where title is at issue. (See Ex. A-4-44.)

Petitioners further allege that publicly available genealogical and historical materials identify individuals claimed by some sources to be biological descendants of Lot Kapuāiwa. Petitioners do not assert that such lineage has been adjudicated; however, the existence of such materials demonstrates that potential heirship claims exist and were not considered or addressed in the administrative record. For example, historical and secondary sources describe Keanolani as the daughter of Abigail Maheha and Lot Kapuāiwa Kamehameha V, while also acknowledging that her parentage was not formally recognized or adjudicated. Additional genealogical records similarly identify individuals such as Sarah Kapamaikela Makahilahlia Kamehameha as descendants of Lot Kapuāiwa Kamehameha V. These materials, while not determinative of legal title, demonstrate that multiple sources identify potential lines of descent associated with Kamehameha V, the holder of the Royal Patent for Keauhou II. (See Exs. B-23, B-4-4-1, B-4-4-2, and B-4-4-3.)

Petitioners allege that where credible historical, spatial, and genealogical materials raise questions concerning succession, heirship, or chain of title, agencies have a duty to disclose and examine those issues before approving development. HRS §172-11 reflects the principle that title derived from Land Commission Awards and Royal Patents must rest upon a valid and demonstrated foundation. Petitioners further allege that the FEIS contains no disclosure or analysis addressing whether any potential heirs or lines of descent associated with the Royal Patent were identified, evaluated, or considered. The absence of such analysis reflects a failure to address legally relevant questions of succession and title prior to approval. (See Ex. A-1-22.)

Petitioners further allege that these unresolved title issues bear directly on whether lawful authority has been established to proceed with the Proposed Action. Where such authority has not been demonstrated within the administrative record, agency approval may be subject to judicial review and appropriate relief.

Petitioners therefore respectfully request that the Court order a formal and independent investigation into the chain of title, historical ownership, and lawful authority underlying Keauhou II, including review of the Royal Patent, subsequent conveyances, succession, and any unresolved historical issues affecting title.

Petitioners further request that lands held or administered by Kamehameha Schools that derive from Royal Patents or Land Commission Awards be subject to appropriate title review, and that commercial development, land alteration, permitting activity, and agency approvals affecting

such lands be stayed or enjoined unless and until Respondents demonstrate, through competent documentation and full disclosure within the administrative record, that lawful title and authority have been clearly established. Petitioners further allege that, as a charitable trust, Kamehameha Schools is bound by the highest fiduciary duties to ensure that all lands it administers are lawfully held, properly verified, and managed in strict accordance with its governing obligations. The absence of any disclosed investigation, verification, or analysis of title, succession, or authority with respect to the Keauhou II lands—particularly where those lands derive from Royal Patents and Land Commission Awards—raises serious concerns regarding whether those fiduciary duties have been satisfied. Petitioners further allege that where such foundational issues are not examined or disclosed in connection with one project, it reasonably calls into question whether similar deficiencies may exist with respect to other lands held or administered under the same asserted authority. Under these circumstances, Petitioners respectfully request that this Court require a clear, documented, and verifiable showing of lawful title and authority before permitting any further development, and that the administration and use of such lands he subject to careful and searching judicial scrutiny to ensure compliance with fiduciary duties, governing law, and the obligations attendant to trust-held lands.

Accordingly, Petitioners request injunctive and declaratory relief as the Court deems just and proper to ensure that development does not proceed in the absence of demonstrated lawful title, authority, and compliance with applicable law.

Petitioners further request that all lands held or administered by Kamehameha Schools that derive from Royal Patents or Land Commission Awards be subject to comprehensive chain-of-title investigation and verification, and that Respondents be required to demonstrate, through competent evidence and full disclosure, the complete and lawful chain of title supporting their asserted authority over such lands, as well as that such lands are being used and administered in compliance with the terms of the Will and applicable fiduciary obligations.

.II.G.(1) Individual Responsibility for Unlawful Reliance on Unverified Title and Failure of Duty

Petitioners further allege that Respondents Jeff Darrow, Marissa Harman, and Kawika McKeague each bear individual responsibility for advancing, approving, and relying upon an environmental review that failed to disclose, examine, or verify lawful title and authority for lands within Keauhou II, despite the presence of credible historical, spatial, and legal evidence demonstrating unresolved chain-of-title concerns. As senior officials and professional preparers responsible for environmental review, disclosure, and agency reliance, these Respondents had an affirmative, non-delegable duty to ensure that the Final Environmental Impact Statement

("FEIS") accurately disclosed all legal constraints, underlying assumptions, and authority affecting the proposed action before permitting development or agency approvals to proceed.

Petitioners allege that Director Jeff Darrow, acting in his official capacity, unlawfully accepted and relied upon the FEIS as a basis for continued agency action despite the absence of any parcel-by-parcel title verification or demonstration of lawful authority within the administrative record, thereby exceeding his statutory authority and breaching his duty to ensure lawful compliance with HRS Chapter 343 and the Hawai'i Constitution.

Petitioners further allege that Marissa Harman, acting on behalf of Kamehameha Schools, knowingly advanced and certified an FEIS that omitted disclosure of unresolved title ambiguity within Keauhou II, despite her direct involvement in project coordination and awareness of the Kingdom-era origins of the lands at issue, thereby facilitating agency reliance on an incomplete and misleading environmental document.

Petitioners further allege that Kawika McKeague, acting in his professional and official capacity through G70, prepared, coordinated, and submitted an FEIS that failed to identify, map, or analyze the complete chain of title for all lands affected by the proposed action, despite the availability of public OHA spatial records demonstrating visible gaps and unresolved ownership, thereby breaching professional duties of accuracy, completeness, and good-faith disclosure required under HRS Chapter 343 and HAR §11-200.1.

Petitioners allege that the combined actions of Darrow, Harman, and McKeague reflect a pattern of knowing disregard for mandatory disclosure obligations and a willingness to proceed with development in the absence of lawful authority, resulting in an environmental review that is materially misleading, legally deficient, and incapable of supporting valid agency action.

II.H. Interference With Community, Cultural, and Beneficiary Rights Through Retaliatory and Biased Conduct

Petitioners allege that Respondent Kamehameha Schools engaged in prejudicial, biased, and retaliatory conduct designed to suppress community expression and opposition to its proposed bungalow resort development at Keauhou Bay, and to interfere with lawful Hawaiian cultural and community gatherings occurring on trust, shoreline, and Hawaiian Endowed Lands, in Keauhou Bay.

Petitioner Rebecca Melendez participated in and helped organize a Hawaiian and broader community awareness event held at Keauhou Bay North Park for the purpose of educating the

public about the proposed Kamehameha Schools bungalow resort development. The intention of the event was to mālama Keauhou Bay.

This event included live Hawaiian music by Maka Gallinger and her 808 'Ohana, and a community photo-sharing effort organized by Petitioner Rebecca Melendez, who provided a photo booth with a prominently displayed "Save Keauhou Bay" banner as the backdrop. Community members were encouraged to take and share photographs to raise awareness and foster public engagement regarding the future of Keauhou Bay. Photographic documentation of this event is attached as Exhibit B-9.

Petitioners allege that this event was peaceful, lawful, culturally grounded, and consistent with long-standing community use of Keauhou Bay for gathering, expression, education, and cultural practice.

Petitioners further allege that Native Hawaiians are the intended beneficiaries of Hawaiian Endowed Lands, which Kamehameha Schools is obligated to steward for the benefit of the Hawaiian people pursuant to the Will of Princess Bernice Pauahi Bishop. As trustee, Kamehameha Schools holds these lands in a fiduciary capacity and may not condition access, impose burdens, or extract fees from Hawaiian beneficiaries in a manner inconsistent with the trust's charitable purpose.

Petitioners are informed and believe that in or about April 2024, community member and Hawaiian beneficiary Nolen Kahulamu lawfully reserved Keauhou Bay North Park for another Hawaiian community event, in which Petitioner Rebecca Melendez was again involved, and that Mr. Kahulamu was required to pay a $130 reservation deposit to use a park located on Kamehameha Schools' lands. Petitioners allege that charging Hawaiian beneficiaries a fee to access and use Hawaiian Endowed Lands for lawful cultural and community purposes is inconsistent with the fiduciary obligations of a charitable trust created for the benefit of the Hawaiian people.

Petitioners allege that after a reservation for a community event was accepted and a required $130 deposit was paid, an individual who identified himself as acting on behalf of Kamehameha Schools, believed to possibly be named "Wally," contacted the reserving party by telephone approximately three days before the scheduled event and canceled the reservation. Petitioners further allege that the cancellation was expressly stated to be based on opposition to Kamehameha Schools' proposed development at Keauhou Bay. Petitioners further allege that the $130 reservation deposit was not refunded.

Petitioners allege that this cancellation was not based on neutral criteria, safety concerns, or legitimate scheduling conflicts, but instead constituted viewpoint-based discrimination and retaliation against Hawaiian beneficiaries and community members who opposed Kamehameha Schools proposed development.

Petitioners further allege that when Petitioner Daisy Mitchell attempted to organize an additional event at Keauhou Bay, at the Keauhou Canoe Club, in or about December 2024, following the initial awareness gathering, she did so after Kamehameha Schools had canceled a prior park reservation for a Hawaiian community event, and in an effort to hold a mālama Keauhou Bay gathering at an alternative location within Keauhou Bay. Petitioners allege that despite having secured a reservation with the Keauhou Canoe Club, the Canoe Club informed Ms. Mitchell that the event had to be canceled after Kamehameha Schools became aware that Petitioners were attempting to hold another mālama Keauhou Bay event in Keauhou Bay through the Canoe Club, and that, as a result, the Canoe Club was informed by Kamehameha Schools that the event could not proceed. See Declaration of Daisy Mitchell, ¶¶ 3–6 (Exhibit C-2).

Petitioners allege that Kamehameha Schools, as trustee of Hawaiian Endowed Lands, lacks legal authority under Hawai'i law to deny, suppress, or interfere with community and cultural gatherings based on opposition to its proposed bungalow resort development. Hawai'i law expressly adopts common-law trust principles and recognizes Hawaiian usage as a source of enforceable law. HRS § 1-1 (Ex. A-1-20). The Hawai'i Constitution further mandates the protection of public trust resources and the preservation of traditional and customary Native Hawaiian rights. (Exs. A-1-10; A-1-14.)

The Hawai'i Supreme Court has confirmed that customary and traditional Hawaiian rights grounded in Hawaiian usage exist independent of statutory codification and must be meaningfully protected in land-use, shoreline, and community contexts. Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission (PASH) (Exs. A-4-18–A-4-19).

Hawai'i courts further recognize that longstanding and continuous public use of shoreline access routes and coastal pathways establishes protected public rights-of-way and public thoroughfares. In Gold Coast Neighborhood Ass'n v. State, the court confirmed that coastal access routes used by the public for decades to access the shoreline, ocean, and recreational resources constitute public thoroughfares subject to protection under Hawai'i law. (Exs. A-4-7; A-4-8; A-4-11; A-4-12; A-4-16.) These protections apply regardless of whether such access originated on private land, where the public has been permitted to use such areas continuously over time.

Additionally, Hawai'i law recognizes that longstanding community use of shoreline areas and coastal access routes—including gatherings, recreational use, and public assembly—are protected under principles of public access, common law, and statutory rights-of-way, and may not be arbitrarily restricted or interfered with. (Exs. A-1-20; A-4-7; A-4-8; A-4-11; A-4-12; A-4-16.)

Accordingly, where community gatherings, cultural practices, and shoreline access are exercised in connection with Keauhou Bay, those uses are protected under Hawai'i law, and neither Kamehameha Schools nor any private or quasi-private entity acting as trustee may lawfully restrict, interfere with, or suppress such activities based on their viewpoint, content, or opposition to proposed development. Petitioners allege that the denial of such activities under these circumstances constitutes unlawful and improper conduct.

Petitioners further allege that the Will of Princess Bernice Pauahi Bishop establishes Hawaiian Endowed Lands as a charitable trust to be administered for the benefit of the Hawaiian people, and that Kamehameha Schools, as trustee, is bound by fiduciary duties of loyalty, impartiality, and good-faith administration. Petitioners allege that using control over trust and shoreline lands to suppress, cancel, or interfere with community and cultural events because those events oppose a private development proposal constitutes ultra vires conduct *(i.e., action taken beyond the scope of lawful trustee authority)* and fiduciary overreach, represents impermissible partiality and retaliation, and exceeds any lawful authority granted by the trust.

Petitioners allege that denying access to, or canceling, community and cultural gatherings based on viewpoint unlawfully interferes with these constitutionally protected rights and does not constitute lawful regulation. Conditioning access to Hawaiian Endowed Lands or community facilities on support for, or non-opposition to, Kamehameha Schools' private development proposal constitutes unlawful prejudice, retaliation, and misuse of trustee authority. Petitioners allege that, by denying and interfering with opposition events related to the proposed bungalow resort development, Kamehameha Schools has acted contrary to Hawai'i law, the Pauahi Will, and its fiduciary and constitutional obligations owed to the Hawaiian people and the community.

Petitioners further allege that the foregoing conduct warrants disciplinary and remedial action because it reflects a pattern of unlawful, retaliatory, and prejudicial use of trustee authority inconsistent with the duties owed under Hawai'i law and the Will of Princess Bernice Pauahi Bishop. Hawai'i law requires that a trust be administered solely in the interests of its beneficiaries, in good faith, and in a manner consistent with the purposes of the trust. (Exs. A-3-6; A-3-7; A-3-8.) Trustees are further required to administer the trust with reasonable care, skill,

and caution, and to take reasonable steps to protect and preserve trust property. (Exs. A-3-7; A-3-9.)

Petitioners allege that Kamehameha Schools' actions demonstrate a failure to adhere to these fiduciary obligations, including duties of loyalty, impartiality, and prudent administration, and instead reflect the use of trustee authority in a manner inconsistent with the interests of beneficiaries and the proper purposes of the trust. Hawai'i law further provides that trust administration must be consistent with lawful purposes and not contrary to public policy. (Ex. A-3-5.)

Petitioners further allege that such conduct constitutes misuse of control over Hawaiian Endowed Lands to suppress lawful community and cultural expression, rather than to benefit the trust and its beneficiaries as required by law. Accordingly, Petitioners seek the removal of trustees who have violated these fiduciary and legal obligations, along with appropriate disciplinary review, corrective measures, and equitable relief necessary to prevent further violations, ensure compliance with constitutional and fiduciary duties, and protect the rights of the Hawaiian people and the community going forward.

II.I. Material Misrepresentation and Unlawful Expansion of Project Scope (101 Units vs. 150 Units)

Petitioners allege that the FEIS is legally deficient because it advances a project scope that materially differs from the baseline disclosed during the Environmental Impact Statement Preparation Notice ("EISPN") process, undermining informed public participation and informed agency decision-making.

The administrative record confirms that, at the EISPN stage, the County Department of Water Supply advised the applicant that only 101 units of water were assigned to the project pursuant to an executed Water Agreement, and that any additional water would be subject to future approval. The Department further documented that existing services already exceed meter capacity and required professional engineering demand calculations before appropriate service could be determined. (Exs. B-6-1, B-6-2.)

That same limitation appears again within the FEIS record. In the FEIS comment-response table, the Department reiterates that only 101 units of water are assigned and that additional water would require further approval. (Ex. B-7-1.)

Yet in that same FEIS record, Respondents acknowledge that the Project will result in water demand equivalent to approximately 240 water credits, and state that they are "working with" the

Department of Water Supply to obtain additional credits. (Ex. B-7-1.) Respondents further indicate that water issues will be addressed through future coordination, design measures, and post-approval submissions rather than through confirmed availability at the time of environmental review. (Ex. B-7-2.)

Separately, the FEIS's own project description states that the proposed low-impact lodging is designed to accommodate a total of 150 units. (Ex. B-8.)

The record therefore establishes three undisputed facts:

1. Only 101 units of water were assigned at the time of scoping;
2. The FEIS advances a 150-unit lodging project; and
3. Respondents acknowledge the project's water demand exceeds existing allocations and depends on speculative future approvals.

This discrepancy is material. A 150-unit project with water demand equivalent to approximately 240 credits represents a substantially more intensive development than the project disclosed during scoping. Yet the FEIS does not reconcile this inconsistency, does not demonstrate that sufficient water resources are lawfully available for the project as proposed, and does not evaluate the environmental consequences of proceeding at this expanded scale.

Under HRS Chapter 343 and HAR §11-200.1, an environmental impact statement must accurately describe the proposed action and may not proceed on shifting, incomplete, or misleading project parameters. Because the FEIS advances a materially different project than the one disclosed during the EISPN process, the environmental review fails to evaluate the actual project being proposed. The FEIS is therefore misleading, materially incomplete, and legally invalid, and agency actions taken in reliance upon it must be reversed and prohibited pursuant to HRS §343-7(c).

The record further reflects that senior decision-makers responsible for advancing the FEIS necessarily had access to these inconsistencies before the document was finalized and accepted. The FEIS itself contains, within its own volumes, (1) the Department of Water Supply's confirmation that only 101 units of water were assigned, (2) Respondents' admission that the Project's water demand substantially exceeds that allocation, and (3) the Project description confirming a 150-unit lodging proposal. (Exs. B-6-1, B-6-2, B-7-1, B-7-2, B-8.) As officials charged with reviewing, overseeing, and approving the adequacy of the FEIS, Respondents Kawika McKeague and Marissa Harman had a professional duty to identify and resolve material

inconsistencies within the document before advancing it for acceptance. Nevertheless, the FEIS was finalized and presented for agency action without correcting these contradictions or disclosing their legal significance, thereby perpetuating a materially misleading environmental review.

This section addresses the material inconsistency within the FEIS itself and the resulting failure of the environmental review to accurately disclose and evaluate the proposed action. Petitioners address the roles, responsibilities, and conduct of specific Respondents in advancing and submitting the FEIS, including their knowledge of these inconsistencies, in the sections that follow.

II.I (1). Failure to Identify, Disclose and Analyze Endangered and Threatened Species and Critical Habitat (Public Trust Violation; Failure to Take a "Hard Look"; Ka Pa'akai Deferral)

Petitioners allege that the Final Environmental Impact Statement ("FEIS") is unlawful because it fails to identify, disclose, and analyze endangered and threatened species and associated habitat within Keauhou Bay and the Project Area, and therefore fails to satisfy the State's heightened public trust obligations and its duty to take a reasoned, informed "hard look" at environmental consequences before approving the Proposed Action.

The Hawai'i Supreme Court has held that where public trust resources are implicated, agencies bear an affirmative obligation to protect those resources and must exercise a high duty of care grounded in a thorough understanding of existing conditions and potential impacts. Agencies may not proceed on the basis of incomplete information, assumptions, or deferred analysis. Endangered and threatened species using nearshore marine and coastal environments are among the most protected public trust resources under Hawai'i law.

Here, the FEIS acknowledges that the Proposed Action is located within a coastal and nearshore marine environment subject to shoreline regulation and public trust protections, yet it does not establish adequate baseline biological conditions for endangered and threatened species. The FEIS states that consultant surveys "found no species listed as threatened or endangered by state or federal statutes on any of the Project parcels," while separately acknowledging that listed marine species are present in Kona waters and may utilize the shoreline and nearshore environment. See Exhibits B-14-1 through B-14-2 (FEIS Vol. I).

Most notably, the FEIS expressly acknowledges that endangered and threatened marine species are regularly reported in the region, stating:

"Both endangered Hawaiian monk seals (*Monachus schauinslandi*) and the threatened Pacific green sea turtle (*Chelonia mydas*) are regularly reported from Kona waters (David, 2022). Although unlikely, either species could haul out along the shoreline close to the dock or by the beach landing."
(Exhibit B-14-3, FEIS Vol. I at p. 4-102).

This characterization is contradicted by real-world observations. Exhibit B-17-1 documents a Hawaiian monk seal hauled out on the beach landing at Keauhou Bay, directly contradicting the FEIS's assertion that such use of the shoreline is "unlikely." Exhibit B-17-2 further documents a green sea turtle actively swimming within Keauhou Bay, confirming regular in-bay use of the nearshore marine environment by a threatened species.

The FEIS refers to the Hawaiian monk seal using the former taxonomic designation "*Monachus schauinslandi.*" Current federal scientific authorities, including NOAA Fisheries, classify the species as "*Neomonachus schauinslandi.*" Although the species' protected status is unchanged, the FEIS's reliance on outdated nomenclature—when coupled with its characterization of shoreline use as "unlikely"—demonstrates a lack of reasonable diligence in incorporating current scientific understanding into the environmental review. This outdated framing, contradicted by documented real-world shoreline use at Keauhou Bay, underscores the FEIS's failure to meaningfully evaluate existing conditions and reflects a disregard for contemporary scientific information required to support informed decision-making. *See* Exhibits B-14-3, B-17-1, B-18-4, and B-18-6.

In addition, Exhibits B-18-1 and B-18-2 consist of publicly available informational sources documenting that Hawaiian waters—including nearshore environments such as Keauhou Bay—are recognized habitat for protected marine species including Hawaiian monk seals, sea turtles, and other marine wildlife, and that manta rays are known to congregate and feed in the waters off Keauhou Bay. These sources confirm that Keauhou Bay is not merely a transit area, but an actively used nearshore marine environment for protected species.

Petitioners further allege that publicly available information confirms that Keauhou Bay is a uniquely sensitive marine environment and a well-documented aggregation area for manta rays, commonly known as "Manta Village," where artificial lighting attracts plankton and supports predictable manta ray feeding behavior (Ex. B-18-2; B-18-11). Scientific and agency sources further establish that land-based pollution—including sedimentation, nutrients, and contaminants—directly degrades coral reef ecosystems, disrupts plankton dynamics, and impairs the marine food web upon which manta rays depend (Ex. B-18-12; B-18-13). These impacts are particularly significant in coastal systems such as Keauhou Bay, where runoff and water quality

degradation can alter the ecological conditions necessary to sustain nearshore species and their feeding patterns. Collectively, these exhibits demonstrate that the environmental baseline is both sensitive and already subject to stressors, requiring careful and accurate analysis of additional impacts before any development is advanced.

Despite this information, the FEIS does not identify manta rays at all, does not evaluate their use of Keauhou Bay, and does not analyze how shoreline modification, artificial lighting, increased nighttime activity, vessel traffic, or long-term resort operations may affect species known to utilize the bay's nearshore waters. The absence of any discussion of manta rays is particularly notable given the FEIS's acknowledgment of protected marine species presence in Kona waters and the project's direct interface with the shoreline and marine environment.

The FEIS's Biological Assessment further demonstrates this deficiency. While acknowledging that listed species may transit or utilize the general area, the FEIS relies on generalized precautionary measures triggered only if a species is encountered during construction and concludes that no listed species were found on the project parcels. See Exhibits B-16-1 through B-16-4 (FEIS Vol. III, Appendix K). This approach substitutes reactive monitoring for the required upfront analysis of impacts to protected species and habitat.

Public comments raised concerns regarding marine species, shoreline habitat use, and nearshore water quality impacts. Rather than undertaking additional species-specific analysis, the FEIS responses rely on generalized assurances regarding future best management practices and permitting. See Exhibits B-15-1 through B-15-5 (FEIS Vol. II).

This approach mirrors the deficiency condemned by the Hawai'i Supreme Court in *Waiāhole Ditch*, where the Court held that agencies violate their duty when they proceed without first obtaining and evaluating the information necessary to understand environmental impacts. Uncertainty does not excuse agency action; it heightens the duty of caution.

The FEIS's treatment of endangered and threatened species is also inconsistent with the analytical framework required under *Ka Pa'akai*, which mandates that impacts to protected resources be identified, evaluated, and addressed at the environmental review stage—not deferred to later discretionary approvals.

These failures are compounded by the FEIS's fragmented structure, which disperses biological information across multiple appendices without synthesizing a single, project-specific analysis of endangered and threatened species impacts. See Exhibit B-13 (FEIS Vol. III Table of Contents).

Accordingly, Petitioners allege that Respondents unlawfully accepted and relied upon an FEIS that fails to satisfy the State's high duty of care, fails to take a hard look at endangered and threatened species and habitat impacts, and improperly defers essential analysis in violation of Hawai'i's public trust doctrine, HRS Chapter 343, and HAR Chapter 11-200.1. These deficiencies render the FEIS misleading, materially incomplete, and incapable of supporting lawful agency action.

Endangered Species Act obligations further highlight the relevance of the information reflected in Exhibits B-18-7 through B-18-10 to the FEIS's duty to identify and analyze impacts to endangered and threatened species and their habitat.

The Endangered Species Act ("ESA") was enacted to halt and reverse species extinction caused by "economic growth and development untempered by adequate concern and conservation," and to ensure that "the ecosystems upon which endangered species and threatened species depend may be conserved." These mandates impose a substantive, non-discretionary duty on federal agencies, which—through consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries—must ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. See Exhibit B-18 at B-18-8–10.

Publicly available federal and state sources documenting protected marine species present in Hawaiian waters and associated with nearshore environments—including those reflected in Exhibits B-18-7 through B-18-10—underscore that endangered and threatened species protection is ecosystem-based and forward-looking, and cannot be satisfied by assumptions, minimization, or deferral of analysis. The FEIS's failure to meaningfully identify, analyze, and disclose endangered and threatened species use of Keauhou Bay is incompatible with these statutory requirements and reinforces Petitioners' claims that the environmental review did not take the required hard look at impacts to protected species and their habitat.

Petitioners further allege that Respondents unlawfully accepted and relied upon an FEIS that minimizes or omits documented real-world use of Keauhou Bay by protected marine species, as confirmed by photographic evidence and publicly available informational sources regarding marine species associated with Keauhou Bay. *See* Exhibits B-17 and B-18.

Accordingly, Petitioners further allege that Respondents Jeff Darrow, Kawika McKeague and Marissa Harman acting in their respective official capacities, unlawfully participated in the preparation, submission, review, and acceptance of the FEIS despite its failure to identify, disclose, and analyze endangered and threatened species and habitat within Keauhou Bay. By

accepting and relying upon an FEIS that characterizes protected species use of the bay as unlikely while omitting or deferring required analysis of known nearshore conditions, these Respondents failed to ensure compliance with Hawai'i's public trust obligations and the requirement that environmental impacts be meaningfully evaluated at the FEIS stage, rendering the agency action unlawful.

II.J. Failure to Analyze Existing Infrastructure and Resource Capacity Constraints Affecting Hawai'i Island (Cumulative Impacts; Public Trust; Waiāhole Ditch, 94 Hawai'i 97 (2000)

Petitioners allege that the Final Environmental Impact Statement ("FEIS") fails to disclose, evaluate, and analyze existing islandwide infrastructure and resource capacity constraints, despite publicly documented evidence that Hawai'i Island's essential systems are already operating under significant and increasing strain. These existing conditions constitute baseline environmental facts that must be meaningfully considered in environmental review.

Petitioners incorporate by reference Exhibits M-1 through M-17, which consist of publicly reported sources documenting systemic limitations affecting Hawai'i Island's infrastructure and public resources, including but not limited to solid waste disposal, water supply, wastewater treatment, energy availability, transportation, and emergency services. These sources demonstrate that Hawai'i Island is not operating from a position of surplus capacity and that cumulative demands already place stress on essential systems.

Petitioners allege that the FEIS's failure to analyze these documented baseline conditions and cumulative impacts renders it misleading, materially incomplete, and unlawful. By proceeding as though adequate capacity exists without substantiating that assumption, Respondents failed to conduct the reasoned and informed analysis required under HRS Chapter 343, HAR Chapter 11-200.1, and the Hawai'i Supreme Court's public trust jurisprudence, including *In re Water Use Permit Applications (Waiāhole Ditch)*, 94 Hawai'i 97 (2000).

1. Existing baseline conditions trigger the State's "high duty of care"

The Hawai'i Supreme Court has held that agencies owe a high duty of care and must base decisions on a reasoned and informed analysis. In Waiāhole Ditch, the Court held that the agency violated its legal duty where it failed to meaningfully consider the impacts of its decision, explaining that "nowhere in its decision ... did the Commission fulfill its duty to consider the impact." 94 Hawai'i at 141–143. Excerpt from Waiāhole Ditch is included as Exhibit A-4-17.

Here, the baseline conditions documented in public reporting demonstrate that Hawai'i Island's essential systems are already operating under visible stress:

(a) Solid waste and landfill limitations.
Public reporting confirms that Hawai'i Island relies heavily on the West Hawai'i Sanitary Landfill and that landfill capacity and long-term waste planning are unresolved issues. Big Island Now reports that the landfill is forecast to reach capacity within approximately 20 to 25 years. See Ex. M-1.

A follow-up poll confirms community concern and the absence of a single solution. See Ex M-2.

Public reporting further documents county discussions of ordinances to divert recyclables to slow capacity loss. See Ex M-3.

Historical reporting highlights the practical reality that siting new landfills is difficult and politically contested. See Ex M-4.

Additional reporting describes broader statewide waste-management pressures, including stalled waste-to-energy efforts. See Ex M-5.

Recent reporting further confirms waste restrictions affecting operations at the East Hawai'i Regional Sort Station. See Ex M-6.

And Hawai'i Public Radio reports long-term ongoing challenges in Hawai'i Island waste handling and hauling. See Ex M-7.

These facts raise a fundamental cumulative impact issue: the FEIS fails to disclose or analyze how increased waste generation from additional resort and development approvals will be managed where long-term landfill replacement and diversion solutions remain unresolved.

(b) Traffic safety and fatalities.
Public reporting confirms rising traffic safety risks and fatality concerns statewide, underscoring the danger of approving major growth without adequate roadway capacity and safety infrastructure. See Ex. M-8. Community reporting further reflects public concern regarding traffic fatality trends and increasingly dangerous roadway conditions. See Ex. M-9-1 and M-9-2. Additional reporting confirms that congestion on Hawai'i Island is persistent and locally recognized, including along the Kona corridor where the two-lane roadway through Kainaliu is

described as "often congested," resulting in what locals refer to as the "Kainaliu crawl." See Ex. M-30. Statewide reporting further acknowledges that Hawai'i's roadway infrastructure is inadequate to meet current demand and is experiencing overuse and heavy traffic conditions, reinforcing that existing systems are already strained prior to additional development. See Exs. M-31-1 and M-31-2. Public petition evidence further reflects substantial community concern regarding the impacts of increased development on roadway capacity, traffic congestion, and public safety, including specific concerns that additional resort development will increase vehicle volumes and strain already limited access routes in the Keauhou Bay area. See Ex. M-28-1 and M-28-2.

(c) Power outages and grid instability.

Reliable electricity is essential to water delivery, communications, healthcare, and emergency response. Public reporting confirms recurring outage alerts and power reliability concerns affecting large numbers of customers. See M-10.

Spectrum News reports that customers on Hawai'i Island are being urged to reduce electricity use due to constrained generation capacity and that rolling outages may occur when supply cannot meet demand. (Ex. M-11.) The article's "What You Need To Know" section states:

"Hawaii Island customers may see alerts asking them to conserve energy, especially on days when there isn't much wind that generates up to 15% of electricity.

When alerts are issued, Hawaiian Electric is asking customers to take immediate action to minimize electricity use.

Even when no alerts are issued, customers — including hotels and large retailers — are urged to reduce electricity use as much as possible, especially between 5 and 9 p.m. on weekdays.

If there is not enough electricity to meet demand, Hawaiian Electric may initiate rolling outages of up to an hour around the island."

Big Island Video News reports rolling outages and reduced generator output conditions. See Ex M-12.

(d) Water conservation and supply stress.

Drought monitoring underscores existing water supply vulnerability during dry conditions. See Ex. M-13.

Public reporting confirms conservation notices, essential-needs advisories, and warnings that supply may not sustain demand without reduced usage. See Exs. M-14, M-15, M-16.

Public reporting further confirms unresolved governance and protection concerns regarding critical water resources. As reported, "Alameda is also hoping the county retains oversight of the **Keauhou aquifer, which the state is looking to designate as a conservation area.**" See Ex M-17.

These sources establish that Hawai'i Island is not operating from a position of surplus capacity. The baseline reality is existing stress and limitation across multiple essential systems.

2. Under *Waiāhole*, Existing Conditions Require Careful Evaluation and Protection Under Applicable Law

Waiāhole makes clear that when information before the agency demonstrates uncertainty, existing degradation, or risk to public trust resources and public safety, the State must err on the side of protection. The Hawai'i Supreme Court recognized that "[w]here scientific evidence is preliminary and not yet conclusive ... it is prudent to adopt 'precautionary principles' in protecting the resource," and that "lack of full scientific certainty should not be a basis for postponing effective measures to prevent environmental degradation." The Court further explained that "where uncertainty exists, a trustee's duty to protect the resource mitigates in favor of choosing presumptions that also protect the resource." (*Waiāhole*, 94 Hawai'i 97 (2000); Exs. M-22, M-23, M-24.)

Here, the FEIS fails to meaningfully analyze how the proposed Keauhou Bay bungalow resort would add cumulative demand to already strained systems, including landfill capacity, traffic safety, grid reliability, and water supply vulnerability. By failing to confront existing baseline constraints, the FEIS presents a misleading impression of available capacity and shifts risk onto the public.

The administrative record itself confirms that essential baseline data are missing. The FEIS expressly acknowledges that there is "no comparison between the current impervious surface coverage and that proposed, and as such there is no data presented on which to develop an appropriate level of mitigation." (Ex. M-19.) This is not a minor technical omission; it is a foundational defect. Without an accurate baseline, neither impacts nor mitigation can be meaningfully evaluated.

The surrounding record further confirms that existing degradation and environmental risk are already present. The FEIS documentation describes sedimentation, nutrient transport, and water quality concerns that extend beyond Ho'okūkū Pond and affect Keauhou Bay more broadly, noting that "there is no documentation suggesting that the sedimentation or excessive nutrients

... are limited to Ho'okūkū Pond, and the condition of Ka'ili'ilinehe Beach suggests sedimentation impacts are more widespread." (Ex. M-18.)

An independent technical commenter within the FEIS record further explains that baseline studies have not been adequately completed, stating that the 2016 study "might be appropriate to consider as a baseline study, which is particularly important to assess conditions and impacts," and concluding unequivocally:

"However, without the foregoing analysis, it is nearly impossible to determine the extent of project impacts on Keauhou Bay marine resources."
(Ex. M-21.)

Despite these acknowledged deficiencies, Respondents' response does not cure the defect. Rather than supplying the missing baseline comparison or conducting the analysis identified as necessary, the response relies on generalized assurances regarding future stormwater design, anticipated best management practices, and future regulatory compliance. (Ex. M-20.) Such assurances do not substitute for the reasoned, informed analysis required at the FEIS stage. Deferring meaningful analysis to later phases improperly shifts environmental risk to the public and reflects a failure to ensure that the record contained the information necessary to support a lawful, informed approval decision.

Under *Waiāhole*, where the record itself demonstrates uncertainty, missing baseline data, and existing degradation, the State's duty is heightened, not relaxed. The failure to resolve these acknowledged deficiencies before approval violates that duty.

Based on the record before the agency, the deficiencies described above were not hidden, speculative, or outside the administrative materials. They were expressly documented within the FEIS itself and its accompanying comments and technical analyses. As the preparer of the FEIS on behalf of the project proponent, Kawika McKeague was responsible for compiling and presenting an accurate and complete environmental analysis. As the project representative for Kamehameha Schools, Marissa Harman transmitted the FEIS to the Hawai'i County Planning Department, as the accepting authority, for review and action. As the accepting authority, Darrow was responsible for ensuring that the FEIS satisfied the requirements of HRS Chapter 343, including consideration of the substance of the record and whether the document met the legal requirements for environmental review prior to acceptance.

The presence in the record of acknowledged missing baseline data, unresolved uncertainty regarding impacts, and expert conclusions that it is "nearly impossible to determine the extent of

project impacts" should have precluded acceptance of the FEIS as legally adequate. Acceptance under these circumstances reflects a failure of the environmental review process to grapple with the information before the agency .and resulted in approval of an FEIS despite the fact that the record did not contain the information required for a lawful approval.

This case concerns the approval and reliance upon the FEIS for the proposed development at Keauhou Bay within the broader context of documented infrastructure and resource constraints affecting Hawai'i Island. The record reflects ongoing concerns regarding roadway capacity, traffic safety, water resources, and other infrastructure limitations relevant to the analysis of environmental impacts under HRS Chapter 343. These conditions are relevant to the assessment of cumulative impacts and the adequacy of the FEIS.

3. Misallocation of the burden of proof

Waiāhole makes clear that the burden does not rest on the public to prove harm. Rather, the Hawai'i Supreme Court recognized that "the party applying for use of public trust lands for private commercial purposes bore the burden of proof," and that the State, as trustee, "must not relegate itself to the role of a mere 'umpire,' but instead must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process." (*In re Water Use Permit Applications (Waiāhole Ditch)*, 94 Hawai'i 97 (2000); Ex. M-25.)

Here, Respondents relied on an FEIS that omits acknowledged baseline deficiencies and fails to analyze cumulative impacts, yet nonetheless proceeded with acceptance and approval. That approach effectively shifts the burden onto the public to prove harm after the fact, contrary to the principles articulated in *Waiāhole* and inconsistent with the disclosure requirements of HRS Chapter 343.

4. Rubber-stamping and failure of decision-makers to consider known constraints

The Hawai'i Supreme Court has expressly rejected agency "rubber-stamping" of incomplete environmental review. *Waiāhole Ditch*, 94 Hawai'i at 141. Acceptance of an FEIS that omits acknowledged baseline deficiencies, documented infrastructure strain, and meaningful analysis of cumulative impacts (see, e.g., Exs. M-18 through M-21) constitutes a failure to engage in the reasoned, informed review required by law and a breach of the State's constitutional obligations under Article XI.

Petitioners further allege that this duty applies directly to County decision-makers, including Hawai'i County Planning Director Jeff Darrow, who are obligated to consider the information in

the administrative record and to account for known islandwide constraints—including documented landfill limitations, traffic safety concerns, infrastructure vulnerability, and water resource stress—before accepting, advancing, or approving large-scale development proposals. Approval in the face of these unresolved and documented deficiencies reflects a failure to meaningfully consider the record and undermines the integrity of the environmental review process.

5. Legal consequence under *Waiāhole* and HRS §343-7(c)

Because the FEIS fails to disclose and analyze infrastructure and resource capacity constraints affecting Hawai'i Island—despite the documented evidence of baseline deficiencies, system strain, and unresolved impacts reflected in the administrative record (see, e.g., Exs. M-18 through M-21)—it is misleading, materially incomplete, and legally invalid. Accordingly, agency actions taken in reliance on the FEIS are subject to judicial review and may be set aside pursuant to HRS §343-7(c), and no further development approvals—beginning with the proposed Keauhou Bay bungalow resort—may lawfully proceed under an environmental review that fails to evaluate baseline conditions and cumulative capacity in a manner consistent with the Public Trust Doctrine.

Petitioners further assert that the record demonstrates existing islandwide strain on essential systems, including water resources, power reliability, transportation safety, waste management, and related infrastructure. In light of these conditions, Petitioners respectfully request that new large-scale visitor-oriented development approvals be halted unless and until Respondents and decision-makers can demonstrate, through competent evidence and lawful environmental review, that Hawai'i Island's infrastructure, utilities, and natural resources are adequately protected and capable of supporting such development without endangering residents, public safety, or public trust resources.

II.K. Failure to Accurately Acknowledge, Summarize, and Respond to Multiple Written Public Comments, Including Those of Petitioners and Expert Submissions

The Final Environmental Impact Statement ("FEIS") unlawfully fails to accurately acknowledge, summarize, and respond in good faith to numerous written public comments submitted during the Draft Environmental Impact Statement ("DEIS") comment period, in violation of HAR §11-200.1-23. These failures were not isolated or inadvertent, but instead reflect a systemic pattern of omission, minimization, distortion, and mischaracterization of both public and expert opposition to the proposed Keauhou Bay bungalow resort development.

Petitioner Rebecca Melendez submitted multiple written comment letters during the DEIS comment period opposing the project. Her comments raised detailed environmental, cultural, and legal concerns, including stormwater runoff pollution, impacts to coral reefs and protected marine species, traffic and safety hazards, infrastructure and capacity limitations, shoreline access, traditional and customary Hawaiian practices, endangered species in the bay, and Keauhou Bay's designation by the U.S. Environmental Protection Agency as an impaired water body. These written submissions are documented in Exhibit R-4.

Petitioner Melendez expressly identified Keauhou Bay as an EPA-listed impaired water body in her written DEIS comments submitted on the final day of the comment period. See Exhibit R-4. Although the FEIS contains generalized references to "water quality concerns," stormwater management, and best management practices, it does not clearly or accurately acknowledge Keauhou Bay's listing under Clean Water Act §303(d), nor does it analyze the project under the heightened legal obligations applicable to impaired waters. Instead, the FEIS treats water quality as a routine impact subject to future mitigation, thereby minimizing the regulatory significance of the impaired-water designation and obscuring the State's affirmative duty to prevent further degradation. This approach materially understates the legal and environmental importance of Keauhou Bay's impaired status and fails to meaningfully respond to Petitioner Melendez's written comment raising this issue. See Exhibit R-4.

Petitioner Melendez's written DEIS submissions further included extensive scientific and technical documentation demonstrating that Keauhou Bay is already experiencing chronic water quality degradation and ongoing pollutant loading, directly contradicting the FEIS's minimization of runoff and water quality impacts. As documented in Exhibit R-4 at pages R-4-132 through R-4-140, the submitted materials include turbidity data showing elevated near-shore turbidity levels that decrease offshore; photographic, analytical, and mapped evidence of stormwater and sediment transport into the Bay from Kamehameha III Road, adjacent public roadways, and developed areas; and calculations demonstrating that even modest rainfall events can generate hundreds of thousands of gallons of runoff carrying fine sediments into the near-shore environment. Exhibit R-4 further documents elevated nitrogen and phosphorus concentrations exceeding State water quality standards, identifies cesspools, aging sewer infrastructure, and non-permitted wastewater discharges as likely sources of nutrient contamination, and explains how submarine groundwater discharge functions as a direct and scientifically established pathway for pollutants into the Bay. The submission also identifies risks associated with sewer leakage, extreme tidal events, and dry-well failures and explains that, under Clean Water Act §303(d), further degradation of an impaired water body triggers heightened legal obligations, including Total Maximum Daily Load ("TMDL") analysis. These

data-supported comments squarely raised baseline water quality conditions, regulatory consequences, and the risk of further impairment, yet the FEIS failed to meaningfully acknowledge, summarize, or respond to this scientific evidence, in direct violation of HAR §11-200.1-23. See Exhibit R-4.

Petitioner Melendez's written DEIS submissions also incorporated a comprehensive, peer-reviewed body of long-term scientific research documenting how groundwater–ocean interaction, tidal forcing, and human-derived pollutants drive chronic and predictable water quality degradation in Kona Coast embayments, including conditions directly relevant to Keauhou Bay. As documented in Exhibit R-4 at pages R-4-141 through R-4-152, the submitted materials synthesize more than a decade of scientific monitoring and published research demonstrating that submarine groundwater discharge delivers large volumes of freshwater, nutrients, trace elements, and microbial contaminants to nearshore waters on a daily basis; that tidal cycles strongly control salinity, temperature, nutrient concentrations, and indicator bacteria levels; and that elevated nitrogen, phosphorus, and bacteria are consistently associated with groundwater inflow and land-based human activity rather than offshore marine sources. The submissions further establish, through multiple peer-reviewed studies, that cesspools, septic systems, wastewater infrastructure, fertilizers, and human dietary nitrogen are primary contributors to nutrient loading; that nutrient impacts must be evaluated based on total mass flux rather than concentration alone; and that protected embayments experience heightened ecological harm due to limited circulation, including increased turbidity, algal proliferation, reduced natural UV disinfection, and amplified coral stress and bleaching. Exhibits R-4-151 and R-4-152 further confirm that these processes are well-established in the scientific literature governing Hawaiian coastal hydrology, subterranean estuaries, groundwater–seawater mixing, and nutrient-driven reef degradation, and provide authoritative citations directly applicable to Clean Water Act §303(d) impaired-water analysis and Total Maximum Daily Load ("TMDL") obligations. Despite the direct relevance of this long-term scientific record to baseline conditions, impaired-water status, cumulative impacts, and regulatory duties, the FEIS fails to accurately acknowledge, summarize, or meaningfully respond to these data-supported submissions, in violation of HAR §11-200.1-23. See Exhibit R-4, pages. R-4-141–R-4-152.

The Planning Director had an independent duty to ensure that the FEIS accurately disclosed existing environmental conditions and complied with HAR §11-200.1-23. The failure to clearly disclose and analyze Keauhou Bay's impaired-water status, as designated by the U.S. Environmental Protection Agency, and the associated legal implications was apparent on the face of the FEIS and should have precluded acceptance of the document as legally sufficient.

Petitioner Melendez's submissions expressly incorporated and transmitted a public petition entitled "Save Keauhou Bay from Becoming a Big Crowded Resort." At the time her comment email was submitted during the DEIS comment period, the petition had reached 6,198 signatures, many accompanied by written statements explaining the basis for opposition. This figure was clearly stated in her comment email and formed part of the administrative record submitted for consideration. See Exhibit R-4.

Despite this clear record, the FEIS misrepresents the size and scope of public opposition by stating that the petition had only 1,681 signatures. That figure is demonstrably false and materially inaccurate. It reflects an outdated snapshot of the petition and disregards the updated number expressly provided in Petitioner Melendez's written DEIS comments. By understating public opposition by more than 4,500 signatures, the FEIS distorts the administrative record and minimizes the scale of documented community resistance to the project.

The inaccuracy of this representation is further confirmed by the petition's continued growth. As of February 4, 2026, the petition opposing the Keauhou Bay bungalow resort has exceeded 7,400 signatures, confirming that public opposition was substantial at the time of the DEIS comment period and was materially understated in the FEIS. This ongoing growth demonstrates that public opposition was not isolated at the time of DEIS review, fleeting, or overstated by Petitioners, but instead persistent, organized, and increasing over time.

Respondents had actual knowledge of this organized public opposition well before the DEIS comment period commenced. Prior to release of the Draft EIS, Petitioner Melendez notified Hawai'i County Planning Department staff member Alex J. Roy, M.Sc., of the existence of the petition and the thousands of comments opposing the resort. County Planning personnel acknowledged awareness of the petition and indicated, as reflected in the administrative record, that the project applicant was likewise aware of it, establishing that both the County and Kamehameha Schools knew of widespread public opposition before the DEIS process formally began. See Exhibit R-1.

During the DEIS comment period, Petitioner Melendez submitted written comments through the project's designated submission channels, including direct submission to the environmental consultant G70 Planning via its publicly identified email address. On the final day of the DEIS comment period, Petitioner Melendez also transmitted her written comment letter incorporating the public petition to keauhoubay@ksbe.edu, the official Applicant contact email identified in the FEIS comment-submission materials, which listed Marissa Harman of Kamehameha Schools as the Applicant contact responsible for the Project. As the designated Applicant contact for purposes of the environmental review process, Ms. Harman bore responsibility for ensuring that

written public comments received through the Applicant's official email address were transmitted to G70 Planning and included in the DEIS administrative record. Petitioner Melendez simultaneously transmitted the same submission to the Hawai'i County Planning Department, including Planning staff member Alex J. Roy, M.Sc., at alex.roy@hawaiicounty.gov, ensuring timely receipt by the approving agency. These submissions were timely, properly directed to the official email addresses identified for the Project, and fully compliant with the established DEIS public participation process. Any failure to transmit, include, acknowledge, or accurately summarize Petitioner Melendez's submissions therefore rests with Respondents, including Kamehameha Schools and its designated Applicant representative, rather than with Petitioner. See Exhibits R-2, and R-4.

The DEIS comment period also included an extensive expert written comment letter submitted by Jeff Caufield, Esq., an environmental attorney with more than thirty years of experience in environmental impact analysis and litigation. Mr. Caufield's submission identified fundamental deficiencies in the Draft EIS, including the absence of adequate baseline studies, unsupported claims regarding congestion, failure to analyze traffic, runoff, toxic and nutrient loading, noise, air quality, coral reef impacts, cultural resource impacts, reasonable alternatives, and the project proponent's long-standing failure to maintain existing facilities. Mr. Caufield further documented that the Draft EIS itself acknowledges existing environmental degradation within Keauhou Bay, including shoreline modification and sediment contamination at Ka'ili'ilinehe Beach and degraded conditions at Ho'okuku Pond characterized by organic sediments, dense algal mats, and indicators of nutrient and potential bacterial contamination. Despite these documented conditions, the DEIS fails to evaluate whether existing runoff, sedimentation, nutrient transport, and groundwater connectivity are already impacting the Bay, and fails to establish any bay-wide baseline against which project impacts can be meaningfully assessed. Mr. Caufield explained that baseline study is particularly important to assess conditions and impacts in shallow embayment's such as Keauhou Bay, and identified specific baseline analyses that should have been conducted, including coral condition surveys, sedimentation rate assessment, nutrient and contaminant analysis in sediments and groundwater, bacteriological assessment, and comparison to reference sites. He further explained that, without such baseline information, it is nearly impossible to determine the extent of project impacts or to design effective mitigation measures. Mr. Caufield's expert submission is documented in Exhibit R-5 and is corroborated by the technical baseline analysis contained in Exhibit M-21.

Mr. Caufield's expert submission is documented in Exhibit R-5 and is further supported by the technical baseline analysis contained in Exhibit M-21, which expressly explains that meaningful evaluation of project impacts to Keauhou Bay cannot occur without establishing and analyzing

existing baseline conditions. As summarized in Exhibit M-21, the FEIS itself acknowledges that Keauhou Bay's marine resources—including coral, fish, and nearshore ecosystems—are particularly vulnerable to excess sediment, toxic pollutants, and nutrient loading in shallow embayments, and that existing conditions already show evidence of degradation, including sedimentation, algal growth, and potential bacterial contamination associated with Ho'okuku Pond and adjacent shoreline areas. Exhibit M-21 explains that, at minimum, prior studies cited in the FEIS—such as the 2016 KBOM DEA referenced but not included in the record—should have been reviewed and evaluated as baseline studies to determine whether current levels of development have already affected shoreline communities. The technical analysis further explains that baseline conditions should include bay-wide assessment of coral distribution and health, historical sedimentation rates, nutrient and contaminant concentrations in sediments and groundwater, bacteriological conditions, and comparison to a nearby reference site, together with pre-development, post-construction, and periodic monitoring to evaluate cumulative "built-out" impacts. Exhibit M-21 concludes that without this baseline analysis, it is nearly impossible to determine the extent of project impacts on Keauhou Bay marine resources or to design or evaluate effective mitigation measures, underscoring a fundamental deficiency in the DEIS's environmental review.

The FEIS fails to meaningfully respond to Mr. Caufield's expert comments. As reflected in Exhibits R-7-1 through R-7-8, Kamehameha Schools' responses consist primarily of generalized statements, references to institutional mission documents, and conclusory assertions that issues are addressed elsewhere in the FEIS. The responses do not engage with Mr. Caufield's documented evidence of existing degradation, do not address his identification of missing baseline studies despite acknowledged sedimentation and nutrient impacts, do not rebut his runoff and toxic-loading analysis, do not respond to his recommendations for bay-wide baseline evaluation, and do not address his documentation of prior unpermitted development and chronic maintenance failures. This failure to acknowledge, summarize, and meaningfully respond to expert analysis documenting baseline environmental deficiencies constitutes a direct violation of HAR §11-200.1-23's requirement that written comments, including expert submissions, be meaningfully addressed. See Exhibits R-5, R-7-1 through R-7-8, and M-21.

The FEIS further mischaracterizes Petitioner Melendez's comments by attributing to her the statement "I don't understand the educational point." See Exhibit R-6-1. Petitioner Melendez never made such a statement. To the contrary, her written submissions and incorporated petition clearly and repeatedly advocate for education and cultural learning as a primary use of Keauhou Bay.

Petitioner Melendez's petition expressly states, in relevant part:

"To have a cultural center where people can learn more about the land, and the Hawaiian people can have a place of their own at King Kamehameha III's birthplace would be great."

See Exhibit R-4.

This statement demonstrates that Petitioner Melendez plainly understood the educational concept and was advocating for education and cultural preservation as a first priority, without the construction of a large commercial resort. By attributing a contrary statement to her, the FEIS inaccurately characterizes her position and substitutes a false narrative for her actual written comments, materially distorting the public comment record.

Rather than fairly summarizing and responding to Petitioner Melendez's comments and Mr. Caufield's expert submission, the FEIS selectively excerpts isolated phrases, understates petition support, omits critical context, and substitutes generic responses that fail to engage with the substance of the concerns raised. These same deficiencies affected other written submissions from community members, cultural practitioners, and long-time users of Keauhou Bay, whose comments were minimized, fragmented, or inaccurately paraphrased. See Exhibits R-6 and R-7.

Collectively, these actions demonstrate a systemic failure to comply with HAR §11-200.1-23 and undermine the procedural safeguards required by Hawai'i's environmental review framework and Article XI of the Hawai'i Constitution. By accepting and relying upon an FEIS that inaccurately summarizes written public and expert comments, understates documented opposition, and mischaracterizes community priorities, Respondents approved a materially misleading and legally deficient environmental review document.

Multiple written submissions from cultural practitioners, lineal descendants, and community organizations likewise emphasized protection, stewardship, and education rooted in respect for place, including submissions from a lineal descendant (Ex. B-1-5), the Royal Order of Kamehameha (Exs. B-1-6 and B-1-7), and community member Charles Leslie (Exs. B-1-8 and B-1-9). These submissions further confirm that community priorities centered on protection and education—not commercialization—yet the FEIS failed to accurately convey this substance and instead minimized or distorted the nature and extent of opposition.

II.L. Failure to Complete Required Cultural Analysis for Keauhou Bay as the Birthplace of King Kamehameha III (Ka Pa'akai Violation)

The Final Environmental Impact Statement ("FEIS") expressly acknowledges that Keauhou Bay is historically and culturally significant as the birthplace of King Kamehameha III (Kauikeaouli). In the Cultural Impact Assessment background, the FEIS recounts the 1914 centennial commemoration of King Kauikeaouli's birth and quotes contemporaneous newspaper accounts describing a stone tablet intended to be inset into the "famous Kauikeaouli Stone," identified in the quoted source as marking the birthplace of Kamehameha III. The FEIS further documents ceremonial observances attended by Queen Lili'uokalani and other ali'i, including chanting, genealogy recitation, and large public gatherings at Keauhou. See Exhibits B-10-1 and B-10-2 (FEIS Vol. III, Cultural Impact Assessment, pp. 56–57).

The FEIS also contains a section titled "Ka Pa'akai Analysis" in FEIS Volume I. In that section, the FEIS recites the three-part analytical framework established by the Hawai'i Supreme Court in *Ka Pa'akai o ka 'Āina v. Land Use Commission*, 94 Hawai'i 31 (2000), requiring agencies to: (1) identify valued cultural resources and traditional and customary Native Hawaiian practices; (2) identify the extent to which those resources and practices will be affected or impaired by the proposed action; and (3) specify feasible mitigative or protective measures. See Exhibit B-11-1 (FEIS Vol. I, p. 4-31).

On that same page, however, the FEIS expressly states that *"although not required for the acceptance of the EIS, a Ka Pa'akai analysis will be required for obtaining the SMA permit for the Project."* See Exhibit B-11-1 (FEIS Vol. I, p. 4-31). Thus, the FEIS acknowledges the governing legal standard while simultaneously declaring that compliance with that standard is not required at the FEIS stage. The FEIS therefore affirmatively defers completion of the Ka Pa'akai analysis until a later permitting phase, rather than completing it as part of the environmental review prior to acceptance and reliance.

In addition, FEIS Volume I does not disclose the preparation of any new, birthplace-specific archaeological or cultural studies undertaken to evaluate the Project's effects on Keauhou Bay as the birthplace of King Kamehameha III. The archaeological discussion in FEIS Vol. I consists of summaries of prior archaeological investigations and historical surveys conducted over the last century, including island-wide surveys and studies undertaken for earlier developments, as well as a 2022 Archaeological Reconnaissance Survey and Site Condition Update focused on relocating and updating previously identified sites. See Exhibits B-11-2 and B-11-3 (FEIS Vol. I, pp. 4-32–4-33). The FEIS does not identify any new cultural impact study, field investigation, or project-specific analytical work undertaken to assess how the proposed Project may affect the cultural significance of the royal birthplace at the time of environmental review. This absence of a completed, project-specific cultural analysis is further reflected in agency consultation

materials in FEIS Volume II, which show that DLNR / Nā Ala Hele identified culturally significant historic features requiring verification and consultation, while the FEIS response relied on limited re-examination of prior surveys and deferred cultural protection measures to future planning and permitting stages, rather than completing a project-specific cultural impact analysis at the FEIS stage. See Exhibit B-12-1 through B-12-4 (FEIS Vol. II).

Taken together, the FEIS establishes that:
(1) it acknowledges Keauhou Bay's royal birthplace significance through historical narrative and commemoration accounts (Exhibits B-10-1, B-10-2);
(2) it recites the Ka Pa'akai legal framework but expressly states that compliance with that framework is not required for FEIS acceptance (Exhibit B-11-1); and
(3) it relies on summaries of prior archaeological work and agency responses to comments, and does not disclose any completed, Project-specific cultural analysis undertaken to evaluate impacts to the birthplace prior to FEIS acceptance (Exhibits B-11-2, B-11-3; Exhibit B-12-1 through B-12-4).

As reflected in the FEIS Volume II agency consultation materials, DLNR's recommendations were addressed through summaries of prior work and references to future planning and consultation, rather than through completion of a project-specific cultural analysis at the FEIS stage.

Petitioners allege that this approach violates Hawai'i law. Environmental review under HRS Chapter 343 is intended to ensure that the FEIS itself discloses cultural impacts and identifies protective measures before it is accepted, approved, or relied upon by State and County agencies. *Ka Pa'akai* does not permit agencies or applicants to acknowledge cultural significance while deferring the required analysis of impacts and protective measures to a later permitting phase. By expressly deferring completion of the Ka Pa'akai analysis and relying on generalized and historical information rather than a completed, Project-specific cultural evaluation at the FEIS stage, Respondents failed to fulfill the State's affirmative obligations under *Ka Pa'akai*, Article XII, Section 7, and Article XI of the Hawai'i Constitution to protect Native Hawaiian traditional and customary rights and culturally significant places.

Accordingly, Petitioners allege that acceptance and reliance on the FEIS are unlawful because, although the FEIS acknowledges Keauhou Bay as the birthplace of King Kamehameha III, it expressly defers completion of the required Ka Pa'akai analysis and the identification of feasible protective measures until a later permitting phase. Hawai'i law requires that this analysis be completed and disclosed as part of the FEIS itself, before the FEIS is accepted, approved, or relied upon, so that agencies and the public may evaluate cultural impacts and protections at the

time environmental review is completed. By deferring Ka Pa'akai compliance until after FEIS acceptance, Respondents acted contrary to the requirements of HRS Chapter 343, *Ka Pa'akai o ka 'Āina*, and Articles XI and XII of the Hawai'i Constitution, rendering the FEIS legally insufficient at the time of acceptance.

At the time the FEIS was accepted and advanced through the approval process, Respondent Jeffrey Darrow, as Planning Director for the County of Hawai'i, had an independent, non-delegable duty to ensure that the FEIS complied with HRS Chapter 343, HAR Chapter 11-200.1, and applicable constitutional requirements before acceptance and reliance. The FEIS's express statement that completion of the Ka Pa'akai analysis was "not required for the acceptance of the EIS" and would instead occur at a later SMA permitting stage appears on the face of the FEIS itself. See Exhibit B-11-1 (FEIS Vol. I, p. 4-31). Respondents Marissa Harman and Kawika McKeague, acting on behalf of the project proponent, participated in the preparation, coordination, and submission of the FEIS for agency consideration. Because the FEIS simultaneously acknowledged Keauhou Bay as the birthplace of King Kamehameha III (see Exhibits B-10-1, B-10-2), the legal insufficiency created by expressly deferring the required Ka Pa'akai analysis was apparent from the administrative record. Petitioners allege that acceptance and advancement of the FEIS under these circumstances—by County and project-level officials alike—constituted a failure to discharge mandatory duties to ensure that environmental review was legally complete and compliant at the time of FEIS acceptance, rather than deferring required cultural analysis and protective determinations until a later permitting stage.

II.M. Misrepresentation of Cultural Consultation Testimony and Absence of Support for Resort Development (Consultation Testimony – Lack of Support for Resort Development)

Failure to Demonstrate Community Support for Resort Development

This claim is supported by the FEIS excerpts submitted as Exhibit B-2.

The FEIS consultation record reflects an internal inconsistency regarding Barbara Nobriga, as documented in the FEIS excerpts submitted as Exhibit B-2 (Exhibit B-2-1, Exhibit B-2-12, B-2-13, and B-2-14). In FEIS Volume III, Ms. Nobriga is identified in the consultation table as an individual sought for cultural consultation, with the notation that she "did not respond to approve interview summary." However, Ms. Nobriga's substantive written testimony is nevertheless included in the FEIS Volume II comment record. In her submitted comment, she states her dissatisfaction with the development of Keauhou Bay, describes such development as harmful to the cultural and historical character of the area, criticizes further commercialization of the shoreline (including proposed commercial uses near the canoe hālau), and expresses that any

additional development should be located away from the culturally active bayfront. This record demonstrates that a recognized community member with cultural ties to Keauhou Bay provided testimony opposing the commercialization of the shoreline, notwithstanding the FEIS's separate indication that no approved interview summary was obtained. The FEIS therefore reflects both that Ms. Nobriga was identified for consultation and that her written opposition to shoreline commercialization is part of the official record, as shown in Exhibit B-2-1, Exhibit B-2-12, and B-2-13.

The Final Environmental Impact Statement ("FEIS") is legally deficient because it relies on cultural consultation testimony in a manner that improperly implies community acceptance or support for a bungalow resort development at Keauhou Bay, despite the absence of any such support in the consultation record.

The consultation record excerpts cited in Exhibit B-1 further demonstrate that cultural consultees and consultation-related organizations did not provide endorsement of resort development, and instead emphasized preservation, stewardship, and cultural protection in connection with Keauhou Bay. (See Exs. B-1-6, B-1-7.)

A review of the cultural consultation testimony contained in Exhibit B-2 likewise demonstrates that none of the consulted cultural practitioners, kūpuna, or community members endorsed resort-style lodging, overnight accommodations, or increased commercial intensity at Keauhou Bay. To the contrary, the consultation record reflects consistent emphasis on preservation, stewardship, protection of cultural practices, and safeguarding of the bay's resources and community uses. (See Ex. B-2 at pp. B-2-1 through B-2-13.)

The testimony repeatedly characterizes Keauhou Bay as a living cultural landscape and emphasizes the importance of protecting marine resources, water quality, shoreline access, cultural sites, and intergenerational practices grounded in mālama ʻāina. Consultees spoke to the need for education, continuity of cultural practices, and protection of remaining resources — not expansion of commercial development.

Multiple consultees described Keauhou Bay as a historic fishing village and subsistence landscape shaped by mauka makai practices, shoreline canoe storage, fishing, gathering, and cultural gatherings. These testimonies raised concerns regarding declining water quality, loss of marine abundance, sedimentation, and cumulative impacts associated with increased commercial and boating activity in the bay. These concerns were presented as reasons to limit additional stressors on Keauhou Bay, not as justification for introducing new development pressures.

Cultural practitioners associated with Keauhou Canoe Club emphasized protection of canoe launching areas, shoreline access, and safe spaces for keiki, and expressed concern regarding whether proposed changes would adequately accommodate or protect traditional and recreational paddling practices. Their testimony addressed cultural education, heritage, and respectful use of the bay and did not support overnight lodging or resort infrastructure.

Expert consultation regarding the Kāneaka hōlua complex and associated cultural landscape focused on preservation, education, and protection of one of the most significant hōlua systems in Hawai'i. The testimony emphasized safeguarding the integrity of the hōlua slide, associated burials, and surrounding cultural landscape for future generations, not commercial or resort-oriented development. (Exs. B-2-7 through B-2-10.)

Taken as a whole, the consultation record demonstrates that consulted cultural practitioners sought protection of Keauhou Bay's cultural sites, marine resources, water quality, shoreline access, and traditional practices. The consultation materials do not reflect any expressed support for a bungalow resort development. The FEIS nevertheless relies on these consultations to advance or legitimize the proposed project without clearly disclosing the absence of such support. The decision-makers reviewing the FEIS had a duty to evaluate the underlying record and should have recognized that the consultation testimony does not support the proposed development.

This omission and mischaracterization violate HAR §11-200.1-23 by failing to accurately summarize and disclose the substance of consultation input and by creating a misleading impression of cultural acceptance that is not supported by the record.

This misrepresentation is demonstrated by the cultural consultation summaries contained in Appendix H (Cultural Impact Assessment) of the FEIS, Volume III, specifically Chapter 3 (Consultation), beginning at CIA page 97, submitted herein as Exhibit B-2. A plain reading of these consultation materials shows that no cultural consultee expressed support for resort development or increased commercial intensity at Keauhou Bay, contrary to the manner in which the FEIS relies upon and characterizes the consultation record.

II.N. Misrepresentation of Educational and Cultural Justification; Absence of an Educational or Cultural Center in the Proposed Action

This claim is supported by the FEIS excerpts submitted as Exhibit B-1, including FEIS Volume I, pages B-1-1 through B-1-4, which demonstrate that cultural and educational facilities are

referenced only as discretionary management strategies and are not included as required or enforceable components of the Proposed Action.

Respondents state in the FEIS Volume II Comment Response Matrix that: "The Purpose and Need set forth in Section 2.7 of the EIS indicates..." and rely on that asserted section to justify the project. This statement appears in the applicant's response to public comment included in Exhibit B-1 (FEIS Vol. II, pp. B-1-10 through B-1-12). However, upon review of the Final Environmental Impact Statement Volume I as made available to the public, Petitioners are unable to locate any Section 2.7 titled "Purpose and Need" within the body of the document. Although the Table of Contents lists Sections 2.6.4, 2.6.5, 2.7(Exhibit B-1 -16), and 2.8, Chapter 2 in the FEIS ends on PDF page 58 and proceeds directly to Chapter 3 on PDF page 59, without inclusion of those sections. This discrepancy is further demonstrated by the FEIS excerpts submitted as Exhibit B-1 (FEIS Vol. I, pp. B-1-13 through B-1-15).

This discrepancy is not a minor formatting issue. Respondents rely on a section that does not appear anywhere in the operative FEIS provided to the public and decision-makers. This internal inconsistency undermines the reliability of the administrative record, deprives the public of meaningful transparency, and frustrates the purpose of environmental review under HRS Chapter 343.

Because the FEIS affirmatively represents to the public that these sections exist, but omits them from the actual document, the FEIS is internally inconsistent on its face and cannot lawfully serve as a reliable administrative record.

The absence of entire sections listed in the Table of Contents from a legally relied-upon environmental document reflects a fundamental failure in the accuracy and integrity of the FEIS as prepared, submitted, and accepted, and warrants judicial scrutiny to ensure compliance with environmental review requirements.

The FEIS was prepared by G70 and its representatives, including Kawika McKeague, and submitted by Kamehameha Schools through its representatives, including Marissa Harman, and accepted for agency action by Hawai'i County Planning Director Jeff Darrow. Where these individuals and entities rely on and present a document that references sections that are not actually contained within the document, it raises serious concerns regarding the integrity and reliability of the FEIS and the actions taken by those responsible for creating, submitting, and accepting it. Such deficiencies demonstrate the need for judicial scrutiny to ensure that legal obligations are being fulfilled and that accountability is imposed where the record itself reveals fundamental defects.

1. **Public statements asserting that resort development is required to fund education**

Petitioners allege that representatives of Kamehameha Schools, including Respondent Marissa Harman, publicly stated during meetings with community members and cultural practitioners that construction of a bungalow resort development at Keauhou Bay is necessary in order to pay for a cultural and educational center. These statements were made in response to community opposition and concerns regarding the conversion of Keauhou Bay into a commercial resort destination.

Petitioners allege that this justification was repeatedly presented to the public as the primary rationale for pursuing resort development at a culturally and environmentally sensitive bay.
As stated in the FEIS comment-response record:
"The lodging component provides a critical revenue stream to support long-term cultural and educational programming... Without this element, the KBMP would lack a sustainable funding mechanism necessary to achieve its goals for cultural revitalization, education, and responsible land management." (Exs. B-1-11, B-1-12.)

2. **The FEIS does not include an educational or cultural center as a defined project component**

Despite these public statements, the Final Environmental Impact Statement ("FEIS") does not include a cultural or educational center as a defined, required, or enforceable component of the Proposed Action.

The FEIS first references a cultural or educational facility only within Volume I, Section 3.2.4, "Management Strategy D: Maintain and Establish New Place-Based Cultural Educational Areas." (Ex. B-1-17.)
There, the FEIS states that existing bayfront commercial facilities may be repurposed into a cultural education heritage center after commercial tenants are relocated. This reference appears at Volume I, page 3-77. (Ex. B-1-4.)

The FEIS does not:

- designate a new parcel for an educational or cultural center;
- include architectural plans, square footage, or construction requirements;
- require that any educational or cultural center be completed prior to or concurrently with resort development;

- allocate funding or impose enforceable conditions for such a center; or
- include the center as a required element of the Proposed Action section.

This contradiction is further underscored by the FEIS response stating that lodging revenue is required to fund education, while no enforceable educational facility appears in the Proposed Action. (Ex. B-1-11.)

Accordingly, the FEIS discloses the cultural education facility only as a contingent, secondary, and discretionary future possibility, dependent on relocation of commercial uses and internal funding decisions.

3. Resort development is fully defined, while education is discretionary

In contrast, the FEIS fully defines and advances resort-related development, including:

- overnight visitor lodging within a resort-zoned area;
- visitor-oriented commercial uses;
- site circulation, parking, and infrastructure improvements.

These resort components are analyzed, mapped, and relied upon as part of the Proposed Action, while the educational or cultural center is not.

4. Misrepresentation under HRS Chapter 343 and HAR §11-200.1

Petitioners allege that representing to the public that a bungalow resort is required to fund education, while failing to include an educational or cultural center as a defined project component, constitutes material misrepresentation and misleading disclosure under HRS Chapter 343 and HAR §11-200.1.

Environmental review must disclose what will actually be built, not what is asserted rhetorically to justify development. An agency may not rely on aspirational or speculative benefits to justify approval of environmentally harmful commercial development, particularly where those benefits are not enforceable.

5. Fiduciary Inconsistency, Failure to Provide a Trust Accounting, and Why Protection of Keauhou Bay Requires Judicial Oversight

Petitioners allege that Respondents' claim that a luxury bungalow resort is financially necessary to support education and cultural stewardship is not credible and directly undermines the protection of Keauhou Bay.

Publicly reported information demonstrates that Kamehameha Schools controls assets exceeding $15 billion. Despite this extraordinary wealth (Ex. B-3-1.):

- Kamehameha Schools operates only three high school campuses statewide;
- No new high schools have been built for many years;
- Native Hawaiian beneficiaries continue to face limited access to educational opportunities; and
- Tuition is charged to beneficiaries, notwithstanding the trust's original purpose to support orphaned and indigent Hawaiian children.

Petitioners allege that if an institution holding assets of this magnitude claims it must commercialize culturally and environmentally sensitive trust land in order to fund education, that assertion raises serious questions about whether trust assets are being administered for their intended purposes. The burden of that mismanagement is now being placed directly upon Keauhou Bay.

The Last Will and Testament of Princess Bernice Pauahi Bishop imposes mandatory fiduciary duties on trustees, including the duty to provide an annual, full, and complete accounting of all receipts, expenditures, property, and investments. These duties exist to prevent exactly this type of outcome: the erosion of culturally significant trust lands under the justification of financial necessity. (Ex. C-1.)

Petitioners allege that Kamehameha Schools has not provided a true fiduciary accounting consistent with these obligations. Instead, it has issued curated public-facing materials that function more as promotional publications than as transparent trust accountings, leaving beneficiaries and the public unable to meaningfully evaluate whether trust assets are being managed in accordance with Princess Pauahi's intent.

Without transparency, Keauhou Bay becomes vulnerable to exploitation under the guise of stewardship. Without accountability, culturally significant trust land becomes treated as a commercial asset rather than a sacred responsibility.

Petitioners therefore allege that protection of Keauhou Bay requires judicial oversight and a full trust accounting, so that this Court and the public can determine whether the proposed commercialization of this wahi pana is truly justified, or whether it represents a breach of fiduciary duty and a misuse of Hawaiian trust lands.

6. Disproportionate Harm Versus Minimal Educational Return

Petitioners allege that the FEIS authorizes the transformation of Keauhou Bay into a luxury, million-dollar bungalow resort for tourists, resulting in substantial and irreversible impacts, including:

- degradation of coral reefs and marine ecosystems;
- harm to endangered and threatened species;
- increased shoreline congestion, commercialization, and loss of open community space;
- displacement of canoe shoreline storage, subsistence and recreational fishing practices, long-standing cultural gatherings, and removal of the long-established shoreline volleyball court.

Despite these significant impacts, the only educational benefit disclosed in the FEIS is a single, speculative cultural education facility proposed to be created by repurposing existing commercial space, with no binding commitment, no implementation timeline, and no assurance that it will ever be constructed.

Petitioners allege that this disparity demonstrates that "education" is not a genuine project purpose but is instead being invoked as a post-hoc justification to legitimize an otherwise tourism-driven commercial development. Such mischaracterization undermines the integrity of environmental disclosure, misleads the public and decision-makers, and violates Hawai'i's environmental review laws, public trust duties, and constitutional protections for traditional and customary cultural practices.

Within the FEIS record, community members and cultural practitioners expressly rejected the claim that resort development serves education, instead emphasizing that tourism-oriented commercial development contradicts Pauahi Bishop's legacy, undermines cultural stewardship, and causes direct harm to the cultural integrity of Keauhou Bay. (Exs. B-1-5, B-1-8, B-1-9.)

7. Legal Consequence

Because the FEIS:

- affirmatively relies on the asserted need to fund education as a primary justification for approval of the proposed resort;
- fails to include any educational or cultural center as a defined, required, or enforceable component of the Proposed Action; and
- relies on speculative, uncertain, and unenforceable future benefits to offset known and foreseeable environmental and cultural harm;

Petitioners allege that the FEIS is materially misleading and legally deficient, and that Respondents' acceptance, approval, and continued reliance upon such a document constitutes unlawful agency action, arbitrary and capricious decision-making, and a violation of their affirmative statutory and constitutional duties. Respondents may not lawfully rely upon a deficient environmental document to advance development. Accordingly, all agency actions taken in reliance upon the FEIS must be reversed and prohibited pursuant to HRS §343-7(c).

II.P. Project-Specific Failure of Stewardship and Environmental Mismanagement at Keauhou Bay

Whereas Section II.F addresses Respondents' overall compliance with the Will and fiduciary obligations, this section addresses how those duties are violated in the context of the Keauhou Bay project specifically.

Petitioners allege that Respondents have failed to exercise meaningful stewardship over Keauhou Bay lands, allowing environmental degradation risks to persist while simultaneously relying on speculative future development to justify approval of the project.

A. FEIS Admissions of Present Mismanagement and Lack of Stormwater Infrastructure on Kamehameha Schools Lands

The FEIS comment–response record expressly acknowledges that existing conditions on Kamehameha Schools' own lands are not being responsibly managed:

"At present, portions of the KS properties at Keauhou Bay are unmanaged and susceptible to runoff and erosion." (Exhibit B-5-5.)

This is a direct admission, within the administrative record, that lands under Respondents' control at Keauhou Bay have been allowed to remain in an unmanaged condition vulnerable to environmental harm.

The FEIS further expressly acknowledges the absence of existing stormwater controls in the Project Area:

"The existing Project Area lacks active management and does not contain infrastructure to capture or treat stormwater, resulting in untreated runoff that may flow toward the ocean." (Exhibit B-5-4.)

Petitioners allege that this admission is significant because it confirms that the Project Area presently lacks stormwater capture and treatment infrastructure necessary to prevent polluted runoff from reaching Keauhou Bay.

The FEIS comment–response record also reiterates current unmanaged conditions on KS lands:

"At present, portions of the KS properties at Keauhou Bay are unmanaged and susceptible to runoff and erosion." (Exhibit B-5-5.)

Petitioners allege that these admissions, taken together, demonstrate that Respondents have allowed lands under their control at Keauhou Bay to remain in an unmanaged condition lacking basic stormwater infrastructure and vulnerable to runoff, erosion, and environmental harm.

B. Reliance on Future Promises Instead of Existing Stewardship

Rather than demonstrating ongoing stewardship, the FEIS relies on projected future benefits of the project to justify approval:

"The Project is expected to result in long-term benefits as permanent sediment control measures and stormwater infrastructure would minimize runoff and erosion." (Exhibit B-5-5.)

Petitioners allege that this framing is legally deficient. Where the administrative record expressly acknowledges that portions of Respondents' lands are currently unmanaged and susceptible to runoff and erosion (Ex. B-5-5), environmental review must disclose and evaluate those existing conditions and enforceable commitments to address them, rather than relying on speculative future benefits to excuse documented present failures in land management.

C. Department of Health Review Recommendation and Failure to Demonstrate Compliance

The administrative record contains an express recommendation that project approvals be conditioned upon further regulatory review due to potential water quality risks:

"There may be the potential for ground or surface water degradation/contamination and recommend that approvals for this project be conditioned upon a review by the State Department of Health and the developer's acceptance of any resulting requirements related to water quality." (Exhibit B-5-6.)

Petitioners allege that this recommendation is significant because it acknowledges potential harm to surface and groundwater resources and calls for an additional layer of regulatory oversight prior to approval.

The administrative record further includes this same express recommendation that project approvals be conditioned on Department of Health review due to potential contamination risks:

"There may be the potential for ground or surface water degradation/contamination and recommend that approvals for this project be conditioned upon a review by the State Department of Health and the developer's acceptance of any resulting requirements related to water quality." (Exhibit B-5-6.)

Petitioners allege that the FEIS does not demonstrate that such a Department of Health review occurred, that project approval was actually conditioned upon such review, or that any resulting requirements were imposed or incorporated into the project as enforceable conditions within the record.

Petitioners further allege that proceeding with approval of the project in the absence of documented compliance with this recommendation reflects a failure to adequately address acknowledged risks to water quality and further evidences mismanagement of environmental concerns at Keauhou Bay.

D. Existing Drainage Conditions Confirm Lack of Infrastructure

The FEIS's own description of existing site conditions confirms the limited nature of current drainage controls:

"Offsite, existing drainage infrastructure is limited to gutters, swales, and inlets to dry wells along Kaleiopapa and Kamehameha Road." (Exhibit B-5-2.)

Petitioners allege that this description confirms the absence of comprehensive, engineered stormwater controls sufficient to protect Keauhou Bay from runoff originating on and adjacent to KS lands.

The FEIS further describes existing drainage infrastructure as limited in scope:

"Offsite, existing drainage infrastructure is limited to gutters, swales, and inlets to dry wells along Kaleiopapa and Kamehameha Road." (Exhibit B-5-2.)

Petitioners allege that this confirms the absence of comprehensive, engineered stormwater controls sufficient to protect Keauhou Bay from runoff originating on and adjacent to KS lands.

E. Legal Consequence

Petitioners allege that allowing lands at Keauhou Bay to remain unmanaged and environmentally vulnerable, while simultaneously seeking approval for intensified commercial development, violates duties of stewardship, care, and loyalty owed by trustees managing Hawaiian trust lands. Petitioners further allege that reliance on speculative, non-binding future mitigation cannot cure the documented deficiencies in present management conditions reflected within the administrative record itself.

F. Agency Recommendation to Prevent Polluted Runoff and Lack of Demonstrated Implementation

The administrative record reflects that agency reviewers recommended stormwater best management practices to prevent pollution:

"We recommend the use of best management practices (BMP) for stormwater management to minimize the impact of the project to the existing area's hydrology while maintaining on-site infiltration and preventing polluted runoff from storm events." (Exhibit B-5-5.)

Petitioners allege that this recommendation originates from agency reviewers (not Kamehameha Schools). Petitioners further allege that, despite this recommendation appearing in the record, the same record acknowledges unmanaged runoff-susceptible conditions on KS lands (Ex. B-5-5), and does not demonstrate that such measures were implemented as existing, enforceable protections prior to advancing project approval.

G. Visual Evidence of Runoff During Storm Events

Petitioners further submit direct visual evidence documenting stormwater accumulation, surface runoff pathways, and discharge toward Keauhou Bay during rainfall events. Exhibit B-5-8 consists of screenshots extracted from video recorded by Petitioner Rebecca Melendez on August 27, 2024. (Exhibit B-5-8 at pp. B-5-8-1 through B-5-8-6.)

Petitioners submit video evidence depicting flooding conditions on both the north and south sides of Keauhou Bay. The video is on YouTube, titled *"Why Keauhou Bay is WORTH SAVING From Kamehameha Schools Bungalow Resort Development!!!!"* and is available at: https://tinyurl.com/KeauhouRunoff.

Petitioners allege that this visual evidence corroborates the record admissions that the Project Area lacks stormwater management infrastructure (Ex. B-5-4) and that portions of KS lands are unmanaged and susceptible to runoff and erosion (Ex. B-5-5).

H. Sewage / Wastewater Concerns as Additional Evidence of Existing Vulnerability

Petitioners further submit Exhibit B-5-7 as evidence of sewage / wastewater-related concerns relevant to water quality impacts affecting coastal resources in the Keauhou Bay area. (Exhibit B-5-7.)

Petitioners allege that these concerns further demonstrate that Keauhou Bay is already environmentally vulnerable and that intensified development would compound existing risks unless existing infrastructure failures and pollution pathways are addressed first.

I. FEIS Groundwater and Hydrology Analysis Demonstrates Environmental Sensitivity of the Area

Petitioners further submit Exhibit B-5-3 as part of the evidentiary record supporting this section. Exhibit B-5-3 consists of the FEIS groundwater and hydrology analysis, which provides technical baseline information regarding aquifers, subsurface conditions, and water resources in the Keauhou area.

Petitioners allege that this exhibit is relevant because it establishes that the Project Area is hydrologically connected to sensitive groundwater resources and coastal systems, and that land disturbance, increased development intensity, and infrastructure stress in this area carry foreseeable risk to water quality and nearshore resources.

Petitioners further allege that when this technical groundwater evidence (Ex. B-5-3) is considered together with:

- the FEIS admission that portions of KS lands are unmanaged and susceptible to runoff and erosion (Ex. B-5-5),
- the FEIS admission that the Project Area lacks stormwater capture and treatment infrastructure (Ex. B-5-4),
- the Department of Health review recommendation due to potential contamination risk (Ex. B-5-6), and
- Petitioners' direct visual evidence of runoff entering Keauhou Bay (Ex. B-5-8),

the record demonstrates that Keauhou Bay is environmentally vulnerable and that approval of intensified development without first addressing existing conditions creates unreasonable risk to water quality, coastal resources, and public trust assets.

J. FEIS Confirms Groundwater Vulnerability and Sensitivity in the Keauhou Area (Exhibit B-5-1)

Petitioners further submit Exhibit B-5-1, consisting of the FEIS discussion of existing groundwater conditions at Keauhou Bay.

The FEIS confirms that groundwater resources in the Kona region are inherently vulnerable to degradation:

"Wells drawing from basal groundwater in Kona are susceptible to salinity if they are drilled too deep or if they are over-pumped."

The Exhibit B-5-1

The FEIS further states:

"The Project Area is situated in the Keauhou Aquifer System (80901), which is within the Hualālai Aquifer Sector Area..."

The Exhibit B-5-1

Petitioners allege that these admissions are significant because they establish that the Project Area is hydrologically connected to a sensitive groundwater system, and that degradation of groundwater resources is a recognized risk in the region. Petitioners further allege that when this acknowledged vulnerability is considered alongside:

- the FEIS admission that portions of KS lands are unmanaged and susceptible to runoff and erosion (Ex. B-5-5),
- the FEIS admission that the Project Area lacks stormwater capture and treatment infrastructure (Ex. B-5-4),
- the recommendation that approvals be conditioned on Department of Health review due to potential contamination (Ex. B-5-6), and
- Petitioners' visual evidence of runoff entering Keauhou Bay (Ex. B-5-8),

the record demonstrates that Keauhou Bay and its connected water resources are environmentally vulnerable and that further intensification of development poses foreseeable risk to water quality and public trust resources.

III. CLAIMS FOR RELIEF

COUNT I

Breach of Fiduciary Duty – Duty of Loyalty and Duty of Obedience

Petitioners reallege and incorporate by reference the factual allegations set forth above.

Kamehameha Schools is a charitable trust governed by the Last Will and Testament of Princess Bernice Pauahi Bishop. Trustees are fiduciaries and are legally obligated to administer the trust solely in furtherance of the purposes expressed in the Will and for the benefit of the intended beneficiaries.

The Will directs trustees to devote trust 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 allege that trustees owe beneficiaries strict duties of loyalty and obedience, including the duty to administer the trust in accordance with its governing instrument; avoid diversion of trust assets toward purposes inconsistent with the Will; preserve trust property for the benefit of beneficiaries; and refrain from using trust lands in ways that primarily benefit institutional, commercial, or third-party interests rather than beneficiaries.

Petitioners allege that the proposed conversion of endowed lands at Keauhou Bay into private commercial luxury resort use is inconsistent with the trust's charitable purpose and raises serious questions as to whether trustees are acting in accordance with their fiduciary obligations.

Accordingly, Petitioners allege that Respondents' conduct constitutes a breach of the Duty of Loyalty and Duty of Obedience owed to beneficiaries under Hawai'i trust law and principles of equity.

COUNT II

Breach of Fiduciary Duty – Failure to Preserve and Protect Trust Property

Petitioners reallege and incorporate by reference the foregoing allegations.

Endowed trust lands are finite, culturally significant, and irreplaceable assets held in trust for future generations of beneficiaries. Once sold, transferred, or irreversibly altered, such lands cannot be restored to the trust estate.

Petitioners allege that trustees owe a fiduciary duty to preserve trust property and to avoid unnecessary or unjustified actions that could permanently impair the trust res.

Petitioners further allege that large-scale commercial development on endowed lands constitutes permanent alteration; sale or threatened sale of culturally significant trust lands risks permanent loss of trust property; and such actions require the highest level of fiduciary justification and judicial scrutiny.

Petitioners allege that proceeding with irreversible development or disposition of lands such as Keauhou Bay and Keauhou II without prior judicial review risks permanent harm to trust property and constitutes a breach of trustees' duty to protect and preserve trust assets.

COUNT III

Failure to Administer the Trust in a Manner Consistent With Its Charitable Purpose

Petitioners reallege and incorporate by reference the foregoing allegations.

Trustees are bound not only to avoid misconduct, but to affirmatively administer the trust in a manner that advances its charitable purpose.

Petitioners allege that where trustees increasingly utilize endowed lands for commercial enterprise, monetization, and real estate development, rather than prioritizing uses closely aligned with the trust's charitable mission, such conduct raises legitimate questions as to whether the trust is being administered in accordance with its governing purpose.

Petitioners further allege that the proposed use of Keauhou Bay as a private luxury resort exemplifies a shift away from stewardship grounded in beneficiary-centered purpose and toward land use driven primarily by commercial objectives.

Such conduct warrants judicial examination to determine whether trustees are faithfully administering the trust in accordance with the Will.

COUNT IV

Request for Judicial Oversight and Equitable Protection of Trust Assets

Petitioners reallege and incorporate by reference the foregoing allegations.

Courts of equity have inherent authority to supervise charitable trusts and to intervene where credible concerns arise regarding the protection of trust property and faithful administration.

Petitioners allege that the circumstances presented here, including proposed irreversible development, threats of land sale, and ongoing questions regarding consistency with trust purpose, warrant the Court's exercise of its supervisory authority.

Petitioners therefore respectfully request that this Court order an independent judicial review of trustees' administration of trust lands implicated in this action; examine whether past, proposed, or threatened land sales or dispositions have been conducted solely in furtherance of the trust's charitable purpose; and ensure that trust lands are not irreversibly altered or lost before such review occurs.

COUNT V

Request for Injunctive Relief to Prevent Irreparable Harm to Trust Lands

Petitioners reallege and incorporate by reference the foregoing allegations.

Because the loss, sale, or irreversible alteration of trust lands constitutes irreparable harm that cannot be remedied through monetary damages, Petitioners allege that injunctive relief is appropriate and necessary.

Petitioners therefore respectfully request that this Court issue an order prohibiting any sale, transfer, encumbrance, or permanent alteration of Keauhou II lands and all other endowed trust lands held, administered, or controlled by Kamehameha Schools, including but not limited to those implicated in this action, unless and until Respondents demonstrate, through competent evidence and judicial review, that such actions are lawful and consistent with the trust's governing purpose.

Without such protection, Petitioners allege that trust lands of profound cultural, historical, and beneficiary significance risk permanent loss before the Court has an opportunity to fulfill its supervisory role.

VI ACCOUNTABILITY AND REMOVAL OF UNLAWFUL OFFICIALS

Petitioners respectfully request that the Court order or otherwise direct appropriate authorities to pursue the removal of the following individuals from their professional positions: JEFF DARROW, MARISSA HARMAN, and KAWIKA MCKEAGUE.

This request is based on the following serious concerns: violations of environmental protection laws; breaches of constitutionally mandated Public Trust Doctrine duties; failure to safeguard Native Hawaiian and community cultural practices; ethical misconduct and disregard of statutory obligations; and abuse of governmental authority and misuse of public power.

The conduct associated with the FEIS in this case is so blatantly unlawful that it raises a reasonable and legitimate concern regarding whether similar failures to follow the law may have occurred in other matters. Petitioners do not claim to know of prior misconduct; rather,

Petitioners assert that when an agency action is this openly deficient, dismissive of cultural protection, inconsistent with statutory and constitutional requirements, reflects the misleading, mischaracterization, or failure to accurately present consultation comments and public comments within the administrative record, and omits, minimizes, or fails to adequately disclose and analyze the presence, use, and impacts to protected and endangered marine species and their habitat, it reasonably calls into question the overall pattern and adequacy of oversight within these agencies and organizations.

Such disregard for legal obligations, particularly in a process intended to protect public trust resources, undermines public confidence and threatens environmental, cultural, and community rights. When officials entrusted with protecting the public and the environment demonstrate disregard for these responsibilities, accountability becomes essential to prevent continued harm.

Petitioners therefore assert a request for the removal by the State of Hawai'i of individuals who engage in substantial violations of environmental law, trust duties, and cultural protections. Without accountability, the integrity of the environmental review processes will continue to erode, placing Keauhou Bay, its people, future generations, and the island's lands, communities, cultural resources, and environmental systems at ongoing risk.

Petitioners respectfully request that the Court recognize the seriousness of these violations and order appropriate remedies to restore trust, transparency, and lawful stewardship, demonstrating clearly that such misconduct will not be tolerated within agencies responsible for protecting Hawai'i's natural and cultural resources.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court grant the following relief:

1. Declare unlawful and invalid the Final Environmental Impact Statement ("FEIS") relied upon by Respondents for the Keauhou Bay Management Plan and proposed development, as misleading, incomplete, and in violation of HRS Chapter 343, HAR Chapter 11-200.1, the Hawai'i Constitution, and applicable provisions of Hawai'i law governing public trust resources and Native Hawaiian rights.

2. Vacate and set aside any acceptance of, reliance upon, or actions taken pursuant to the FEIS, including any approvals, planning actions, or administrative steps taken in reliance on that document.

3. Grant any and all additional relief this Court deems necessary, lawful, and just to protect Keauhou Bay, its endangered and threatened species, its people, its waters, its culture, its marine life, and future generations.

4. Issue an injunction prohibiting any further or future development, land alteration, leasing, commercialization, or construction activity at Keauhou Bay, including on Keauhou II lands, because such activity rests upon an unlawful FEIS, unresolved violations of public trust, cultural protections, and fiduciary obligations, and the absence of any demonstrated review, verification, or disclosure of the complete chain of title and lawful authority over lands derived from Royal Patents and Land Commission Awards within the administrative record; and further, to the extent Kamehameha Schools holds, administers, or asserts authority over lands derived from Royal Patents or Land Commission Awards, require that development, land alteration, leasing, commercialization, or construction activity on such lands be stayed unless and until Respondents demonstrate, through competent evidence and appropriate review, that lawful title, authority, and compliance with governing trust obligations have been established and disclosed.

5. Order Kamehameha Schools to produce a full and complete trust accounting, including:

    - A complete accounting of all receipts and expenditures;
    - A complete inventory of all trust assets;
    - Disclosure of how trust income is applied toward the "support and education" of beneficiaries;
    - Disclosure of trustee and executive compensation; and
    - Documentation demonstrating compliance with the express reporting requirements of Princess Bernice Pauahi Bishop's Will.

6. Order Kamehameha Schools to produce competent documentation establishing the complete chain of title for all lands derived from Royal Patents and Land Commission Awards, including Keauhou II and other lands administered by the trust, demonstrating lawful succession, conveyance, and authority to hold and administer such lands.

7. Order that no development, land alteration, leasing, sale, or commercial use of Kamehameha Schools trust lands proceed unless and until this Court conducts or orders a formal judicial review and investigation into the administration of the trust, including whether:

- The trustees have faithfully complied with the express terms of Princess Bernice Pauahi Bishop's Will;
- The trustees have fulfilled their fiduciary duties of loyalty, obedience, and prudence;
- The trust is being administered in strict accordance with its charitable purpose to support and educate the Hawaiian people;
- All trust lands are lawfully held with a verified chain of title;
- The proposed uses of trust lands have been and are consistent with fiduciary duties and the trust's charitable purpose; and
- All prior sales, transfers, leases, or dispositions of trust lands complied with and continue to comply with the express terms of the Will and applicable fiduciary law, and did not unlawfully liquidate, leverage, or divert Hawaiian endowed lands from their educational and cultural purpose.

If the Court determines that the trustees have failed to administer the trust in accordance with the Will or have breached their fiduciary duties, order the removal of such trustees and the appointment of new trustees who are willing and able to administer the trust in faithful adherence to Princess Bernice Pauahi Bishop's intent and the trust's charitable purpose.

8. Declare that the directive in Princess Bernice Pauahi Bishop's Will requiring the "support and education of orphans and others in indigent circumstances" establishes a binding fiduciary obligation to ensure that Native Hawaiian children, particularly those who are orphaned or living in poverty, receive comprehensive support reasonably encompassing housing, food, clothing, and access to education free from financial barriers.

9. Declare that the practice of charging tuition to Native Hawaiian beneficiaries, while simultaneously asserting financial necessity to justify commercial development, despite the trust's assets being valued in the billions, is inconsistent with the express intent of Princess Bernice Pauahi Bishop's Will and constitutes a breach of the trustees' fiduciary duties of loyalty and obedience.

10. Declare that the use or proposed use of endowed trust lands, including Keauhou Bay, for commercial resort development, particularly where such use is justified or advanced in connection with the generation of revenue for educational or cultural facilities, is inconsistent with the charitable purpose of the trust and constitutes an unlawful

prioritization of commercial enterprise over the trust's primary obligation to educate and support Native Hawaiian beneficiaries.

11. Order the removal of Jeff Darrow, Marissa Harman, and Kawika McKeague from their positions of public authority, based on the record demonstrating abuse of power, disregard of mandatory legal duties, unlawful advancement of an invalid FEIS, and conduct that has undermined the integrity of public process and public trust.

12. Declare that the State of Hawai'i must remove or bar from positions of environmental authority any additional individuals, beyond those expressly named herein, who are determined to have violated the law or breached public-trust obligations in connection with the actions challenged in this Petition.

13. Order an immediate halt to all islandwide large-scale, resource-intensive, and visitor-oriented commercial development activity, including both new development approvals and projects that have already been approved but not yet completed, beginning with and prioritizing the proposed development at Keauhou Bay, where existing conditions demonstrate that Hawai'i Island lacks adequate infrastructure and resource capacity. This includes documented deficiencies in water availability, electrical capacity, roadway safety, emergency response capability, and landfill limitations. Further order that no large-scale visitor-oriented commercial development proceed where continued development would place communities, public trust resources, and environmental systems at unreasonable and foreseeable risk, and that the stabilization and remediation of these essential infrastructure and resource deficiencies be treated as a priority over the approval or continuation of any additional development.

14. Declare that the conduct documented in this action reflects systemic failure of accountability and unlawful rubber-stamping, and that judicial intervention is necessary to restore lawful governance, protect Hawai'i's people and resources, and prevent further abuse of authority.

15. Award Petitioner Rebecca Melendez, proceeding pro se, her reasonable and recoverable costs of suit incurred in this action, and grant such additional equitable relief as this Court deems just and proper in light of the extraordinary time, labor, and personal resources expended by Petitioner in pursuing this action in the public interest.

16. Grant such other and further relief as this Court deems just and proper to enforce the Will of Princess Bernice Pauahi Bishop, protect Native Hawaiian beneficiaries, and

permanently safeguard Keauhou Bay and its surrounding trust lands from unlawful commercialization, degradation, or conversion to non-educational use.

17. Petitioners further request that, because Respondents Darrow, Harman, and McKeague each played a direct and material role in advancing and relying upon an environmental review that was unlawful and lacked lawful authority and failed to disclose unresolved title concerns, this Court order appropriate equitable relief, including but not limited to removal, disqualification, or prohibition from further participation in decision-making or approval relating to the challenged FEIS or any subsequent approvals related to Keauhou II. Petitioners allege that allowing these Respondents to continue exercising authority over the same lands and approvals would perpetuate unlawful reliance, undermine public trust, and risk irreparable harm.

18. Petitioners respectfully request that this Court issue preliminary and permanent injunctive relief to immediately enjoin all development, land alteration, construction, permitting, and agency approvals affecting lands held, administered, or claimed by Kamehameha Schools that derive from Royal Patents or Land Commission Awards where lawful ownership, authority, and chain of title have not been fully demonstrated and disclosed in the administrative record. Petitioners further request that no agency reliance or approval be permitted absent competent documentation establishing clear and lawful authority over each parcel. Petitioners allege that allowing development to proceed without such verification exceeds lawful authority, defeats meaningful public review, and risks irreparable harm to lands of profound cultural and historical significance.

19. Petitioners further request that this Court declare that the use of control over Hawaiian Endowed Trust lands to deny or interfere with lawful community gatherings requested by Hawaiian beneficiaries constitutes a breach of fiduciary duties. Petitioners allege that the cancellation of a reserved event, denial of a subsequent gathering, and charging fees to Hawaiian beneficiaries for use of their own endowed lands demonstrate misuse of trust authority inconsistent with the purposes of Princess Bernice Pauahi Bishop's Will, which requires that trust resources be used for the "support and education" of Hawaiians (Exhibit C-1). Accordingly, Petitioners request appropriate equitable relief, including investigation and removal of any trustees found to have engaged in such conduct.

Signatures of Pro Se Petitioners

DATED: Kailua-Kona, Hawai'i, 02 April 2026

/s/ Daisy Mitchell
DAISY MITCHELL, Pro Se

DATED: Kailua-Kona, Hawai'i, 06 April 2026

/s/ Rebecca Melendez
REBECCA MELENDEZ, Pro Se

PETITIONER CONSENT & STATUS MODIFICATION PAGE

(Filed With First Amended Petition – Pursuant to HRCP Rule 15)

The following signatures confirm Petitioner changes resulting from this First Amended Petition.
This sheet updates the official Petitioner list, removing prior Petitioners and adding new Petitioners to the action.

Mitchell, Melendez, Melendez & Stryker et al.
v. Kamehameha Schools (Bishop Estate), Hawai'i County Planning Department, et al.
Circuit Court of the Third Circuit — State of Hawai'i

Printed Name	ADD Petitioner	REMOVE Petitioner	Signature	Date
Michelle Melendez	☑	☐		
Deborah Stryker	☑	☐	Deborah Stryker	2/20/26 Deborah Stryker ✓
Kimberly Gay	☐	☑	Kimberly Gay	12/6/25
Robert Gay	☐	☑	Robert Gay	12/6/25

Petitioner Consent & Status Modification
(Filed With First Amended Petition -- Pursuant to HRCP Rule 15)

The following signatures confirm the Petitioners' acknowledgment of and consent to all revisions contained in this First Amended Petition. This page also updates the official list of Petitioners by identifying individuals who are not participating as Petitioners in this action.

Mitchell, Melendez, et al.
v.
Kamehameha Schools (Bishop Estate), Hawai'i County Planning Department, et al.
Circuit Court of the Third Circuit — State of Hawai'i

Printed Name	ADD Petitioner	REMOVE Petitioner	Signature	Date
Michelle Melendez	☐	☑		
Deborah Stryker	☐	☑	Deborah Stryker	4/1/26
Kimberly Gay	☐	☑		
Robert Gay	☐	☑		

Petitioner Status Clarification

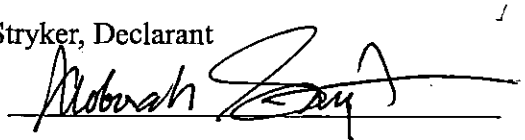
Petitioners respectfully clarify that Michelle Melendez was identified as a proposed petitioner in the First Amended Petition but did not execute the Petitioner Consent & Status Modification page. Accordingly, Michelle Melendez is not a party to this action and is not a Petitioner.

Petitioners further clarify that Deborah Stryker, although previously identified as a petitioner, has elected to withdraw from participation in this action and will execute the Petitioner Consent & Status Modification page reflecting that decision. Accordingly, Deborah Stryker is not a party to this action and is not a Petitioner.

Accordingly, the only remaining Petitioners in this action are Daisy Mitchell and Rebecca Melendez.

Date: 4/1/26

Deborah Stryker, Declarant

Signature: 

Printed Name: Deborah Stryker

EXHIBIT INDEX

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

Exhibit No.	Description	Exhibit Page(s)	Petition Page(s)
A-1	HRS §343-5 – Applicability and requirements	A-1-1	110
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SUPPLEMENTAL EXHIBIT INDEX
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

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EXHIBIT A-1
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-1

Petitioners hereby submit **Exhibit Series A-1-1 through A-1-9**, consisting of selected excerpts from **Hawai'i Revised Statutes Chapter 343 (Environmental Impact Statements)**, including statutory provisions governing environmental review, definitions, applicability, requirements, and limitation of actions.

This exhibit series includes the following excerpts and corresponding exhibit page numbers:

- Exhibit A-1-1 (Exhibit Page 109): HRS §343-5 – Applicability and Requirements
- Exhibit A-1-2 (Exhibit Page 110): HRS §343-7 – Limitation of Actions
- Exhibit A-1-3 (Exhibit Page 111): HRS §§343-1–343-2 – Findings and Purpose; Definitions
- Exhibit A-1-4 (Exhibit Page 112): HRS §343-2 – Definitions (continued)
- Exhibit A-1-5 (Exhibit Page 113): HRS §343-5 – Applicability and Requirements (continued)
- Exhibit A-1-6 (Exhibit Page 114): HRS §343-5 – Acceptance Requirements and Agency Authority
- Exhibit A-1-7 (Exhibit Page 115): HRS §343-5 – Final Statement Preparation and Acceptance (continued)
- Exhibit A-1-8 (Exhibit Page 116): HRS §343-6 – Rules; Procedures and Requirements
- Exhibit A-1-9 (Exhibit Page 117): HRS §343-7 – Limitation of Actions (continued)

These statutory provisions are submitted as controlling legal authority governing environmental review under Hawai'i law, including requirements for preparation, review, and acceptance of environmental impact statements, and the statutory time limitations applicable to judicial review.

availability for inspection of the proposed agreement, plan, and application to enter into a planning process for the preparation and implementation of the habitat conservation plan for public review and comment;

(3) A proposed incidental take license as part of a habitat conservation plan or safe harbor agreement; and

(4) An application for the registration of land by accretion pursuant to section 501-33 or 669-1(e) for any land accreted along the ocean.

(d) The office shall inform the public by the publication of a periodic bulletin to be available to persons requesting this information. The bulletin shall be available through the office and public libraries. [L 1974, c 246, pt of §1; ren L 1979, c 197, §1(3); am L 1983, c 140, §6; am L 1992, c 241, §1; am L 1997, c 380, §8; am L 1998, c 237, §7; am L 2003, c 73, §3]

§343-4 REPEALED. L 1983, c 140, §7.

§343-5 Applicability and requirements. (a) Except as otherwise provided, an environmental assessment shall be required for actions that:

(1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under section [205-2(d)(10)] or [205-4.5(a)(13)] shall only be required pursuant to section 205-5(b);

(2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;

(3) Propose any use within a shoreline area as defined in section 205A-41;

(4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;

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Mitchell et al. v. Kamehameha Schools et al.
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HRS §343-5 — Applicability and Requirements
Hawai'i Revised Statutes

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§343-6.5 Waiahole water system; exemption. The purchase of the assets of the Waiahole water system shall be specifically exempt from the requirements of chapter 343. [L 1998, c 111, §4]

§343-7 Limitation of actions. (a) Any judicial proceeding, the subject of which is the lack of assessment required under section 343-5, shall be initiated within one hundred twenty days of the agency's decision to carry out or approve the action, or, if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted within one hundred twenty days after the proposed action is started. The council or office, any agency responsible for approval of the action, or the applicant shall be adjudged an aggrieved party for the purposes of bringing judicial action under this subsection. Others, by court action, may be adjudged aggrieved.

(b) Any judicial proceeding, the subject of which is the determination that a statement is required for a proposed action, shall be initiated within sixty days after the public has been informed of such determination pursuant to section 343-3. Any judicial proceeding, the subject of which is the determination that a statement is not required for a proposed action, shall be initiated within thirty days after the public has been informed of such determination pursuant to section 343-3. The council or the applicant shall be adjudged an aggrieved party for the

purposes of bringing judicial action under this subsection. Others, by court action, may be adjudged aggrieved.

(c) Any judicial proceeding, the subject of which is the acceptance of an environmental impact statement required under section 343-5, shall be initiated within sixty days

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§343-1 Findings and purpose. The legislature finds that the quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions. The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.

It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations. [L 1979, c 197, §1(1); am L 1983, c 140, §4]

§343-2 Definitions. As used in this chapter unless the context otherwise requires:

"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.

"Action" means any program or project to be initiated by any agency or applicant.

"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.

"Approval" means a discretionary consent required from an agency prior to actual implementation of an action.

"Council" means the environmental council.

"Council" means the environmental council.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

"Environmental assessment" means a written evaluation to determine whether an action may have a significant effect.

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

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public's comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the respective accepting authority.

"Finding of no significant impact" means a determination based on an environmental assessment that the subject action will not have a significant effect and, therefore, will not require the preparation of an environmental impact statement.

"Helicopter facility" means any area of land or water which is used, or intended for use for the landing or takeoff of helicopters; and any appurtenant areas which are used, or intended for use for helicopter related activities or rights-of-way.

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(B) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3;

(C) The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required;

(D) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment; and

(E) The agency shall file notice of such determination with the office. When a conflict of interest may exist because the proposing agency and the agency making the determination are the same, the office may review the agency's determination, consult the agency, and advise the agency of potential conflicts, to comply with this section. The office shall publish the final determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement.

The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement.

(2) The final authority to accept a final statement shall rest with:

(A) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or the use of state funds, or whenever a state agency proposes an action within the categories in

EXHIBIT A
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Hawai'i Revised Statutes
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whenever a state agency proposes an action within the categories in subsection (a); or

(B) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

(c) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. The final approving agency for the request for approval is not required to be the accepting authority.

For environmental assessments for which a finding of no significant impact is anticipated:

(1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;

(2) The office shall inform the public of the availability of the draft environmental

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(2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3;

(3) The applicant shall respond in writing to comments received during the review, and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement 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 the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office.

The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3.

The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement.

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3.

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. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

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(6) Establish criteria to determine whether a statement is acceptable or not;

(7) Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an assessment;

(8) Prescribe procedures for informing the public of determinations that a statement is either required or not required, for informing the public of the availability of draft statements for review and comments, and for informing the public of the acceptance or nonacceptance of the final statement; and

(9) Prescribe the contents of an environmental assessment.

(b) At least one public hearing shall be held in each county prior to the final adoption, amendment, or repeal of any rule. [L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(7); am L 1983, c 140, §9; am L 1986, c 186, §2; am L 1987, c 187, §3]

Case Notes

Project requiring completely new drainage system serving over 300 residences was qualitatively incompatible with both letter and intent of administrative rules implementing subsection (a)(7) which intended to exempt only very minor projects from requirements of this chapter. 86 H. 66, 947 P.2d 378.

Where all three elements under §343-5(c) were present: (1) an applicant proposed an action specified by §343-5(a), (2) the action required the approval of an agency, and (3) the action was not exempt under this section, the land use commission, as the agency that received the request for approval of the boundary amendment petition, was required by statute to prepare an environmental assessment of the proposed action at the earliest practical time. 109 H. 411, 126 P.3d 1098.

§343-6.5 Waiahole water system; exemption. The purchase of the assets of the Waiahole water system shall be specifically exempt from the requirements of chapter 343. [L 1998, c 111, §4]

§343-7 Limitation of actions. (a) Any judicial proceeding, the subject of which is the lack of assessment required under section 343-5, shall be initiated within one hundred twenty days of the agency's decision to carry out or approve the action, or, if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a

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(c) Any judicial proceeding, the subject of which is the acceptance 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 council shall be adjudged an aggrieved party for the purpose of bringing judicial action under this subsection. Affected agencies and persons who provided written comment to such statement during the designated review period shall be adjudged aggrieved parties for the purpose of bringing judicial action under this subsection; provided that the contestable issues shall be limited to issues identified and discussed in the written comment. [L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(8); am L 1983, c 140, §10; am L 1992, c 241, §3]

Case Notes

Plaintiff's claims that Hawai'i environmental policy act was violated were barred; plaintiff did not submit comment and filed suit more than sixty days after office of environmental quality control informed the public that the state final environmental impact statement had been accepted. 307 F. Supp. 2d 1149.

Court has no jurisdiction over actions initiated after time limit. 64 H. 126, 637 P.2d 776.

Date of commission's decision to grant SMA permit triggered time period for appeal, not date when commission made express determination that no environmental assessment was required for project; plaintiff's challenge to lack of environmental assessment thus timely. 86 H. 66, 947 P.2d 378.

Where the federal construct of a procedural right was not germane to case because this section, the statute at issue, establishes who and under what circumstances the lack of an environmental assessment, may be challenged, and federal cases recognizing this standard were inapposite because they rested on non-analogous statutes, petitioner could not be afforded so-called "procedural standing" under subsection (a). 100 H. 242, 59 P.3d 877.

Where Hawaiian homes commission did not accept the proposal for an environmental impact statement, the subject of the judicial proceeding before the trial court was not the "acceptance" of such statement; intervenors were not required to provide written comments pursuant to subsection (c) as subsection (c) did not apply; intervenor's objections, therefore, were subject to judicial review under subsection (b). 106 H. 270, 103 P.3d 939.

§343-8 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or

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EXHIBIT A-1
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-1 (CONTINUED)

Petitioners hereby submit additional materials for **Exhibit Series A-1-10 through A-1-14**, consisting of selected excerpts from the **Hawai'i State Constitution,** including provisions governing public trust resources, environmental rights, natural resource management, and traditional and customary rights.

This exhibit series includes the following excerpts and corresponding exhibit page numbers:

- Exhibit A-1-10 (Exhibit Page 119): Hawai'i Constitution, Art. XI, §1 – Conservation and Development of Resources
- Exhibit A-1-11 (Exhibit Page 120): Hawai'i Constitution, Art. XI, §§2–5 – Natural Resource Management
- Exhibit A-1-12 (Exhibit Page 121): Hawai'i Constitution, Art. XI, §§6–9 – Marine, Water, and Environmental Rights
- Exhibit A-1-13 (Exhibit Page 122): Hawai'i Constitution, Art. XI, §§10–11 – Public Lands and Economic Zone
- Exhibit A-1-14 (Exhibit Page 123): Hawai'i Constitution, Art. XII, §7 – Traditional and Customary Rights

These constitutional provisions are submitted as controlling legal authority establishing the State's public trust obligations, environmental protections, and the protection of traditional and customary Native Hawaiian rights, all of which govern agency decision-making and environmental review under Hawai'i law.

UNIVERSITY OF HAWAII

Section 5. The University of Hawaii is hereby established as the state university and constituted a body corporate. It shall have title to all the real and personal property now or hereafter set aside or conveyed to it, which shall be held in public trust for its purposes, to be administered and disposed of as provided by law. [Ren and am Const Con 1978 and election Nov 7, 1978]

BOARD OF REGENTS; POWERS

Section 6. There shall be a board of regents of the University of Hawaii, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor from pools of qualified candidates presented to the governor by the candidate advisory council for the board of regents of the University of Hawaii, as provided by law. At least part of the membership of the board shall represent geographic subdivisions of the State. The board shall have the power to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board. The board shall also have exclusive jurisdiction over the internal structure, management, and operation of the university. This section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern. [Am HB 253 (1964) and election Nov 3, 1964; ren and am Const Con 1978 and election Nov 7, 1978; am SB 539 (2000) and election Nov 7, 2000; am SB 1256 (2005) and election Nov 7, 2006]

Article XI • Conservation, Control & Development Of Resources

Note: This article was redesignated from "Article X Conservation and Development of Resources" to be "Article XI Conservation, Control and Development of Resources" by Const Con 1978 and election Nov 7, 1978. The former Article XI now appears as Article XII.

CONSERVATION AND DEVELOPMENT OF RESOURCES

Section 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people. [Add Const Con 1978 and election Nov 7, 1978]

Note: A proposal of the 1978 Constitutional Convention deleted the former section 1 of the old Article X, which read: "Section 1. The legislature shall promote the conservation, development and utilization of agricultural resources, and fish, mineral, forest, water, land, game and other natural resources." This deletion appears to be one of the unspecified changes submitted for ratification under Question 34. On whether any of the changes submitted under Question 34 was in fact approved by the electorate, see Kahalekai v. Doi, 60 H. 324, 590 P.2d 543, excerpted in the note preceding the Preamble to the Constitution.

MANAGEMENT AND DISPOSITION OF NATURAL RESOURCES
Section 2. The legislature shall vest in one or more executive boards or commissions powers for the management of natural resources owned or controlled by the State, and such powers of disposition thereof as may be provided by law; but land set aside for public use, other than for a reserve for conservation purposes, need not be placed under the jurisdiction of such a board or commission.
The mandatory provisions of this section shall not apply to the natural resources owned by or under the control of a political subdivision or a department or agency thereof. [Ren and am Const Con 1978 and election Nov 7, 1978]

AGRICULTURAL LANDS
Section 3. The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action. [Add Const Con 1978 and election Nov 7, 1978]

PUBLIC LAND BANKING
Section 4. The State shall have the power to acquire interests in real property to control future growth, development and land use within the State. The exercise of such power is deemed to be for a public use and purpose. [Add Const Con 1978 and election Nov 7, 1978]

GENERAL LAWS REQUIRED; EXCEPTIONS
Section 5. The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision,

or any department or agency thereof. [Ren and am Const Con 1978 and election Nov 7, 1978]

MARINE RESOURCES

Section 6. The State shall have the power to manage and control the marine, seabed and other resources located within the boundaries of the State, including the archipelagic waters of the State, and reserves to itself all such rights outside state boundaries not specifically limited by federal or international law.

All fisheries in the sea waters of the State not included in any fish pond, artificial enclosure or state-licensed mariculture operation shall be free to the public, subject to vested rights and the right of the State to regulate the same; provided that mariculture operations shall be established under guidelines enacted by the legislature, which shall protect the public's use and enjoyment of the reefs. The State may condemn such vested rights for public use. [Ren and am Const Con 1978 and election Nov 7, 1978]

WATER RESOURCES

Section 7. The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii's water resources. [Add Const Con 1978 and election Nov 7, 1978]

NUCLEAR ENERGY

Section 8. No nuclear fission power plant shall be constructed or radioactive material disposed of in the State without the prior approval by a two-thirds vote in each house of the legislature. [Add Const Con 1978 and election Nov 7, 1978]

ENVIRONMENTAL RIGHTS

Section 9. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law. [Add Const Con 1978 and election Nov 7, 1978]

FARM AND HOME OWNERSHIP
Section 10. The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Note: This is the former section 5 of the old Article X. A proposal of the 1978 Constitutional Convention deleting this provision from the Constitution was not validly ratified. Kahalekai v. Doi, 60 H. 324, 590 P.2d 543. In view of the holding, the revisor has restored the provision and designated it as section 10 of this article under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

EXCLUSIVE ECONOMIC ZONE
Section [11]. The State of Hawaii asserts and reserves its rights and interest in its exclusive economic zone for the purpose of exploring, exploiting, conserving and managing natural resources, both living and nonliving, of the seabed and subsoil, and super adjacent waters. [Add SB 2021 (1988) and election Nov 8, 1988]

Article XII • Hawaiian Affairs

Note: This article was redesignated from "Article XI Hawaiian Home Lands" to "Article XII Hawaiian Affairs" by Const Con 1978 and election Nov 7, 1978. The former Article XII now appears as Article XIII.

HAWAIIAN HOMES COMMISSION ACT
Section 1. Anything in this constitution to the contrary notwithstanding, the Hawaiian Homes Commission Act, 1920, enacted by the Congress, as the same has been or may be amended prior to the admission of the State, is hereby adopted as a law of the State, subject to amendment or repeal by the legislature; provided that if and to the extent that the United States shall so require, such law shall be subject to amendment or repeal only with the consent of the United States and in no other manner; provided further that if the United States shall have been provided or shall provide that particular provisions or types of provisions of such Act may be amended in the manner required for ordinary state legislation, such provisions or types of provisions may be so amended. The proceeds and income from Hawaiian home lands shall be used only in accordance with the terms and spirit of such Act. The legislature shall make sufficient sums available for the following purposes: (1) development of home, agriculture, farm and ranch lots; (2) home, agriculture, aquaculture, farm and ranch loans; (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved;

for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board. [Add Const Con 1978 and election Nov 7, 1978]

TRADITIONAL AND CUSTOMARY RIGHTS

Section 7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]

Note: A proposal of the 1978 Constitutional Convention adding a section 7 defining the terms "Hawaiian" and "native Hawaiian" was not validly ratified. Kahalekai v. Doi, 60 H. 324, 590 P.2d 543. In view of the holding, the revisor has deleted the section and renumbered section 8 as section 7 under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

Article XIII • Organization; Collective Bargaining

Note: This article was renumbered from Article XII to be Article XIII by Const Con 1978 and election Nov 7, 1978. The former Article XIII now appears as Article XV.

PRIVATE EMPLOYEES

Section 1. Persons in private employment shall have the right to organize for the purpose of collective bargaining. [Ren Const Con 1978 and election Nov 7, 1978]

PUBLIC EMPLOYEES

Section 2. Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law. [Am Const Con 1968 and election Nov 5, 1968; ren and am Const Con 1978 and election Nov 7, 1978]

Article XIV • Code of Ethics

Note: This article, entitled "Code of Ethics," is new, added by Const Con 1978 and election Nov 7, 1978. The former Article XIV, entitled "General and Miscellaneous Provisions," now appears as Article XVI.

EXHIBIT A-1
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-1 (CONTINUED)

Petitioners hereby submit additional materials for **Exhibit Series A-1-15, A-1-16, A-1-20, A-1-22,** consisting of selected excerpts from the **Hawai'i Revised Statutes**, including statutory definitions, requirements for environmental review, common law applicability, and land patent provisions relevant to ownership and title.

This exhibit series includes the following excerpts and corresponding exhibit page numbers:

- Exhibit A-1-15 (Exhibit Page 124): HRS §343-2 – Definitions (Significant Effect; Related Terms)
- Exhibit A-1-16 (Exhibit Page 125): HRS §343-5(c) – Acceptance Requirement as Condition Precedent
- Exhibit A-1-20 (Exhibit Page 126): HRS §1-1 – Common Law of the State; Hawaiian Usage
- Exhibit A-1-22 (Exhibit Page 127): HRS §172-11 – Land Patents on Land Commission Awards

These statutory provisions are submitted as controlling legal authority governing environmental review requirements, the legal effect of acceptance of environmental impact statements, the incorporation of Hawaiian usage into the common law of the State, and the statutory framework governing land patents and title derived from Land Commission Awards.

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"Power-generating facility" means:

(1) A new, fossil-fueled, electricity-generating facility, where the electrical output rating of the new equipment exceeds 5.0 megawatts; or

(2) An expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, where the incremental electrical output rating of the new equipment exceeds 5.0 megawatts.

"Significant effect" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State.

"Wastewater treatment unit" means any plant or facility used in the treatment of wastewater. [L 1974, c 246, pt of §1; am and ren L 1979, c 197, §1(2); am L 1983, c 140, §5; am L 1986, c 186, §1; am L 1987, c 187, §1 and c 325, §2; am L 1996, c 61, §1; am L 2000, c 50, §2; am L 2004, c 55, §2; am L 2005, c 130, §2]

Attorney General Opinions

"Action" includes a subdivision proposal. Att. Gen. Op. 75-14.

"Action" includes issuance of building permits. Att. Gen. Op. 75-15.

Case Notes

Sufficiency of an environmental impact statement is a question of law. 81 H. 171, 914 P.2d 1364.

The proper inquiry for determining the necessity of an environmental impact statement (EIS) based on the language of §343-5(c) is whether the proposed action will "likely" have a significant effect on the environment; as defined in this section, "significant effect" includes irrevocable commitment of natural resources; where the burning of thousands of gallons of fuel and the withdrawal of millions of gallons of groundwater on a daily basis would "likely" cause such irrevocable commitment, an EIS was required pursuant to both the common meaning of "may" and the statutory definition of "significant effect". 106 H. 270, 103 P.3d 939.

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The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement.

The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement.

(2) The final authority to accept a final statement shall rest with:

(A) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or the use of state funds, or whenever a state agency proposes an action within the categories in subsection (a); or

(B) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

(c) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. The final approving agency for the request for approval is not required to be the accepting authority.

§1-1 Common law of the State; exceptions. The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State. [L 1892, c 57, §5; am L 1903, c 32, §2; RL 1925, §1; RL 1935, §1; RL 1945, §1; RL 1955, §1-1; HRS §1-1]

Attorney General Opinions

Common-law authority establishes that governmental bodies possess inherent power to receive gifts to be used in implementing their functions. Att. Gen. Op. 92-4.

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ 65.
Native Hawaiian Cultural Practices Under Threat. I HBJ No. 13, at pg. 1.
On the Reception of the Common Law in the Hawaiian Islands. III HBJ No. 13, at pg. 87.
The Lum Court and Native Hawaiian Rights: 14 UH L. Rev. 377.
Pele Defense Fund v. Paty: Exacerbating the Inherent Conflict Between Hawaiian Native Tenant Access and Gathering Rights and Western Property Rights. 16 UH L. Rev. 207.
Public Access Shoreline Hawaii v. Hawaii County Planning Commission: The Affirmative Duty to Consider the Effect of Development on Native Hawaiian Gathering Rights. 16 UH L. Rev. 303.
The Reassertion of Native Hawaiian Gathering Rights Within The Context of Hawai'i's Western System of Land Tenure. 17 UH L. Rev. 165.
Cultures in Conflict in Hawai'i: The Law and Politics of Native Hawaiian Water Rights. 18 UH L. Rev. 71.
Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i. 20 UH L. Rev. 99.
The Backlash Against PASH: Legislative Attempts To Restrict Native Hawaiian Rights. 20 UH L. Rev. 321.
The Latest Take on Background Principles and the States' Law of Property After Lucas and Palazzolo. 24 UH L. Rev. 497.
Loko I'a: A Legal Guide to the Restoration of Native Hawaiian Fishponds Within the Western Paradigm. 24 UH L. Rev. 657.
Wiping Out the Ban on Surfboards at Point Panic. 27 UH L. Rev. 303.
Biopiracy in Paradise?: Fulfilling the Legal Duty to Regulate Bioprospecting in Hawai'i. 28 UH L. Rev. 387.
The Hawaiian Usage Exception to the Common Law: An Inoculation Against the Effects of Western Influence. 30 UH L. Rev. 319.
Public Beach Access: A Right for All? Opening the Gate to Iroquois Point Beach. 30 UH L. Rev. 495.
The "Hawaiianness" of Same-Sex Adoption. 30 UH L. Rev. 517.
Method Is Irrelevant: Allowing Native Hawaiian Traditional and Customary Subsistence Fishing to Thrive. 32 UH L. Rev. 203 (2009).
William S. Richardson: Developing Hawai'i's Lawyers and Shaping the Modern Hawai'i Court System. 33 UH L. Rev. 33 (2010).
The Life of the Law Is Perpetuated in Righteousness: The Jurisprudence of William S. Richardson. 33 UH L. Rev. 99 (2010).
The Moon Court, Land Use, and Property: A Survey of Hawai'i Case Law 1993-2010. 33 UH L. Rev. 635 (2011).
Demolition of Native Rights and Self Determination: Act 55's Devastating Impact through the Development of Hawai'i's Public Lands. 35 UH L. Rev. 297 (2013).

EXHIBIT A
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

the expense of the surveys and of the adjudication shall be determined and is hereby made a lien upon the lands superior to all other incumbrances. [L 1919, c 208, §3; am L 1923, c 155, §2; RL 1925, §566; RL 1935, §1692; RL 1945, §4639; RL 1955, §100-9; am L Sp 1959 2d, c 1, §12; HRS §172-9]

" §172-10 **Enforcement of payment of expenses by owners.** The attorney general shall proceed, at any time after the determination of the sum due as hereinbefore provided, to enforce payment of the same by any proper proceedings brought in the name of the State in such manner as provided for in sections 172-1 to 172-6, in the foreclosure of lien for commutation. [L 1919, c 208, §4; am L 1923, c 155, §2; RL 1925, §567; RL 1935, §1693; RL 1945, §4640; RL 1955, §100-10; HRS §172-10]

" §172-11 **Land patents on land commission awards; to whom, for whose benefit.** Every land patent issued upon an award of the board of commissioners to quiet land titles, shall be in the name of the person to whom the original award was made, even though the person is deceased, or the title to the real estate thereby granted has been alienated; and all land patents so issued shall inure to the benefit of the heirs and assigns of the holder of the original award. [L 1872, c 21, §1; RL 1925, §568; RL 1935, §1587; RL 1945, §4641; RL 1955, §100-11; HRS §172-11]

Case Notes

Land commission award held good against later royal patent. 1 H. 69; 1 H. 90. Award cannot be collaterally attacked. 1 H. 90.

Certificate of award of land commission, with its accompanying survey, are admissible in evidence. 2 H. 202.

Patents based on awards do not confer or confirm title of

EXHIBIT A
Mitchell et al. v. Kamehameha Schools et al.
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EXHIBIT A-2
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-2

Petitioners hereby submit **Exhibit Series A-2**, consisting of excerpts from the Hawai'i Environmental Policy Act (HEPA) Citizen's Guide (Oct. 2014), which provides authoritative guidance regarding consultation requirements, significance criteria, environmental impact statement procedures, and cumulative impact analysis under HRS Chapter 343.

This exhibit includes guidance establishing that consultation with agencies, community members, and stakeholders is a required and iterative component of the environmental review process, and that meaningful public participation must occur at the earliest practicable time.

This exhibit further includes the significance criteria used to determine whether a proposed action may have a significant effect on the environment, including impacts to natural and cultural resources, water quality, endangered species, and cumulative environmental degradation.

Additional guidance included in this exhibit describes the required EIS process, including preparation, public comment, agency response obligations, and the requirement that a Final Environmental Impact Statement must be accepted as complete and technically adequate prior to project implementation.

This exhibit also addresses cumulative effects and project segmentation, establishing that a proposed action must be evaluated in its entirety and may not be improperly divided into smaller components to avoid full environmental review.

Petitioners submit Exhibit Series A-2 to demonstrate the governing procedural and substantive requirements applicable to environmental review under HEPA, and to show that Respondents were required to conduct full, transparent, and comprehensive analysis prior to acceptance and reliance upon the Final Environmental Impact Statement.

2.0 Consultation

Please refer to Section 11-200-9, HAR

Consultation is a critical and imperative part of the HEPA process. At the earliest practicable time, an agency is required to consult (or direct an applicant to consult) with agencies, citizen groups and individuals that might have jurisdiction or expertise with respect to the proposed action. Communities and various stakeholders must be included in the decision making process. The cultural and social importance of the environment to the people who live in the area must be considered.

2.1 Consultation Process

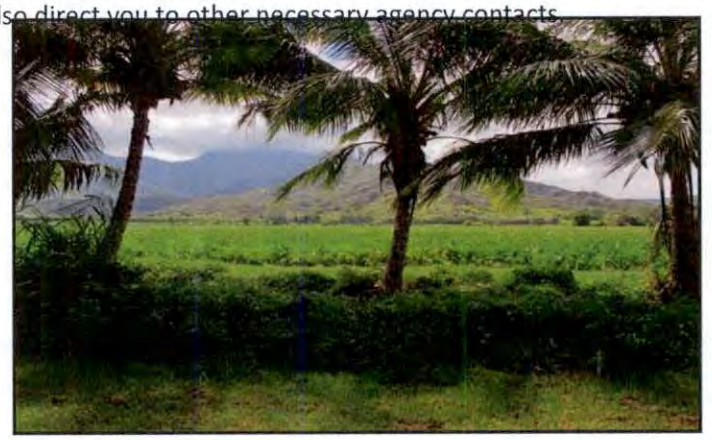
Consultation is an *iterative process.* Throughout the Chapter 343 process, agencies, individuals, or organizations may be contacted multiple times, depending on the information received and the questions that arise. Conflict is probable, but through transparency and public participation, potential adverse effects on the environment are identified and solutions considered. It is pragmatic to involve communities and various stakeholders in the decision making process because the public is more likely to 'buy in' to a proposal or plan in which they have had some involvement.

2.2 Who needs to be consulted?

Which agencies and individuals to consult will depend on both the *regulatory context and* the *environmental context*. To determine the regulatory context, it helps to contact all agencies processing required discretionary approvals. Determining the environmental context of the proposed action is also important. For example, the proponent of a new wind farm should consider both the site for the wind turbines and the surrounding environment.

2.3 Pre-Assessment Consultation

Consult with the community as well as agencies regarding your proposed activity before preparing your draft EA or EISPN. Groups, individuals and organizations that have expertise in the field, have an interest or will be affected by the activity you are proposing should be consulted. Immediate neighbors or neighboring landowners must be contacted. Consultation with the local planning department is required. The local planning staff can also direct you to other necessary agency contacts.



4.1 Significance Criteria

In most cases, an agency determines that an action may have a significant impact on the environment if it meets any of the following criteria:

1. Involves an irrevocable commitment to loss or destruction of any natural or cultural resource;
2. Curtails the range of beneficial uses of the environment;
3. Conflicts with the state's long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS, and any revisions thereof and amendments thereto, court decisions, or executive orders;
4. Substantially affects the economic or social welfare of the community or State;
5. Substantially affects public health;
6. Involves substantial secondary impacts, such as population changes or effects on public facilities;
7. Involves a substantial degradation of environmental quality;
8. Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
9. Substantially affects a rare, threatened, or endangered species, or its habitat;
10. Detrimentally affects air or water quality or ambient noise levels;
11. Affects or is likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal waters;
12. Substantially affects scenic vistas and view planes identified in county or state plans or studies; or
13. Requires substantial energy consumption



6.0 Environmental Impact Statements

An EIS is a disclosure document that analyzes the effects of a proposed project or program on the environment in terms of direct, indirect and cumulative impacts. When examining the potential environmental impacts of proposed actions, the EIS is a more complex screening tool than the EA.

This in-depth study discusses alternative methods, modes or designs of the proposed action, and formulates mitigation to eliminate, reduce, and rectify adverse impacts of the proposed action.

HEPA directs that in cases where an EIS is required, the preparing party (the proposing agency for agency actions, or the applicant for applicant actions) must prepare the EIS, submit it for review and comments, and revise it, while taking into account all critiques and responses. As such, an EIS is more involved - the entire process of consultation, research, dialogue, document preparation and review. The EIS must be written in plain language to allow public understanding of its content.

6.1 EIS Process

At each step in the process, the EIS documents (EISPN, DEIS, and FEIS) must be submitted to OEQC for publication in *The Environmental Notice*.

- An EIS may begin with an FEA or bypass the preparation of an EA process completely and proceed to the EIS Preparation Notice (EISPN) that undergoes a 30-day comment period. The consultation process of the EISPN affords agencies, organizations and individuals an opportunity to request to become a consulted party in the preparation of the EIS.
- Next, the study is compiled and printed as a Draft Environmental Impact Statement (DEIS). The DEIS must include copies of comments received and responses sent for the FEA/EISPN or the Act 172-2012 EISPN during the 30-day comment period. The EIS content requirements are provided in Part 6.2 of this guide.
- The DEIS is circulated to consulted parties with a 45-day public comment period. The applicant or approving agency must respond to the comments received during the DEIS public review period in a point-by-point manner. After comments have been received and responded to, the DEIS is finalized with updated information and copies of comments received and responses.
- The final document (FEIS) must be accepted by the accepting authority as complete and technically adequate before the proposed project can be implemented. The acceptance of an FEIS may be challenged.
- Aggrieved parties have 60 days from notification of acceptance/ non acceptance determination in *The Environmental Notice* to challenge the acceptability of the final document in court.

For agency actions, the accepting authority for an EIS on proposed state actions is the governor, and for county actions, the mayor.

For applicant actions, the accepting authority is a state or county agency with the power to grant discretionary permits on the project.

8.0 Cumulative Effects

When considering the significance of potential environmental effects, the proposing or approving agency must consider the sum of the effects on the quality of the environment. That same agency must evaluate the cumulative effects of a proposed action including the expected direct and indirect consequences, as well as short-term and long-term effects of the proposed action.

8.1 Phased Actions - Project Segmentation

A group of actions proposed by an agency or an applicant shall be treated as a single action when:

A. The component actions are phases or increments of a larger total undertaking;
B. An individual project is a necessary precedent for a larger project;
C. An individual project represents a commitment to a larger project;
D. The actions in question are essentially identical and a single statement will adequately address the impacts of each individual action and those of the group of actions as a whole (Section 11-200-7, HAR).

A proposed action must be described in its entirety and cannot be broken up into component parts, which if each is taken separately, may have minimal impact on the environment. Segmenting a project generally is forbidden. If a project includes a later phase that cannot be fully described in the current EA because it will be implemented in the distant future (as opposed to the "reasonably foreseeable future"), the EA should disclose as much detail as possible about the future phase. Should the future phase of such a project eventually be proposed, a new environmental review document will be required at that time.



EXHIBIT A-3
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-3

Petitioners hereby submit **Exhibit Series A-3**, consisting of Hawai'i Revised Statutes governing trust administration, trustee duties, fiduciary obligations, and charitable trust requirements under HRS Chapter 554 and related provisions.

This exhibit includes statutory provisions governing the administration of trust estates, including requirements for leasing, investment, and management of trust property, as well as the obligation of trustees to act in accordance with the purposes of the trust and for the benefit of the beneficiaries.

This exhibit further includes provisions requiring trustees to provide accounting and reporting of trust assets and transactions, ensuring transparency, oversight, and accountability in the administration of trust property.

Additional authorities included in this exhibit address fiduciary duties owed by trustees, including duties of loyalty, prudent administration, and the obligation to protect and control trust property, as well as limitations on self-dealing and improper use of trust assets.

This exhibit also includes provisions governing charitable trusts, including restrictions on administration, requirements for lawful use of trust assets, and the authority of courts and the State to oversee and enforce proper trust management.

Petitioners submit Exhibit Series A-3 to demonstrate that trustees are bound by strict fiduciary, statutory, and equitable duties in the administration of trust lands and assets, and that failure to comply with these obligations constitutes a violation of law subject to judicial review.

the court or provided by the rules of the court, may, if it appears to be for the benefit of the trust estate, authorize or direct the trustee or trustees to lease or extend the terms of leases of the real property for such periods as may be deemed advantageous to the estate; or to invest moneys of the trust estate in the purchase of real or personal property, or the constructing, improving, or repairing of buildings or other improvements on the land belonging to the trust estate, or in such other manner as the court deems to be most for the benefit of the trust estate and as best effecting the objects of the trust. Any lease or extension of lease made under such authority or direction shall continue in force for the full period so authorized notwithstanding the trust has terminated. [L 1921, c 141, §1; RL 1925, §2464; am L 1929, c 92, §1; am L 1933, c 194, §1; RL 1935, §4712; RL 1945, §12573; RL 1955, §340-3; HRS §554-3; am L 1972, c 145, §3(c)]

Case Notes

Lease for term extending beyond duration of trust, application of this statute considered. 34 H. 333. See as to power under will, 40 H. 543, compare 31 H. 500.

§554-4 Annual account; trustees to file. Every trustee acting under appointment of any court or under any appointment requiring the approval of any court, shall, except in cases where the prior trustee, if any, was not required by statute or the instrument creating the trust or appointing the trustee to file such an account, file annually with the court having jurisdiction thereof an account showing in detail all receipts and disbursements, together with a full and detailed inventory of all property in the trustee's possession or under the trustee's control; provided that the court in cases in which it deems it advisable in the interests of the beneficiaries may permit the accounts to be filed biennially or triennially instead of annually or, if they are filed annually, may permit them to accumulate to be passed upon biennially or triennially; and provided further that the court on its own examination or that of its clerk, shall, without reference to a master, pass upon the accounts in cases in which the annual income does not exceed $1,000, except in the case of a final account when the court may refer the same to a master, irrespective of the amount of the annual income, if for any reason it is deemed proper or necessary. If any such trustee fails to file an account as herein required, the clerk of the court in which the trustee is required to file the account, shall notify the trustee promptly of such failure, and, if the trustee fails to file the account within thirty days after such notification, the trustee shall be cited to appear before the court and be required to show cause why the trustee should not be punished for contempt of court as provided by section 710-1077 and the trustee shall be subject to all of the penalties in such section provided. The court may also, in its discretion, remove any such trustee.

Unless otherwise required by the instrument creating the trust, nothing in this section shall be construed to require the filing of an annual account by a trustee or trustees appointed by the court as additional trustee or trustees to serve with or in the place and stead of a trustee or trustees appointed in the instrument creating a trust, nor by a trustee whose appointment is made in accordance with or pursuant to the instrument creating the trust where such appointment has been confirmed by any court in proceedings brought to secure the confirmation or approval thereof. This provision applies to trusts existing on May 13, 1935, and appointments made thereunder as well as to future trusts. [L 1915, c 101, §1; RL 1925, §2475; am L 1929, c 169, §1; am L Sp 1933, c 38, §1; RL 1935, §4713; am L 1935, c 154, §1 and pt of §2; RL 1945, §12574; am L 1945, c 186, §1; RL 1955, §340-4; HRS §554-4; am L 1976, c 200, pt of §1; am L 1984, c 95, §11]

Cross References

Commissions and further allowances of trustees, see §607-18.

Rules of Court

Accountings, see Hawaii Probate Rules, part A(VII); HPR rules 83, 84.

Ex parte proceedings regarding accounts, applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(a).

Case Notes

Duty to render accurate accounts. 30 H. 359, 391.

Trustee may not make profits for itself. 30 H. 359, 386; 47 H. 629, 394 P.2d 432.

Right to interest on advance made by trustee to pay interest. 31 H. 958.

Ex parte approval of accounts not binding. 34 H. 263; 35 H. 501, 537; 35 H. 689, 707; 46 H. 475, 559, 382 P.2d 920.

What bookkeeping system required of trustee. 34 H. 417.

Whether accounts should be settled before termination of trust, duty of master to advise court. 46 H. 475, 561, 382 P.2d 920.

An appellate court in reviewing trustee's accounting has duty to question any receipt or expenditure which is improper without regard to whether the issues were argued and briefed on appeal. 53 H. 604, 499 P.2d 670.

Trial court's award of master's fee will be reversed only on showing of abuse of discretion. 53 H. 604, 499 P.2d 670.

Cited: 36 H. 403, 452; 37 H. 111, 122, 146.

§554-5 REPEALED. L 1973, c 200, §2.

§554-6 Investments. Every trustee, other than a trust company acting as such, except insofar as the terms of the instrument or words creating or defining the trust specifically provide otherwise, or

unless it is otherwise ordered by the court, which order may be made on an ex parte hearing, shall invest the funds of the trust only in the investments authorized in the cases of trust companies acting as trustees under article 8 of chapter 412, and with respect to all investments and the security for the same every such trustee shall have and be subject to the same rights, powers, privileges, duties, obligations, and responsibilities as would apply to trust companies acting as trustees as to similar investments and the security for the same under article 8 of chapter 412. Nothing in this section shall be deemed to authorize any trustee other than a trust company to issue participation certificates or notes. Any investment made by any such trustee under order by the court made on an ex parte hearing or otherwise may be held during the life of the trust or lesser period unless the terms of the instrument or words creating or defining the trust or the terms of the order of the court or of any subsequent order of the court specifically provide otherwise. [L Sp 1933, c 47, §1; RL 1935, §4715; am L 1941, c 154, §1; RL 1945, §12576; RL 1955, §340-6; HRS §554-6; am L 1976, c 200, pt of §1; am L 1993, c 350, §33]

Case Notes

This section applicable only when trust instrument does not otherwise provide. 35 H. 1, 8.

Duty to diversify investments, to exercise reasonable judgment. 47 H. 548, 393 P.2d 96; 47 H. 577, 393 P.2d 89.

Cited: 43 H. 37, 41; 47 H. 629, 638, note 6, 394 P.2d 432.

§554-7 Assignee for creditors, instructions, and approval of accounts. A trustee or assignee for creditors has the same right, by application to a circuit court to request and receive instructions or to have the trustee's or assignee's accounts approved or be discharged from the trustee's or assignee's trust, as any other fiduciary, according to the usages and principles of courts of equity concerning trusts. [L 1941, c 292, §1; RL 1945, §12577; RL 1955, §340-7; HRS §554-7; am L 1972, c 145, §3(d); gen ch 1985]

Rules of Court

Accountings, see Hawaii Probate Rules, part A(VII); HPR rules 83, 84.

Case Notes

See 36 H. 732.

§554-8 Charitable trusts; expenses. In any proceedings, in any court, concerning a trust, which is wholly or partly charitable and in which the attorney general has been cited by the court or trustees as a necessary or proper party, the court having jurisdiction of such proceedings may require the payment of all reasonable and necessary expenses incurred by the attorney general for the

protection of the beneficial interest in, or for the proper conduct of, such proceedings from the corpus or income, or both, of the trust estate, in such reasonable amounts as the court may order. [L Sp 1941, c 16, §1; RL 1945, §12578; RL 1955, §340-8; HRS §554-8]

§554-9 Charitable trusts; leases. Trustees of a charitable trust may modify, suspend, or waive the enforcement of any provision of any lease or accept a surrender thereof if a leased land or any structure built thereon has been destroyed in part or in whole by any natural disaster, or the use of the land or the construction of any improvements thereon has been restricted or prohibited in any manner by law, ordinance, or regulation of any government agency due to natural disaster. [L Sp 1960, c 8, §1; Supp, §540-9; HRS §554-9]

[§554-10] Charitable trusts; administration. (a) In the administration of any trust which is a "private foundation" as defined in section 509 of the Code or to which section 4947 of the Code applies, the following shall be prohibited:

(i) Engaging in any act of "self-dealing" (as defined in section 4941(d) of the Code);
(ii) Retaining any "excess business holdings" (as defined in section 4943(c) of the Code);
(iii) Making any investments in such manner as to subject it to tax under section 4944 of the Code; and
(iv) Making any "taxable expenditures" (as defined in section 4945(d) of the Code);

provided that this subsection (a) shall not apply to such amounts of any trust to which section 4947(a)(2) of the Code applies as are described in the second sentence of said section and items (ii) and (iii) of this subsection (a) shall not apply to any trust to which said section 4947(a)(2) applies which is described in section 4947(b)(3) of the Code.

(b) In the administration of any trust which is a "private foundation" as defined in section 509 of the Code or a "charitable trust" as defined in section 4947(a)(1) of the Code, there shall be distributed, and the trustee or trustees shall be empowered and authorized to distribute, for the purposes specified in the trust instrument, such amounts at such time and in such manner as shall be required so as not to subject it to tax under section 4942 of the Code.

(c) Nothing in this section shall impair the rights and powers of the courts or the attorney general of this State with respect to any trust.

(d) References in this section to sections of the Code are to sections of the Internal Revenue Code of 1954, as heretofore amended, and shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws. [L 1971, c 136, §1]

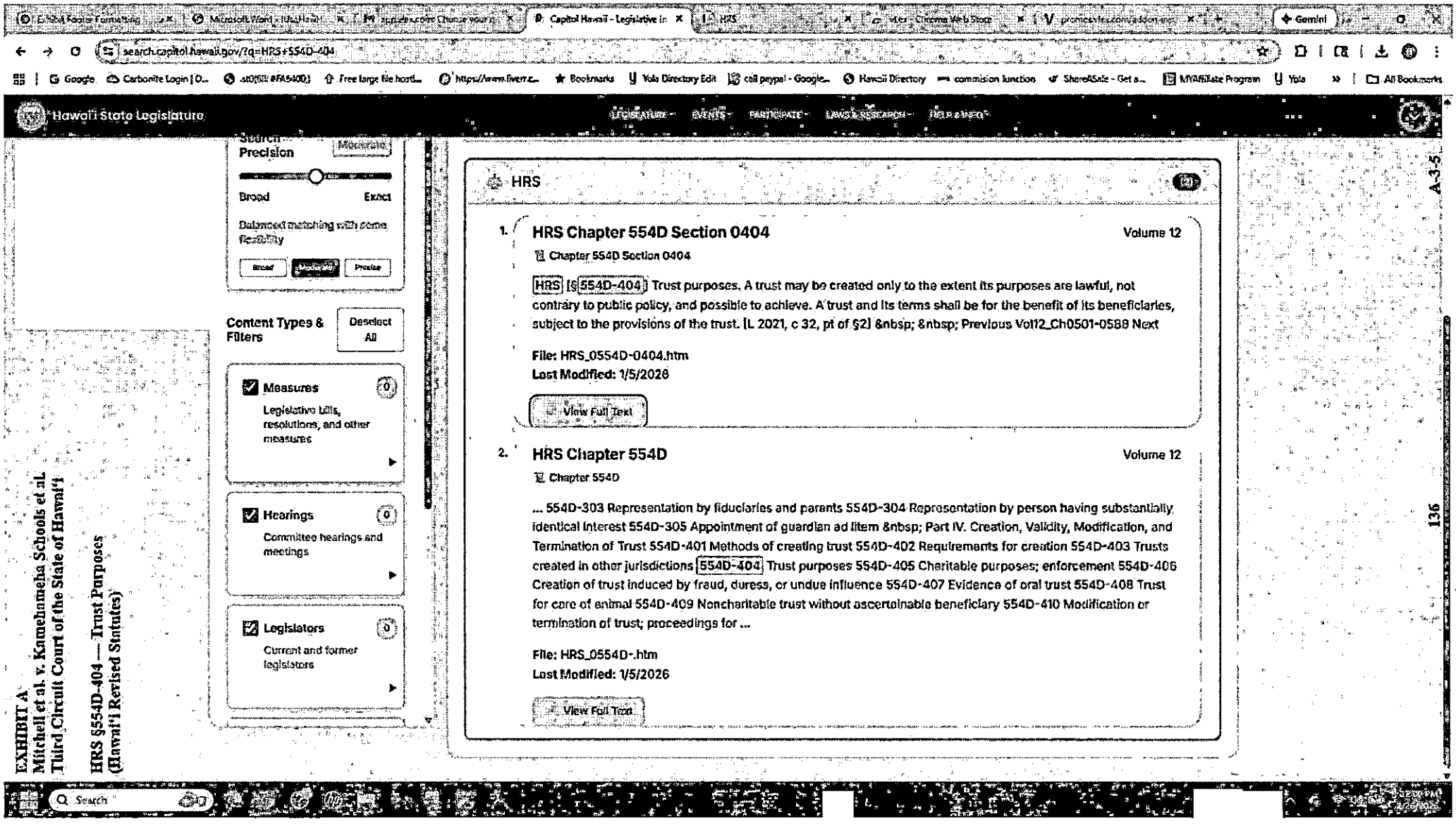


EXHIBIT A
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

HRS §554D-404 — Trust Purposes
(Hawai'i Revised Statutes)

A-3-5

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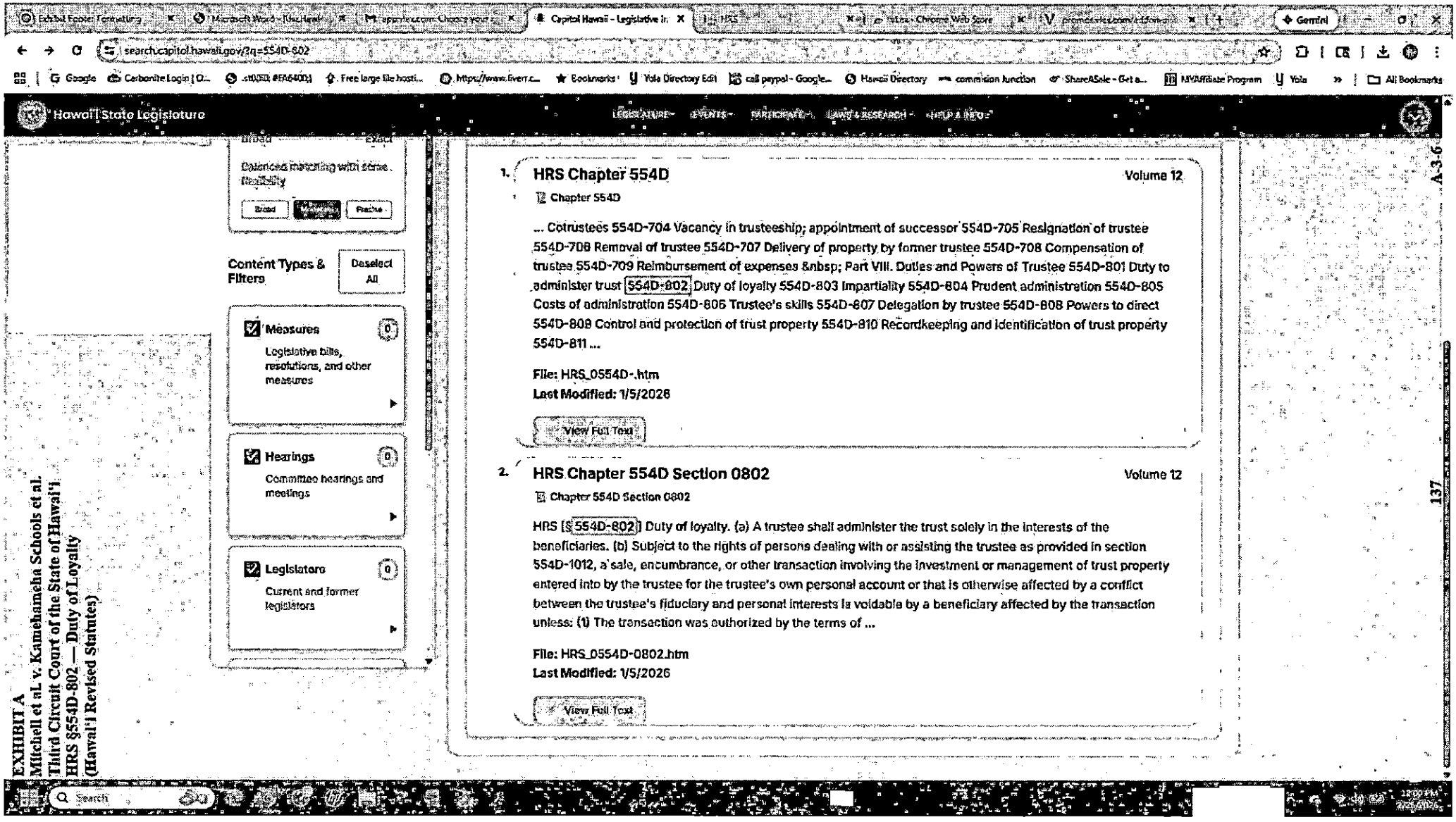

EXHIBIT A
Mitchell et al v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i
HRS §554D-802 — Duty of Loyalty
(Hawai'i Revised Statutes)

A-3-6

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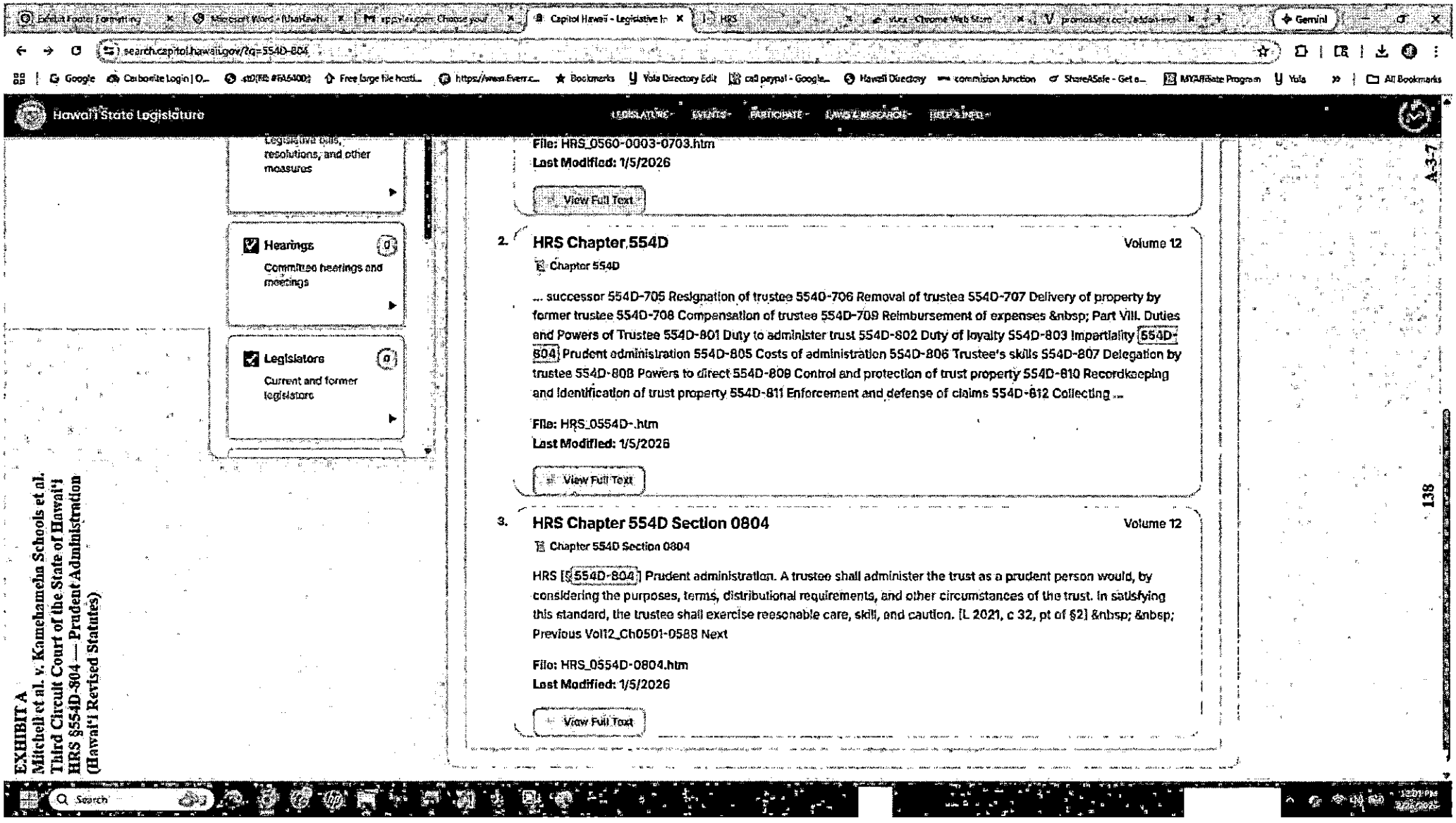

EXHIBIT A
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i
HRS §554D-804 — Prudent Administration
(Hawai'i Revised Statutes)

A-3-7

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capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0554D/HRS_0554D-0805.htm

[§554D-805] Costs of administration. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee. [L 2021, c 32, pt of §2]

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EXHIBIT A
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i
HRS §554D-805 — Costs of Administration
(Hawai'i Revised Statutes)

[§554D-809] Control and protection of trust property. A trustee shall take reasonable steps to take control of and protect the trust property. [L 2021, c 32, pt of §2]

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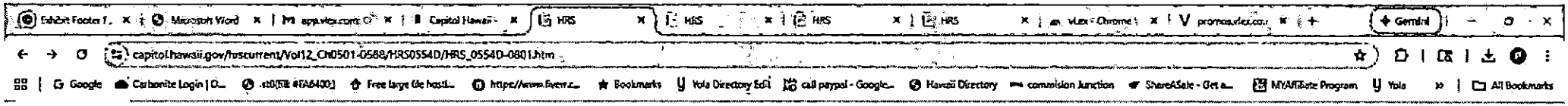

PART VIII. DUTIES AND POWERS OF TRUSTEE

[§554D-801] Duty to administer trust. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter. [L 2021, c 32, pt of §2]

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EXHIBIT A
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i
HRS §554D-801 — Duty to Administer Trust
(Hawai'i Revised Statutes)

EXHIBIT A-4
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-4

Petitioners hereby submit **Exhibit Series A-4**, consisting of **Exhibits A-4-1 through A-4-28,** comprising selected Hawai'i case law, statutory authority, federal law, and historical government records addressing public trust obligations, environmental review requirements, shoreline access, Native Hawaiian rights, land use authority, and unlawful governmental actions affecting Hawai'i.

This series includes excerpts from the following authorities:

• In re Water Use Permit Applications (Waiāhole Ditch), 94 Hawai'i 97 (2000), addressing public trust doctrine, water resource protection, and agency obligations

• Gold Coast Neighborhood Ass'n v. State (Haw. 2017), addressing shoreline access, public use of coastal areas, and application of HRS §264-1

• Ke Kauhulu O Mānā v. Board of Land and Natural Resources, 575 P.3d 13 (Haw. 2025), addressing HEPA compliance and agency obligations

• Ka Pa'akai o ka 'Āina v. Land Use Commission, 94 Hawai'i 31 (2000), establishing the framework for protection of Native Hawaiian traditional and customary rights

• Hawai'i Revised Statutes §264-1, addressing public highways, trails, and public rights-of-way

• United States Public Law 103-150 (1993) (the "Apology Resolution"), acknowledging the overthrow of the Kingdom of Hawai'i

• President Grover Cleveland's Message to Congress (December 18, 1893), addressing the overthrow of the Hawaiian Kingdom

The attached pages are true and correct copies of the cited materials and are provided as excerpts for reference and judicial review.

In 1978, this state added several provisions to its constitution specifically relating to water resources. Article XI, section 1 of the Hawai'i Constitution states:

> CONSERVATION AND DEVELOPMENT OF RESOURCES
>
> Section 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
>
> All public natural resources are held in trust by the State for the benefit of the people.

(Emphases added.) Article XI, section 7 further provides:

> WATER RESOURCES
>
> Section 7. The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.
>
> The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use polices; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii's water resources.

(Emphasis added.) In 1987, pursuant to the constitutional mandate of article XI, section 7, the legislature enacted the State Water Code, HRS chapter 174C.

2. Relationship to the State Water Code

Several parties, most notably LURF, contend that the Commission erred by relying upon the public trust doctrine as a legal authority in addition to the State Water Code. According to LURF, the Code "subsumes and supplants whatever common law doctrine of public trust may previously have existed in Hawai'i." By invoking the public trust, LURF argues, the Commission improperly expanded its statutory powers, upsetting the Code's

constitutional law in Hawai'i. See Payne v. Kassab, 361 A.2d 263, 272 (Pa. 1976) ("There can be no question that the [constitution] declares and creates a public trust of public natural resources for the benefit of all people (including future generations as yet unborn) . . . ."); State v. Bleck, 338 N.W.2d 492, 497 (Wis. 1983) (grounding the public trust doctrine in the state constitution); Save Ourselves v. Louisiana Env't Control Comm'n, 452 So.2d 1152, 1154 (La. 1984) (recognizing a public trust based on the state constitution); Owsicheck v. State, Guide Licensing and Control Bd., 763 P.2d 488, 493-96 (Alaska 1988) (holding that the constitutional "common use" clause adopted common law trust principles in relation to fish, wildlife, and water resources).

Other state courts, without the benefit of such constitutional provisions, have decided that the public trust doctrine exists independently of any statutory protections supplied by the legislature. See, e.g., National Audubon Soc'y v. Superior Ct. Of Alpine Cty., 658 P.2d 709, 728 n.27 (Cal.) ("Aside from the possibility that statutory protections can be repealed, the noncodified public trust doctrine remains important both to confirm the state's sovereign supervision and to require consideration of public trust uses in cases filed directly in the courts . . . ."), cert. denied, 464 U.S. 977 (1983); Kootenai

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[30](...continued)
supra note 29. Article XI, section 7 is thus self-executing to the extent that it adopts the public trust doctrine. See Debates, in 2 Proceedings at 863 (statement by Delegate Waihee) ("What the [amendment] attempts to do is, first of all, create a fiduciary duty to regulate and control the water. The second thing that it does is establish a coordinating agency to regulate all water."); Haw. Const. art XVI § 16 ("The provisions of this constitution shall be self-executing to the fullest extent that their respective natures permit."); cf. Payne v. Kassab, 361 A.2d 263, 272 (Pa. 1976) ("No implementing legislation is needed to enunciate these broad purposes and establish these relationships; the amendment does so by its own ipse dixit.").

address: 1) the "scope" of the trust, or the resources it encompasses; and 2) the "substance" of the trust, including the purposes or uses it upholds and the powers and duties it confers on the state.

a. Scope of the Trust

The public trust doctrine has varied in scope over time and across jurisdictions. In its ancient form, the public trust included "the air, running water, the sea, and consequently the shores of the sea." J. Inst. 2.1.1. Under the English common law, the trust covered tidal waters and lands. See Shively v. Bowlby, 152 U.S. 1, 11 (1892). Courts in the United States have commonly understood the trust as extending to all navigable waters and the lands beneath them irrespective of tidality. See Illinois Central, supra; Phillips Petroleum, 484 U.S. 469 (1988) (confirming that the public trust still applies to tidal waters, whether navigable or not). In Hawai'i, this court has recognized, based on founding principles of law in this jurisdiction, a distinct public trust encompassing all the water resources of the state. See Robinson, 65 Haw. at 674, 658 P.2d at 310. The Hawai'i Constitution declares that "all public resources are held in trust by the state for the benefit of its people," Haw. Const. art. XI, § 1, and establishes a public trust obligation "to protect, control, and regulate the use of Hawaii's water resources for the benefit of its people," Haw. Const. art. XI, § 7.

We need not define the full extent of article XI, section 1's reference to "all public resources" at this juncture. For the purposes of this case, however, we reaffirm that, under article XI, sections 1 and 7 and the sovereign reservation, the public trust doctrine applies to all water resources without

exception or distinction. KSBE and Castle advocate for the exclusion of ground waters from the public trust. Their arguments, first, contradict the clear import of the constitutional provisions, which do not differentiate between categories of water in mandating the protection and regulation of water resources for the common good.[31] The convention's records confirm that the framers understood "water resources" as "includ[ing] ground water, surface water and all other water." Debates, in 2 Proceedings, at 861 (statement by Delegate Fukunaga).

We are also unpersuaded by the contention of KSBE and Castle that the sovereign reservation does not extend to ground waters. Their argument rests almost entirely on one decision, City Mill Co., Ltd. v. Honolulu Sewer & Water Comm'n, 30 Haw. 912 (1929). Discussing the effect of the Māhele, the City Mill court observed that "'all mineral or metallic mines' were reserved to the Hawaiian government, but there was no reservation whatever of the subterranean waters." Id. at 934. Nowhere in the opinion, however, does the court address the reservation of sovereign prerogatives and its surrounding historical and legal context. This fatal oversight, common to other cases subsequently invalidated by this court, discounts the precedential value of City Mill concerning the public trust. See Robinson, 65 Haw. at

[31] With respect to article XI, section 1, KSBE contends that the provision's reference to "public natural resources" indicates an intent to exclude "privately owned" waters from the public trust. This argument misses the point; at least in the water resources context, we have maintained that, apart from any private rights that may exist in water, "there is, as there always has been, a superior public interest in this natural bounty." Robinson, 65 Haw. at 677, 658 P.2d at 312.

the detriment of public trust purposes. See Robinson, 65 Haw. at 677, 658 P.2d at 312; see also National Audubon, 658 P.2d at 727; Kootenai, 671 P.2d at 1094 ("[T]he public trust doctrine takes precedent even over vested water rights."); cf. Karam v. Department of Envtl. Protection, 705 A.2d 1221, 1228 (N.J. Super. Ct. App. Div. 1998) ("[T]he sovereign never waives its right to regulate the use of public trust property."), aff'd, 723 A.2d 943, cert. denied, __ U.S. __, 120 S.Ct. 51 (1999).[38] This authority empowers the state to revisit prior diversions and allocations, even those made with due consideration of their effect on the public trust. See National Audubon, 658 P.2d at 728.

The state also bears an "affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible[39]." Id. (emphasis added). Preliminarily, we note that this duty may not readily translate into substantive results.[40] The public has a definite interest in the development and use of water resources for various reasonable and beneficial public and private offstream purposes, including agriculture, see

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[38] We agree with the National Audubon court that the few exceptions to the general rule against the abandonment of the public trust would not likely apply in the context of usufructuary water rights. See id. at 727 n.25.

[39] Read narrowly, the term "feasible" could mean "capable of achievement," apart from any balancing of benefits and costs. See Industrial Union Dept., AFL-CIO v. American Petroleum Inst., 448 U.S. 607, 718-19 (1980) (Marshall, J., dissenting). The National Audubon court apparently did not use "feasible" in this strict sense, and neither do we in this case.

[40] But see Debates, in 2 Proceedings, at 866-67 (statement by Delegate Hornick) ("The public trust doctrine implies that the disposition and use of these resources must be done with procedural fairness, for purposes that are justifiable and with results that are consistent with the protection and perpetuation of the resource." (emphasis added)).

perpetuate[s] the constitutional rule"). HRS § 174C-2(a) reiterates the decree in our constitution and case law that the state holds water resources for the benefit of the public and emphasizes the essential feature of the public trust, i.e., the right of the people to have the waters protected for their use. HRS § 174C-2(b) recognizes the policy of comprehensive resource planning intrinsic to the public trust concept. In line with the dual nature of the state water resources trust, HRS § 174C-2(c) mandates liberal interpretation in favor of maximum beneficial use, but also demands adequate provision for traditional and customary Hawaiian rights, wildlife, maintenance of ecological balance and scenic beauty, and the preservation and enhancement of the waters for various uses in the public interest.

DOA/DLNR asserts that the provision promoting "maximum beneficial use" in HRS § 174C-2(c) expresses a preference for "consumptive uses such as agriculture" over instream uses. On the contrary, this provision does not dictate maximum consumptive use, but instead requires maximum beneficial use for the range of purposes described, with the condition that "adequate provision shall be made" for various protective purposes. See A Model Water Code § 1.02(3) commentary at 85 (Frank E. Maloney et al. 1972) [hereinafter Model Water Code].[45] WWCA argues the opposite

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[45] The commentary to section 1.02(3) of the Model Water Code, which, apart from the addition of Hawaiian rights, HRS § 174C-2(c) tracks verbatim, explains:

> Subsection (3) sets out a list of water uses which are declared to be beneficial. A second class of water uses is declared to be in the public interest. These uses receive special protection under the Model Water Code. There is an affirmative duty upon the state and local boards to see that these uses are not adversely affected by the operation of the code. In particular, these uses shall be preferred to

(continued...)

respectfully dissent from sections IV.B-C of the Majority's opinion.

II. BACKGROUND

Nearly a century ago, unknown private parties built a seawall on the makai boundary of private property fronting Diamond Head. The primary purpose of the seawall was to "protect land and upland property from damage by waves in areas of high wave action, with incidental functions as a retaining wall or bulkhead." There is no indication that the seawall has ceased to serve this primary purpose -- protection of private property.

However, approximately sixty-five years ago, the seawall started serving a secondary purpose, as a "thoroughfare for public travel" along the Waikīkī coastline. Multiple people, Gold Coast members and the general public alike, testified that the public uses the seawall as a walkway, traversing it in order to access the ocean or walk along the coastline. For instance, June Anderson, a Gold Coast member, testified that she has lived in her home bordering the seawall for over thirty-seven years, has used the seawall as a pathway for over fifty-five years, and has observed the public using the seawall as a walkway throughout this time; Robert Gentry, a Gold Coast member, testified that he has lived in his home bordering the seawall since 1982 and that he has "observed members of the public us[ing] the Diamond Head Seawall as a walkway and for recreational purposes on a

continuous basis," and; Guy Bishaw, a Waikīkī resident, testified that he has used the seawall for over forty years to access offshore surfing spots.

Starting in the 1980s, the State began to periodically repair sections of the seawall. These repairs included: emergency repair work to shore approximately forty feet of the seawall, rehabilitation of broken sections, surface repair work, construction of handrails along some portions of the seawall, and emergency rehabilitation of portions of the seawall following Hurricane Iniki. Funds for this work were authorized by the State legislature.

In 2006, Gold Coast requested two million dollars from the State legislature in order to repair and improve the seawall. The legislature appropriated the requested funds for "plans, design and construction for the resurfacing of the seawall and installation of railings along Waikiki's Gold Coast." However, the funds were never released because the Department of Land and Natural Resources (DLNR) disputed that it had the responsibility to maintain and repair the seawall.

On June 22, 2007, Gold Coast filed a complaint against the State, requesting declaratory relief over a "dispute between the GCNA and the State of Hawai'i pertaining to whether the State has the duty to maintain in good and safe condition a long stretch of seawall on the Waikiki coastline along Kalakaua Avenue

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KE KAUHULU O MĀNĀ, an Unincorporated Association; Hawai'i Alliance for Progressive Action, a Non-Profit Corporation; Surfrider Foundation, a Non-Profit Corporation; Koholā Leo, a Non-Profit Corporation; Punohu Kekauaiua III, Petitioners/Plaintiffs-Appellants/Cross-Appellees,
v.
BOARD OF LAND AND NATURAL RESOURCES, State of Hawaii, Respondent/Defendant-Appellee/Cross-Appellee,
and
Syngenta Seeds, LLC, a Limited Liability Company, Syngenta Hawaii, LLC, a Limited Liability Company, Respondents/Defendants-Appellees/Counter-claim-Appellants.

SCWC-18-0000057

Supreme Court of Hawai'i.

August 26, 2025

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CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS (CAAP-18-0000057; CASE NO. 5CC171000094)

Lance D. Collins and Bianca Isaki for petitioners

Ewan C. Rayner, Deputy Solicitor General for respondent Board of Land and Natural Resources, State of Hawai'i

Paul Alston and Timothy H. Irons, Honolulu, for respondents Syngenta Seeds, LLC and Syngenta Hawaii, LLC

RECKTENWALD, C.J., McKENNA, EDDINS, and DEVENS, JJ., and CIRCUIT JUDGE HAMMAN, IN PLACE OF GINOZA, J., RECUSED

OPINION OF THE COURT BY McKENNA, J.

I. Introduction

This case arises out of the Board of Land and Natural Resources' ("BLNR") decision

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to exempt Syngenta Hawaii, LLC, from preparing an environmental assessment ("EA") for its seed research operation on state land. Hawaii Revised Statutes ("HRS") Chapter 343, the Hawaii Environmental Policy Act ("HEPA"), requires EAs for actions proposing use of state lands, unless exempted.

In 2017, when BLNR issued a new revocable permit ("RP") to Syngenta Hawai'i, LLC, it declared an EA was not required because the land's usage was not being changed and because there was minimal or no significant effect on the environment. In so determining, BLNR referred to its 1982 approval of a conservation district use permit ("CDUP") for which a "finding of no significant impact" ("FONSI") had issued.

But the 1982 CDUP and FONSI had been based on use of the land for sugar cane cultivation. BLNR had not analyzed possible environmental impacts of a seed research operation involving the use of restricted use pesticides ("RUPs") and genetically modified organisms ("GMOs").

Ke Kauhulu o Mana and others (collectively referred to as "Ke Kauhulu") challenged BLNR's 2017 EA exemption declaration in the Environmental Court of the Fifth Circuit ("environmental court"). The environmental court[1] upheld the exemption declaration and granted summary judgment in favor of Syngenta and BLNR.

On appeal, the Intermediate Court of Appeals ("ICA") ruled in relevant part that issues of fact as well as gaps in BLNR's record precluded summary judgment. The ICA ordered a remand to the environmental court for it to readdress the EA exemption declaration.

On certiorari, Ke Kauhulu argues the ICA erred when it ordered a remand instead of determining that an EA was required as a matter of law.

We agree with Ke Kauhulu and hold that (1) whether an agency has "followed proper procedures" or "considered appropriate factors" in declaring an EA exemption are questions of law reviewed de novo; and (2) because BLNR did not "follow proper procedures" or "consider appropriate factors" in its 2017 EA exemption declaration, an EA is required as a matter of law. Therefore, the ICA should not have ordered a remand for the environmental court to readdress the EA exemption declaration.

Instead, we order a remand to the environmental court for further proceedings consistent with this opinion, which includes requiring the BLNR to prepare an EA regarding possible environmental impacts from use of the land for seed research.

II. Background

A. Factual and pre-litigation background

The following background shows that BLNR never analyzed the potential environmental impacts of using state conservation land for seed research operations.

1. The land

The land involved is within TMK (4) 1-2-002:040 in Kekaha, Waimea, Kaua?i, in a state-owned conservation district. It consists of approximately 132 acres located about 400 feet from the ocean; about half of that acreage is involved here.

2. 1982 CDUP and FONSI

In 1981, Kekaha Sugar Company ("Kekaha Sugar") applied for a CDUP to use sixty-two acres of the land for "[f]arming operation[s] necessary to raise sugar cane." In late 1981, BLNR held a public hearing on the application. At the hearing, Kekaha Sugar said it proposed to use the land to "raise cane" and for "sugar cane cultivation[.]" Kekaha Sugar also said that Pride Company, Inc. ("Pride"), which was not included in its original application, would use a portion of the land for seed research.

This proposed use of state land triggered HEPA environmental review requirements.

I. Introduction

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We first address the standard of review applicable to the EA exemption declared by BLNR.

[4, 5] This court discussed the standard of review for EA exemptions in Sierra Club v. Department of Transportation, 115 Hawai?i 299, 167 P.3d 292 (2007) ("Superferry I"); we determined that the appropriate standard of review depends on the question under consideration. But whether an agency has "followed proper procedures" or "considered appropriate factors" are questions of law reviewed de novo:

HEPA does not provide direct guidance as to what standards of review should apply to an agency's determination that a project is exempt from the preparation of an EA Therefore, this court must decide which standard of review to apply. Based on this review of the statutory framework and our caselaw, we conclude that the appropriate standard of review depends on the specific question under consideration. In general, agency exemption determinations

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that involve factual questions should be reviewed under a clearly erroneous standard .... However, as discussed below, whether or not an agency has followed proper procedures or considered the appropriate factors in making its determination is a question of law, and will be reviewed de novo.

Superferry I, 115 Hawai?i at 314-15, 167 P.3d at 307-08 (emphasis added).

[6] Thus, where an agency's EA exemption declaration raises questions regarding whether the agency "followed proper procedures" or "considered appropriate factors," those questions will be reviewed de novo.

B. Because BLNR did not follow proper procedures or consider appropriate factors in its 2017 EA exemption declaration, an EA is required as a matter of law

1. BLNR did not follow proper procedures in its 2017 exemption declaration

Whether BLNR "followed proper procedures" in declaring an EA exemption for Syngenta Hawaii's 2017 RP is a question of law reviewed de novo.

[7] The ICA correctly deemed the record insufficient to support the 2017 exemption's determination that there was no expansion or change in use of the subject area. The ICA also correctly determined that the record did not establish whether Syngenta's seed research operation was similar to the "raising sugar cane" activity included in the 1982 FONSI.

[8, 9] With respect to "proper procedures," however HEPA "places the burden of compiling information on the agency so that the public and interested government departments can conveniently monitor and criticize the agency's action." Kia'i Wai o Wai?ale?ale v. Dep't of Water, 151 Hawaii 442, 461, 517 P.3d 725, 744 (2022). Therefore, while a challenger of an agency's environmental review process may present extrarecord evidence, allowance of such evidence in HEPA cases "is not a two-way street"; an agency cannot rely on extra-record evidence as a substitute for the analysis it should have included in its record. Kia'i Wai, 151 Hawaii at 460, 517 P.3d at 743.

[10] In other words, an agency's existing record must include the information justifying its exemption declaration. Here, as correctly determined by the ICA, the record was insufficient. Therefore, BLNR did not "follow proper procedures" in its exemption declaration.[8]

2. BLNR also did not consider appropriate factors in its 2017 exemption declaration

Whether BLNR "considered appropriate factors" in declaring an EA exemption is also a question of law reviewed de novo.

[11] BLNR's record also does not show it "considered appropriate factors" in declaring an EA exemption. With respect to EA exemptions, the agency declaring the exemption must determine that the action will probably have minimal or no significant effects on the environment, not merely that it fits an exemption category. Superferry I, 115 Hawaii at 316, 167 P.3d at 309.

[12] Here, the ICA correctly determined there were material disputes as to HAR § 11-200-8(a)'s requirement that the action be one with "minimal or no significant effect on the environment." Issues of fact exist because BLNR never compiled information regarding possible environmental impacts of the seed research operation. But an agency is required to take a "hard look" at environmental factors before declaring an EA exemption based on a FONSI. Superferry I, 115 Hawaii at 335, 167 P.3d at 342.

[13] As a challenger of BLNR's environmental review process, Ke Kauhulu presented various possible environmental effects, listed above, from the use of RUPs and GMOs in seed research operations. Yet, the

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original FONSI which BLNR relied upon in declaring Syngenta's 2017 RP exempt from the EA requirement dealt only with sugar cane cultivation and never addressed any possible environmental effects of seed research operations.

Therefore, the questions of fact discerned by the ICA actually establish BLNR's failure to take a "hard look" and to consider appropriate factors in its EA exemption declaration.

3. An EA is required as a matter of law so a remand should not have been ordered for the environmental court to readdress the exemption declaration

2. Motions for summary judgment

In August 2017, Ke Kauhulu and Syngenta filed competing motions for summary judgment ("MSJ"). BLNR joined Syngenta's motion in part.[6]

The only issue before this court is whether the ICA should have ordered a remand to the environmental court for it to readdress whether an EA exemption was properly declared. Thus, only the arguments relevant to this issue are discussed.

a. Ke Kauhulu's arguments

Ke Kauhulu argued BLNR's finding of an exemption was invalid and violated HEPA. BLNR had said there were no significant effects by noting that the parcel had been "in agricultural use for many decades" and that such use had resulted in "no known significant impacts to the natural and environmental resources in the area." Ke Kauhulu argued that this was not the proper legal standard; rather, BLNR needed to take a "hard look" at environmental factors, consider foreseeable direct and indirect impacts, and discuss adverse impacts.

[6] BLNR joined Syngenta's MSJ only "as to the result sought therein."

under the first factor, it is undisputed that the seawall "was built by unknown private parties" almost a century ago. And, under the second factor, this court in prior cases has specifically included seawalls within the purview of HRS § 264-1(c) if the seawall is used as a public thoroughfare.

For instance, in Levy v. Kimball, 50 Haw. 497, 443 P.2d 142 (1968), a woman was injured when she fell from a Waikīkī seawall while walking along its surface. The State had an express easement for the purpose of public travel over the seawall, and this court determined that, because of this express easement, the State had "the right and the duty to keep it in repair." Id. at 498, 443 P.2d at 144. In addition, this court focused on the State's responsibility for the seawall under Revised Laws of Hawaii 1955, Sec. 142-1, an earlier iteration of HRS § 264-1. Id. at 499, 443 P.2d at 144. This court determined that "[a]lthough a seawall is not expressly mentioned in the above enumeration, it can be fairly implied that a seawall such as that which is in question here which is used as a public thoroughfare is included in the term 'public highwasy' [sic]." Id. As such, this court noted that the State's duty to maintain a highway includes, inter alia, "a duty to maintain the surface of the highway in a condition reasonably safe for travel." Id. at 499, 144-45 (quoting Restatement (Second) of Torts § 349 (Am. Law Inst. 1965)).

been free to walk along . . . to access the beach, shoreline, and ocean in order to swim, surf, fish, and enjoy other activities of island living." As such, because the seawall in this case is also a public thoroughfare, I would hold that its disposition is governed by HRS § 264-1.

Despite the clear language of our case law, the Majority insists that Levy and Banning actually require that, for a seawall to fall under HRS § 264-1, the State must hold "a preexisting express easement for the specific purpose of opening up a pathway for public travel." I disagree with this reading of the case law, and maintain that neither case expressly states that such a requirement is necessary under HRS § 264-1. In Levy, this court concluded that "[a]lthough a seawall is not expressly mentioned in the above enumeration, it can be fairly implied that a seawall such as that which is in question here which is used as a public thoroughfare is included in the term 'public highwasy' [sic]." 50 Haw. at 499, 443 P.2d at 144. The Majority takes the phrase "a seawall such as that which is in question here" to mean a seawall that the State already holds an express easement over. However, such a reading ignores the rest of the sentence immediately succeeding the phrase at issue: "a seawall such as that which is in question here which is used as a public thoroughfare[.]" The underlined phrase is a non-restrictive relative clause, meaning that it defines the antecedent noun --

Article XII, section 7 of the Hawai'i Constitution obligates the LUC to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians *to the extent feasible* when granting a petition for reclassification of district boundaries. *See PASH,* 79 Hawai'i at 450 n. 43, 903 P.2d at 1271 n. 43 (emphasis added). In order for the rights of native Hawaiians to be meaningfully preserved and protected, they must be enforceable. In order for native Hawaiian rights to be enforceable, an appropriate analytical framework for enforcement is needed. Such an analytical framework must endeavor to accommodate the competing interests of protecting native Hawaiian culture and rights, on the one hand, and economic development and security, on the other. *See PASH,* 79 Hawai'i at 447, 903 P.2d at 1268 ("A community development proposing to integrate cultural education and recreation with tourism and community living represents a promising opportunity to demonstrate the continued viability of Hawaiian land tenure ideals in the modern world."); *Kalipi,* 66 Haw. at 7, 656 P.2d at 749 ("Our task is thus to conform these traditional rights born of a culture which knew little of the rigid exclusivity associated with the private ownership of land, with a modern system of land tenure in which the right of an owner to exclude is perceived to be an integral part of fee simple title."); Comm. Whole Rep. No. 12, in 1 Proceedings of the Constitutional Convention of 1978, at 1016 (1980) ("it is possible, with work, to both protect the rights of private landowners and allow for the preservation of an aboriginal people").

[21] We therefore provide this analytical framework in an effort to effectuate the State's obligation to protect native Hawaiian **1084 *47 customary and traditional practices while reasonably accommodating competing private interests. In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must-*at a minimum*-make specific findings and conclusions as to the following: (1) the identity and scope of " valued cultural, historical, or natural resources" FN27 in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources-including traditional and customary native Hawaiian rights-will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.FN28

FN27. We decline to define the term, "cultural resources." "Cultural resources" is a broad category, of which native Hawaiian rights is only one subset. In other words, we do not suggest that the statutory term, "cultural resources" is synonymous with the constitutional term, customary and traditional native Hawaiian rights.

FN28. Importantly, we note that the 2000 Hawai'i State legislature passed H.B. No. 2895, H.D. 1, entitled, "A Bill for an Act Relating to Environmental Impact Statements." It amends HRS § 343-2 to include the effects of economic development on *cultural practices:*

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

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traditionally used for salt gathering. Hannah Springer, a kama'aina of the mauka portion of Ka'upulehu, and her 'ohana have traditionally gathered salt in this area on an occasional basis.

The LUC found that these resources would be preserved as part of KD's 235-acre RMP. This RMP, according to the LUC's findings, would be consistent with KS/BE's ahupua'a plan, which would, in the future, involve native Hawaiians in its implementation:74. The areas for fishing, limu, ['lopihi, and salt gathering, and general recreation are to be preserved and managed as part of Petitioner's RMP, thus perpetuating these activities on and makai of the Property.

....

88. The proposed Project will reasonably preserve and perpetuate cultural resources such as archaeological sites, the coastal trail, areas of fishing, ['lopihi, and limu gathering, salt gathering, and general recreation in the proposed areas within Petitioner's RMP. Petitioner's RMP area totals approximately 235 acres.

89. KS/BE has formulated a plan to manage and protect cultural resources within the entire ahupua'a of Ka'upulehu. *Petitioner's RMP will be consistent with* and further the objective of the ahupua'a plan. KSBE's ahupua'a plan includes designated geographic zones that define the natural, cultural, and historic resources of Ka'upulehu from the mountain to the sea. The ahupua'a plan *will involve native Hawaiians*, particularly the 'ohana who are kama'aina to the subject Property, to relink the traditions and practices that are rooted in that Property. KSBE will form a non-profit entity in perpetuity to oversee the formulation and implementation of the Ka'upulehu ahupua'a plan.

Condition No. 18 of the boundary amendment provided that "Petitioner shall preserve and protect any gathering and access rights of native Hawaiians who have customarily and traditionally exercised subsistence, cultural and religious practices on the subject property." The LUC also noted that KD "will develop and implement its RMP which would in the future coordinate development with native Hawaiian rights, recreational opportunities, and the creation of a buffer for Kona Village Resort."

A review of the record and the LUC's decision leads us to the inescapable conclusion that the LUC's findings and conclusions are insufficient to determine whether it discharged its duty to protect customary and traditional practices of native Hawaiians to the extent feasible. The LUC, therefore, must be deemed, as a matter of law, to have failed to satisfy its statutory and constitutional obligations.

First, apart from its finding that "Hannah Springer, a kama'aina of the mauka portion of Ka'upulehu, and her 'ohana have traditionally gathered salt in this area on an occasional basis," the LUC failed to enter any definitive findings or conclusions as to the extent of the native Hawaiian practitioners' exercise of customary and traditional practices in the subject area.[FN29] Instead, as discussed further **1086 *49 below, the LUC charged KD with blanket authority to "preserve and protect any gathering and access rights of native Hawaiians" without identifying those rights or providing any specificity as to the locations on which native Hawaiians could be expected to exercise them. *See infra* section III.B.4.

FN29. Although the LUC found that "[t]he shoreline portion of the Property is used for fishing and gathering of limu, ['lopihi, and other resources, and for camping[,]" it did not indicate whether any of these uses were customarily and/or traditionally exercised

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gathering that might occur."

Moreover, Leimana Damate, of KHCC, testified that "[t]he area in question, if developed, will adversely affect the gathering activities and impact the access rights of Hawaiians, particularly in the area known as Kalaeman[o]...." She further asserted that "[t]he area of Kalaeman[o] was a source of gathering for the whole area of Kekaha and continues to be used by Hawaiians today. The development will compromise these gathering practices significantly." Finally, she submitted that she and others "embrace the practice of using the ahupua'a as a model for integrated planning. This planning includes the protection and conservation of all waters and other resources, embracing the ahupua'a custom and tradition from the mountains to the sea, including forest reserves, streams, anchialine ponds and coastal waters. This practice ... would be curtailed by the Ka'upulehu Development." *See also***1087 *50 Section III.A. (describing group members' testimony as to various cultural resources within the petition area). In rendering its findings and conclusions, the LUC failed to assess any of this potentially relevant testimony regarding possible effects on or impairment of Ka Pa'akai's members' traditional and customary practices.[FN33]

FN33. Aside from a finding on scientifically-identified archeological sites in the petition area, *see* FOF No. 78, the LUC's findings are, at best, ambivalent as to what the potential impact on valued cultural resources might be.

If the practice of native Hawaiian rights being exercised will be curtailed to some extent by the land use reclassification and the resulting development, the LUC is obligated to address this. Indeed, the promise of preserving and protecting customary and traditional rights would be illusory absent findings on the extent of their exercise, their impairment, and the feasibility of their protection. Requiring these minimal prerequisites facilitates precisely what the 1978 Constitutional Convention delegates sought: "badly needed judicial guidance" and the "enforcement by the courts of these rights[.]" *See* Stand. Comm. Rep. No. 57, in 1 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 640. *See also Pele Defense Fund*, 73 Haw. at 619-20, 837 P.2d at 1271 ("[I]n reaffirming these rights in the Constitution, your Committee feels that badly needed judicial guidance is provided and enforcement by the courts of these rights is guaranteed.") (Quoting Stand. Comm. Rep. No. 57, in 1 Proceedings of the Constitutional Convention of Hawai'i of 1978, at 640.)

4. *The LUC improperly delegated its duty to KD.*

[23] KD argues, however, that Hawaiian rights are adequately protected because the LUC's Condition No. 18 requires KD to "preserve and protect any gathering and access rights of native Hawaiians who have customarily and traditionally exercised subsistence, cultural and religious practices on the subject property." KD further maintains that its conceptual RMP will adequately protect any such rights. This wholesale delegation of responsibility for the preservation and protection of native Hawaiian rights to KD, a private entity, however, was improper and misses the point. These issues must be addressed *before* the land is reclassified.

In *Hui Alaloa*, this court held that, contrary to statutory mandates, the Maui Planning Commission impermissibly delegated its authority to determine whether a development complied with the policies and objectives of the CZMA to the applicants for a special management

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More recently, in In re Banning, 73 Haw. 297, 312, 832 P.2d 724, 732 (1992), this court reiterated that a seawall can fit within the definition of "public highway" articulated in HRS § 264-1: "In Levy v. Kimball, . . . a seawall used by the public as a thoroughfare was considered to fit within the definition of 'public highway' although it was not expressly defined as such in the Revised Laws of Hawaii 1955, § 142-1, which was the predecessor to the present HRS § 264-1." As such, the Banning court reaffirmed the conclusion in Levy that a seawall is a public highway if it is used as a thoroughfare by the public. Thus, Hawai'i law clearly places seawalls that are used as public thoroughfares within the ambit of ways and trails as articulated by HRS § 264-1(c).[4]

In this case, it is undisputed that the seawall has been used for decades by the public as a path to access the beach. Testimony from June Anderson, Robert Gentry, and Guy Bishaw evidences that the public has used the seawall as a walkway for decades. The Majority, too, describes the seawall as a public thoroughfare that "residents and visitors of O'ahu have

[4] This court's interpretation of this statute and its applicability to seawalls is consistent with the common definitions of "way" and "trail," which focus on the movement of people from place to place, instead of the structure that the movement is taking place on. For instance, way is defined as "a thoroughfare used or designed for traveling or transportation from place to place." *Way*, Webster's Third New International Dictionary (1993). Trail is defined as "a course followed or to be followed." *Trail*, Webster's Third New International Dictionary (1993).

at 12. This blanket rationale ignores the apparent differences between stream diversions and uses of water from other sources such as basal aquifers.[78]

The Commission and Campbell Estate argue that the release of unused water into the streams and the requirement that permittees pay for their water use provide adequate safeguards. Even if properly limited to actual need, however, offstream uses may still subject windward streams to extreme and potentially harmful fluctuations in base flow over the course of a year. No one disputes the variable nature of agricultural water demand and the corresponding need for flexibility. Nowhere in its decision, however, did the Commission fulfill its duty to consider the impact of fluctuating diversions on instream base flows and the practicability of adopting specific measures to mitigate this impact.

We vacate and remand this portion of the Commission's decision. In order to mitigate the impact of variable offstream demand on instream base flows, the Commission shall consider measures such as coordination of the times and rates of offstream uses, construction and use of reservoirs, and use of a shorter time period over which to measure average usage, see, e.g., HAR § 13-171-14(b) (1988) (requiring the Commission to consider a three-month average in measuring existing uses).[79] If necessary,

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[78] The storage characteristics of basal aquifers allow "draft rates in excess of the sustainable yield during periods of high demand and low recharge, so long as there is compensation by reducing draft rates less than the sustainable yield during the other periods." Department of General Planning, City & County of Honolulu, Oahu Water Management Plan § 2.4.1 (1990).

[79] Presumably, some such measures have already been adopted in the "Implementation Plan" that the Commission required the agricultural users, along with the ditch operator and DOA, to draft within six months of the

(continued...)

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PART I. HIGHWAYS, GENERALLY

§264-1 Public highways and trails. (a) All highways, roads, alleys, streets, ways, lanes, bikeways, bridges, and all other real property highway-related interests in the State, opened, laid out, subdivided, consolidated, and acquired and built by the government are declared to be public highways. Public highways are of two types:

(1) State highways, which are those lands, interests, or other real property rights, as defined above, having an alignment or possession of a real property highway-related interest as established by law, subdivided and acquired in accordance with policies and procedures of the department of transportation, separate and exempt from any county subdivision ordinances, and all those under the jurisdiction of the department of transportation; and

(2) County highways, which are all other public highways.

(b) All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-ways by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the state board of land and natural resources unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county.

(c) All highways, roads, alleys, streets, ways, lanes, bikeways, bridges, and trails in the State, opened, laid out, or built by private parties and dedicated or condemned to the public use, are declared to be public highways or public trails as follows:

(1) Dedication of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails shall be by deed of conveyance naming the State as grantee in the case of a state highway, road, alley, street, way, lane, bikeway, bridge, or trail and naming the county as grantee in the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or trail. The deed of conveyance shall be delivered to and accepted by the director of transportation in the case of a state highway, road, alley, street, way, lane, bikeway, or bridge, or the board of land and natural resources in the case of a state trail. In the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or trail, the deed shall be delivered to and accepted by the legislative body of a county; provided that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law, the legislative body of the county shall accept the dedication of the same without exercise of discretion; and

(2) Condemnation of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails initiated by the State or county pursuant to chapter 101 shall be by final order of condemnation by a court; provided that any private owner of a highway, road, alley, street, way, lane, bikeway, bridge, or trail may petition the mayor of the county in which the highway, road, alley, street, way, lane, bikeway, bridge, or trail is located to initiate condemnation proceedings if the highway, road, alley, street, way, lane, bikeway, bridge, or trail is part of a public road, ownership has not been exercised by limiting use or access, or the State or county has provided some form of maintenance to the highway, road, alley, street, way, lane, bikeway, bridge, or trail in the interest of the public; provided further that a private owner may only petition the mayor of a county after the dissolution of the roads commission established by Act 194, Session Laws of Hawaii 2016; provided further that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law at the time of construction and completion, the highway, road, alley, street, way, lane, bikeway, bridge, or trail shall be exempt from meeting the construction standards in place at the time of condemnation by the State or county.

(d) If a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail has been condemned by the State or county pursuant to subsection (c), the State or county shall be exempt for a period of three years from any state laws or rules adopted pursuant thereto that would require the State or county to perform construction, reconstruction, preservation, resurfacing, restoration, or rehabilitation upon it. The State and counties may only be held jointly and severally liable for acts or omissions that occurred after the condemnation of a highway, road, alley, street, way, lane, bikeway, bridge, or trail.

(e) All county public highways and trails once established shall continue until vacated, closed, abandoned, or discontinued by a resolution of the legislative body of the county wherein the county highway or trail lies. All state trails once established shall continue until lawfully disposed of pursuant to the requirements of chapter 171.

(f) A privately owned highway, road, alley, street, way, lane, bikeway, or bridge that has been condemned by the State or county pursuant to subsection (c) may be accorded flexibility in design, including limitations of liability, pursuant to section 264-20, in consideration of the unique nature and limitations associated with property dedicated or condemned to public use. [L 1892, c 47, §2; RL 1945, §6111; am L 1947, c 142, pt of §1; am L 1949, c 74, §2; RL 1955, §142-1; am L 1957, c 155, §1; am L 1963, c 190, §1; HRS §264-1; am L 1977, c 68, §4; am L 1988, c 150, §1; am L 2008, c 12, §1; am L 2016, c 194, §3; am L 2022, c 123, §2]

Cross References

Construction of facilities for physically handicapped persons, see §286-9.

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Full text of the Apology Resolution (excerpts only below)

- **Congressional Record - Senate**, October 27, 1993
- **Congressional Record - House**, November 15, 1993

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United States Public Law 103-150

The "Apology Resolution"

Passed by Congress and signed by President William J. Clinton
November 23, 1993



President Clinton signs Public Law 103-150, the "Apology Resolution" to Native Hawaiians, on November 23, 1993, as Vice-President Gore and Hawaii's Congressional delegation look on: Sen. Daniel Inouye, Rep. Patsy Mink, Rep. Neil Abercrombie, and Sen. Daniel Akaka (L to R)

- excerpts -

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation...

Whereas, on January 14, 1893... the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful

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A-4-21

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation...,

Whereas, on January 14, 1893... the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii;

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

> "I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.
> "That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed a Honolulu and declared that he would support the Provisional Government.
> "Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands."
> - Queen Liliuokalani, Jan 17, 1893

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms.

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown... President Cleveland further concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair" and called for the restoration of the Hawaiian monarchy.

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.

Whereas, the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;
Whereas, the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;
Whereas, the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;

Now, therefore, be it
Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,
The Congress
- apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893... and the deprivation of the rights of Native Hawaiians to self-determination;
- expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and
- urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people.

"...the logical consequences of this resolution would be independence."

- Senator Slade Gorton (R-Washington), US Senate Congressional Record Wednesday, October 27, 1993, 103rd Cong. 1st Sess.

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PRESIDENT GROVER CLEVELAND'S MESSAGE

December 18, 1893

Citation: *Hawaiian Islands. Report of the Committee on Foreign Relations, United States Senate, with accompanying testimony, and Executive documents transmitted to Congress from January 1, 1883 to March 10, 1894*, page 1253.

To the Senate and House of Representatives:

In my recent annual message to the Congress I briefly referred to our relations with Hawaii and expressed the intention of transmitting further information on the subject when additional advices permitted.

Though I am not able now to report a definite change in the actual situation, I am convinced that the difficulties lately created both here and in Hawaii and now standing in the way of a solution through Executive action of the problem presented, render it proper and expedient, that the matter should be referred to the broader authority and discretion of Congress, with a full explanation of the endeavor thus far made to deal with the emergency and a statement of the considerations which have governed my action.

I suppose that right and justice should determine the path to be followed in treating this subject. If national honesty is to be disregarded and a desire for territorial extension, or dissatisfaction with a form of government not our own, ought to regulate our conduct, I have entirely misapprehended the mission and character of our Government and the behavior which the conscience of our people demands of their public servants.

When the present Administration entered upon its duties the Senate had under consideration a treaty providing for the annexation of the Hawaiian Islands to the territory of the United States. Surely under our Constitution and laws the enlargement of our limits is a manifestation of the highest attribute of sovereignty, and if entered upon as an Executive act, all things relating to the transaction should be clear and free from suspicion. Additional importance attached to this particular treaty of annexation, because it contemplated a departure from unbroken American tradition in providing for the addition to our territory of islands of the sea more than two thousand miles removed from our nearest coast.

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These considerations might not of themselves call for interference with the completion of a treaty entered upon by a previous Administration, but it appeared from the documents accompanying the treaty when submitted to the Senate, that the ownership of Hawaii was tendered to us by a provisional government set up to succeed the constitutional ruler of the islands, who had been dethroned, and it did not appear that such provisional government had the sanction of either popular revolution or suffrage. Two other remarkable features of the transaction naturally attracted attention. One was the extraordinary haste - not to say precipitancy - characterizing all the transactions connected with the treaty. It appeared that a so-called Committee of Safety, ostensibly the source of the revolt against the constitutional Government of Hawaii, was organized on Saturday, the 14th day of January; that on Monday, the 16th, the United States forces were landed at Honolulu from a naval vessel lying in its harbor; that on the 17th the scheme of a provisional government was perfected, and a proclamation naming its officers was on the same day prepared and read at the Government building; that immediately thereupon the United States Minister recognized the provisional government thus created; that two days afterwards, on the 19th day of January, commissioners representing such government sailed for this country in a steamer especially chartered for the occasion, arriving in San Francisco on the 28th day of January, and in Washington on the 3rd day of February; that on the next day they had their first interview with the Secretary of State, and another on the 11th, when the treaty of annexation was practically agreed upon, and that on the 14th it was formally concluded and on the 15th transmitted to the Senate. Thus between the initiation of the scheme for a provisional government in Hawaii on the 14th day of January and the submission to the Senate of the treaty of annexation concluded with such government, the entire interval was thirty-two days, fifteen of which were spent by the Hawaiian Commissioners in their journey to Washington.

In the next place, upon the face of the papers submitted with the treaty, it clearly appeared that there was open and undetermined an issue of fact of the most vital importance. The message of the President accompanying the treaty declared that "the overthrow of the monarchy was not in any way promoted by this Government," and in a letter to the President from the Secretary of State also submitted to the Senate with the treaty, the following message occurs: "At the time the provisional government took possession of the Government buildings no troops or officers of the United States were present or took any part whatever in the proceedings. No public recognition was accorded to the provisional government by the United States Minister until after the Queen's abdication and when they were in effective possession of the Government buildings, the archives, the treasury, the barracks, the police station, and all the potential machinery of the Government." But a protest also accompanied said treaty, signed by the Queen and her ministers at the time she made way for the provisional government, which explicitly stated that she yielded to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support such provisional government.

The truth or falsity of this protest was surely of the first importance. If true, nothing but the concealment of its truth could induce our Government to negotiate with the semblance of a government thus created, nor could a treaty resulting from the acts stated in the protest have been knowingly deemed worthy of consideration by the Senate. Yet the truth or falsity of the protest had not been investigated.

I conceived it to be my duty therefore to withdraw the treaty from the Senate for examination, and meanwhile to cause an accurate, full, and impartial investigation to be made of the facts attending the subversion of the constitutional Government of Hawaii and the installment in its place of the provisional government. I selected for the work of investigation the Hon. James H. Blount, of Georgia, whose service of eighteen years as a member of the House of Georgia, and whose experience as chairman of the Committee of Foreign Affairs in that body, and his consequent familiarity with international topics, joined with his high character and honorable reputation, seemed to render him peculiarly fitted for the duties entrusted to him. His report detailing his action under the instructions given to him and the conclusions derived from his investigation accompany this message.

These conclusions do not rest for their acceptance entirely upon Mr. Blount's honesty and ability as a man, nor upon his acumen and impartiality as an investigator. They are accompanied by the evidence upon which they are based, which evidence is also herewith transmitted, and from which it seems to me no other deductions could possibly be reached than those arrived at by the Commissioner.

The report with its accompanying proofs, and such other evidence as is now before the Congress or is herewith submitted, justifies in my opinion the statement that when the President was led to submit the treaty to the Senate with the declaration that "the overthrow of the monarchy was not in

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The report with its accompanying proofs, and such other evidence as is now before the Congress or is herewith submitted, justifies in my opinion the statement that when the President was led to submit the treaty to the Senate with the declaration that "the overthrow of the monarchy was not in any way promoted by this Government", and when the Senate was induced to receive and discuss it on that basis, both President and Senate were misled.

The attempt will not be made in this communication to touch upon all the facts which throw light upon the progress and consummation of this scheme of annexation. A very brief and imperfect reference to the facts and evidence at hand will exhibit its character and the incidents in which it had its birth.

It is unnecessary to set forth the reasons which in January, 1893, led a considerable proportion of American and other foreign merchants and traders residing at Honolulu to favor the annexation of Hawaii to the United States. It is sufficient to note the fact and to observe that the project was one which was zealously promoted by the Minister representing the United States in that country. He evidently had an ardent desire that it should become a fact accomplished by his agency and during his ministry, and was not inconveniently scrupulous as to the means employed to that end. On the 19th day of November, 1892, nearly two months before the first overt act tending towards the subversion of the Hawaiian Government and the attempted transfer of Hawaiian territory to the United States, he addressed a long letter to the Secretary of State in which the case for annexation was elaborately argued, on moral, political, and economical grounds. He refers to the loss of the Hawaiian sugar interests from the operation of the McKinley bill, and the tendency to still further depreciation of sugar property unless some positive measure of relief is granted. He strongly inveighs against the existing Hawaiian Government and emphatically declares for annexation. He says: "In truth the monarchy here is an absurd anachronism. It has nothing on which it logically or legitimately stands. The feudal basis on which it once stood no longer existing, the monarchy now is only an impediment to good government - an obstruction to the prosperity and progress of the islands."

He further says: "As a crown colony of Great Britain or a Territory of the United States the government modifications could be made readily and good administration of the law secured. Destiny and the vast future interests of the United States in the Pacific clearly indicate who at no distant day must be responsible for the government of these islands. Under a territorial government they could be as easily governed as any of the existing Territories of the United States." * * * "Hawaii has reached the parting of the ways. She must now take the road which leads to Asia, or the other which outlets her in America, gives her an American civilization, and binds her to the care of American destiny." He also declares: "One of two courses seems to me absolutely necessary to be followed, either bold and vigorous measures for annexation or a 'customs union,' an ocean cable from the California coast to Honolulu, Pearl Harbor perpetually ceded to the United States, with an implied but not expressly stipulated American protectorate over the islands. I believe the former to be the better, that which will prove much the more advantageous to the islands, and the cheapest and least embarrassing in the end to the United States. If it was wise for the United States through Secretary Marcy thirty-eight years ago to offer to expend $100,000 to secure a treaty of annexation, it certainly can not be chimerical or unwise to expend $100,000 to secure annexation in the near future. To-day the United States has five times the wealth she possessed in 1854, and the reasons now existing for annexation are much stronger than they were then. I can not refrain from expressing the opinion with emphasis that the golden hour is near at hand."

These declarations certainly show a disposition and condition of mind, which may be usefully recalled when interpreting the significance of the Minister's conceded acts or when considering the probabilities of such conduct on his part as may not be admitted.

In this view it seems proper to also quote from a letter written by the Minister to the Secretary of State on the 8th day of March, 1892, nearly a year prior to the first step taken toward annexation. After stating the possibility that the existing Government of Hawaii might be overturned by an orderly and peaceful revolution, Minister Stevens writes as follows: "Ordinarily in like circumstances, the rule seems to be to limit the landing and movement of United States forces in foreign waters and dominion exclusively to the protection of the United States legation and of the lives and property of American citizens. But as the relations of the United States to Hawaii are exceptional, and in former years the United States officials here took somewhat exceptional action in circumstances of disorder, I desire to know how far the present Minister and naval commander may deviate from established international rules and precedents in the contingencies indicated in the first part of this dispatch."

To a minister of this temper full of zeal for annexation there seemed to arise in January, 1893, the precise opportunity for which he was watchfully waiting - an opportunity which by timely "deviation from established international rules and precedents" might be improved to successfully accomplish the great object in view; and we are quite prepared for the exultant enthusiasm with which in a letter to the State Department dated February 1, 1893, he declares: "The Hawaiian pear is now fully ripe and this is the golden hour for the United States to pluck it."

As a further illustration of the activity of this diplomatic representative, attention is called to the fact that on the day the above letter was written, apparently unable longer to restrain his ardor, he issued a proclamation whereby "in the name of the United States" he assumed the protection of the Hawaiian Islands and declared that said action was "taken pending and subject to negotiations at Washington." Of course this assumption of a protectorate was promptly disavowed by our Government, but the American flag remained over the Government building at Honolulu and the forces remained on guard until April, and after Mr. Blount's arrival on the scene, when both were removed.

A brief statement of the occurrences that led to the subversion of the constitutional Government of Hawaii in the interests of annexation to the United States will exhibit the true complexion of that transaction.

On Saturday, January 14, 1893, the Queen of Hawaii, who had been contemplating the proclamation of a new constitution, had, in deference to the wishes and remonstrances of her cabinet, renounced the project for the present at least. Taking this relinquished purpose as a basis of action, citizens of Honolulu numbering from fifty to one hundred, mostly resident aliens, met in a private office and selected a so-called Committee of Safety, composed of thirteen persons, seven of whom were foreign subjects, and consisted of five Americans, one Englishman, and one German. This committee, though its designs were not revealed, had in view nothing less than annexation to the United States, and between Saturday, the 14th, and the following Monday, the 16th of January - though exactly what action was taken may not be clearly disclosed -they were certainly in communication with the United States Minister. On Monday morning the Queen and her cabinet made public proclamation, with a notice which was specially served upon the representatives of all foreign governments, that any changes in the constitution would be sought only in the methods provided by that instrument. Nevertheless, at the call and under the auspices of the Committee of Safety, a mass meeting of citizens was held on that day to protest against the Queen's alleged illegal and unlawful proceedings and purposes. Even at this meeting the Committee of Safety continued to disguise their real purpose and contented themselves with procuring the passage of a resolution denouncing the Queen and empowering the committee to devise ways and means "to secure the permanent maintenance of law and order and the protection of life, liberty, and property in Hawaii." This meeting adjourned between three and four o'clock in the afternoon. On the same day, and immediately after such adjournment, the committee, unwilling to take further steps without the cooperation of the United States Minister, addressed him a note representing that the public safety was menaced and that lives and property were in danger, and concluded as follows: "We are unable to protect ourselves without aid, and therefore pray for the protection of the United States forces." Whatever may be thought of the other contents of this note, the absolute truth of this latter statement is incontestable. When the note was written and delivered, the committee, so far as it appears, had neither a man or a gun at their command, and after its delivery they became so panic-stricken at their stricken position that they sent some of their number to interview the Minister and request him not to land the United States forces till the next morning. But he replied that the troops had been ordered, and whether the committee were ready or not the landing should take place. And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States Steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the bona fide purpose of protecting the imperilled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the de facto and the de jure government. In point of fact the existing government instead of requesting the presence of an armed force protested against it. There is as little basis for the pretense that such forces were landed for the security of American life and property. If so, they would have been stationed in the vicinity of such property and so as to protect it, instead of at a distance and so as to command the Hawaiian Government building and palace. Admiral Skerrett, the officer in command of our naval force on the Pacific station, has frankly stated that in his opinion the location of the troops was inadvisable if they were landed for the protection of American citizens whose residences and places of business, as well as the legation and consulate were in the city, but the location selected was entirely appropriate if the forces were landed for the purpose of overawing the provisional government. [illegible] to life and property calling for any such special care, had existed. Great Britain and other foreign powers [illegible]

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This meeting adjourned between three and four o'clock in the afternoon. On the same day, and immediately after such adjournment, the committee, unwilling to take further steps without the cooperation of the United States Minister, addressed him a note representing that the public safety was menaced and that lives and property were in danger, and concluded as follows: "We are unable to protect ourselves without aid, and therefore pray for the protection of the United States forces." Whatever may be thought of the other contents of this note, the absolute truth of this latter statement is incontestable. When the note was written and delivered, the committee, so far as it appears, had neither a man or a gun at their command, and after its delivery they became so panic-stricken at their stricken position that they sent some of their number to interview the Minister and request him not to land the United States forces till the next morning. But he replied that the troops had been ordered, and whether the committee were ready or not the landing should take place. And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States Steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the bona fide purpose of protecting the imperilled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the de facto and the de jure government. In point of fact the existing government instead of requesting the presence of an armed force protested against it. There is as little basis for the pretense that such forces were landed for the security of American life and property. If so, they would have been stationed in the vicinity of such property and so as to protect it, instead of at a distance and so as to command the Hawaiian Government building and palace. Admiral Skerrett, the officer in command of our naval force on the Pacific station, has frankly stated that in his opinion the location of the troops was inadvisable if they were landed for the protection of American citizens whose residences and places of business, as well as the legation and consulate, were in a distant part of the city, but the location selected was a wise one if the forces were landed for the purpose of supporting the provisional government. If any peril to life and property calling for any such martial array had existed, Great Britain and other foreign powers interested would not have been behind the United States in activity to protect their citizens. But they made no sign in that direction. When these armed men were landed, the city of Honolulu was in its customary orderly and peaceful condition. There was no symptom of riot or disturbance in any quarter. Men, women, and children were about the streets as usual, and nothing varied the ordinary routine or disturbed the ordinary tranquility, except the landing of the Boston's marines and their march through the town to the quarters assigned them. Indeed, the fact that after having called for the landing of the United States forces on the plea of danger to life and property the Committee of Safety themselves requested the Minister to postpone action, exposed the untruthfulness of their representations of present peril to life and property. The peril they saw was an anticipation growing out of guilty intentions on their part and something which, though not then existing, they knew would certainly follow their attempt to overthrow the Government of the Queen without the aid of the United States forces.

Thus it appears that Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands, or of anybody else so far as shown, except the United States Minister.

Therefore the military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property. It must be accounted for in some other way and on some other ground, and its real motive and purpose are neither obscure nor far to seek.

The United States forces being now on the scene and favorably stationed, the committee proceeded to carry out their original scheme. They met the next morning, Tuesday, the 17th, perfected the plan of temporary government, and fixed upon its principal officers, ten of whom were drawn from the thirteen members of the Committee of Safety. Between one and two o'clock, by squads and by different routes to avoid notice, and having first taken the precaution of ascertaining whether there was any one there to oppose them, they proceeded to the Government building to proclaim the new government. No sign of opposition was manifest, and thereupon an American citizen began to read the proclamation from the steps of the Government building almost entirely without auditors. It is said that before the reading was finished quite a concourse of persons, variously estimated at from 50 to 100, some armed and some unarmed, gathered about the committee to give them aid and confidence. This statement is not important, since the one controlling factor in the whole affair was unquestionably the United States marines, who, drawn up under arms and with artillery in readiness only seventy-six yards distant, dominated the situation.

The provisional government thus proclaimed was by the terms of the proclamation "to exist until terms of union with the United States had been negotiated and agreed upon". The United States Minister, pursuant to prior agreement, recognized this government within an hour after the reading of the proclamation, and before five o'clock, in answer to an inquiry on behalf of the Queen and her cabinet, announced that he had done so.

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government de facto nor de jure. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge. Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal, while the Committee of Safety, by actual search, had discovered that there were but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recognition of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands.

This protest was delivered to the chief of the provisional government, who endorsed thereon his acknowledgment of its receipt. The terms of the protest were read without dissent by those assuming to constitute the provisional government, who were certainly charged with the knowledge that the Queen instead of finally abandoning her power had appealed to the justice of the United States for reinstatement in her authority; and yet the provisional government with this unanswered protest in its hand hastened to negotiate with the United States for the permanent banishment of the Queen from power and for the sale of her kingdom.

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions. We are not without a precedent showing how scrupulously we avoided such accusations in former days. After the people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission into the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us "to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves". This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States. Fair-minded people with the evidence before them will hardly claim that the Hawaiian Government was

hawaii-nation.org/cleveland.html
Carbonite Login | O... .st0[Ek#FA5400) Free large file hosti... https://www.fiverr.c... Bookmarks Yola Directory Edit call paypal - Google... Hawaii Directory commission junction ShareASale - Get a... MYAffiliate Program Yola All Bookmarks

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States. Fair-minded people with the evidence before them will hardly claim that the Hawaiian Government was overthrown by the people of the islands or that the provisional government had ever existed with their consent. I do not understand that any member of this government claims that the people would uphold it by their suffrages if they were allowed to vote on the question.

While naturally sympathizing with every effort to establish a republican form of government, it has been the settled policy of the United States to concede to people of foreign countries the same freedom and independence in the management of their domestic affairs that we have always claimed for ourselves; and it has been our practice to recognize revolutionary governments as soon as it became apparent that they were supported by the people. For illustration of this rule I need only to refer to the revolution in Brazil in 1889, when our Minister was instructed to recognize the Republic "so soon as a majority of the people of Brazil should have signified their assent to its establishment and maintenance"; to the revolution in Chile in 1891, when our Minister was directed to recognize the new government "if it was accepted by the people"; and to the revolution in Venezuela in 1892, when our recognition was accorded on condition that the new government was "fully established, in possession of the power of the nation, and accepted by the people."

As I apprehend the situation, we are brought face to face with the following conditions:

The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may be safely asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.

But for the notorious predilections of the United States Minister for annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed.

But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.

But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.

And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Stevens' recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States.

Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration, and in the instructions to Minister Willis, a copy of which accompanies this message, I have directed him to so inform the provisional government.

But in the present instance our duty does not, in my opinion, end with refusing to consummate this questionable transaction. It has been the boast of our government that it seeks to do justice in all things without regard to the strength or weakness of those with whom it deals. I mistake the American people if they favor the odious doctrine that there is no such thing as international morality, that there is one law for a strong nation and another for a weak one, and that even by indirection a strong power may with impunity despoil a weak one of its territory.

By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair. The provisional government has not assumed a republican or other constitutional form, but has remained a mere executive council or oligarchy, set up without the assent of the people. It has not sought to find a permanent basis of popular support and has given no evidence of an intention to do so. Indeed, the representatives of that government assert that the people of Hawaii are unfit for popular government and frankly avow that they can be best ruled by arbitrary or despotic power.

The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to legal liabilities; and the United States in aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.

These principles apply to the present case with irresistible force when the special conditions of the Queen's surrender of her sovereignty are recalled. She surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States. Furthermore, the provisional government acquiesced in her surrender in that manner and on those terms, not only by tacit consent, but through the positive acts of some members of that government who urged her peaceable submission, not merely to avoid bloodshed, but because she could place implicit reliance upon the justice of the United States, and that the whole subject would be finally considered at Washington.

I have not, however, overlooked an incident of this unfortunate affair which remains to be mentioned. The members of the provisional government and their supporters, though not entitled to extreme sympathy, have been led to their present predicament of revolt against the Government of the Queen by the indefensible encouragement and assistance of our diplomatic representative. This fact may entitle them to claim that in our effort to rectify the wrong committed some regard should be had for their safety. This sentiment is strongly seconded by my anxiety to do nothing which would invite either harsh retaliation on the part of the Queen or violence and bloodshed in any quarter. In the belief that the Queen, as well as her enemies, would be willing to adopt such a course as would meet these conditions, and in view of the fact that both the Queen and the provisional government had at one time apparently acquiesced in a reference of the entire case to the United States Government, and considering the further fact that in any event the provisional government by its own declared limitation was only "to exist until terms of union with the United States of America have been negotiated and agreed upon," I hoped that after the assurance to the members of that government that such union could not be consummated I might compass a peaceful adjustment of the difficulty.

Actuated by these desires and purposes, and not unmindful of the inherent perplexities of the situation nor of the limitations upon my power, I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned. The conditions suggested, as the instructions show, contemplate a general amnesty to those concerned in setting up

Search

Exhibit A

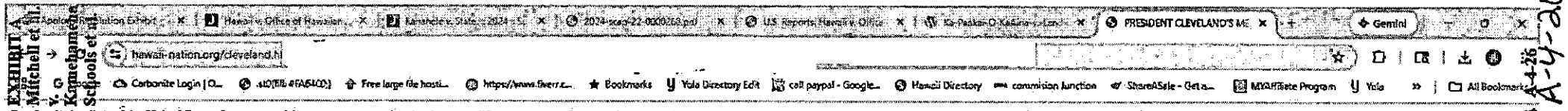

EXHIBIT A
Mitchell et al. v. Kamehameha Schools et al.

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I therefore submit this communication with its accompanying exhibits, embracing Mr. Blount's report, the evidence and statements taken by him at Honolulu, the instructions given to both Mr. Blount and Minister Willis, and correspondence connected with the affair in hand.

In commending this subject to the extended powers and wide discretion of the Congress, I desire to add the assurance that I shall be much gratified to cooperate in any legislative plan which may be devised for the solution of the problem before us which is consistent with American honor, integrity, and morality.

GROVER CLEVELAND
Executive Mansion,
Washington, December 18, 1893

Return to the Hawaiian Independence Home Page or the Legal Documents Index

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Westlaw.

7 P.3d 1068
94 Hawai'i 31, 7 P.3d 1068
(Cite as: 94 Hawai'i 31, 7 P.3d 1068)

Ka Pa'akai O Ka'Aina v. Land Use Com'n, State of Hawai'i
Hawai'i,2000.

Supreme Court of Hawai'i.
KA PA'AKAI O KA'AINA, an association of Ka Lahui Hawai'i, a Hawaiian nation, Kona Hawaiian Civic Club, a Hawai'i nonprofit corporation, and Protect Kohanaiki Ohana, a Hawai'i nonprofit corporation, Ka Lahui Hawai'I, Kona Hawaiian Civic Club and Protect Kohanaiki Ohana, Plaintiffs-Appellants/Appellants
v.
LAND USE COMMISSION, STATE OF HAWAI'I; Office of State Planning, State of Hawai'i; County of Hawai'i Planning Department; Ka'Upulehu Developments, now known as Hualalai Development Company, a Delaware Corporation, Appellees/Appellees,
andPlan To Protect, a Hawai'i nonprofit corporation, Appellees/
Cross-Appellants/Appellants/Appellants.
Plan To Protect, Appellant/Cross-Appellants,
v.
State of Hawai'i, Land Use Commission, Appellees/Appellees
No. 21124.

Sept. 11, 2000.

Native Hawaiian groups appealed state Land Use Commission's (LUC) grant of developer's petition to reclassify approximately 1,000 acres of land from state land use conservation district to a state land use urban district. The Third Circuit Court affirmed LUC's decision, and granted developer's petition for land use boundary reclassification. Native Hawaiian groups appealed. The Supreme Court, Ramil, J., consolidated appeals and held that: (1) native Hawaiian organizations were aggrieved parties with standing to appeal action of LUC; (2) LUC's findings of fact and conclusions of law were insufficient to determine whether it fulfilled its obligation to preserve and protect customary and traditional rights of native Hawaiians; and (3) LUC improperly delegated to private developer its constitutional obligation to preserve and protect customary and traditional rights of native Hawaiians.

Vacated and remanded.

West Headnotes

[1] Boundaries 59 ⇐4

59 Boundaries
59I Description
59k4 k. Natural and Permanent Objects. Most Cited Cases
An "ahupua'a" is a land division usually extending from the mountains to the sea along rational lines, such as ridges or other natural characteristics.

[2] Administrative Law and Procedure 15A ⇐749

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15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak749 k. Presumptions. Most Cited Cases

The decisions of administrative bodies acting within their sphere of expertise are accorded a presumption of validity.

[3] Administrative Law and Procedure 15A ⇐785

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak785 k. Clear Error. Most Cited Cases

Administrative Law and Procedure 15A ⇐791

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak791 k. Substantial Evidence. Most Cited Cases

An administrative agency's findings of fact are reviewable under the clearly erroneous standard to determine if the agency decision was clearly erroneous in view of reliable, probative, and substantial evidence on the whole record.

[4] Administrative Law and Procedure 15A ⇐796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law Questions in General. Most Cited Cases

An administrative agency's conclusions of law are freely reviewable to determine if the agency's decision was in violation of constitutional or statutory provisions, in excess of statutory authority or jurisdiction of agency, or affected by other error of law.

[5] Appeal and Error 30 ⇐893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases

The interpretation of a statute is a question of law reviewable de novo.

[6] Statutes 361 ⇐181(1)

361 Statutes

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EXHIBIT A-4
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-4

Petitioners hereby submit **Exhibit Series A-4**, consisting of **Exhibits A-4-29 through A-4-33,** consisting of selected excerpts from the United States Supreme Court decision in *Hawai'i v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009).

This exhibit series includes the following excerpts and corresponding exhibit page numbers:

- Exhibit A-4-29 (Exhibit Page 171): EXCERPT – SYLLABUS p. 163
- Exhibit A-4-30 (Exhibit Page 172): EXCERPT – SYLLABUS p. 164
- Exhibit A-4-31 (Exhibit Page 173): EXCERPT – SYLLABUS p. 165
- Exhibit A-4-32 (Exhibit Page 174): EXCERPT – SYLLABUS p. 166
- Exhibit A-4-33 (Exhibit Page 175): EXCERPT – OPINION OF THE COURT pp. 171–172

These excerpts are submitted to demonstrate that the United States Supreme Court expressly held that the Apology Resolution does not create substantive rights, does not recognize enforceable claims against the State of Hawai'i, and does not restrict the State's authority over ceded lands. Petitioners submit this authority to show that reliance on the Apology Resolution as a legal basis to alter land use authority, impose restrictions, or support claims affecting land ownership or control is not supported by controlling law.

These documents are provided in read-only format and do not contain headers or footers. Accordingly, exhibit numbering has been applied through the Exhibit Index and corresponding page references.

The attached pages are true and correct copies of the official published court opinion and are provided as excerpts for reference and judicial review.

Exhibit A
Mitchell et al. v. Kamehameha Schools et al.

Syllabus

HAWAII ET AL. *v.* OFFICE OF HAWAIIAN AFFAIRS ET AL.

CERTIORARI TO THE SUPREME COURT OF HAWAII

No. 07–1372. Argued February 25, 2009—Decided March 31, 2009

After the overthrow of the Hawaiian monarchy in 1893, Congress annexed the Territory of Hawaii pursuant to the Newlands Resolution, under which Hawaii ceded to the United States the "absolute fee" and ownership of all public, government, and crown lands. In 1959, the Admission Act made Hawaii a State, granting it "all the public lands . . . held by the United States," § 5(b), and requiring these lands, "together with the proceeds from [their] sale . . . , [to] be held by [the] State as a public trust," § 5(f). Hawaii state law also authorizes the State to use or sell the ceded lands, provided the proceeds are held in trust for Hawaiian citizens. In 1993, Congress' joint Apology Resolution "apologize[d]" for this country's role in overthrowing the Hawaiian monarchy, § 1, and declared that nothing in the resolution was "intended to serve as a settlement of any claims against the United States," § 3.

The "Leiali'i parcel," a Maui tract of former crown land, was ceded to the United States at annexation and has been held by the State since 1959 as part of the Admission Act § 5(f) trust. Hawaii's affordable housing agency (HFDC) received approval to remove the parcel from the trust and redevelop it upon compensating respondent Office of Hawaiian Affairs (OHA), which manages funds from the use or sale of ceded lands for the benefit of native Hawaiians. After HFDC refused OHA's demand that the payment include a disclaimer preserving any native Hawaiian claims to lands transferred from the trust for redevelopment, respondents sued to enjoin the sale or transfer of the Leiali'i parcel and any other of the ceded lands until final determination of native Hawaiians' claims. The state trial court entered judgment against respondents, but the Hawaiian Supreme Court vacated that ruling. Relying on the Apology Resolution, the court granted the injunction that respondents requested, rejecting petitioners' argument that the Admission Act and state law give the State explicit power to sell ceded lands.

Held:

1. This Court has jurisdiction. Respondents argue to no avail that the case does not raise a federal question because the State Supreme Court merely held that the sale of ceded lands would constitute a breach of the State's fiduciary duty to native Hawaiians under state law. The

Exhibit A
Mitchell et al. v. Kamehameha Schools et al.

Syllabus

Court has jurisdiction whenever "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law." *Michigan* v. *Long*, 463 U. S. 1032, 1040. Far from providing a plain statement that its decision rested on state law, the state court plainly held that the decision was dictated by federal law, particularly the Apology Resolution. Pp. 171–172.

2. The Apology Resolution did not strip Hawaii of its sovereign authority to alienate the lands the United States held in absolute fee and granted to the State upon its admission to the Union. Pp. 172–177.

(a) Neither of the resolution's substantive provisions justifies the judgment below. The first such provision's six verbs—*i. e.*, Congress "acknowledge[d] the historical significance" of the monarchy's overthrow, "recognize[d] and commend[ed] efforts of reconciliation" with native Hawaiians, "apologize[d] to [them]" for the overthrow, "expresse[d] [the] commitment to acknowledge [the overthrow's] ramifications," and "urge[d] the President . . . to also acknowledge [those] ramifications," § 1—are all conciliatory or precatory. This is not the kind of language Congress uses to create substantive rights, especially rights enforceable against the cosovereign States. See, *e. g.*, *Pennhurst State School and Hospital* v. *Halderman*, 451 U. S. 1, 17–18. The resolution's second substantive provision, the § 3 disclaimer, by its terms speaks only to those who may or may not have "claims against the United States." The State Supreme Court, however, read § 3 as a congressional recognition—and preservation—of claims *against Hawaii*. There is no justification for turning an express disclaimer of claims against one sovereign into an affirmative recognition of claims against another. Pp. 173–174.

(b) The State Supreme Court's conclusion that the 37 "whereas" clauses prefacing the Apology Resolution clearly recognize native Hawaiians' "unrelinquished" claims over the ceded lands is wrong for at least three reasons. First, such "whereas" clauses cannot bear the weight that the lower court placed on them. See, *e. g.*, *District of Columbia* v. *Heller*, 554 U. S. 570, 578, n. 3. Second, even if the clauses had some legal effect, they did not restructure Hawaii's rights and obligations, as the lower court found. "[R]epeals by implication are not favored and will not be presumed unless the intention of the legislature to repeal [is] clear and manifest." *National Assn. of Home Builders* v. *Defenders of Wildlife*, 551 U. S. 644, 662. The Apology Resolution reveals no such intention, much less a clear and manifest one. Third, because the resolution would raise grave constitutional concerns if it purported to "cloud" Hawaii's title to its sovereign lands more than three decades after the State's admission to the Union, see, *e. g.*, *Idaho* v. *United States*, 533 U. S. 262, 280, n. 9, the Court refuses to read the

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Exhibit A
Mitchell et al. v. Kamehameha Schools et al.

Syllabus

nonsubstantive "whereas" clauses to create such a "cloud" retroactively, see, *e. g.*, *Clark* v. *Martinez*, 543 U. S. 371, 381–382. Pp. 175–177.

117 Haw. 174, 177 P. 3d 884, reversed and remanded.

ALITO, J., delivered the opinion for a unanimous Court.

Mark J. Bennett, Attorney General of Hawaii, argued the cause for petitioners. With him on the briefs were *Lisa M. Ginoza*, First Deputy Attorney General, *Dorothy Sellers*, Solicitor General, *William J. Wynhoff*, Deputy Attorney General, *Seth P. Waxman*, *Jonathan E. Nuechterlein*, and *Jonathan G. Cedarbaum*.

William M. Jay argued the cause for the United States as *amicus curiae* in support of petitioners. With him on the brief were former *Solicitor General Garre*, *Assistant Attorney General Tenpas*, then-*Deputy Solicitor General Joseffer*, *Deputy Solicitor General Kneedler*, *David C. Shilton*, and *John Emad Arbab*.

Kannon K. Shanmugam argued the cause for respondents. With him on the brief were *Anna-Rose Mathieson*, *Kimberly D. Perrotta*, *Sherry P. Broder*, *Jon M. Van Dyke*, *Melody K. MacKenzie*, *William Meheula*, and *Hayden Aluli*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Washington et al. by *Robert M. McKenna*, Attorney General of Washington, *Maureen A. Hart*, Solicitor General, and *Jay D. Geck*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Talis J. Coldberg* of Alaska, *Terry Goddard* of Arizona, *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Steve Carter* of Indiana, *Tom Miller* of Iowa, *Steve Six* of Kansas, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *Douglas F. Gansler* of Maryland, *Michael A. Cox* of Michigan, *Jim Hood* of Mississippi, *Jon Bruning* of Nebraska, *Kelly A. Ayotte* of New Hampshire, *Gary K. King* of New Mexico, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Nancy H. Rogers* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Mark L. Shurtleff*

A-4-31

Exhibit A
Mitchell et al. v Kamehameha Schools et al.

JUSTICE ALITO delivered the opinion of the Court.

This case presents the question whether Congress stripped the State of Hawaii of its authority to alienate its sovereign territory by passing a joint resolution to apologize for the role that the United States played in overthrowing the Hawaiian monarchy in the late 19th century. Relying on Congress' joint resolution, the Supreme Court of Hawaii permanently enjoined the State from alienating certain of its lands, pending resolution of native Hawaiians' land claims that the court described as "unrelinquished." We reverse.

I

A

In 1893, "[a] so-called Committee of Safety, a group of professionals and businessmen, with the active assistance of

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of Utah, *William H. Sorrell* of Vermont, and *Bruce A. Salzburg* of Wyoming; for the Commissioner of Public Lands for the State of New Mexico by *Turner W. Branch;* for the Center for Constitutional Jurisprudence by *Anthony T. Caso, John C. Eastman,* and *Edwin Meese III;* for the Grassroot Institute of Hawaii et al. by *H. William Burgess* and *Shannon Lee Goessling;* for the Mountain States Legal Foundation by *J. Scott Detamore* and *William Perry Pendley;* and for the Pacific Legal Foundation et al. by *John H. Findley, Robert H. Thomas,* and *Ilya Shapiro.*

Briefs of *amici curiae* urging affirmance were filed for the Equal Justice Society et al. by *Eric K. Yamamoto;* for the National Congress of American Indians by *Beth S. Brinkmann, Brian R. Matsui, John E. Echohawk,* and *Kim Jerome Gottschalk;* for the Native Hawaiian Legal Corp. et al. by *Catherine E. Stetson* and *Jessica L. Ellsworth;* for Abigail Kinoiki Kekaulike Kawananakoa by *George W. Van Buren;* and for Samuel L. Kealoha, Jr., et al. by *Walter R. Schoettle* and *Emmett E. Lee Loy.*

Briefs of *amici curiae* were filed for the Alaska Federation of Natives, Inc., by *David S. Case, Carol H. Daniel,* and *Riyaz Kanji;* for the Asian American Justice Center et al. by *Jonathan M. Cohen, Mark A. Packman, Karen Narasaki,* and *Vincent Eng;* for Current and Former Hawaii State Officials by *Virginia A. Seitz* and *Sarah O'Rouke Schrup;* for the Hawai'i Congressional Delegation by *Sri Srinivasan;* and for the Sovereign Councils of the Hawaiian Homelands Assembly et al. by *Charles Rothfeld, Andrew J. Pincus,* and *Thomas W. Merrill.*

Exhibit A
Mitchell et al. v. Kamehameha Schools et al.

Resolution," which "dictate[d]" its conclusion, *id.*, at 212, 177 P. 3d, at 922, the State Supreme Court ordered "an injunction against the defendants from selling or otherwise transferring to third parties (1) the Leiali'i parcel and (2) any other ceded lands from the public lands trust until the claims of the native Hawaiians to the ceded lands have been resolved," *id.*, at 218, 177 P. 3d, at 928. In doing so, the court rejected petitioners' argument that "the State has the undoubted and explicit power to sell ceded lands pursuant to the terms of the Admission Act and pursuant to state law." *Id.*, at 211, 177 P. 3d, at 921 (internal quotation marks and alterations omitted). We granted certiorari. 554 U. S. 944 (2008).

II

Before turning to the merits, we first must address our jurisdiction. According to respondents, the Supreme Court of Hawaii "merely held that, in light of the ongoing reconciliation process, the sale of ceded lands would constitute a breach of the State's fiduciary duty to Native Hawaiians *under state law.*" Brief for Respondents 17. Because respondents believe that this case does not raise a federal question, they urge us to dismiss for lack of jurisdiction.

Although respondents dwell at length on that argument, see *id.*, at 19–34, we need not tarry long to reject it. This Court has jurisdiction whenever "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion." *Michigan* v. *Long*, 463 U. S. 1032, 1040–1041 (1983). Far from providing a "plain statement" that its decision rested on state law, *id.*, at 1041, the State Supreme Court plainly held that its decision was "dictate[d]" by federal law—in particular, the Apology Resolution, see 117 Haw., at 212, 177 P. 3d, at 922. Indeed, the court explained that the Apology Resolution lies "[a]t the heart of [respondents'] claims," that respondents' "current claim for

Exhibit A
Mitchell et al. v. Kamehameha Schools et al.

injunctive relief is . . . based largely upon the Apology Resolution," and that respondents' arguments presuppose that the Apology Resolution "changed the legal landscape and restructured the rights and obligations of the State." *Id.*, at 189–190, 177 P. 3d, at 899–900 (internal quotation marks omitted). The court noted that "[t]he primary question before this court on appeal is whether, in light of the Apology Resolution, this court should *issue an injunction*" against sale of the trust lands, *id.*, at 210, 177 P. 3d, at 920, and it concluded, "[b]ased on a plain reading" of the Apology Resolution, that "Congress has clearly recognized that the native Hawaiian people have unrelinquished claims over the ceded lands," *id.*, at 191, 177 P. 3d, at 901.

Based on these and the remainder of the State Supreme Court's 77 references to the Apology Resolution, we have no doubt that the decision below rested on federal law.[2] We are therefore satisfied that this Court has jurisdiction. See 28 U. S. C. § 1257.

III

Turning to the merits, we must decide whether the Apology Resolution "strips Hawaii of its sovereign authority to sell, exchange, or transfer," Pet. for Cert. i, the lands that the United States held in "absolute fee," 30 Stat. 750, and "grant[ed] to the State of Hawaii, effective upon its admission into the Union," 73 Stat. 5. We conclude that the Apology Resolution has no such effect.

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[2] Respondents argue that the Supreme Court of Hawaii relied on the Apology Resolution "simply to support its factual determination that Native Hawaiians have unresolved claims to the ceded lands." Brief for Respondents 21. Regardless of its factual determinations, however, the lower court's *legal* conclusions were, at the very least, "interwoven with the federal law." *Michigan* v. *Long*, 463 U. S. 1032, 1040 (1983). See 117 Haw. 174, 217, 218, 177 P. 3d 884, 927, 928 (2008) ("hold[ing]" that respondents' legal claim "arose" only when "the Apology Resolution was signed into law on November 23, 1993"); *id.*, at 211, n. 25, 177 P. 3d, at 921, n. 25 (emphasizing that "our holding is grounded in Hawai'i and federal law"). See also n. 4, *infra*.

EXHIBIT A-4
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-4

Petitioners hereby submit Exhibit Series A-4, consisting of **Exhibit A-4-40 through A-4-43**, including selected excerpts from Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission, 79 Hawai'i 425 (1995).

This exhibit includes excerpts from the Hawai'i Supreme Court's decision addressing the rights of Native Hawaiian traditional and customary practices and the obligations of agencies to recognize and protect those rights in land use and permitting decisions.

The excerpts further demonstrate that agency actions are unlawful where they disregard the protection of traditional and customary practices or fail to properly consider and preserve those rights in the decision-making process.

This authority is submitted in support of Petitioners' claims that Respondents failed to identify, evaluate, and protect traditional and customary practices at Keauhou Bay, in violation of Article XII, Section 7 of the Hawai'i Constitution.

79 Hawai'i 425

PUBLIC ACCESS SHORELINE HAWAII, by Jerry ROTHSTEIN, its coordinator; and Angel Pilago, Appellants-Appellees-Respondents,
v.
HAWAI'I COUNTY PLANNING COMMISSION, by Fred Y. FUJIMOTO in his capacity as its chairman; and Nansay Hawaii, Inc., a Hawai'i corporation, Appellees-Appellants-Petitioners.

No. 15460.

Supreme Court of Hawai'i.

Aug. 31, 1995.

*428 Roy Vitousek, III (J. Robert Arnett, II, Nani Lee and John P. Powell of Cades, Schutte, Fleming and Wright, with him on the briefs), Honolulu, for Appellee-Petitioner Nansay Hawaii, Inc.

Joseph Kamelamela, Deputy Corporation Counsel (Michael J. Matsukawa with him on the briefs), Hilo, for Appellee-Petitioner Hawai'i County Planning Commission.

Skip Spaulding (Arnold L. Lum, Denise E. Antolini, Eric S. Walters, San Francisco, CA, and Lea O. Hong of Sierra Club Legal Defense Fund, with him on the briefs), Honolulu, for Appellants-Respondents Public Access Shoreline Hawaii and Angel Pilago.

David Kaapu, on the briefs, Kailua Kona, for the Kona Hawaiian Civic Club.

Mililani Trask, Kia'aina, on the briefs, Honolulu, for Ka Lahui Hawai'i.

David L. Callies, Orlando R. Davidson, and Gordon M. Arakaki, on the briefs, Honolulu, for the Land Use Research Foundation.

Carl C. Christensen, Alan T. Murakami, and Paul F.N. Lucas (Native Hawaiian Legal Corporation), on the briefs, Honolulu, for Pele Defense Fund.

Sherry P. Broder and Jon M. Van Dyke, on the briefs, Honolulu, for the Office of Hawaiian Affairs.

Steven S. Michaels and Girard D. Lau, Deputy Attorneys General, on the briefs, Honolulu, for the State of Hawai'i.

Hayden Aluli, on the briefs, Honolulu, for the 'Ohana Council.

Williamson B.C. Chang and David Michael Foulkes, on the briefs, Honolulu, for Protect Kohanaiki 'Ohana, Inc., Kalamaula Homestead Association, and the Native Hawaiian Environmental Defense Fund.

Before MOON, C.J., and KLEIN, LEVINSON, NAKAYAMA and RAMIL, JJ.

*429 KLEIN, Justice.

We issued a writ of certiorari to review the decision of the Intermediate Court of Appeals (ICA) in this case, which concerns a challenge by Public Access Shoreline Hawaii (PASH) and Angel Pilago to the Hawai"i County Planning Commission's (HPC) decision denying them standing to participate in a contested case hearing on an application by Nansay Hawai'i, Inc. (Nansay) for a Special Management Area (SMA) use permit."

In order to pursue development of a resort complex on land within a SMA on the island of Hawai"i (Big Island), Nansay applied to the HPC for a SMA use permit. PASH, an unincorporated public interest membership organization based in Kailua-Kona, and Pilago opposed the issuance of the permit and requested contested case hearings before the HPC. The HPC denied the requests on the ground that, under its rules, neither PASH nor Pilago had standing to participate in a contested case. The HPC subsequently issued a SMA use permit to Nansay. When the case came before the circuit court, the court essentially vacated the permit by remanding to the HPC with instructions to hold a contested case hearing in which both PASH and Pilago would be allowed to participate. In other words, because the SMA permit was granted pursuant to flawed procedures, the circuit court implicitly concluded that the SMA permit was void. On appeal, the ICA affirmed the circuit court's order with respect to PASH and reversed it with respect to Pilago. For the reasons set forth below, we affirm the ICA's decision and remand the case to the HPC for proceedings consistent with this opinion."

I. BACKGROUND FACTS

The HPC received a SMA use permit application from Nansay for a resort development on the Big Island. Nansay sought approval of its plans to develop a community complex including: two resort hotels with over 1,000 rooms; 330 multiple family residential units; 380 single family homes; a golf

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PASH and Pilago sought review in circuit court of both agency decisions (denial of their contested case requests and issuance of the SMA use permit) pursuant to HRS §§ 91-14 and 205A-6 (1985). 5 The circuit court determined that the HPC erred in finding that PASH and Pilago did not have interests that were distinguishable from the general public. Accordingly, the court remanded the case with instructions for the HPC to grant PASH and Pilago a contested case hearing pursuant to its rules.

Nansay and the HPC appealed, and the ICA affirmed in part, holding that PASH was entitled to contested case hearing procedures. PASH I, at 253, 900 P.2d at 1317. The ICA's conclusion was based on its determination that the HPC "disregarded the rules regarding the gathering rights of native Hawaiians and its obligation to preserve and protect those rights." Id. In other words, the ICA determined that PASH's "interest in the proceeding was clearly distinguishable from that of the general public[.]" Id. 6 However, the ICA reversed the circuit court with respect to Pilago, explaining that his acknowledged "special" interest in the proceeding was not a sufficiently "personal" interest "clearly distinguishable from that of the general public." Id. at 254, 900 P.2d at 1318.

The HPC and Nansay subsequently applied for a writ of certiorari, which we granted on May 7, 1993.

II. THE RIGHTS OF A NON-APPEALING PARTY

Appeals from decisions of the ICA are governed by HRS § 602-59 (1985), which provides for an appeal only by application for writ of certiorari. State v. Bolosan, 78 Hawai'i 86, 88, 890 P.2d 673, 675 (1995). In the instant case, the ICA ruled against the HPC and Nansay with respect to PASH's claims, and against Pilago with respect to his claims. The HPC and Nansay accordingly filed applications for writs of certiorari.

Notwithstanding our October 28, 1993 order permitting Pilago's counsel to withdraw and allowing PASH's representative to appear as counsel for Pilago, Pilago never filed **[*1252]** **[**431]** an application for writ of certiorari from the decision of the ICA. Accordingly, we decline to address Pilago's asserted rights in this opinion.

III. JURISDICTIONAL REQUIREMENTS

It is well-settled that "every court must ... determine as a threshold matter whether it has jurisdiction to decide the issue[s] presented." Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai'i 64, 67, 881 P.2d 1210, 1213 (1994). Moreover, subject matter jurisdiction may not be waived and can be challenged at any time. Bush v. Hawaiian Homes Comm'n, 76 Hawai'i 128, 133, 870 P.2d 1272, 1277 (1994).

In the instant case, the HPC and Nansay argue that the circuit court lacked jurisdiction to consider PASH s claims. Nansay asserts further that the proper remedy for PASH to pursue was an action for declaratory judgment and/or an injunction, rather than an appeal under HRS § 91-14. PASH contends that the circuit court properly exercised appellate jurisdiction under HRS § 91-14. 7

The necessary inquiry in this case, therefore, is whether PASH has met the requirements of HRS § 91-14: first, the proceeding that resulted in the unfavorable agency action must have been a "contested case" hearing--i.e., a hearing that was 1) "required by law" and 2) determined the "rights, duties, and privileges of specific parties"; second, the agency's action must represent "a final decision and order," or "a preliminary ruling" such that deferral of review would deprive the claimant of adequate relief; third, the claimant must have followed the applicable agency rules and, therefore, have been involved "in" the contested case; and finally, the claimant's legal interests must have been injured--i.e., the claimant must have standing to appeal. See generally Puna Geothermal, supra. In the remaining subsections of this part, we shall apply this test to the circumstances presented in this appeal.

A. Contested Case Hearing

In Puna Geothermal, we observed that "a contested case must have occurred before appellate jurisdiction may be exercised. A contested case is an agency hearing that 1) is required by law and 2) determines the rights, duties, or privileges of specific parties." 77 Hawai'i at 67-68, 881 P.2d at 1213-14 (citations and footnote omitted). In order for a hearing to be "required by law," it may be required by statute, agency rule, or constitutional due process. See id. at 68, 881 P.2d at 1214.

In the instant case, we need only look to agency rules promulgated under the authority of HRS § 205A-29 to find the hearing requirement. 8 See HPC Rule 9-11(B), supra note 2. In fact, the respective county planning commissions for all the neighbor **[*1253]** **[**432]** islands are authorized under the Coastal Zone Management Act (CZMA), HRS chapter 205A, and in accordance with the Hawai'i Administrative Procedures Act (HAPA), HRS chapter 91, to establish rules governing the grant or denial of a SMA permit. 9 See, e.g., Chang v. Planning Comm'n, 64 Haw. 431, 436, 643 P.2d 55, 60 (1982). In the City and County of Honolulu, on the other hand, the relevant authority under the CZMA (specifically, the Honolulu City Council) is a legislative body that is exempt from HAPA. Sandy Beach Defense Fund v. City Council, 70 Haw. 361, 368, 773 P.2d 250, 255 (1989). No other law requires the Honolulu City Council to hold hearings on SMA applications. Id. at 376, 773 P.2d at 260. Similarly, in the County of Hawai'i, hearings are not required under the HPC Rules for cases involving SMA minor permit applications. Kona Old Hawaiian Trails v. Lyman, 69 Haw. 81, 734 P.2d 161 (1987). 10

> to the agency's action. Cf. Kona Old Hawaiian Trails v. Lyman, 69 Haw. 81, 92-94, 734 P.2d 161, 168-69 (1987). This would be the case notwithstanding a particular claimant's designation of the claim as an "appeal" rather than an original action. In re Eric G., 65 Haw. 219, 224, 649 P.2d 1140, 1144 (1982). In the instant case, we need not further discuss PASH and Pilago's claims under HRS § 205A-6 because we decide the issue of jurisdiction under HRS § 91-14. See infra section III."

Nansay and the HPC appealed, and the ICA affirmed in part, holding that PASH was entitled to contested case hearing procedures. PASH I, at 253, 900 P.2d at 1317. The ICA's conclusion was based on its determination that the HPC "disregarded the rules regarding the gathering rights of native Hawaiians and its obligation to preserve and protect those rights." Id. In other words, the ICA determined that PASH's "interest in the proceeding was clearly distinguishable from that of the general public[.]" Id. [FN6] However, the ICA reversed the circuit court with respect to Pilago, explaining that his acknowledged "special" interest in the proceeding was not a sufficiently "personal" interest "clearly distinguishable from that of the general public." Id. at 254, 900 P.2d at 1318.

> FN6. At the hearing before the HPC, Nansay did not directly dispute the assertion that unnamed members of PASH possess traditional native Hawaiian gathering rights at Kohanaiki, including food gathering and fishing for "opae, or shrimp, which are harvested from the anchialline ponds located on Nansay's proposed development site. See, e.g., HRS § 174C-101 (Supp.1992) (indicating that "traditional and customary rights shall include, but not be limited to ... the gathering of [hihiwai], ['opae], ['o'opu], limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural and religious purposes"). Pilago's similarly undisputed concern and interest was that the area of the planned development would destroy important cultural sites, possibly including the burial site of King Kamehameha I."

The HPC and Nansay subsequently applied for a writ of certiorari, which we granted on May 7, 1993.

II. THE RIGHTS OF A NON-APPEALING PARTY

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III. JURISDICTIONAL REQUIREMENTS

It is well-settled that "every court must ... determine as a threshold matter whether it has jurisdiction to decide the issue[s] presented." Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai"i 64, 67, 881 P.2d 1210, 1213 (1994). Moreover, subject matter jurisdiction may not be waived and can be challenged at any time. Bush v. Hawaiian Homes Comm'n, 76 Hawai'i 128, 133, 870 P.2d 1272, 1277 (1994)."

In the instant case, the HPC and Nansay argue that the circuit court lacked jurisdiction to consider PASH's claims. Nansay asserts further that the proper remedy for PASH to pursue was an action for declaratory judgment and/or an injunction, rather than an appeal under HRS § 91-14. PASH contends that the circuit court properly exercised appellate jurisdiction under HRS § 91-14. [FN7]

> FN7. HRS § 91-14(a) (Comp.1993) provides:
> Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law. Notwithstanding any other provision of this chapter to the contrary, for the purposes of this section, the term "person aggrieved" shall include an agency that is party to a contested case proceeding before that agency or another agency.
> Although the last sentence of this provision did not become effective until May 20, 1993, see County of Hawai"i v. Civil

The following factors, inter alia, may constitute significant adverse effects: (a) "an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes"; (b) effects upon "the economic or social welfare and activities of the community, County or State"; and (c) actions "contrary to the objectives and policies of [the CZMA] and the [SMA] Guidelines[.]" HPC Rule 9-10(H)(1), (4) & (10) (emphases added). See also HPC Rule 9-6(A)(2); HRS § 205A-2(b)(2) (one of the CZMA's objectives and policies is to protect and preserve "those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian ... history and culture ") (emphasis added). The interests asserted by PASH fall within these broad categories; therefore, they are entitled to protection under the CZMA. 20 See HRS § 205A-21 (finding that "special controls on development are necessary to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure ... adequate access"); HPC Rule 9-11(C) (authorizing the the HPC to attach "reasonable terms and conditions" to SMA permits); cf. Hammond v. North Slope Borough, 645 P.2d 750, 761-62 (Alaska 1982) (holding that Alaska's version of the CZMA requires its agencies to "assure opportunities for subsistence usage of coastal areas and resources" and to issue development permits only where consistent with Alaska's environmental and cultural interests).

In order for any conditions placed on a SMA permit issued by the HPC on remand to be deemed "reasonable," they must bear an essential nexus to legitimate State interests and must be "roughly proportional" to the impact of the proposed development. See infra section V.B. (discussing the respective requirements from Nollan v. California Coastal Comm'n, 483 U.S. 825, 836, 107 S.Ct. 3141, 3148, 97 L.Ed.2d 677 (1987), and Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994)). Here, the relevant State interests are reflected in article XII, section 7 of the Hawai'i Constitution (1978) and HRS § 1-1. See infra section IV.B. In other words, the HPC may require dedications appropriately tailored to the special [*1258] [**437] and quantifiable burdens associated with granting discretionary benefits to Nansay, through a SMA permit, which facilitate development of the company's land. Conditions that ensure continued access to the subject property for the legitimate and reasonable practice of customary and traditional rights would presumably comply with constitutional prohibitions against the uncompensated taking of private property. See infra section V.B.

B. Obligations Under Article XII, Section 7

of the Hawai'i Constitution and HRS § 1-1

In addition to the requirements of the CZMA, the HPC is obligated to protect customary and traditional rights to the extent feasible under the Hawai'i Constitution and relevant statutes. Article XII, section 7 of the Hawai'i Constitution (1978) provides:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

(Emphases added.) HRS § 1-1 (Supp. 1992) provides:

The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of [Hawai'i] in all cases, except as otherwise expressly provided by the Coustitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State.

(Emphasis added.) 21

The aforementioned provisions were discussed by this court, in the context of an individual's asserted gathering rights, in Kalipi v. Hawaiian Trust Co., 66 Haw. 1, 656 P.2d 745 (1982). Ten years later, in Pele Defense Fund v. Paty, supra, we recognized [*1259] [**438] that ancient Hawaiian gathering rights may have extended beyond the boundaries of individual ahupua'a in certain cases. 73 Haw. at 620, 837 P.2d at 1272. Nevertheless, neither Kalipi nor Pele precluded further inquiry concerning the extent that traditional practices have endured under the laws of this State. "In Kalipi, we foresaw that '[t]he precise nature and scope of the rights retained by § 1-1 would, of course, depend upon the particular circumstances of each case.' " Pele, 73 Haw. at 619, 837 P.2d at 1271 (quoting Kalipi, 66 Haw. at 12, 656 P.2d at 752).

In order to determine whether the HPC must protect traditional and customary rights of the nature asserted in this case, we shall first review our analysis of gathering rights in Kalipi and Pele. Then we shall clarify the status of customary rights in general, as a result of relevant judicial and legislative developments in Hawaiian history. Finally, we will provide the HPC with some specific, although not necessarily exhaustive, guidelines to aid its future deliberations in the event that Nansay elects to pursue its challenges to the legitimacy of PASH's claims.

1. Kalipi v. Hawaiian Trust Co.: judicial recognition of

traditional Hawaiian gathering rights based upon

residency in a particular ahupua'a

Although we later mentioned "other requirements of Kalipi " with approval-- implicitly *440 referring to the "undeveloped lands" and "no actual harm" requirements of Kalipi, see 73 Haw. at 621, 837 P.2d at 1272--our holding in Pele was not intended to foreclose argument regarding those requirements in future, unrelated cases involving assertions of customary and traditional rights under HRS § 1-1. "In Kalipi, we foresaw that "[t]he precise nature and scope of the rights retained by § 1-1 would, of course, depend upon the particular circumstances of each case." Pele, 73 Haw. at 619, 837 P.2d at 1271 (quoting Kalipi, 66 Haw. at 12, 656 P.2d at 752).

3. The "other requirements of Kalipi"

In addition to creating the "undeveloped land" requirement, see Kalipi, 66 Haw. at 7-8, 656 P.2d at 749, the court in Kalipi made the following observations concerning claims of traditional gathering rights under HRS § 1-1: [FN24]

> FN24. The court in Kalipi also addressed the "kuleana" reservation in the title to the lands in question. The "kuleana" reservation provides, "Koe nae no kuleana a na kanaka moloko," [which was] translated at trial to mean "the kuleanas [sic] of the people therein are excepted" ... [, and which thereby states the government's intention to] "... hereby declare these lands to be set apart as the lands of the Hawaiian Government, subject always to the rights of tenants." Kalipi, 66 Haw. at 12, 656 P.2d at 752 (emphasis added). Although the court withheld comment on the precise scope of this alternative source of gathering rights, see Kalipi, 66 Haw. at 12-13, 656 P.2d at 752, it nevertheless indicated that Territory v. Liliuokalani, 14 Haw. 88, 95 (1902) (holding that a similar reservation did not incorporate any public right to the use of certain shoreline areas included within a grant of land), does not necessarily dispose of the "kuleana" reservation as a source of additional gathering rights beyond HRS § 7-1. Id. at 12, 656 P.2d at 752.
> The word "kuleana" is defined as, inter alia, "[r]ight, privilege, concern, responsibility, ... [or] small piece of property, as within an ahupua'a [.]" Pukui & Elbert, Hawaiian Dictionary 179 (2nd ed. 1986). The word "kanaka" is defined, inter alia, as "person, individual, ... subject, as of a chief; laborer, ... Hawaiian[.]" Id. at 127."

"We perceive the Hawaiian usage exception to the adoption of the common law to represent an attempt on the part of the framers of the statute to avoid results inappropriate to the isles' inhabitants by permitting the continuance of native understandings and practices which did not unreasonably interfere with the spirit of the common law. The statutory exception is thus akin to the English doctrine of custom whereby practices and privileges unique to particular districts continued to apply to the residents of those districts even though in contravention of the common law. This is not to say that we find that all the requisite elements of the doctrine of custom were necessarily incorporated in § 1-1. Rather we believe that the retention of a Hawaiian tradition should in each case be determined by balancing the respective interests and harm once it is established that the application of the custom has continued in a particular area.
In this case, Plaintiff's witnesses testified at trial that there have continued in certain [ahupua"a] a range of practices associated with the ancient way of life which required the utilization of the undeveloped property of others and which were not found in § 7-1. [FN25] Where these practices have, without harm to anyone, been continued, we are of the opinion that the reference to Hawaiian usage in § 1-1 insures their continuance for so long as no actual harm is done thereby."

> FN25. These included the gathering of items not delineated in § 7-1 and the use of defendants' lands for spiritual and other purposes. Id. at 10 n. 4, 656 P.2d at 751 n. 4.

Oni v. Meek, [2 Haw. 87, (1858)], does not preclude this conclusion, for in that case the application of the doctrine of custom was argued and the doctrine itself was not rejected.... Moreover, the language in Oni respecting the conclusiveness of § 7-1 does not necessarily preclude application of the doctrine."

Id. at 10-11, 656 P.2d at 751 (citations omitted) (footnote renumbered and internal citation *441 added) (emphases added). [FN26] In reaching its conclusion regarding the continued existence of customary rights, the Kalipi court necessarily rejected the appellee's contentions that 1) "any customary rights which might otherwise have been retained by § 1-1 have been abrogated by judicial precedent[,]" and 2) "no customary rights other than those found in ... [HRS § 7-1] survived the [Mahele]." [FN27] Id. at 9- 10, 656 P.2d at 750. Oni does not stand for the proposition that customary rights, which had not yet been formally established through judicial proceedings, were extinguished sub silentio by the Mahele or its associated legal developments. Oni

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The following factors, inter alia, may constitute significant adverse effects: (a) "an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes"; (b) effects upon "the economic or social welfare and activities of the community, County or State"; and (c) actions "contrary to the objectives and policies of [the CZMA] and the [SMA] Guidelines[.]" HPC Rule 9-10(H)(1), (4) & (10) (emphases added). See also HPC Rule 9-6(A)(2); HRS § 205A-2(b)(2) (one of the CZMA's objectives and policies is to protect and preserve "those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian ... history and culture ") (emphasis added). The interests asserted by PASH fall within these broad categories; therefore, they are entitled to protection under the CZMA. 20 See HRS § 205A-21 (finding that "special controls on development are necessary to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure ... adequate access"); HPC Rule 9-11(C) (authorizing the the HPC to attach "reasonable terms and conditions" to SMA permits); cf. Hammond v. North Slope Borough, 645 P.2d 750, 761-62 (Alaska 1982) (holding that Alaska's version of the CZMA requires its agencies to "assure opportunities for subsistence usage of coastal areas and resources" and to issue development permits only where consistent with Alaska's environmental and cultural interests).

In order for any conditions placed on a SMA permit issued by the HPC on remand to be deemed "reasonable," they must bear an essential nexus to legitimate State interests and must be "roughly proportional" to the impact of the proposed development. See infra section V.B. (discussing the respective requirements from Nollan v. California Coastal Comm'n, 483 U.S. 825, 836, 107 S.Ct. 3141, 3148, 97 L.Ed.2d 677 (1987), and Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994)). Here, the relevant State interests are reflected in article XII, section 7 of the Hawai'i Constitution (1978) and HRS § 1-1. See infra section IV.B. In other words, the HPC may require dedications appropriately tailored to the special [*1258] [**437] and quantifiable burdens associated with granting discretionary benefits to Nansay, through a SMA permit, which facilitate development of the company's land. Conditions that ensure continued access to the subject property for the legitimate and reasonable practice of customary and traditional rights would presumably comply with constitutional prohibitions against the uncompensated taking of private property. See infra section V.B.

B. Obligations Under Article XII, Section 7

of the Hawai'i Constitution and HRS § 1-1

In addition to the requirements of the CZMA, the HPC is obligated to protect customary and traditional rights to the extent feasible under the Hawai'i Constitution and relevant statutes. Article XII, section 7 of the Hawai'i Constitution (1978) provides:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

(Emphases added.) HRS § 1-1 (Supp.1992) provides:

The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of [Hawai'i] in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State.

(Emphasis added.) 21

The aforementioned provisions were discussed by this court, in the context of an individual's asserted gathering rights, in Kalipi v. Hawaiian Trust Co., 66 Haw. 1, 656 P.2d 745 (1982). Ten years later, in Pele Defense Fund v. Paty, supra, we recognized [*1259] [**438] that ancient Hawaiian gathering rights may have extended beyond the boundaries of individual ahupua'a in certain cases. 73 Haw. at 620, 837 P.2d at 1272. Nevertheless, neither Kalipi nor Pele precluded further inquiry concerning the extent that traditional practices have endured under the laws of this State. "In Kalipi, we foresaw that '[t]he precise nature and scope of the rights retained by § 1-1 would, of course, depend upon the particular circumstances of each case.' " Pele, 73 Haw. at 619, 837 P.2d at 1271 (quoting Kalipi, 66 Haw. at 12, 656 P.2d at 752).

In order to determine whether the HPC must protect traditional and customary rights of the nature asserted in this case, we shall first review our analysis of gathering rights in Kalipi and Pele. Then we shall clarify the status of customary rights in general, as a result of relevant judicial and legislative developments in Hawaiian history. Finally, we will provide the HPC with some specific, although not necessarily exhaustive, guidelines to aid its future deliberations in the event that Nansay elects to pursue its challenges to the legitimacy of PASH's claims.

1. Kalipi v. Hawaiian Trust Co.: judicial recognition of

traditional Hawaiian gathering rights based upon

residency in a particular ahupua'a

merely rejected one particular claim based upon an apparently non-traditional practice that had not achieved customary status in the area where the right was asserted.

FN26. The elements of the common-law doctrine of custom, as set forth in 1 W. Blackstone, Commentaries 76-78 (Sharwood ed. 1874) [hereafter Blackstone's Commentaries] are that the alleged custom must be, or have been:
(1) exercised so long "that the memory of man runneth not to the contrary"--according to subsequent commentators, "long and general" usage is sufficient, see, e.g., State ex rel. Thornton v. Hay, 254 Or. 584, 596, 462 P.2d 671, 677 (Or.1969) (citing Professor Cooley's edition of the Commentaries);
(2) without interruption (as to the right versus exercise thereof--i.e., continuous exercise is not required: "the custom is not destroyed, though they do not use it for ten years; it only becomes more difficult to prove");
(3) peaceable and free from dispute (i.e., exercised by consent);
(4) reasonable--i.e., "of artificial and legal reason, warranted by authority of law" and appropriate to the land and the usages of the community;
(5) certain;
(6) obligatory or compulsory (when established); and
(7) consistent with other customs.

FN27. Kalipi implicitly rejected the Hawaiian Trust Company's argument, which was based on language in Oni to the effect that the rights provided by the Act of August 6, 1850, were declarative of "all the specific rights of the [hoa"aina] (except fishing rights) which should be held to prevail against the fee simple title of the konohiki[.]" 2 Haw. at 95."
The English version of the 1850 Act uses the term "people," which was held to be synonymous with the word "hoa'aina." Id. at 96. The word "hoa'aina" is defined as "[t]enant, caretaker, as on a kuleana." Pukui & Elbert, Hawaiian Dictionary 73 (2nd ed. 1986). Meanwhile, the term "tenant" includes "one who holds or possesses real estate or sometimes personal property ... by any kind of right[.]" Webster's Third New Int'l Dictionary 2354 (1967 ed.) (emphasis added). Therefore, it is possible to construe the term "tenant" so as to incorporate the traditional native Hawaiian concept of a cultural link to the land. See McBryde Sugar Co. v. Robinson [McBryde II], 55 Haw. 260, 289 n. 29, 517 P.2d 26, 42 n. 29 (1973) cert. denied, 417 U.S. 976, 94 S.Ct. 3183, 41 L.Ed.2d 1146 (1974) (Levinson, J., dissenting) (suggesting the need for comparative analysis of bilingual statutes because the English version is binding under HRS § 1-13 only when there is a "radical or irreconcilable difference" between the two versions); In re Ross, 8 Haw. 478, 480 (1892) ("[t]he effort is always made to have [the two versions] exactly coincide, and the legal presumption is that they do"). See also infra note 35 (discussing the definition of "maka'ainana"). Nevertheless, we recognize that the Hawaiian language version of this Act actually uses the word "kanaka." See supra note 24."

The Kalipi court implicitly acknowledged the possibility of recognizing certain customary rights, under HRS § 1-1, to gather items that are not specifically delineated in HRS §7-1. See supra note 25 & accompanying text (quoting Kalipi, 66 Haw. at 10 & n. 4, 656 P.2d at 751 & n. 4). However, the court did not fully embrace the opportunity to clarify Oni with respect to the potential application of the doctrine of custom. [FN28] We believe that the Kalipi court's preoccupation*442 with residency requirements under HRS § 7-1 obfuscated its cursory examination of Kalipi's alternative claim based on customarily and traditionally exercised Hawaiian rights. [FN29] Accordingly, we read the discussion of customary rights in Oni and Kalipi as merely informing us that the balance of interests and harms clearly favors a right of exclusion for private property owners as against persons pursuing non-traditional practices or exercising otherwise valid customary rights in an unreasonable manner.

FN28. Immediately prior to its substantive analysis, the court in Kalipi summarily stated:
Kalipi asserts that it has long been the practice of him and his family to travel the lands of the Defendants in order to gather indigenous agricultural products for use in accordance with traditional Hawaiian practices....
A trial was had and the jury, by special verdict, determined that Kalipi had no such right. He now alleges numerous errors in the trial court's instructions to the jury and conduct of the trial. We find, for the reasons stated below, that none of the alleged errors warrants reversal.

EXHIBIT A-4
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-4

Petitioners hereby submit Exhibit Series A-4, consisting of **Exhibit A-4-44**, including HRS §532-8 — Kindred of Half Blood (Hawai'i Revised Statutes).

This exhibit includes statutory provisions governing inheritance rights among kindred of the half blood and establishes that such individuals may inherit equally with those of the whole blood within the same degree, subject to limitations where property is derived from a specific ancestor.

The statute further demonstrates that inheritance rights depend upon lawful lineage and identifiable connection to the ancestor from whom the property was derived, reinforcing the requirement that claims of ownership must be supported by proper genealogical and legal succession.

This authority is submitted in support of Petitioners' claims that questions of heirship, lineage, and lawful inheritance must be examined and established where land ownership is asserted based on Royal Patents or Land Commission Awards.

" **§532-7 From persons born to parents not married to each other.** If any person born to parents not married to each other dies intestate, without leaving lawful issue, or a spouse, the decedent's estate shall descend to the decedent's mother; but if the decedent leaves a spouse, the spouse shall take one-half, and the decedent's mother the other half, and if the decedent's mother is not living, but the decedent's spouse is, then the spouse shall take one-half, and the remaining half shall go to the decedent's brothers and sisters in equal parts, the children of any deceased brother or sister taking by right of representation. In default of surviving brothers or sisters, or their issue, such one-half shall go to the brothers and sisters of the decedent's mother in equal shares, the issue of any such brother or sister who is deceased, taking by right of representation. In default of any relatives as are in this section mentioned, the half, and the whole in the event that the decedent leaves no spouse, shall go to the decedent's next of kin. No action shall be commenced or prosecuted on behalf of the State to recover or hold any property which but for this section, might have been held to have escheated to the State. [CC 1859, §1453; am L 1874, c 50, §2 (repealed by L 1876, c 9); am L 1909, c 6, §1; RL 1925, §3308; RL 1935, §4816; RL 1945, §12076; RL 1955, §318-7; HRS §532-7; am L 1972, c 108, §2; am L 1997, c 52, §3]

Case Notes

Cited: 4 H. 221, 225.

" **§532-8 Kindred of half blood.** The kindred of the half blood shall inherit equally with those of the whole blood in the same degree; provided that where the inheritance came to the intestate by descent, devise, or gift, of some one of his ancestors, all those who are not of the blood of the ancestor, shall be excluded from such inheritance. [CC 1859, §1454; RL 1925, §3309; RL 1935, §4817; RL 1945, §12077; RL 1955, §318-8; HRS §532-8]

Case Notes

Effect of adjudication of pedigree in subsequent action. 3 H. 546, 551.

Kindred of half blood as heirs. 6 H. 410; 9 H. 393. Cousin of half blood as heir. 6 H. 487. "Each of my nephews and nieces" includes those of the half blood. 33 H. 299.

Definitions: "Ancestor" means any one from whom estate was immediately inherited by deceased, including son or wife of

EXHIBIT A-5
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-5

Petitioners hereby submit Exhibit Series A-5, consisting of **Exhibits A-5-1 through A-5-7,** including selected excerpts from the Final Environmental Impact Statement (FEIS) for the Keauhou Bay Management Plan.

This exhibit series includes statements asserting that resort development will generate revenue to support Kamehameha Schools' mission and operations, repeated reliance on "Purpose and Need" justifications tied to revenue generation and self-sustaining development, and representations regarding water demand, wastewater capacity, and infrastructure impacts.

The exhibits further include community comments and responses addressing development impacts and resource strain, as well as assertions of policy consistency with the County of Hawai'i General Plan and tourism strategy.

These materials are true and correct copies of FEIS excerpts from the Hawai'i Administrative Record and are submitted in support of Petitioners' claims regarding environmental review requirements, disclosure obligations, and reliance on revenue-based project justification under HRS Chapter 343.

Table 7.2 DEA Summary of Comments and Responses

Comments	Commenter	Responses
		values that were identified during the KBMP process. The income generated from activities at Keauhou Bay – including the resort – will be used to support KS' mission as well as the educational and cultural components of the Keauhou Bay Management Plan. Chapter 3 of the Draft Environmental Impact Statement provides a detailed description of the Project. The location for the proposed boutique resort is mauka of Old Kona Road. The canoe hālau is viewed as an important community and cultural resources and will remain in its existing location. Thank you for your participation in the environmental review process.
Joe Robinson	I object to the proposal for development of a new resort area at Keauhou Bay. We have the Outrigger resort in that area for many years, and many other rentals in the area as well at under untilized Keauhou shopping center with many vacancies for retail We do not need more development in the area at this time.	Thank you for your letter dated April 22, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge your comments related to the KBMP. As the steward of approximately 54 acres at Keauhou Bay, Kamehameha Schools (KS) has specific kuleana to

Table 7.2 DEA Summary of Comments and Responses		
Comments	Commenter	Responses
		for the various project components. In total, the Project will result in an average water demand of approximately 97,466.2 GPD. Based on these estimates, impacts to the public water supply are not expected. Water conservation measures will be implemented in design of the Project and may include, but not be limited to, the following: efficient irrigation systems such a drip system and moisture sensors, utilization of nonpotable water for irrigation, drought tolerant plants, and the use of Water Sense-labeled ultra-low flow water fixtures and toilets. A wastewater flow analysis has been conducted as part of the analysis for the Draft Environmental Impact Statement (DEIS). The flow projections are based on land use areas, unit counts and estimated population using demand rates from the State HAR Chapter 11-62, Appendix D. As described in DEIS Section 4.12.2, the Project is expected to generate an average daily flow of 50,925 gallons per day (GPD). It is expected that the He'eia

Table 7.2 DEA Summary of Comments and Responses

Comments	Commenter	Responses
		Wastewater Treatment Plant (WWTP) will have capacity to accommodate the increase in wastewater flows. Thank you for your participation in the environmental review process.
John Knoebber	I write to voice my opposition to any planned removal of the volleyball court at Keauhou Bay. I have lived here for 8 years; and I have enjoyed playing volleyball there on many occasions. Also, I have made friends there with people from all walks of life. Also, I believe there are already far too few, safe places like this for friends and family to gather and be active. Perhaps any renovation could leave room for at least 1-2 courts?	Thank you for your letter dated March 30, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. At present, KS does not have an agreement with any entity for use of the volleyball court. Further complicating the matter, a portion of the land underneath the court is within the County right-of-way and therefore outside of KS ownership. KS is committed to the continued consultation with elected officials and representatives of the Kona area to discuss how outdoor recreational activities such as volleyball can be planned in more appropriate areas. Thank you for your participation in the environmental review process.

EXHIBIT A
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i
FEIS Vol. II — Statements Regarding Resort Revenue and Trust Purpose

Summary of Draft EIS Comments and Responses		
Comments	Commenter	Responses
organizations were really meant to be, instead of using them to deepen pockets of people who do nothing for Hawaiians. No More Resorts!!!!		possible through a sustainable tourism model that uses revenue from the low-impact lodging and commercial operations to fund ongoing stewardship, maintenance, and educational programming.
Justify building a resort that will benefit a few while severely impacting the community by the loss of one of the last historically untouched areas on the island that has not been overdeveloped and has been beloved by locals and visitors for many decades.	Cory (No last name provided)	The Purpose and Need set forth in Section 2.7 of the EIS indicates a need to strategically reorient and establish new opportunities for place-based cultural educational programming; create passive and active recreational activities; manage circulation and parking; define appropriate commercial and resort-zoned uses; generate revenue that will go back into the long-term operations and maintenance of Keauhou Bay and as well as any excess revenue to support the general mission of Kamehameha Schools. The Project meets this need by providing an opportunity to redefine notions of hospitality, placekeeping, and placemaking in harmonious balance with ensuring all associated improvement costs as a result of this plan's implementation can be self-sustaining. Long-term management of the bay's natural and cultural resources is made possible through a sustainable tourism model that uses revenue from the low-impact lodging and commercial operations to fund ongoing stewardship, maintenance, and educational programming.
Keauhou Bay already has one large hotel and numerous other rental housing units adjacent to its shore	Jeffrey and Leann Malison	The Purpose and Need set forth in Section 2.7 of the EIS indicates a need to strategically reorient and establish new opportunities for place-based cultural educational programming; create passive and active recreational activities; manage circulation and parking; define appropriate commercial and resort-zoned uses; generate revenue that will go back into the long-term operations and maintenance of Keauhou Bay and as well as any excess revenue to support the general mission of Kamehameha Schools. The Project meets this need by providing an opportunity to redefine notions of hospitality, placekeeping, and placemaking in harmonious balance with ensuring all associated improvement costs as a result of this plan's implementation can be self-sustaining. Long-term management of the bay's natural and cultural resources is made possible through a sustainable tourism model that uses revenue from the low-impact lodging and commercial operations to fund ongoing stewardship, maintenance, and educational programming.

(Responses Referencing Section 2.7 Not Included in FEIS Text) HRS Chapter 343 — Trust Revenue Justification

EXHIBIT A

Mitchell et al. v. Kamehameha Schools et al.

Third Circuit Court of the State of Hawai'i FEIS Vol. II — Statements Regarding Resort Revenue and Trust Purpose

Keauhou Bay Management Plan
Draft Environmental Impact Statement Comment Response Matrix

Summary of Draft EIS Comments and Responses		
Comments	Commenter	Responses
I DO NOT support development of a 150-unit transient accommodations lodge in this area. Hotel, condotel and other STVR opportunities exist in the area that are not at capacity.	Mary Cowen	The Purpose and Need set forth in Section 2.7 of the EIS indicates a need to strategically reorient and establish new opportunities for place-based cultural educational programming; create passive and active recreational activities; manage circulation and parking; define appropriate commercial and resort-zoned uses; generate revenue that will go back into the long-term operations and maintenance of Keauhou Bay and as well as any excess revenue to support the general mission of Kamehameha Schools. The Project meets this need by providing an opportunity to redefine notions of hospitality, placekeeping, and placemaking in harmonious balance with ensuring all associated improvement costs as a result of this plan's implementation can be self-sustaining. Long-term management of the bay's natural and cultural resources is made possible through a sustainable tourism model that uses revenue from the low-impact lodging and commercial operations to fund ongoing stewardship, maintenance, and educational programming.
The current facility is under investigation to determine its impact on Honokohau Harbor and neighboring waters. Can KSBE find a less impactful use than a Resort/ Restaurant? *Is there a development idea that would be much less impactful to our already strained services?	Rolin Stonebraker-Soles	The Purpose and Need set forth in Section 2.7 of the EIS indicates a need to strategically reorient and establish new opportunities for place-based cultural educational programming; create passive and active recreational activities; manage circulation and parking; define appropriate commercial and resort-zoned uses; generate revenue that will go back into the long-term operations and maintenance of Keauhou Bay and as well as any excess revenue to support the general mission of Kamehameha Schools. The Project meets this need by providing an opportunity to redefine notions of hospitality, placekeeping, and placemaking in harmonious balance with ensuring all associated improvement costs as a result of this plan's implementation can be self-sustaining. Long-term management of the bay's natural and cultural resources is made possible through a sustainable tourism model that uses revenue from the low-impact lodging and commercial operations to fund ongoing stewardship, maintenance, and educational programming.
I fully support all the scientific reasons this is a terrible plan... and I can help being very anger about the potential destruction of an area that has been very Kama'aina	Deborah Green	The Purpose and Need set forth in Section 2.7 of the EIS indicates a need to strategically reorient and establish new opportunities for place-based cultural educational programming; create passive and

Warmly,
Marcie Ide
[redacted]
Wayfinding :
"Knowledge of where one is, is crucial if one is to profit from an experience."

Marcie Ide

Aloha All,

In the 1960's, I grew up on Keauhou Bay with my kapuna in a rental near where the Outrigger · KonaResort chapel is now located. Keauhou Bay is the source from where I come from. I applaud most of the proposed development activities in the Keauhou Bay Management Plan to"reorient commercial activities away from culturally sensitive areas to alleviate congestion andestablish a new place-based cultural educational center."

I support this opportunity to develop a scenic and open space heritage corridor that protects habitats, maintains biodiversity, and promotes outdoor recreation with trails, picnic tables and bathrooms. ·

Restore the cultural landscape with physical features, trees, pathways, and pavilions, that express the historical significance of his birthplace.

· Restore the Old Kona Road and Keauhou Trail to provide access mainly for pedestrians, bicycles,the handicapped and parking. I understand the need for Kamehameha Schools to optimize and invest in revenue opportunities thatprovide long-term economic returns. However, money isn't the most important issue here. Keauhou

Bay and the nearshore waters are too small and fmgile to support more development. Keauhou Bay needs the protection and support of the existing natural filtering system between thegolf course and the beach.

The bungalow development imposes a significant environmental impact, paving over this natural filtering system, by adding additional hardscape. It also defines what kinds of people and incomes can enjoy this development. It becomes a destination that works for fewer and fewer types of people.

The bungalow concept is symptomatic of over-tourism and lack of affordable housing. "People here need authentic, affordable workforce housing. The needs of this community do not include more hotel rooms." Rebecca Villegas, a Hawaii County Council member whose district includes KeauhouBay. The draft environmental impact study arguments are conclusory and underdeveloped. The potentialimpacts of the increased traffic, noise, marine water quality, and demand on the area's drinkingwater supply have yet to be analyzed.

Keauhou Bay is one of the last historically untouched areas on the island that has not beenoverdeveloped and enjoyed by locals and visitors for many decades. Once we lose this land toanother development, we will never see it again.

Table 5-4: Hawai'i Tourism Strategic Plan: 2020-2025		S	N/S	N/A
Objective 1:	Ensure that Hawai'i's brand image is globally aligned and consistent with marketing principles of authenticity, uniqueness, and Responsible Tourism.	X		
Objective 2:	Ensure marketing is focused on higher-spending, lower impact market segments in each market area.			X
Objective 3:	Maintain or improve the strength of Hawai'i's brand relative to its competitors.			X
Discussion: *As a large private landowner in the State of Hawai'i, Kamehameha Schools strives to steward and manage their lands to protect Hawai'i's culture and unique natural environment. Cultivating responsible stewardship and land management, the KBMP has been crafted to ensure Hawai'i's unique and authentic culture is showcased in an appropriate manner to foster responsible tourism.*				

5.3 County of Hawai'i Plans, Policies and Controls

5.3.1 County of Hawai'i General Plan

The County of Hawai'i General Plan was adopted on December 15, 1971, and subsequently amended (most recently in 2005). Since its adoption, the General Plan laid the foundation for establishing a comprehensive planning program for the County of Hawai'i. The 2005 General Plan is the policy document for the long-range comprehensive development of the Island of Hawai'i. The purpose of the General Plan is to:

- Guide the pattern of future development in the County based on long-term goals;
- Identify visions, values, and priorities important to the people of the County;
- Provide the framework for regulatory decisions, capital improvement priorities, acquisition strategies, and other pertinent government programs within the County organization and coordinated with State and Federal programs;
- Improve the physical environment of the County as a setting for human activities; to make it more functional, beautiful, healthful, interesting, and efficient;
- Promote and safeguard the public interest and the interest of the County as a whole;
- Facilitate the democratic determination of community policies concerning the utilization of its natural, man-made, and human resources;
- Effect political and technical coordination in community improvement and development
- Inject long-range considerations into the determination of short-range actions and implementation.

A Draft Final Recommended General Plan 2045 was published for public review in July 2024. A Final Revised General Plan update is still pending final approval from the County Council (anticipated in February 2025). Accordingly, the Project must address its consistency with the existing 2005 amended version. It is noted that the Land Use Designation Map in the Final General Plan 2045 designates the Project Area as "Resort". The proposed Project is consistent with the land uses envisioned in the Final General Plan 2045.

The Proposed Action's consistency with the applicable objectives and policies of the existing County General Plan as amended in 2005 is described below.

EXHIBIT A-6
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-6

Petitioners hereby submit Exhibit Series A-6, consisting of **Exhibits A-6-1 through A-6-19,** including selected provisions from Hawai'i Administrative Rules (HAR) Chapter 11-200.1 governing environmental review procedures under HRS Chapter 343.

This exhibit series includes regulatory provisions establishing the procedural and substantive requirements for environmental assessments and environmental impact statements, including definitions, draft and final EIS content requirements, public notice and comment procedures, and agency duties in reviewing and evaluating environmental impacts.

The exhibits further reflect mandatory standards governing disclosure, analysis, and the acceptance of environmental review documents, as well as the obligations imposed upon agencies prior to approval or implementation of proposed actions.

These authorities are submitted in support of Petitioners' claims that the FEIS at issue does not comply with required environmental review standards and was improperly accepted and relied upon by Respondents.

§11-200.1-27 Content requirements; final environmental impact statement
§11-200.1-28 Acceptability
§11-200.1-29 Appeals to the council
§11-200.1-30 Supplemental environmental impact statements

Subchapter 11 National Environmental Policy Act

§11-200.1-31 National environmental policy act actions: applicability to chapter 343, HRS

Subchapter 12 Retroactivity and Severability

§11-200.1-32 Retroactivity
§11-200.1-33 Severability

Historical note: This chapter is based substantially upon chapter 11-200. [Eff 12/6/85; am and comp 8/31/96; am 12/17/2007; R AUG - 9 2019]

SUBCHAPTER 1

PURPOSE

§11-200.1-1 Purpose. (a) Chapter 343, Hawaii Revised Statutes (HRS), establishes a system of environmental review at the state and county levels that shall ensure that environmental concerns are given appropriate consideration in decision-making along with economic and technical considerations. The purpose of this chapter is to provide agencies and persons with procedures, specifications regarding the contents of exemption notices, environmental assessments (EAs), and environmental impact statements (EISs), and criteria and definitions of statewide application.

(b) Agencies and applicants shall ensure that exemption notices, EAs, and EISs are prepared at the earliest practicable time. This shall assure an early, open forum for discussion of adverse effects and available

alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action prior to decision-making.

(c) Exemption notices, EAs, and EISs are meaningless without the conscientious application of the environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. In preparing any exemption notice, EA, or EIS, proposing agencies and applicants are to make every effort to:

(1) Convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form or length of the document;

(2) Concentrate on important issues and to ensure that the document remains essentially self-contained, capable of being understood by the reader without the need for undue cross-reference; and

(3) Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process. [Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-1, 343-6)

SUBCHAPTER 2

DEFINITIONS

§11-200.1-2 Definitions. As used in this chapter:

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

"Accepting authority" means, in the case of agency actions, the respective governor or mayor, or their

authorized representative, and in the case of applicant actions, the agency that initially received and agreed to process the request for an approval, that makes the determination that the EIS fulfills the requirements for acceptance.

"Action" means any program or project to be initiated by an agency or applicant.

"Addendum" means an attachment to a draft EA or draft EIS, prepared at the discretion of the proposing agency, applicant, accepting authority, or approving agency, and distinct from a supplemental EIS, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft EA or the draft EIS filed with the office.

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

"Applicant" means any person that, pursuant to statute, ordinance, or rule, officially requests approval from an agency for a proposed action.

"Approval" means a discretionary consent required from an agency prior to implementation of an action.

"Approving agency" means an agency that issues an approval prior to implementation of an applicant action.

"Council" means the environmental council.

"Cumulative impact" means the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes the other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency based upon a given set of facts, as prescribed by law without the use of judgment or discretion.

"Draft environmental assessment" means the EA submitted by a proposing agency or an approving agency for public review and comment when that agency anticipates a finding of no significant impact (FONSI).

"Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological effects (such

as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative, whether immediate or delayed. Effects may also include those effects resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

"EIS preparation notice" or "EISPN" or "preparation notice" means a determination that an action may have a significant effect on the environment and, therefore, will require the preparation of an EIS, based on either an EA or an agency's judgment and experience that the proposed action may have a significant effect on the environment.

"EIS public scoping meeting" means a meeting in which agencies, citizen groups, and the general public assist the proposing agency or applicant in determining the range of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS.

"Emergency action" means an action to prevent or mitigate loss or damage to life, health, property, or essential public services in response to a sudden, unexpected occurrence demanding the immediate action.

"Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, health, air, water, minerals, flora, fauna, ambient noise, and objects of historic, cultural, or aesthetic significance.

"Environmental assessment" or "EA" means a written evaluation that serves to provide sufficient evidence and analysis to determine whether an action may have a significant effect.

"Environmental impact statement", "statement", or "EIS" means an informational document prepared in compliance with chapter 343, HRS. The initial EIS filed for public review shall be referred to as the draft EIS and shall be distinguished from the final EIS, which is the document that has incorporated the public's comments and the responses to those comments. The final EIS is the document that shall be evaluated for acceptability by the accepting authority.

"Exemption list" means a list prepared by an agency pursuant to subchapter 8. The list may contain in part one the types of routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring further chapter 343, HRS, environmental review. In part two, the list may contain the types of actions the agency finds fit into the general types of action enumerated in section 11-200.1-15.

"Exemption notice" means a notice produced in accordance with subchapter 8 for an action that a proposing agency or approving agency on behalf of an applicant determines to be exempt from preparation of an EA.

"Final environmental assessment" means either the EA submitted by a proposing agency or an approving agency following the public review and comment period for the draft EA and in support of either a FONSI or an EISPN.

"Finding of no significant impact" or "FONSI" means a determination by an agency based on an EA that an action not otherwise exempt will not have a significant effect on the environment and therefore does not require the preparation of an EIS.

"Impacts" means the same as "effects".

"Issue date" means the date imprinted on the periodic bulletin required by section 343-3, HRS.

"National Environmental Policy Act" or "NEPA" means the National Environmental Policy Act of 1969, Public Law 91-190, 42 U.S.C. sections 4321-4347, as amended.

"Office" means the office of environmental quality control.

"Periodic bulletin" or "bulletin" means the document required by section 343-3, HRS, and published by the office.

"Person" includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an agency.

"Primary impact", "primary effect", "direct impact", or "direct effect" means effects that are caused by the action and occur at the same time and place.

"Program" means a series of one of more projects to be carried out concurrently or in phases within a general timeline, that may include multiple sites or geographic areas, and is undertaken for a broad goal or purpose. A program may include: a number of separate projects in a

given geographic area which, if considered singly, may have minor impacts, but if considered together, may have significant impacts; separate projects having generic or common impacts; an entire plan having wide application or restricting the range of future alternative policies or actions, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; implementation of multiple projects over a long time frame; or implementation of a single project over a large geographic area.

"Project" means a discrete, planned undertaking that is site and time specific, has a specific goal or purpose, and has potential impact to the environment.

"Proposing agency" means any state or county agency that proposes an action under chapter 343, HRS.

"Secondary impact", "secondary effect", "indirect impact", or "indirect effect" means an effect that is caused by the action and is later in time or farther removed in distance, but is still reasonably foreseeable. An indirect effect may include a growth-inducing effect and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water, and other natural systems, including ecosystems.

"Significant effect" or "significant impact" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals and guidelines as established by law, adversely affect the economic welfare, social welfare, or cultural practices of the community and State, or are otherwise set forth in section 11-200.1-13.

"Supplemental EIS" means an updated EIS prepared for an action for which an EIS was previously accepted, but which has since changed substantively in size, scope, intensity, use, location, or timing, among other things.

"Trigger" means any use or activity listed in section 343-5(a), HRS, requiring environmental review.

Unless defined in this section, elsewhere within this chapter, or in chapter 343, HRS, a proposing agency or approving agency may use its administrative rules or statutes that they implement to interpret undefined terms. [Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

(D) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the draft EIS at the nearest state library in each county in which the proposed action is to occur and one paper copy with the Hawaii Documents Center; and

(E) Submit to the office one true and correct copy of the original audio file, at standard quality, of all oral comments received at the time designated within any EIS public scoping meeting for receiving oral comments;

(6) When the document is a final EIS, the proposing agency or applicant shall:

(A) Sign and date the final EIS;

(B) Indicate that the final EIS and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in subchapter 10; and

(C) File the final EIS with the accepting authority and the office simultaneously;

(7) When the notice is an acceptance or non-acceptance of a final EIS, the accepting authority shall:

(A) File the notice of acceptance or non-acceptance of a final EIS with the office; and

(B) Simultaneously transmit the notice to the proposing agency or applicant;

(8) When the notice is of the withdrawal of an anticipated FONSI, FONSI, or EISPN, the proposing agency or approving agency shall include a rationale of the withdrawal specifying any associated documents to be withdrawn;

(9) When the notice is of the withdrawal of a draft EIS or final EIS, the proposing agency or applicant shall simultaneously file the notice with the office and submit the notice with the accepting authority; and

(10) When the submittal is a changed version of a notice, document, or determination previously published and withdrawn, the submittal shall be

filed as the "second" submittal, or "third" or "fourth", as appropriate. Example: A draft EIS is withdrawn and changed. It is then filed with the office for publication as the "second draft EIS" for the particular action.
[Eff AUG - 9 2019] (Auth: HRS §§343-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-6)

§11-200.1-6 Republication of notices, documents, and determinations. (a) An agency or applicant responsible for filing a chapter 343, HRS, notice, document, or determination may file an unchanged, previously published submittal in the bulletin provided that the filing requirements of this subchapter and any other publication requirements set forth in this chapter or chapter 343, HRS, are satisfied.

(b) When the publication of a previously published chapter 343, HRS, notice, document, or determination involves a public comment period under this chapter or chapter 343, HRS:

(1) The public comment period shall be as required for that notice, document, or determination pursuant to this chapter or chapter 343, HRS, or as otherwise statutorily mandated (for example, publication of an unchanged draft EIS initiates a forty-five day public comment period upon publication in the bulletin); and

(2) Any comments received during the comment period must be considered in the same manner as set forth in this chapter and chapter 343, HRS, for that notice, document, or determination type, in addition to comments received in any other comment period associated with the publication of the notice, document, or determination.

[Eff AUG - 9 2019] (Auth: HRS §§341-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-5, 343-6)

SUBCHAPTER 5

RESPONSIBILITIES

accepted EISs. Further, when previous determinations and previous EISs are considered or incorporated by reference, they shall be substantially relevant to the action being considered. [Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 7

DETERMINATION OF SIGNIFICANCE

§11-200.1-12 Consideration of previous determinations and accepted statements. A proposing agency or applicant may incorporate information or analysis from a relevant prior exemption notice, final EA, or accepted EIS into an exemption notice, EA, EISPN, or EIS, for a proposed action whenever the information or analysis is pertinent and has logical relevancy and bearing to the proposed action (for example, a project that was broadly considered as part of an accepted program EIS may incorporate relevant portions from the accepted program EIS by reference). [Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-13 Significance criteria. (a) In considering the significance of potential environmental effects, agencies shall consider and evaluate the sum of effects of the proposed action on the quality of the environment.

(b) In determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, the expected impacts, and the proposed mitigation measures. In most instances, an action shall be determined to have a significant effect on the environment if it may:

(1) Irrevocably commit a natural, cultural, or historic resource;

(2) Curtail the range of beneficial uses of the environment;

(3) Conflict with the State's environmental policies or long-term environmental goals established by law;
(4) Have a substantial adverse effect on the economic welfare, social welfare, or cultural practices of the community and State;
(5) Have a substantial adverse effect on public health;
(6) Involve adverse secondary impacts, such as population changes or effects on public facilities;
(7) Involve a substantial degradation of environmental quality;
(8) Be individually limited but cumulatively have substantial adverse effect upon the environment or involves a commitment for larger actions;
(9) Have a substantial adverse effect on a rare, threatened, or endangered species, or its habitat;
(10) Have a substantial adverse effect on air or water quality or ambient noise levels;
(11) Have a substantial adverse effect on or be likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, sea level rise exposure area, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
(12) Have a substantial adverse effect on scenic vistas and viewplanes, during day or night, identified in county or state plans or studies; or
(13) Require substantial energy consumption or emit substantial greenhouse gases.

[Eff AUG -9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

§11-200.1-14 Determination of level of environmental review. (a) For an agency action, through its judgment and experience, a proposing agency shall assess the significance of the potential impacts of the action to determine the level of environmental review necessary for the action.

petition shall be appended to the final document; and

(C) Provided that, if a commenter adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to paragraph (2);

(4) A summary of any EIS public scoping meetings, including a written general summary of the oral comments made, and a representative sample of any handout provided by the proposing agency or applicant related to the action provided at any EIS public scoping meeting;

(5) A list of those persons or agencies who were consulted and had no comment in a manner indicating that no comment was provided; and

(6) A representative sample of the consultation request letter.

(t) An addendum to a draft EIS shall reference the original draft EIS to which it attaches and comply with all applicable filing, public review, and comment requirements set forth in subchapter 10. [Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200.1-25 Public review requirements for draft environmental impact statements. (a) Public review shall not substitute for early and open discussion with interested persons and agencies concerning the environmental impacts of a proposed action. Review of the draft EIS shall serve to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives.

(b) The period for public review and for submitting written comments shall commence from the date that notice of availability of the draft EIS is initially published in the periodic bulletin and shall continue for a period of forty-five days, unless mandated otherwise by statute. Written comments shall be received by or postmarked to the accepting authority, and in the case of applicants, to either the accepting authority or the applicant, within the forty-five-day comment period. Any comments outside of the forty-five-day comment period need not be responded to nor considered. [Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-26 Comment response requirements for draft environmental impact statements. (a) In accordance with the content requirements of section 11-200.1-27, the proposing agency or applicant shall respond within the final EIS to all substantive written comments received pursuant to section 11-200.1-25. In deciding whether a written comment is substantive, the proposing agency or applicant shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the EIS, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the proposing agency or applicant as non-substantive and to which no response was provided shall be clearly indicated.

(b) Proposing agencies and applicants shall respond in the final EIS to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:

(1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable topic areas with the commenter identified in each applicable topic area. All comments, except those described in subsection (c), must be appended in full to the final document; or

(2) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response for each comment letter submitted. All comments, except those described in subsection (c), must either be included with the response or appended in full to the final document.

(c) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:

(1) The response may be grouped under subsection (b)(1) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or

(2) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document;

provided that if a commenter adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to subsection (d).

(d) In responding to substantive written comments, proposing agencies and applicants shall endeavor to resolve conflicts or inconsistencies in information and address specific environmental concerns identified by the commenter, providing a response that is commensurate with the substantive content of those comments. The response shall describe the disposition of significant environmental issues raised (for example, the response may point to revisions to the proposed action to mitigate anticipated impacts or objections raised in the comment). In particular, the issues raised when the proposing agency's or applicant's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions. The response shall indicate changes that have been made to the text of the draft EIS. [Eff AUG -9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-27 Content requirements; final environmental impact statement. (a) The final EIS, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed action and shall discuss all reasonably foreseeable consequences of the action. In order that the public can be fully informed and the accepting authority can make a sound decision based upon the full range of responsible opinion on environmental

effects, an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

(b) The final EIS shall consist of:

(1) The draft EIS prepared in compliance with this subchapter, as revised to incorporate substantive comments received during the review processes in conformity with section 11-200.1-26, including reproduction of all comments and responses to substantive written comments;

(2) A list of persons, organizations, and public agencies commenting on the draft EIS;

(3) A list of those persons or agencies who were consulted in preparing the final EIS and those who had no comment shall be included in a manner indicating that no comment was provided;

(4) A written general summary of oral comments made at any EIS public scoping meeting; and

(5) The text of the final EIS written in a format that allows the reader to easily distinguish changes made to the text of the draft EIS.

[Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200.1-28 Acceptability. (a) Acceptability of a final EIS shall be evaluated on the basis of whether the final EIS, in its completed form, represents an informational instrument that fulfills the intent and provisions of chapter 343, HRS, and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

(b) A final EIS shall be deemed to be an acceptable document by the accepting authority only if all of the following criteria are satisfied:

(1) The procedures for assessment, consultation process, review, and the preparation and submission of the EIS, from proposal of the action to publication of the final EIS, 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.

(c) The proposing agency, applicant, or accepting authority may request the office to make a recommendation regarding the acceptability or non-acceptability of the EIS. If the office decides to make a recommendation, it shall submit the recommendation to the proposing agency, applicant, and accepting authority, as applicable. For applicant actions, the office shall submit the recommendation to the applicant and the accepting authority within the period for the accepting authority to determine the acceptability of the final EIS.

(d) The accepting authority shall take prompt measures to determine the acceptability or non-acceptability of the proposing agency's EIS.

(e) Upon acceptance or non-acceptance of the EIS:

(1) For agency actions, a notice shall be filed by the accepting authority with both the proposing agency and the office. For any non-accepted EIS, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin in accordance with subchapter 4. Acceptance of a required statement shall be a condition precedent to the use of state or county lands or funds in implementing the proposed action.

(2) For applicant actions, the accepting authority shall:

(A) Notify the applicant of its determination, and provide specific findings and reasons. The accepting authority shall also provide a copy of this determination to the office for publication in the periodic bulletin. Acceptance of the required EIS shall be a condition precedent to approval of the request and commencement of the proposed action.

(B) Notify the applicant and the office of the acceptance or non-acceptance of the final EIS within thirty days of the final EIS submission to the agency; provided that the thirty-day period may, at the request of the applicant, be extended for a period not

For purposes of the EIS public scoping meeting, substantive comments shall be those pertaining to the scope of the EIS.

(d) No fewer than one EIS public scoping meeting addressing the scope of the draft EIS shall be held on the island or islands most affected by the proposed action, within the public review and comment period in subsection (c). The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the EIS public scoping meeting shall be audio recorded. [Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200.1-24 Content requirements; draft environmental impact statement. (a) The draft EIS, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed action and shall discuss all reasonably foreseeable consequences of the action. In order that the public can be fully informed and that the accepting authority can make a sound decision based upon the full range of responsible opinion on environmental effects, an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

(b) The scope of the draft EIS may vary with the scope of the proposed action and its impact, taking into consideration whether the action is a project or a program. Data and analyses in a draft EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. A draft EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the draft EIS, including cost-benefit analyses and reports required under other legal authorities.

(c) The level of detail in a draft EIS may be more broad for programs or components of a program for which site-specific impacts are not discernible, and shall be more specific for components of the program for which site-specific, project-level impacts are discernible. A draft EIS for a program may, where necessary, omit evaluating issues that are not yet ready for decision at the project level. Analysis of the program may discuss in general terms the constraints and sequences of events likely to

result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.

(d) The draft EIS shall contain a summary that concisely discusses the following:

(1) Brief description of the action;
(2) Significant beneficial and adverse impacts;
(3) Proposed mitigation measures;
(4) Alternatives considered;
(5) Unresolved issues;
(6) Compatibility with land use plans and policies, and a list of permits or approvals; and
(7) A list of relevant EAs and EISs considered in the analysis of the preparation of the EIS.

(e) The draft EIS shall contain a table of contents.

(f) The draft EIS shall contain a separate and distinct section that includes the purpose and need for the proposed action.

(g) The draft EIS shall contain a description of the action that shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

(1) A detailed map (such as a United States Geological Survey topographic map, Flood Insurance Rate Maps, Floodway Boundary Maps, or state sea level rise exposure area maps, as applicable) and a related regional map;
(2) Objectives of the proposed action;
(3) General description of the action's technical, economic, social, cultural, and environmental characteristics;
(4) Use of state or county funds or lands for the action;
(5) Phasing and timing of the action;
(6) Summary technical data, diagrams, and other information necessary to enable an evaluation of potential environmental impact by commenting agencies and the public; and
(7) Historic perspective.

(h) The draft EIS shall describe in a separate and distinct section discussion of the alternative of no action as well as reasonable alternatives that could attain the objectives of the action. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that

(b) Chapter 343, HRS, does not require environmental review for applicant actions when:

(1) Notwithstanding any other law to the contrary, for any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway, that secondary action shall be exempt from this chapter; provided that the applicant for the primary action shall submit documentation from the appropriate agency confirming that no further discretionary approvals are required.

(2) As used in this subsection:
"Discretionary consent" means an action as defined in section 343-2, HRS; or an approval from a decision-making authority in an agency, which approval is subject to a public hearing.
"Infrastructure" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.
"Primary action" means an action outside of the highway or public right-of-way that is on private property.
"Secondary action" means an action involving infrastructure within the highway or public right-of-way. [Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-5.5, 343-6) (Imp: HRS §§343-5, 343.5.5, 343-6)

§11-200.1-10 Multiple or phased actions. A group of actions shall be treated as a single action when:

(1) The component actions are phases or increments of a larger total program;

(2) An individual action is a necessary precedent to a larger action;

(3) An individual action represents a commitment to a larger action; or

(4) The actions in question are essentially identical and a single EA or EIS will adequately address the impacts of each individual action and those of the group of actions as a whole.

[Eff AUG - 9 2019] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200.1-11 Use of prior exemptions, findings of no significant impact, or accepted environmental impact statements to satisfy chapter 343, HRS, for proposed actions. (a) When an agency is considering whether a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed action, the agency may determine that additional environmental review is not required because:

(1) The proposed action was a component of, or is substantially similar to, an action that received an exemption, FONSI, or an accepted EIS (for example, a project that was analyzed in a program EIS);

(2) The proposed action is anticipated to have direct, indirect, and cumulative effects similar to those analyzed in a prior exemption, final EA, or accepted EIS; and

(3) In the case of a final EA or an accepted EIS, the proposed action was analyzed within the range of alternatives.

(b) When an agency determines that a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed action, the agency may submit a brief written determination explaining its rationale to the office for publication pursuant to section 11-200.1-4 and the proposed action may proceed without further chapter 343, HRS, environmental review.

(c) When an agency determines that the proposed action warrants environmental review, the agency may submit a brief written determination explaining its rationale to the office for publication pursuant to section 11-200.1-4 and the agency shall proceed to comply with subchapter 7.

(d) Agencies shall not, without careful examination and comparison, use past determinations and previous EISs to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously

EXHIBIT B
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COVER LETTER FOR EXHIBIT SERIES B-1

Petitioners hereby submit Exhibit Series B, consisting of **Exhibit B-1, including pages B-1-1 through B-1-16,** selected excerpts from the Final Environmental Impact Statement (FEIS), Volume I and Volume II, addressing project purpose, proposed action, management strategies, and community comment responses related to the Keauhou Bay Management Plan.

This exhibit series includes excerpts describing the project's stated purpose and need, proposed action, and management strategies, as well as identified key issues concerning natural and cultural resource integrity, land use, and economic performance.

Exhibits B-1-15 reflect the FEIS Table of Contents indicating that Sections 2.6.2 through 2.6.5, as well as Sections 2.7 (Purpose and Need) and 2.8, are included within Chapter 2 of the FEIS. In contrast, Exhibit B-1-16 demonstrates that Chapter 2, as presented in the FEIS text, ends at Section 2.6.1 and omits Sections 2.6.2 through 2.6.5, 2.7, and 2.8 entirely.

Exhibits B-1-10 through B-1-12 further show that Kamehameha Schools repeatedly rely upon and cite Section 2.7 ("Purpose and Need") in their responses to public comments. However, as demonstrated by Exhibits B-1-15 and B-1-16, Section 2.7 is not included within the FEIS text, establishing that Respondents relied upon and referenced a section that is omitted from the disclosed environmental review document.

These materials are submitted in support of Petitioners' claims that the FEIS omits referenced sections, lacks required disclosures, and was improperly relied upon despite internal inconsistencies between the Table of Contents, the FEIS text, and the responses to public comments.

These materials are true and correct copies of the FEIS as published. Pagination references correspond to the FEIS volumes and, where necessary, reflect PDF page numbering due to inconsistent internal pagination.

Vehicular access into the Project Area is from two single lane paved roads; Kamehameha III Road which leads to the northern part of the Project Area and Kaleiopapa Street which leads to the south part of the Project Area. Both of these roads extend from Ali'i Highway in the Keauhou corridor. A portion of the Old Kona Road extends from Kamehameha III Road and bisects the western portion of the Project Area where it connects with Kaleiopapa Street. Old Kona Road is privately owned by Kamehameha Schools.

1.5 Proposed Action

In 2016, Kamehameha Schools began the planning process of the KBMP, as a comprehensive management tool that provides both short-term and long-term management strategies that are consistent with its mission and values. The KBMP was developed over a three-year period and included extensive consultation with key stakeholders. The KBMP was approved by Kamehameha Schools Trustees in 2018.

Guided by Kamehameha Schools' mission and vision, the KBMP aligns with the current Kamehameha Schools Strategic Map 2025 which is a strategic planning document aimed to achieve the goal of developing resilient communities by stewarding the 'āina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The KBMP aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP planning process.

As a result of the KBMP, a Conceptual Land Use Plan was initially developed to reorganize existing and potential new uses based on goals, planning framework, and extensive community engagement with stakeholders. *Figures 1-10 and 1-11* identify the initial key planning areas and the proposed outcomes:

- A Heritage Engagement area will be established around Ahu'ula Cliff area and the Kauikeaouli birth site, including the current Fair Wind and Sea Quest grounds. Potential uses within this area include a heritage park, cultural and educational program uses, community-based economic development uses, and passive open space/view plane protection.
- The area to the north side, makai of the Old Kona Road, may be used for community engagement activities and passive recreational uses. Parking and landscaping will be improved. A well-defined and welcoming mauka-makai pedestrian path for all users will be established in this area, connecting the bluff area to the bay front. The use of the area by the Keauhou Canoe Club and Ka'ili'ilinehe Beach users will continue to be supported. Other recreational uses are to be further evaluated.
- A new retail area to the south of the bay near the entrance to the existing hotel is intended to accommodate the relocation of existing commercial operators as well as space for ocean recreation businesses that do not have formal retail, office, check in location at the bay. Retail and restaurant use in support of this commercial area are to be accommodated. Support uses such as parking for retail users and potentially a bus drop-off area for educational programs would be considered.
- The upper bluff will accommodate low-impact, minimal height profile cabana/bungalow-type lodging with destination amenities and parking.
- A potential new boat trailer parking is being proposed along Kaleiopapa on the south end of the upper plateau area. This new parking area will accommodate boat trailers currently being parked alongside Kaleiopapa Street.

- Although not a part of the current Project, the lands at He'eia Bay will to be stewarded for its natural and cultural resources while serving as a passive open space that accommodates Kamehameha Schools educational programs. The area of Kaukulaelae will continue under resort use as the area that is under a long-term lease by the Outrigger Kona Resort and Spa.

Specific planning strategies and key targeted actions were developed that ultimately provided the decision-making framework that guided the completion of the KBMP. The KBMP is organized into five (5) primary Management Strategies as presented below:

A. Establish a Heritage Management Corridor

- Relocate existing commercial activities fronting the birth site and repurpose existing facilities for cultural and educational activities.
- Protect cultural lines of sight and view planes from the birth site area and 'Ahu'ula Cliff.
- Continue a walking path to extend from the current birth site area towards Mo'ikeha Cave.
- Maintain a buffer and open space corridor within the alignment of Kaneaka Hōlua path.

B. Reposition and Development of New Commercial Bayfront Areas & Appropriate Density Resort Area

- Develop several low-rise buildings to encompass a total of approximately 14,000 SF retail/dining space to accommodate the relocation of commercial operators from the bay front area, possible complementary retail uses, and potentially allow space for existing ocean recreation operators who currently do not have a physical presence or official check-in location at the bay.
- Address the opportunity gap within Kona's existing visitor accommodation inventory through the provision of an appropriately defined density for a low-impact lodging on the upper mauka plateau of 'Ahu'ula Cliff.

C. Reorient Recreational and Community Use

- Reorient the area of use by the Keauhou Canoe Club to re-organize the extent of formal and informal recreational uses of the area.
- Establish a new 200-foot-wide open space corridor running mauka-makai from the Old Kona Road and upper 'Ahu'ula Cliff overhang to the beach front.
- Expand the Ka'ili'ilinehe Beach Park to connect to the mauka-makai corridor.
- Provide improved parking north of Kamehameha III Road.
- Maintain passive open space along the top of the 'Ahu'ula Cliff plateau by establishing a pedestrian promenade along the Old Kona Road.
- Establish an open space area adjacent to Keauhou Canoe Club.
- Improve shoreline access for cultural and recreational activities.
- Create a greater sense of inclusivity at the bayfront.

D. Maintain Existing and Establish New Place-Based Cultural Educational Areas

- Repurpose the existing buildings adjacent to the birth site area to become a part of a cultural learning center and heritage center.

E. Manage Vehicle, Boat and Pedestrian Circulation Through the Bayfront Village

- Provide improved parking areas for recreational users, local residents, and area visitors with clear points of access.
- Revitalize Old Kona Road to relieve congestion at the bayfront and provide a north-south connection.
- Consider an agreement with DOBOR and Hawai'i County to manage vehicle loading and unloading activities at the pier and adjacent facilities.
- Create new wayfinding throughout the area, inclusive of landscaping, signage, reflection points and an entry feature.

All five Management Strategies must operate in tandem for the KBMP to be holistically successful. Accordingly, the Proposed Action is defined as the implementation of the five Management Strategies at Keauhou Bay. Each Management Strategy will be discussed in detail in *Chapter 3: Project Description*.

ho'okupu, lawai'a, wa'a) that connect and inspire the Native Hawaiian and local communities to take on kuleana to place while at the same time educating the malihini about the culture, beauty, and reverence of place for Keauhou and beyond. The stewarding community partner will also make space available for visiting cultural practitioners as well as community events.

Upon relocation of the existing commercial tenants, the remaining facilities will be repurposed and renovated to establish a new cultural education heritage center (refer to D1 on *Figure 3-34 and 3-60*). The rehabilitated heritage center will be utilized to support a range of activities including: 1) Kamehameha Schools place-based educational programming, 2) key commemoration events such as the annual Kamehameha III celebration; and 3) specific culturally-related collaborations with key community partners to host events that honor the legacy of Keauhou Bay. The heritage center will be utilized to honor and enrich the history and living legacy of excellence in this wahi pana, and to provide a place of learning and connection for locals, lineal descendants, and visitors alike.

As part of the renovations, the facility will be opened-up by removing the wooden fencing surrounding the two buildings and the Kuhalalua Spring (*Figure 3-61*). The fence will be replaced by a low rock wall and landscaped primarily with native vegetation. These improvements are designed to visually connect Kauikeaouli's birth site to Kuhalalua Spring. Renovations will also provide a new entrance and lanai to better welcome guests to the center (*Figure 3-61*).

To access the birth site and heritage corridor from the education facility, two cut basalt crosswalks reminiscent of the 'ili'ili in the area will be constructed across Old Government Road. In addition to providing a visual cue for pedestrians that they will be crossing the asphalt road, the distinctive basalt walkway is a signal for motorists to slow down and watch for pedestrians. Kamehameha Schools must coordinate with the County for these improvements to the County right-of-way.

Fronting the educational buildings, the Project will establish a lawn terrace along the shoreline and adjacent to the Kuhalalua Spring. The lawn terrace will transform the mundane rectangular lawn into a beautiful and functional space. The Project creates an informal amphitheater by using the grade change to support a series of terraced, grassed steps. Additional coconut palms, native and cultural plants in this location provide an aesthetically pleasing and comfortable area for storytelling, cultural activities, performances, and gathering. Landscape plantings will emphasize a coastal theme, with naupaka, 'ākia, and pōhinahina, as well as landscape plantings that can relate to the late 19th century and early 20th century historic periods of this site, including plumeria and hibiscus.

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
		strategic planning document aimed to achieve the goal of developing resilient communities by stewarding the ʻāina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP process. Thank you for your participation in the environmental review process.
Alapa'i Kaulia	I am a decendant of the aina in Keauhou. I am against the development of this area as KAMEHAMEHA schools already has the following in their Kahaluu educational location. The following is already established. I believe that this is a foot step for more progress which is not necessary in Hawaii. There needs to be alternatives to eroding and desecrating out lands for more tourism in the name of educating our kanaka.	Thank you for your letter dated April 22, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge your comments related to the KBMP. The former Keauhou Beach Hotel (Kahaluu Ma Kai) is a different site. There are educational opportunities we want to take advantage of that were not conducive with the previous hotel structure.

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Comments	**Commenter**	**Responses**
Royal Order of Kamehameha	The Royal Order of Kamehameha I - Kona Chapter has reviewed the 84 page EISPN document. We have a few comments and concerns to share regarding the project of revitalizing Keauhou Bay and the Project Parcel area. We understand the need to develop the area, to be able to share the rich history of this location. Also the improvements recommended are important due to the frequent visits of community members and tourists in the area. In reviewing the EISPN and its alternative plans, the document frequently mentions the need for creating and maintaining the cultural significance of the area. Also providing a space for those to engage in place-based learning. We find the pursuit of maintaining our wahi pana and connection with our community, a worthy cause for development. With the focus on culture and education mentioned throughout the EISPN, we are looking for assurances that as the project progresses, the project as a whole and business ventures/expansions planned, do not become the center focus with our cultural sites becoming mere museum displays or tourist attractions. Education and place-based learning should be the focus, not a part of a shopping center. We already have that, Keauhou Shopping Center. To clarify, we have no issues with Keauhou Shopping Center, but the outcome of the Project Parcel area should not be a shopping center. Developing this parcel of land will no doubt receive comments by our community and organizations. Section 3.3 Archaeological and Cultural Resources, Page 34, states "despite the many changes to Keauhou Bay since 1946, the area remains significant as part of a larger indigenous cultural landscape. There are opportunities within the Project Area to reconnect the few remaining indigenous features or to restore those that have been covered or filled and ultimately enhance the integrity of the indigenous cultural landscape." This is most important to us, the revitalization and reconnection to the land and historic sites. If the project stays true to this, it will be for the good of the community and our wahi pana. We ask that the Royal Order of Kamehameha I -Moku O Kona continue to be consulted as this project moves forward. The Royal Order of Kamehameha I was founded on April 11, 1865 by decree of Kamehameha V Lot Kapuaiwa in honor of his grandfather Kamehameha I.	Thank you for your letter dated April 22, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan prepared pursuant to Hawai'i Revised Statues Chapter 343. The mission of KS is to create educational opportunities in perpetuity to improve the capability and well-being of people of Hawaiian ancestry. KS' Vision 2040 Vision seeks to improve the well-being of 'āina and the lāhui within one generation. In that light, the lands bestowed upon Ke Ali'i Pauahi, and subsequently endowed to KS, enhance a sense of Native Hawaiian identity by maintaining its ancestrally mandated obligations and responsibility to past, present, and future. Moreover, KS, as the haku 'āina, has an obligation to care for these legacy lands in a manner conducive to not just fostering this relationship between kānaka and 'āina but to also ensure their long-range economic vitality as to positively meet the needs of the communities the institution invariably serves. To fulfill its mission, KS seeks to utilize its landholdings and resources to

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Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	We continue to honor and celebrate his legacy as chiefs of the Royal Order of Kamehameha I. The Royal Order of Kamehameha I is devoted to the continued preservation and perpetuation of the ancient culture, customs, and traditions of Hawai'i. As well as continuing to uplift the Hawaiian people through supporting projects that align with our values.	achieve a balanced state between educational, cultural, environmental, economic and community returns. KS recognizes that a thriving lāhui is not solely achievable through financial gains but is equally dependent upon the well-being of its learners, the greater community, and the 'āina as a whole. KS is committed to continuing to engage with The Royal Order Of Kamehameha I throughout the planning process. You will be notified of the next public meeting for the Project as well as the opportunity to review and provide comments for the DEIS. Thank you for your participation in the environmental review process.
Businesses		
Fair Wind Cruises	We have enjoyed living and working in Keauhou Bay Small Boat Harbor over the past 50 years. During the 1970's Guido Giacometti was the President of KIC and managed Keauhou with real aloha. He respected and loved the area and the people in it. He jogged through the area daily and his mother lived in a home on the bay. Once he left the position, others who took that position did not have the same aloha and were seldom if ever seen in Keauhou Bay. Soon the nursery guys who took such good care of the landscaping were no longer holding those jobs and the area started to look in shambles. The Kona Lagoon Hotel stood empty for 13 years before it was taken down. The	Thank you for your letter dated April 22, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan prepared pursuant to Hawai'i Revised Statues Chapter 343. We offer the following responses.

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
		Thank you for your participation in the environmental review process.
Charles Keaoloha Leslie	It has come to our attention at the last minute that KSBE is planning to build a "boutique" hotel and additional commercial, tourist-oriented structures and areas related to recreational use at Keauhou. We agree with any plans that look to create a cultural site, especially a wahi so steeped in mo'olelo, history and historical significance as the birthplace of Kauikeaouli. We would have hoped that KSBE would be a little bit more judicious in its use of land and funds after having to tear down two hotels at Kahalu'u which it admits should never have been built. Why are you planning to go backwards? As members of the Kai Kuleana network, Kealakekua Bay Cultural Advisory 'Ohana and cultural practitioners of lawai'a traditions based at Ka'awaloa, Nāpo'opo'o and Pu'u 'Ohau we are shocked and disappointed. We are currently engaged in a Community Action Plan process at Kealakekua Bay MLCD/State Historic Park with the state, the county, federal and community members to reverse this type of thought related to our wahi. All of our Kona Hema communities (Miloli'i, Ho'okena, Hōnaunau and Nāpo'opo'o) are working to huli how our wahi are being used. The plans to return to action based on 'ike kupuna guides us in our endeavors and we hope would lead you as well. The cultural knowledge held in our kaiaulu kanaka maoli which also holds environmental preservation inherently within its base, needs to take precedence over this mindset that more tourism-oriented action should be happening. Why not build some affordable housing down there for kanaka maoli? That, to us, would be more along the guidelines of Pauahi Bishop's love for her people and the future of our 'ōpio.	Thank you for your letter dated April 22, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge your comments related to the KBMP. As the steward of approximately 54 acres at Keauhou Bay, Kamehameha Schools (KS) has specific kuleana to maintain and support the management of the bay and its resources. The significant demand and utilization of the bay can and often does create congestion which leads to user conflicts along the bayfront. KS lands at the bay are also significantly impacted by unauthorized uses, trespassing, vandalism, and other unsanctioned activities. Through consultation with lineal descendants and community members it was determined that doing nothing is not a viable option. Guided by KS' mission and vision, the Project aligns with the current KS Strategic Map 2025 which is a strategic planning document aimed

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Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	We trust KSBE will reconsider this immediately and stay in line with a more forward thinking, culturally based mindset that we are actively pursuing through our many hui such as Kai Kuleana, Kua'aina, E Ala Pu, Maui Nui Makai just to name a few. Mahalo for allowing us the space to comment,	to achieve the goal of developing resilient communities by stewarding the ʻāina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP process. The former Keauhou Beach Hotel (Kahaluu Ma Kai) is a different site. There are educational opportunities we want to take advantage of that were not conducive with the previous hotel structure. The income generated from activities at Keauhou Bay will be used to support KS' mission as well as the educational and cultural components of the Keauhou Bay Management Plan. The provision of housing on the KS owned lands at Keauhou Bay was considered as an alternative and discussed in DEIS Section 6.3. Based on the analysis of alternatives, the Housing Alternative would fail to meet the objectives of the Project. Under this scenario, the

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Summary of Draft EIS Comments and Responses		
Comments	Commenter	Responses
organizations were really meant to be, instead of using them to deepen pockets of people who do nothing for Hawaiians. No More Resorts!!!!		possible through a sustainable tourism model that uses revenue from the low-impact lodging and commercial operations to fund ongoing stewardship, maintenance, and educational programming.
Justify building a resort that will benefit a few while severely impacting the community by the loss of one of the last historically untouched areas on the island that has not been overdeveloped and has been beloved by locals and visitors for many decades.	Cory (No last name provided)	The Purpose and Need set forth in Section 2.7 of the EIS indicates a need to strategically reorient and establish new opportunities for place-based cultural educational programming; create passive and active recreational activities; manage circulation and parking; define appropriate commercial and resort-zoned uses; generate revenue that will go back into the long-term operations and maintenance of Keauhou Bay and as well as any excess revenue to support the general mission of Kamehameha Schools. The Project meets this need by providing an opportunity to redefine notions of hospitality, placekeeping, and placemaking in harmonious balance with ensuring all associated improvement costs as a result of this plan's implementation can be self-sustaining. Long-term management of the bay's natural and cultural resources is made possible through a sustainable tourism model that uses revenue from the low-impact lodging and commercial operations to fund ongoing stewardship, maintenance, and educational programming.
Keauhou Bay already has one large hotel and numerous other rental housing units adjacent to its shore	Jeffrey and Leann Malison	The Purpose and Need set forth in Section 2.7 of the EIS indicates a need to strategically reorient and establish new opportunities for place-based cultural educational programming; create passive and active recreational activities; manage circulation and parking; define appropriate commercial and resort-zoned uses; generate revenue that will go back into the long-term operations and maintenance of Keauhou Bay and as well as any excess revenue to support the general mission of Kamehameha Schools. The Project meets this need by providing an opportunity to redefine notions of hospitality, placekeeping, and placemaking in harmonious balance with ensuring all associated improvement costs as a result of this plan's implementation can be self-sustaining. Long-term management of the bay's natural and cultural resources is made possible through a sustainable tourism model that uses revenue from the low-impact lodging and commercial operations to fund ongoing stewardship, maintenance, and educational programming.

(Responses Referencing Section 2.7 Not Included in FEIS Text)
FEIS Vol. II, p. 376
B-1-10 (PDF p. 675)

Summary of Draft EIS Comments and Responses		
Comments	**Commenter**	**Responses**
KS? 2) How will increased tourist activity and reconfiguration of KCC's footprint affect KCC's access to the bay? 3) How will the KBMP affect race practices, other training, canoe races, and use of the imu for club gatherings and pā`ina? 4) Operational Matters a) Will the KCC halau remain where it is, or will it have to be moved? b) Will KCC be required to construct a "compliant" halau structure? c) Will KCC have access to a secure place on site to store and repair canoes?		maintenance of shared facilities are expected to enhance overall access to the bay for KCC and other users. The KBMP supports continued community use while addressing circulation and congestion challenges within the Project Area. Specific operational matters will be resolved during future lease negotiations.
The most appropriate proposed action would remove the stuck-through language form the five Management Strategies. "Specific planning strategies and key targeted actions were developed that ultimately provided the decision-making framework that guided the completion of the KBMP. The KBMP is organized into five (5) primary Management Strategies as presented below: 1. Establish a Heritage Management Corridor • Relocate existing commercial activities fronting the birth site and repurpose existing facilities for cultural and educational activities. • Protect cultural lines of sight and view planes from the birth site area and 'Ahu'ula Cliff. • Continue a walking path to extend from the current birth site area towards Mo'ikeha Cave. • Maintain a buffer and open space corridor within the alignment of Kaneaka Hōlua path. 2. Reposition ~~and Development of New~~ Commercial Bayfront Areas ~~& Appropriate Density Resort Area~~ • Develop several low-rise buildings to encompass a total of approximately 14,000 SF retail/dining space to accommodate the relocation of commercial operators from the bay front area, possible complementary retail uses, and potentially allow space for existing ocean recreation operators who currently do not have a physical presence or 6 official check-in location at the bay. ~~Address the opportunity gap within Kona's existing visitor~~	Sierra Club (Moku Loa Hawaii Island Group)	Kamehameha Schools appreciates the input provided regarding the proposed action and the KBMP. The Purpose and Need set forth in Section 2.7 of the EIS indicates a need to strategically reorient and establish new opportunities for place-based cultural educational programming; create passive and active recreational activities; manage circulation and parking; define appropriate commercial and resort-zoned uses; generate revenue that will go back into the long-term operations and maintenance of Keauhou Bay and as well as any excess revenue to support the general mission of Kamehameha Schools. The Project meets this need by providing an opportunity to redefine notions of hospitality, placekeeping, and placemaking in harmonious balance with ensuring all associated improvement costs as a result of this plan's implementation can be self-sustaining. Long-term management of the bay's natural and cultural resources is made possible through a sustainable tourism model that uses revenue from the low-impact lodging and commercial operations to fund ongoing stewardship, maintenance, and educational programming. An alternative that omits low-impact lodging does not meet the Purpose and Need identified in EIS Section 2.7. The lodging component provides a critical revenue stream to support long-term cultural and educational programming, site stewardship, and maintenance of facilities. Without this element, the KBMP would lack a sustainable funding mechanism necessary to achieve its goals for cultural revitalization, education, and responsible land management.

Summary of Draft EIS Comments and Responses		
Comments	Commenter	Responses
		Project Area. A housing density similar to or greater than the proposed low-impact lodging would also not meet the Purpose and Need, as the associated environmental impacts, infrastructure demands, and development costs would make it financially and operationally infeasible. The purpose of the EIS is to assess the potential impacts associated with the proposed maximum development allowed under the KBMP. This approach provides a comprehensive evaluation of environmental, cultural, and infrastructure considerations. A smaller-scale resort could be developed if Kamehameha Schools elects to pursue this option based on prevailing market conditions.
My personal experience at Keauhou Bay was one of enjoyment, but also disappointment at the state of the "beach" shoreline and marine biological resources thereby. On a cursory level, these appear degraded. Based on my visual observations, conditions dramatically improved toward the mouth of the Bay as one would expect with increasing water circulation, but the patter also suggests that existing developments adjacent to Ka'ili'ilinehe Beach impact the quality of marine biological resources. As noted above, my overall conclusion is that the DEIS lacks key basic foundational studies of existing conditions within the bay necessary to assess the potential impacts of the project, and the KBMP therefore also fails to assess potential mitigation measures appropriately. Finally, the KBMP makes statements regarding 'sustainability,' but is clearly focused on commercial development and an expanded footprint of development. While the Project might generally improve the human experience of cultural resources in particular (which I applaud), other sustainability elements of the KBMP are lacking, especially considering that the shoreline has already been highly modified by development and, in my opinion, has been in a state of degradation for decades. 2 Two parts of the KBMP provide documented cases of degradation:	Nicholas Buhbe	The current operational model at Keauhou Bay is financially unsustainable. Kamehameha Schools is not generating sufficient income from existing tenants to cover the costs associated with managing and maintaining the area. As a result, funds must be redirected from the institution's broader endowment to subsidize stewardship activities at Keauhou Bay. Reliable revenue generation is critical to support the ongoing management of community spaces, maintain safe access, protect natural resources, restore ecosystems, perform regular groundskeeping, conduct routine repairs and maintenance, and implement necessary improvements to facilities and infrastructure. Additionally, funding is essential to preserve significant cultural sites and expand cultural and educational programming envisioned under the KBMP. The Purpose and Need set forth in Section 2.7 of the EIS indicates a need to strategically reorient and establish new opportunities for place-based cultural educational programming; create passive and active recreational activities; manage circulation and parking; define appropriate commercial and resort-zoned uses; generate revenue that will go back into the long-term operations and maintenance of Keauhou Bay and as well as any excess revenue to support the general mission of Kamehameha Schools. The Project meets this need by providing an opportunity to redefine notions of hospitality, placekeeping, and placemaking in harmonious balance

In 2019, a 3D model of Kāneaka Hōlua was created for inclusion on the Kamehameha Schools cultural heritage website. The goal was to digitally preserve existing conditions of the hōlua and to provide a venue to share the grand architecture and mo'olelo of Kāneaka to a broader audience.

The reactivation and restoration of Kāneaka represents an attempt to reframe Keauhou-Kahalu'u, to heighten awareness of this 'āina as a former royal center that was a focus of Hawaiian culture and political power for centuries. Kāneaka provides a direct physical link to Kamehameha and his son, Kauikeaouli, and is a monumental feat of traditional Hawaiian engineering.

2.6 Key Issues and Concerns

In 2016, Kamehameha Schools began the planning process of the KBMP, as a comprehensive management tool that provides both short-term and long-term management strategies that are consistent with its mission and values. The KBMP was developed over a three-year period and includes extensive consultation with key stakeholders. The KBMP was approved by Kamehameha Schools Trustees in 2019. This section highlights the KBMP's specific strategies and responses to key issues and concerns.

Keauhou Bay is a unique shoreline asset and a significant wahi pana. It presents opportunities to facilitate place-based learning and community gathering while redirecting appropriate means of revenue generation. To implement the KBMP as a focused management strategy for these assets, Kamehameha Schools engaged Keauhou Bay stakeholders including community organizations and citizen groups such as lineal descendants, the Daughters of Hawai'i, cultural practitioners, Keauhou Bay area residents, ocean commercial operators, educational users, Keauhou Canoe Club, Heeia Bay Forever, the Royal Order of Kamehameha, The Outrigger Kona Resort and Spa, elected officials, State and County agencies, and other Kamehameha Schools land asset and resource managers during the initial planning stages of the KBMP. The following critical issues were identified between 2016 and 2019 during the planning process for the KBMP and are further described in this section:

4. The integrity of natural and cultural resources is threatened in the absence of a long-term comprehensive management plan.
5. Kamehameha Schools properties at Keauhou Bay are underperforming economically.
6. Incompatible uses at the bayfront create conflicts between users and disrespect for wahi pana.
7. Kamehameha Schools lands at Keauhou Bay are underutilized for educational programming.
8. Existing circulation patterns create congestion and safety concerns.

2.6.1 Integrity of Natural and Cultural Resources are Threatened

Cultural resources include the tangible and intangible places and landscapes that our kūpuna once lived, worked, played, and passed. For Native Hawaiians, these places provide a spiritual connection to the practices and knowledge of their kūpuna (ancestors/elders) and continue to contribute to a sense of identity and well-being. The preservation of historic and cultural sites has been a concern at Keauhou Bay for many years. Natural disasters such as the two historic tsunami and the threat of sea level rise are risks that have and will continue to be one of concern to integrity of those cultural areas that remain today. Illegal trespassing, vandalism, and other illicit activities are also known to occur and need to be proactively addressed. Passive measures to protect such sites have proven to be insufficient to ensure their long-term care. Kamehameha Schools aims to provide an ethical, prudent, and culturally appropriate stewardship of lands and resources, while protecting and enhancing native ecosystems and the cultural resources they contain. To this end, Kamehameha Schools seeks to

Chapter 3

Description of the Proposed Action

This section provides an overview of existing site conditions, a description of the Proposed Action, and a summary of Project schedule and costs.

3.1 Project Area Profile

Keauhou Bay is located on the west coast of the Island of Hawai'i, approximately six miles southeast of the town center of Kailua-Kona, in the North Kona District (*Figure 1-1* and *3-1*). The bay is located within the traditional moku of Kona and straddles across the ahupua'a of Keauhou 1 and Keauhou 2 on the lower western slopes of Mount Hualālai (*Figure 1-2*).

The narrow, oblong-shaped inlet is approximately 1,670 ft. long by 828 ft. wide. There is minimal wave action within Keauhou Bay due to its narrow configuration and the coral reefs at outer edges of the bay that cause waves to break offshore. Basalt lava flows from Hualālai and Mauna Loa volcanoes merged at the bay and created a rocky and rugged shoreline, a typical characteristic of the Kona coast. The south side of the bay features gentle sloping terrain, typical of pāhoehoe basalt flows. Basalts at the bayfront area form a steep cliff on the south side with a narrow ledge and gradually sloping terrain on the north side. 'Ahu'ula Cliff is located approximately 30-40 ft. mauka from the shoreline and rises to a 60-ft. elevation. Portions of the original pāhoehoe lava ledges that once defined the shoreline are covered with fill, artificially hardened, or lined with basalt rock sea walls. Within Keauhou Bay, is Ka'ili'ilinehe Beach, where two basalt rock sea walls frame a narrow section of natural beach comprised of black sand and pebbles.

Two natural water features remain at the bay including the freshwater Kuhalalua Spring (fronting the Sea Quest) and the brackish water Ho'okūkū Pond (located at the base of 'Ahu'ula Cliff). Freshwater springs created microenvironments ideal for certain species of fish and shellfish.

The Project encompasses Kamehameha Schools owned lands along Keauhou Bay totaling approximately 29 acres in size and presently identified by Tax Map Key (TMK) numbers: (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; and (3)-7-8-012:103 (*Figure 1-3*). Collectively, these parcels will be referred to as the "Project Area".

The majority of parcels comprising the 29.12-acre Project Area are vacant or underutilized. Two parcels at the bayfront (TMK: (3)-7-8-012-014 and (3)-7-8-012:013) are leased for commercial ocean recreational activities. Another commercial lease holder occupies TMKs (3)-7-8-012:065 and (3)-7-8-012:103. A portion of the largest Project parcel, (3)-7-8-010:044, is leased by the Keauhou Canoe Club. A public parking lot, a boat trailer parking lot, and an unsanctioned volleyball court are also located on this parcel. Parcel (3)-7-8-012:027 is the location of the Kamehameha Schools managed Ka'ili'ilinehe Beach Park.

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5. Kamehameha Schools properties at Keauhou Bay are underperforming economically.
6. Incompatible uses at the bayfront create conflicts between users and disrespect for wahi pana.
7. Kamehameha Schools lands at Keauhou Bay are underutilized for educational programming.
8. Existing circulation patterns create congestion and safety concerns.

2.6.1 Integrity of Natural and Cultural Resources are Threatened

Cultural resources include the tangible and intangible places and landscapes that our kūpuna once lived, worked, played, and passed. For Native Hawaiians, these places provide a spiritual connection to the practices and knowledge of their kūpuna (ancestors/elders) and continue to contribute to a sense of identity and well-being. The preservation of historic and cultural sites has been a concern at Keauhou Bay for many years. Natural disasters such as the two historic tsunami and the threat of sea level rise are risks that have and will continue to be one of concern to integrity of those cultural areas that remain today. Illegal trespassing, vandalism, and other illicit activities are also known to occur and need to be proactively addressed. Passive measures to protect such sites have proven to be insufficient to ensure their long-term care. Kamehameha Schools aims to provide an ethical, prudent, and culturally appropriate stewardship of lands and resources, while protecting and enhancing native ecosystems and the cultural resources they contain. To this end, Kamehameha Schools seeks to

[redacted]

Chapter 3

Description of the Proposed Action

This section provides an overview of existing site conditions, a description of the Proposed Action, and a summary of Project schedule and costs.

3.1 Project Area Profile

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COVER LETTER FOR EXHIBIT B-1-17

Petitioners hereby submit **Exhibit B-1-17**, consisting of selected excerpts from the Final Environmental Impact Statement (FEIS), Volume I, addressing "Management Strategy D: Maintain and Establish New Place-based Cultural Educational Areas."

This exhibit demonstrates that, although the FEIS references cultural and educational programming at Keauhou Bay, it does not identify, define, or propose the construction of any specific educational facility or center as part of the Project. Instead, the FEIS relies on generalized descriptions of programming, partnerships, and conceptual future use without disclosing any corresponding built structure, footprint, or project-level details.

The excerpt further shows that the Project emphasizes landscape features, recreational uses, and commercial compatibility, while educational components are described only in terms of potential or expanded programming rather than as a primary or defined element of development.

These materials are submitted in support of Petitioners' claims that the Project does not prioritize or meaningfully incorporate educational development, despite Kamehameha Schools' obligations as a charitable educational trust, and instead advances development that is not centered on a defined or disclosed educational use.

These materials are true and correct copies of the FEIS as published. Pagination references correspond to the FEIS volumes and, where necessary, reflect PDF page numbering due to inconsistent internal pagination.

At the southeast corner of the Ka'ili'ilinehe access corridor, the Project proposes to create an ethnobotanical garden. There is an archaeological site in this location that represents a habitation site with several enclosed terraces. The objectives for the ethnobotanical garden are to create a landscaped version of a kuleana lot to complement the archaeological habitation feature and to provide a safe and convenient pedestrian path that links the Ka'ili'ilinehe and Kāmau'ai Zones. To highlight the traditional use of the area as a habitation site, vegetation recorded in the land use histories of Keauhou Bay will be planted in clusters as if the area were again a home site. Referred to as "kuleana vegetation", it will include trees and palms such as hau, kukui, loulu, milo (*Sorghum bicolor*), niu, noni, and 'ulu (*Artocarpus altilis*) and shrubs like 'awa (*Piper methysticum*), kalo (*Colocasia esculenta*), kī or lā'ī (*Cordyline fruticosa*), and kō (*Saccharum officinarum*). Existing plants suited to a dryland forest and semi-arid conditions will be retained. The emphasis will be on promoting a naturalized environment with plants adapted to Keauhou's coastal environment. An existing imu will be retained for cultural use. Interpretive signs will be incorporated to help tell the story of the archaeological feature and the "kuleana vegetation".

The Keauhou Canoe Club will continue to provide its recreational paddling program for residents, schools groups, community groups, family events, and visitors. The Keauhou Canoe Club and Kamehameha Schools have had a Rental Agreement in place since 1994. The Project seeks to promote the continued presence of the club in the Ka'ili'ilinehe Zone to encourage the perpetuation of Hawaiian outrigger canoe paddling practices. Assigned areas of use, activities, and equipment storage by the Keauhou Canoe Club will be clearly demarcated to ensure the management of access to the shoreline area is organized so that all shoreline users can enjoy the area.

At the existing Ka'ili'ilinehe Beach Park, selective screening of the existing comfort station with landscape improvements such as dense shrub masses and coconut palms will delineate spaces for gathering and ultimately reactivate this beach park area near the restroom.

The mauka area of the cliff will remain as passive open space area. View sheds will be enhanced and maintained as appropriate for cultural orientation and association to place (refer to C3 on *Figure 34*).

3.2.4 Management Strategy D: Maintain and Establish New Place-based Cultural Educational Areas

Keauhou Bay is currently an area underutilized by current Kamehameha Schools educational programs for reasons ranging from a sense of respect and reverence absent at the present time for the area's significance in ali'i lineage; the sense of overcrowding and congestion by commercial users adjacent to the Kauikeaouli birth site; and the lack of community meeting space.

Keauhou Bay offers a unique opportunity to infuse culture and education in a historically significant location. Keauhou Bay is the birthplace of Kauikeaouli who created what has now evolved to our statewide public school system, and who penned the saying "He aupuni palapala ko'u", or mine is a literate nation. The bay already hosts informal school field trips, summer and intercession educational programming, and community ho'okupu. Once further developed to support increased educational and cultural programming, these activities will increase, evolve, and expand. Through educational partnerships that range from Pre-School through College (Pūnana Leo o Kona, Kamehameha Schools Pre-Schools, 'Ehunuikaimalino K-12 Hawaiian Immersion, Kamehameha Schools Campuses, DOE Schools, HCC-Pālamanui, ASU-Local), Keauhou Bay will serve as a venue to explore history, learn from the past, be grounded in the present, and shape the future. Through stewardship by a Community Cultural and Educational partner, the value and respect of this significant cultural site will be evident and highlighted through cultural community programs (mo'olelo, hula, 'ai Hawai'i, ulana lauhala,

EXHIBIT B-2
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Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-2

Petitioners hereby submit **Exhibit B-2**, consisting of excerpts from the Final Environmental Impact Statement (FEIS), Volume III (Cultural Impact Assessment), including consultation records, interview summaries, and comment documentation related to the proposed Keauhou Bay development.

This exhibit demonstrates that in Exhibit B-2-1, Kamehameha Schools identified Barbara Nobriga as a desired consultation participant but reported that they were unable to contact her. However, the FEIS record also shows that Barbara Nobriga submitted comments during the environmental review process opposing the bungalow resort development.

Exhibit B-2 further shows that the individuals included within the consultation process consistently express concerns regarding protection of Keauhou Bay, preservation of cultural practices, and avoidance of pollution and degradation of marine and cultural resources.

Notably, none of the consultation participants included in the FEIS express support for the proposed bungalow resort development. Instead, their statements reflect concern for environmental impacts, increased activity, and the need to preserve cultural practices and the integrity of the bay.

Exhibit B-2 is submitted to demonstrate that the FEIS consultation record does not support the advancement of the proposed development, and that the inclusion and characterization of these consultation materials within the FEIS is inconsistent with the substance of the participants' statements.

Tribune-Herald and the *West Hawaii Today*. Similarly, no responses have been received from these notices and a copy of each Affidavit of Publication and the public notices are attached to this report as Appendix A.

Additionally, ASM staff attempted to contact twelve individuals via email and/or phone (Table 6). These individuals were identified as persons who were long-time residents of the area and believed to have knowledge of past land use, history, or cultural information. Of the twelve people contacted, five agreed to participate in this study. The names of the individuals who agreed to be interviewed are Barbara Nobriga, Sandra Manuel, Noelani Campbell, Keone Kalawe, and Floyd Kahalioumi. Of the five, only four were able to review their interview summary and provided witten or verbal approval for inclusion in this study.

Table 6. Persons contacted for consultation.

Name	*Affiliation*	*Date Contacted*	*Results*
Manu Powell	Daughters of Hawai'i	February 4, 2022	Referred ASM staff to Babara Nobriga.
Barbara Nobriga	Daughters of Hawai'i	-	Did not respond to approve interview summary.
Lily Lyons	Haanio Descendant	February 4, 2022	No response
Mahealani Pai	Kamehameha Schools	February 4, 2022	Referred ASM staff to Floyd Kahalioumi
Sandra Manuel	Haanio descendant	February 9, 2022	See summary below.
Olivia Pasciuta	Haanio descendant	February 10, 2022	Declined to participate in CIA but would like to participate in a community meeting.
Office of Hawaiian Affairs		March 1, 2022	No response.
Noelani Campbell	Keauhou Canoe Club	March 1, 2022	See summary below
Kalaniola Hamm		March 1, 2022	No reponse
Keone Kalawe	*Hōlua* expert	March 1, 2022	See summary below
Lionel Machado	Former resident of Keauhou	March 8, 2022	No response
Floyd Kahalioumi	Resident of Keauhou	March 30, 2022	See summary below

INTERVIEW METHODOLOGY

Prior to the interview, ASM staff provided written information about the nature and location of the proposed project and informed the potential interviewees about the current study, and how the information provided during the interview would be processed and utilized in this study. The potential interviewees were informed that the interviews were completely voluntary and that they would be allowed to review their interview summary prior to inclusion in this report. With their consent, ASM staff then asked questions about their background, their knowledge of past land use, and the history of the project area, as well as their knowledge of any past or ongoing cultural practices. The informants were also invited to share their thoughts on the proposed development and offer mitigative solutions. Two interviews were conducted via Zoom and the remaining three interviews were conducted in person at Keauhou Bay. Below are the interview summaries that have been reviewed and approved by the consulted parties.

SANDRA MANUEL

An in-person interview was conducted on February 17, 2022, with Mrs. Sandra Manuel (Figure 68) by ASM staff, Lokelani Brandt, on the shores of Ka'ili'ilinehe at Keauhou. Born in Honolulu, O'ahu to her mother Shirlen and father Samuel Haanio, Mrs. Manuel's family relocated from O'ahu to Keauhou when she was four years old. When asked why her family relocated, she shared, it was to help her aging paternal grandmother, Mary Ahlo Haanio (also known as "Tūtū Mary" or aunty Mary) a widow, whose *makai* home was located on the north side of Keauhou Bay. Through *tūtū* Harry Haanio, the family acquired their *kuleana* lands. She shared that Tūtū Mary was well-respected in the community.



Figure 68. Sandra Manuel standing near her grandfather's fish lookout stone.

In clarifying her genealogical connection to Keauhou, she noted that her mother was from O'ahu and her father and his

family were from Keauhou. Growing up in a bilingual home, Mrs. Manuel recalled how her father and Tūtū Mary spoke only ʻŌlelo Kanaka to each other but would converse with others in the English language. She related while growing up, learning, and speaking Hawaiian was prohibited, but listening to her father and Tūtū Mary conversing enable her understanding. Thus, although she does not consider herself fluent in ʻŌlelo Kanaka, she is adept at hearing and understanding the language and interjects words or phrases when speaking to her *moʻopuna* (grandchildren).

In reflecting on her childhood, Mrs. Manuel stated that although life was hard, she had quite a fulfilling childhood. She recalled how everyday living was guided by their responsibilities and not distractions. She and her siblings were involved in helping the family with any task that needed to be done at their home or Tūtū Mary's home. It was only when these tasks were completed were they permitted to go out and play. She recalled that whether at their *mauka* or *makai* house, the same rules applied.

Mrs. Manuel explained that traditionally, the families from Keauhou typically had two homes, one located *mauka* which was used mainly for farming and raising livestock, and another *makai* where fishing was the primary activity. In addition to fishing, Mrs. Manuel reported that preparing fish in its different forms, whether raw or dried was also a common practice at the coast. Collectively, she emphasized that this type of lifestyle was completely self-sustaining and "that's just the way it was." Ensuring the family had enough resources to sustain themselves, Mrs. Manual opined, required the family to plan and do things daily, whether gardening, fishing, raising livestock, or hunting.

Concerning their *mauka* home, Mrs. Manuel shared that this home is about two miles inland from their *makai* home and was the home her father was born in. She recalled how her father and "*tūtū* man," Harry Haanio used to farm crops such as *kalo*, sweet potato, *ʻulu*, and banana in the uplands. Mrs. Manuel explained that in addition to their *mauka* house lot, her father and *tūtū* man cultivated food crops in an area further upland of their home called Koʻoluaʻōhiʻa. When the crops were harvested, she described how her father would come down to the coast on his mule to share food with the *ʻohana makai* and in exchange, they would get fish. She pointed out that it was through this *mauka-makai* system of exchange that their *ʻohana* obtained everything they needed to survive. When asked how often these *mauka-makai* trips were made, she stated it was out of necessity or during times of harvest. Mrs. Manuel highlighted the fact that from the ocean, they procured a diversity of fish and marine resources that were prepared in many ways, salted and dried, raw, fried, and in soups. Concerning the types of fish they ate from Keauhou Bay, she identified the following *manini, ʻūʻū, ʻupāpalu, ʻuhu, ʻōpelu, akule, pākukui,heʻe,* and many others. She added that the fishermen were so knowledgeable about the bay that they knew where to find certain species of fish. She detailed how her father would travel to the point near the present-day Sheraton Hotel to gather *pākukui* and *manini*. In the bay, they would gather *wana, hāʻukeʻuke*, and *limu*. In observing the condition of the bay today, Mrs. Manuel stated that she remembered the water being crystal clear but today it is so *pilau*, cloudy, and depleted of *wana, hāʻukeʻuke*, and *limu*, which were plentiful when she was a child. She shared a story of how her Tūtū Mary taught her not to gather the *limu ʻakiʻaki* because that was food for the *honu*.

When asked about what she remembers most about Keauhou Bay as a child, Mrs. Manuel, described it as a thriving fishing village and likened it to the fishing village at Miloliʻi. She recalled how the bay was filled with canoes and when the canoes returned to shore after fishing, the interior of the canoes was filled with fish. She remembered the homes being old and seeing screened boxes used to dry fish laid out and *ʻōpelu* nets hanging in the yard. In reminiscing on the drive down from their *mauka* home, she recalled the old winding road to the coast where she would peek at the ocean with much excitement. Once at the coast, they arrived at *tūtū* Mary's house, however, before going into the ocean, she and her brother would grab a *nīʻau* (made from coconut leaf rib) broom to go rake the mango leaves into a pile. She described, the impending excitement as the chore of raking leaves was done and her father permitted them to swim. She playfully recalled the sound of the *ʻiliʻili* pebbles rustling under her bare feet as she scurried from Tūtū Mary's yard to the shore.

In recollecting some of the visitors that came to Tūtū Mary's house, Mrs. Manuel recalled ʻIolani Luahine, a renowned *hula* master. She remembered how ʻIolani Luahine would offer a chant before going into Tūtū Mary's house. She opined that having witnessed these events, she knew that her Tūtū was well-respected in the community as even elder folks acknowledged her. She felt that her Tūtū was put in that specific area during her time to help guide others in the community. She expressed a sense of honor for the knowledge that her Tūtū has passed down whether to their family or others in the community. She lamented that her family's success is a result of the works of her Tūtū Harry and Tūtū Mary that this was their living legacy.

Mrs. Manuel went on to share some information about specific places near her Tūtū's *makai* home that were used for certain cultural practices. In pointing to two large boulders located on the *makai* side of the turnaround at the end of Kamehameha III Road, she describes how her Tūtū Harry, would stand or sit on these boulders to observe the school of *halalū* coming into the bay. Once he made his observation, he would signal to the canoe paddlers at the

shore where to set the nets. She clarified that during those times, there were no trees in this area, so the visibility of the bay was much greater. Also, despite not having cell phones, she playfully shared how once the canoes came ashore, people would drive down to the bay with their small bags hoping to take home some of the catch. When asked about the type of vegetation that was common near the bay, she recalled *kiawe*, *ʻōhai*, and *opiuma* but noted that *kiawe* was very useful because it was used as firewood. When asked about how her family traveled between their *mauka* and *makai* homes, she said they used the road, but the family also had a trail that ran behind their *makai* home and extended inland to their *mauka* house and to Koʻolauʻōhiʻa. She stated that she walked that trail twice with her father but as she got older, she found the trail arduous and "was more easy to go through the royal slide then cut to the train tracks, catch that, then walk straight up to the house…whoa cut the time in half." She noted that it took about 45 minutes to go upland using the family trail and this was one of the reasons they used mules and donkeys to go up and down the hill. Additionally, she related that the cowboys also used their family trail when driving *pipi* (cattle) down to the coast. Mrs. Manuel also shared that on the northern peninsular of the bay is a tomb. She exclaimed that they were forbidden to go there but shared that she was told that the tomb was the burial place of an English officer. She related that they had some family burials a little inland, but the burials were relocated when they started to develop that area. Another place they were forbidden to go was near the north side of where the Keauhou Canoe Club stands. Mrs. Manuel described a large blue rock outcrop in this area and when there were heavy rains in the uplands, the water would flow underground into the bay and bubble up creating ring-like formations in the ocean, but without any sediment.

In describing her Tūtū Mary's *makai* home, Mrs. Manuel explained that there were two homes on this property with the original home being the former post office. She shared that Kaʻiliʻilinehe originally extended from where the restroom facility is (on the north side of the bay) to where the stone platform is near Sea Quest Hawaiʻi. She clarified that the stone wall that fronts the Keauhou Canoe Club was not there when she was a child.

Recalling some of Tūtū Mary's fishing practices, Mrs. Manuel informed how her Tūtū would come down from her home every night to fish from the old pier. She clarified that the old pier was about half the size of the existing pier. Her Tūtū would go to a specific spot on the pier to catch *moano*. She would gather about 2-3 *moano* then return home with enough for her to eat.

In sharing how her Tūtū Mary generated income, Mrs. Manuel shared that Tūtū used to go down and see some of the local fishermen, one of which included Mr. Sawada. Mr. Sawada would catch fish like *ahi* or *ʻōpelu* and Tūtū Mary would, depending on the catch, purchase one or two *kaʻau* (a Hawaiian measurement unit that refers to 40) of fish which she took home, dried then sold. Cleaning and preparing the fresh fish to be dried was another important step in which Mrs. Manuel described participating in. She shared that water was used when scaling the fish but when gutting and filleting the fish, no water was used. She added that *tūtū* Mary would remove the gills of the fish and rub it on the fillet, salt it, then lay the fish out to dry. She shared that fishing using nets was another common practice at Keauhou, however, this type of fishing has since been banned, which has extinguished this practice at the bay. For the preparation of raw fish, Mrs. Manuel spoke about how they gathered *kukui* (candlenut) nuts to make *inamona* (relish consisting typically of roasted *kukui* nut and sea salt). She exclaimed that there were certain trees they gathered from because some trees produced oilier nuts. She recalled some of these trees being on the north side of the bay and near their house. After gathering the nut, they would *pūlehu* until a cracking sound was heard, after which, they removed the toasted kernel. When asked if people planted other food crops around the bay, Mrs. Manuel stated that Tūtū Mary did attempt to plant vegetables like string beans, however, she clarified that growing food was difficult at the coast because of the heat, inadequate soil, and lack of water. Rather, all planting was done in the uplands where there was good soil and sufficient rain to water the crops which were mostly grown by her late Uncle Harry and Aunty Louisa Haanio.

In speaking about other *kuleana* that Tūtū Mary had at Keauhou, Mrs. Manuel recalled that her Tūtū served as the caretaker of "Kaukeoli", Kauikeaouli birthplace for many years. She added that her Tūtū was a member of the Daughters of Hawaiʻi and the Kaʻahumanu Society and that as children, they had to go to the birthplace and clean and care for this area. In describing how the birth site looked when she was young, she shared "was all *ʻiliʻili* inside and behind the huge rock but now today they put some type of plaque on top." When asked if her Tūtū had shared any stories with her about the birthplace, Mrs. Manuel conveyed that "all I know that they came in the canoes one early morning, rushing in, and they had to take her [Keōpūolani] in and behind the boulder where she went *hānau* (give birth) with her ladies in waiting."

Mrs. Manuel described how Kaʻiliʻilinehe was the "hub" of Keauhou, where the community congregated to fish. Even when the sea was rough, the community gathered at the shore to talk and share stories. She added that although it was an ethnically mixed community "no one knew the difference, we were one family." In relating some of her family uses of Kaʻiliʻilinehe, Mrs. Manuel shared that this was their playground. Furthermore, Mrs. Manuel related that Kaʻiliʻilinehe is where the fishermen would park their canoes. She detailed how the fishermen would park their

canoes further back from the shoreline to protect them from the ocean. Additionally, she recalled an old dry dock located in the vicinity of the present-day Fair Winds Cruises.

When asked about what happened to their family's *makai* home, Mrs. Manuel explained that there was a land swap negotiated by Bishop Estate and her Tutu Mary, Uncle Harry, and her dad Samuel.

Another activity that occurred near the bay was ranching. Mrs. Manuel described how the area laying above the bay to the upper road where their *mauka* home is located was all ranch lands. She added that some of the prominent ranch families included the Walls, Hinds, and Paris. She recalled how Uncle Bobby Hind would drive his cattle down the hill to Keauhou Bay where the cattle were then loaded onto waiting ships. In pointing to the specific areas at the bay used during the cattle drives, Mrs. Manuel identified the old boat ramp located on the north side of the existing pier/parking area. She also recalled an old cattle pen located near the present-day sand volleyball court. She commented how although some of the *paniolo* were *haole*, they were fluent in the Hawaiian language.

Concerning changes to the bay, Mrs. Manuel shared that as commercial activity increased at the bay, she noticed a decline in the water quality. She believes that pollution from large commercial boating has adversely impacted the water quality and the overall health of the marine life in the bay. In the early 1960s there were fewer boats in the bay and commented that "if you can imagine, the whole bay was all open. It was yours to go swimming, diving, spear fish, *'upena kū*, make *wana*, you name it...it was our playground, our refrigerator, our everything." She expressed the importance of cleaning up the bay and ensuring the activities on land don't negatively impact the ocean. She shared that today, the marine resources that were once abundant are no longer abundant which speaks to the declining health of the bay.

Mrs. Manuel expressed her support for the cultural and educational components of the proposed development and felt that this should be the focus. She added that "there is so much here that gave to so many families back in the day, it gave them sustainability, it was their way of life, this was how they fed their families." She wants the cultural resources preserved so the next generation of *keiki* and *kamali'i* may be able to enjoy and experience the healing benefits of Ka'ili'ilinehe, just as she and the previous generations have. She would like to see the plans include improvements to the bay so there is more organization for the different user groups and ensure the *keiki* have a safe place to enjoy the water. She noted that there are a lot of recreational activities in the bay and making sure the *keiki* have a place safe from canoes, kayaks, and boats is crucial. Mrs. Manuel opined that there are many *malihini* that come into the bay that are not *ma'a* (accustomed) nor do they show concern for the safety of others. She emphasized that her ability to enjoy and experieuce Ka'ili'ilinehe was because her *tūtū*'s generation and those before cared for the area. She believes that if the focus of the proposed project is on culture aud education, the vibrancy and fecundity of the bay can be restored. Mrs. Manuel opined that education is a critical component of this development because educating people about what to do is essential to restoring the bay. It's their *kuleana*. Furthermore, she felt that restoring the bay is beneficial to marine life and the Kanaka because the ocean is more than a place to recreate, it is a place of health and healing. She added "when we go into the water it does something for our souls and our body...it gives us that sense of being, of well-being, of continuing who we are because we went *'au'au*...That is what *tūtū* always said, you go *'au'au* first before you can really go swim."

In sharing her thoughts on the commercial aspect of the proposed project, Mrs. Manuel stated that she "hopes there are people *akamai* enough to know that once, this was a thriving community and because of this, it is what it is today." Furthermore, she added that the reason we have Keauhou is because of the generations of *kūpuna* that diligently cared for this area. She highlighted the importance of understanding the history and the *kuleana* that comes with caring for this place. She encouraged the leadership at KS to be the example and step into the role of taking care of this area. She understands the complexity of balancing economic activities, which funds many of KS's educational programs, and stewarding the area, and noted that it takes money and resources to care for an area. She would like KS to hold true to how Ka'ili'ilinehe once was and if they can assume this *kuleana* she would feel ok with the proposed development. She underscored the importance of inclusion and spoke about how *kūpuna* did not only think of themselves when making decisions. She lamented on the fact that *kūpuna* did not adhere strongly to the concept of private property and being selfish with what you had, rather they included and shared with anyone who sustained themselves on this land.

She would like to ensure that the *kūpuna* from the area are kept involved with this project as it moves forward and felt that their guidance would ensure the legacy of the people lives on. Mrs. Manuel noted that "I am just one of the *kupuna* from this area and there are many more that have contributed to the history of this area." She believes *kūpuna* involvement can help guide the project in culturally appropriate ways.

A major concern for Mrs. Manuel regarding the proposed project is the impacts to the bay caused by stormwater runoff. She related how within the past years, there have been major stormwater runoffs that brought down a lot of

sediment into the bay. She added that when these types of storms occur, they destroy important marine habitats and force marine life to flee the bay. She stressed that if there is going to be development, the developers must understand that there is a well-established history of stormwater runoff into the bay. She would like to ensure the developer conducts the proper studies and plans accordingly to prevent such catastrophes from occurring. She would also like to ensure her Tūtū man's lookout stone is preserved in place.

In reflecting on her childhood years spent at Keauhou Bay, Mrs. Manuel stated "I am so glad I grew up in that time because I saw, and I witnessed, and I learned and I know how it was. I am adamant with my *mo'opuna* to take care, *mālama* and give back because the land will give back to you." She commented that when she comes down to the bay today, it makes her sad to see the condition of the area. She said, "back in the day you didn't see rubbish, why? Because everybody took responsibility." She expressed "there is so much change in the world and as much as we can *mālama* and keep what we have." She reflected that she feels lucky having been born during that time; being able to see the relationship between her father and Tūtū Mary and seeing how everyday tasks were driven by their culture and sustainability. This environment, she believes has shaped her into the person she is today, and that the old way of living is something she holds dear and has passed on to her children and grandchildren.

NOELANI CAMPBELL

A Zoom video conference interview was conducted by ASM staff, Lokelani Braudt on March 9, 2022, with Mrs. Noelani Campbell. Born on the island of O'ahu in 1959, Mrs. Campbell attended Aiea Elementary School and High School and has been a lifelong *hula* dancer. After high school, she obtained her undergraduate degree from Chaminade University then pursued her Master of Business Administration (MBA), both of which were funded by financial aid provided by Kamehameha Schools. Mrs. Campbell explained that when she was given the opportunity to attend university with the financial support of Kamehameha School, she was encouraged to "please try and return, in-kind, your education to the Hawaiian people." Mrs. Campbell currently serves as the designated cultural liaison for Keauhou Canoe Club and is also a resident of Keauhou Ahupua'a.

After receiving her MBA, Mrs. Campbell married "a *haole* boy" and in 1981 and for economic reasons, she and her husband decided to relocate to the mainland and where they raised their family. She shared that while living on the mainland, she tried to maintain her cultural connection, however, with the demands of work, raising a family, and living in a culturally different place, she had to adjust. She summarized this by stating, "I was a local girl when I left, and I wasn't a local girl when I came back." She reflected that after living on the mainland for some thirty years, she questioned "what kind of Hawaiian would I be?" She recalled telling her husband that after they retire, her goal was to return home to Hawai'i. Mrs. Campbell emphasized that she was fortunate enough to be able to return home because many Hawaiians that relocate to the mainland don't have that same opportunity. When asked what motivated her to live in Kona, she explained that while living on the mainland, she and her family would often vacation in Kona. She explained that her connection to Kona grew as she began to learn more about the area's cultural sites and history, so after retiring, the decision to move to Kona was an obvious one. She humbly shared that her ability to live in Kona, especially with the high cost of living was due to her generating and saving enough money while living on the mainland. Mrs. Campbell opined that for her living in Kona comes with a *kuleana* of learning about the place, the people, its history, and disseminating that knowledge in a responsible and accountable way.

In recalling how she ended up joining Keauhou Canoe Club, she explained that after moving to Kona, she wanted to paddle and had to decide on a canoe club. After much thought, she joined Keauhou Canoe Club. She shared that about three-four years ago, KS approached Keauhou Canoe Club to assist with teaching their students about the *wa'a* (canoe) and since the canoe club is located on land from Pauahi, the club's membership and board willingly agreed to host the students. At that point, the canoe club identified her as the volunteer representative who would help facilitate KS's six-week educational program. She described working with club members to educate them about culturally sensitive ways to work with Hawaiian students and understanding the cultural significance of the *wa'a*. Mrs. Campbell added that her experience in working with people from outside of Hawai'i equipped her with the ability to diplomatically educate people who are not familiar with Hawaiian cultural knowledge and sensitivities.

When asked if the proposed project had the potential to impact canoe paddling, she shared that as a Hawaiian, paddling has had a profound impact on her life. She explained that most of the paddling that is done at Keauhou is done through a purely recreational lens. However, she added that there are many Hawaiian customs associated with all aspects of canoe paddling, which she observes, practices, and tries to teach to others who are unfamiliar. Mrs. Campbell shared that some of these customs include not standing on the canoe because doing so is equivalent to standing on one's ancestors. Adding to this, she shared that once the *koa* (*Acacia koa*) tree is hewn from the forest by the *kahuna* (master, priest), it is still alive and must be treated with respect. Being mindful of the types of conversations that occur on the canoe is also important. She expressed that it is important for her to share this type of knowledge

which has led to her teaching workshop/classes to club members about the Hawaiian customs and practices relevant to canoe paddling. In speaking about the cultural use of the canoes, she stated that today, most outrigger canoe paddling occurs in a sporting or recreation context rather than in a traditional manner such as navigation, transportation, or fishing. Mrs. Campbell added that their canoes have been used in certain memorial practices such as the scattering of ashes in the bay, however, she considered this to be more of a contemporary canoe culture practice rather than a traditional Hawaiian cultural practice. She related that Hawaiian burial practices are centered around returning the bones to the land. She closed by saying that her *kumu hula* taught her about the importance of knowing your boundaries when it comes to participating in certain cultural practices and sharing culturally valued information.

When asked if she was familiar with any culturally significant sites or resources in the project area, Mrs. Campbell prefaced stating that what she knew about the area was taught to her by either Aunty Lily Kong or Kalei (Aunty Lily's granddaughter, who is also a member of Keauhou Canoe Club) or through her research. She related that on the Ka'ū [south] side of the canoe club is Mō'īkeha Cave and Kaleiopapa Heiau. She added that today, Kaleiopapa is not often recognized as a *heiau* because it has been concreted over and it does not have the grandeur as other more famed *heiau*. However, she noted that based on the mapping done by Henry Kekahuna, there is some understanding as to what Kaleiopapa looked like before some of the concreting activities. Mrs. Campbell shared that the stone and the commemorative tablet have become the focal point of the *heiau*, however, she stated that the stone and tablet were added to the site in 1914. Furthermore, she added that in the area near Kaleiopapa and Mō'ikeha Cave, Aunty Lily Kong taught her where to collect the special red ochre used in traditional dyeing. She lamented that Aunty Lily Kong had passed away before she taught her how to process the dye, however, she and Kalei worked together to learn how to properly process the red ochre into a useable dye.

Concerning other ongoing cultural practices at Kaleiopapa Heiau, Mrs. Campbell shared that on March 17 of each year, the Daughters of Hawai'i and other organizations including KS come together to celebrate the birthday of King Kauikeaouli. In describing other places associated with Kauikeaouli's miraculous birth, she spoke about Pākohe, (translated as "birth canal") a small inlet located next to Kūhalalua, where Queen Keōpūolani went to soothe her birth pains. Mrs. Campbell added that she endeavors to understand this place as it was when the Queen was in labor and that the old place names help to tell that story. She emphasized that Queen Keōpūolani gave birth to two of her children at Keauhou, Kauikeaouli and his sister Nāhi'ena'ena.

Another ongoing cultural practice mentioned by Mrs. Campbell was associated with the *hōlua*. She believes that a portion of it has been used for certain cultural-educational programs. She shared that in the past, an *ali'i* would ride the *hōlua* down the track while another *ali'i* rode the surf on the reef of Kaulu and Kalapu and the two parties would race to He'eia Bay. She stated that there used to be a tower at He'eia Bay that served as the finish line. She noted that the Wai'ula'ula Spring (mapped by Kekahuna) located in the vicinity of He'eia Bay has recently been unearthed after being buried for a long time. She added that when the spring was unearthed, the spring was found to be lined with stones.

When asked about her thoughts on the proposed project, Mrs. Campbell commented on the proposed plans for Ka'ili'ilinehe, stating that in the past, the sea wall fronting the canoe club was not there and that the beach originally extended over to where the existing pier is located. In recalling information shared with her by a member of the Machado family, she stated that the family had leased the land where the existing pier is as well as where Keauhou Canoe Club is located. Mrs. Campbell shared that the canoe club moved into its existing location some forty years ago and during that time, the club's name was Kauikeaouli Canoe Club. She added that the club is aware that the *hālau* will be moved a little more to the north, however, the conceptual plans do not show where, on the beach, they will be able to park and launch their canoes. She hopes a logical solution concerning the launching of the canoes and other recreational vessels is developed. She felt that improving parking on the south side of the bay would help alleviate the pedestrian traffic along the beach because due to the very limited parking on the south side, people often park on the north side of the bay and walk along the beach to get to the charter boat tours.

In looking at the proposed plans to relocate the commercial businesses along Keauhou Bay, Mrs. Campbell felt that this aspect of the plan will help restore some of the *mana* associated with the nearby sites and natural features including Kaleiopapa and the springs. She noted that along 'Ahu'ula Cliff, which is where the capes used to be dried, is the old access road, however, beyond that she was not familiar with that area. She expressed general support for the proposed heritage corridor but felt that the existing signage was sort of "gratuitous" with very little information about Mō'īkeha, so she hopes the signage content will be reexamined. In reviewing the commercial aspect of the proposed plans, Mrs. Campbell expressed a sense of reluctance but shared that she understands that the area around Keauhou Bay is considered prime real estate.

In closing, Mrs. Campbell shared that she was not aware of any cultural sites near the canoe club but pointed out there are many significant cultural sites in the area to the south of the canoe club. For her, Kaleiopapa Heiau continues to be a culturally significant place. It is where she goes to gather red ochre and honor different commemorative milestones associated with historically significant people such as Queen Keōpūolani and King Kauikeaouli.

KEONE KALAWE

On March 16, 2022, a Zoom video conference interview was conducted with Mr. Keone Kalawe, a skilled archaeologist, *kuhikuhi pu'uone*, an expert in *hōlua* culture, and educator. Born in Hilo but raised in the Kapoho area of the Puna District, Mr. Kalawe shared that while growing up, he was fortunate to have spent a lot of time with his grandfather who passed a lot of knowledge about the Kapoho area to him. He added that his grandfather taught him about the *ahupua'a* system and the importance of taking care of the resources within your area and not venturing into another area because those resources are for someone else. He expressed that the teachings of his grandfather have influenced and grounded the work that he does today.

When asked how he became involved in *hōlua*, Mr. Kalawe related that sometime during the mid-1990s while attending a Hawaiian Studies course at Hawai'i Community College, his class was tasked with conducting a group project focusing on a traditional Hawaiian practice that was no longer being practiced. He and two other classmates, Mr. Likeke Teanio and Mrs. Maxine Wilcox did some preliminary research and decided to focus on *hōlua*. Their research began with looking at the construction of the *papa hōlua* (*hōlua* sled), which led them to Hulihe'e Palace in Kona. There, they observed two *hōlua* however, while examining the *hōlua* they discovered that nails were used in its construction. Later, they visited the Bishop Museum in Honolulu and saw an original *papa hōlua* in the museum's basement. From there, they began going into different communities and building *hōlua*. Later, they decided to organize and host community workshops, beginning first on Moku O Keawe, where they would share about *hōlua* culture and speak about the importance of safeguarding these resources from destruction. As part of these workshops, they built *papa hōlua* which was gifted to these communities. The workshops eventually spread to different islands. Mr. Kalawe reflected that for him, these workshops were fascinating as they brought to light a practice that people were either not familiar with or forgot about.

Even after their class together, Mr. Kalawe shared that he and Mrs. Wilcox continued learning and teaching about *hōlua* culture. He added that he and Mrs. Wilcox ended up speaking with *kūpuna* from different places and asking their thoughts and permission to study the *hōlua* in their communities. They ended up visiting select places with intact *hōlua* including ones at Kukuihaele, Kīholo, and other areas in Kona and Ka'ū. Using his background in plane table mapping, Mr. Kalawe was able to map many *hōlua*, which led him to become interested in understanding the construction of the *hōlua*. He shared that throughout time, there have been people who knew how to build the *papa hōlua* but hardly anyone who held a deep understanding of the construction of the actual slide (*kahua hōlua*) itself. He added that "for me and because of my background, when I look at the *kahua hōlua*, I look at different, I look at it as a construction style." Mr. Kalawe related that one of his first contract work that involved mapping of a *kahua hōlua* was on KS property in North Kohala and in 1998, he and Mrs. Wilcox mapped a *kahua hōlua* at Kuamo'o, Kona.

He reflected stating "to me it is so fascinating how our *kūpuna* constructed *hōlua* and similar to *heiau* construction, you have the physical, spiritual, and the natural elements and these three components are used to construct the *kahua hōlua*." He added, "when you say *hō-lua* and you break it down, and when you ride the *papa hōlua* it's like you're going into the next realm." Drawing from his experience, Mr. Kalawe shared that about 99% of all *kahua hōlua* terminate in a bay and at the end of the slide there will he a cave on either the right or left side of the slide. He commented that he is familiar with only two other *hōlua* on Hawai'i Island that do not terminate in water, one being in the Hawai'i Volcanoes National Park and the other on Mauna Kea. He described one *hōlua* at Kapu'a, South Kona as being 99% intact.

In relating information about the construction style of the *papa hōlua*, Mr. Kalawe likened the tip of the runners to two hands being extended. Thus, he shared that "essentially, when you're riding the *papa hōlua*, you are an offering." Furthermore, he added that the spiritual aspect of riding especially when transitioning from land to the ocean is symbolic of entering the depths of another realm.

Mr. Kalawe stated that all *kahua hōlua* were built to honor a particular *ali'i*; the one on Mauna Kea was built for Princess Ka'iulani and the one at Kapu'a was built for King Kalākaua. He stated that one of the remarkable aspects of *hōlua* construction is site selection and just like *heiau* construction, sometimes the same site was reused or repurposed. For example, he shared that before Kāneaka in Keauhou was built, there was another *kahua hōlua* named Pine which was much smaller than Kāneaka and dedicated to Lonoikamakahiki (whose royal residence is near the Keauhou-Kahalu'u boundary). Mr. Kalawe added that when Kamehameha I had Kauikeaouli, he commissioned the

construction of the *hōlua* and ordered that it be wider and longer which resulted in Kāneaka being built on the original Pine *kahua hōlua*. He recalled Kāneaka being about a mile long and it included a smaller branch slide that terminated at Keauhou Bay whereas Kāneaka terminated at He'eia Bay. He recalled that while working on the *hōlua* in Keauhou the late Mr. Duane Keana'āina pointed out the remnants of the branch slide to him several years ago near one of the golf course access roads.

In describing the *hōlua* competitions that took place at Kāneaka in Keauhou, Mr. Kalawe expressed that what is unique about Kāneaka is that when contests were held, they included two opponents with one situated on the *hōlua* and the other on a surfboard in the ocean. About midway on the *kahua hōlua* stood a tower marked with *kī* (ti leaves) that housed the referee. He added that the referee had one of the most important jobs because he was responsible for watching the surf and identifying the waves that were large enough to bring the surfer onto land. As such, the contests were held only during certain times of the year when the waves were large enough for a competition. When the referee deemed a wave suitable for riding, the *kī* was waved thus marking the start of the competition. Both opponents, one on land and one in the ocean, would ride towards the finish line which was marked by two *hōlua ki'i* (carved images), and the contestant that crossed the *hōlua ki'i* first was the winner.

Concerning other features of the *hōlua*, Mr. Kalawe stated that in addition to the *kahua hōlua*, there is also a running path that abuts the head of the slide on the *mauka* end. He shared that these running paths typically measure about 8-10 feet wide and vary in length, however, the running paths were set anywhere between 16-24 inches lower than the *kahua hōlua*. In detailing how the running path was used and why there is a height difference between the running path and the *kahua hōlua*, Mr. Kalawe shared the rider holding its *hōlua* would sprint down the path and hurl their body and the sled in the air. As the rider came down in the air, they would grab the sled with their hands and position it under their body before landing on the *kahua hōlua* in a face-down position. The act of jumping in the air and landing in such a manner gave the rider the momentum needed to slide down the length of the *kahua hōlua*. He stated that there are accounts of riders standing up on their *hōlua* and riding down, however this way of riding did not require the rider to use the running board, rather they stood at the top of the *kahua hōlua* and kicked off.

Mr. Kalawe stated that people have asked him why *hōlua* are so narrow and he explained that this allowed the rider to maneuver the *hōlua* down the track, which sometimes included obstacles. When asked about the obstacles, Mr. Kalawe stated that sometimes natural rock outcrops protruded into the track and sometimes there would be a ditch built into the track and the rider would have to maneuver the *papa hōlua* around such obstacles. Concerning Kāneaka, Mr. Kalawe shared that in one area of the *kahua hōlua* closer to the highway, there is a natural lava outcrop that protrudes into the track. He reminded that *kahua hōlua* were not a flat and unobstructed level plane. While most *kahua hōlua* are oriented *makai*, he shared that in Kalaupapa, Moloka'i, the *kahua hōlua* there is oriented inland rather than *makai*. As such, Mr. Kalawe reiterated that there is a lot of variation in the construction and style of the *kahua hōlua*.

Mr. Kalawe recalled being asked why *kahua hōlua* are found in some areas but not in others. His response to this was that "people need to understand that our *kūpuna* used the natural resources." As such, in places like Hilo and Hāmākua, *kahua hōlua* were established on grassy hills rather than constructed slides thus there are no remnants of the *kahua*. However, in places like Kona, Ka'ū, and Puna, the available material was *pōhaku*, thus to this day, you can find remnants of the slides in these areas. Furthermore, he noted that it was common for *kahua hōlua* to be built near *ahupua'a* boundaries and sometimes the *kahua* themselves served as the boundary marker; which is the case with Kāneaka in Keauhou. In describing the best way to observe *hōlua*, especially in the Kona area, Mr. Kalawe stated that the best observations can be made while at sea.

When asked if the *kahua* or the *papa hōlua* had different names, Mr. Kalawe shared that when speaking about the *papa hōlua*, you'll find the *kāma'aloa* (runners), *mana* (cross pieces)—parts that were fastened together with *'aha* (sennit) or *kaula* (rope, cord). He added that the top rails are known as *kālele*. He stated that in the past, all wood components of the *papa hōlua* were made of Hawaiian hardwoods such as *uhiuhi* (*Mezoneuron kavaiense*) or *kauila* (*Colubrina oppositifolia*). Furthermore, the *kāma'aloa* needed to be made of hardwood, and the bottom needed to be tapered and rounded otherwise there is a risk of the runners splintering or cracking. He shared that when they first started making *papa hōlua* in the 1990s, they were using *'ōhi'a* (*Metrosideros polymorpha*). In speaking about the preparation of the *'aha*, Mr. Kalawe shared that in the past, the coconut would be husked and then placed into an *imu* (undergrouud oven) and baked. Only the fibers that withstood the cooking process were used to make the *'aha* because these were deemed most durable. He noted that *olonā* (*Touchardia latifolia*) cordage was also used sometimes but ultimately the resources found within your local environment determined what materials were used in the construction of a *papa hōlua*. He expressed that there were also woven panels that were placed between the *kālele* and these panels were sometimes made of *makaloa* (*Cyperus laevigatus*) a sedge found typically along marshlands or *lau hala* (*Pandanus odoratissimus*). In either case, he stated that the woven piece needed to be a fine weave and pliable.

In detailing the preparation of the *kahua hōlua* for use, Mr. Kalawe stated that the entire surface of the slide needed to be covered with vegetation, which again, was determined by the availability of the local resources. He recalled using plants such as banana stumps, ti leaves, and in areas like Kona, *pili* (*Heteropogon contortus*) grass was used. Furthermore, to make the slide slick, the *kālele* and the vegetation were oiled using either coconut or *kukui*. He related that "this is the reason why when our *kūpuna* rode their *papa hōlua* on the *kahua hōlua*, they rode at noon, when the sun was above because everything was all slick and warm." He emphasized that it is important to realize how much energy and material was required to cover the surface of the *kahua hōlua* and sometimes certain *ali'i* wanted the surface of the slide covered in *lau hala* mats. He candidly stated, "imagine the resources and the people it took to weave all these mats; you not talking about one, two mats on the slide, you talking about twenty, thirty mats piled on each other and can you imagine how wide because at Kāneaka, in some places, its forty feet wide and one mile long?" Because of these factors, he added that riding was not done in an impromptu style, it had to be planned and was not a daily activity because it took a lot of people and resources to prepare the slide. He noted that this is why the sport of *hōlua* was reserved for the *ali'i*. Mr. Kalawe opined that preparing the slide took a tremendous number of resources from the local area and some of these resources, such as ti leaves, were important for food production. Additionally, when contests were held, it drew a number of people to that area, and those people needed to be fed. As such, he stated that this was certainly a community effort. He went on to add that over time, *hōlua* grew in size, and for a community to decide that it could afford and support all aspects of *hōlua* in terms of resources and labor also speaks to the abundance of resources within that area. He stated that it is amazing because there are multiple components to *hōlua*, from the *papa hōlua* to the *kahua* which is much larger. He believes that *hōlua* are one of the largest man-made constructions found in Hawaiian culture. In reflecting on Kāneaka, he stated "can you imagine how many people it took to move *pōhaku* from one place to another… so it's a real massive undertaking."

In detailing the engineering components of Kāneaka, Mr. Kalawe remarked that if you look closely at this *hōlua*, you will see that *kūpuna* constructed rolling hills into the *kahua*, which helped to slow the rider down. He stated that *hōlua* were never built as a level plane because the rider would go down at uncontrollably high speeds. Because *kahua hōlua* were built on hillsides, incorporating rolling hills into the slide's surface made riding physically possible. Also, at Kāneaka, he shared that there is a stone wall built along the north side of the slide. In recalling some calculations that he and a few others did, it was estimated that a rider could reach speeds of 62-65 miles per hour.

Mr. Kalawe also spoke about what happened when a rider would *hala* (die, pass away) while riding. He explained that if a rider died, they would be buried at the top of the slide, before the running path. As such it is not uncommon to find burials in the area above the running path. Also, the rider's *papa hōlua* would be burned so that their essence would go with their *papa*. He believes that this explains why *papa hōlua* are not commonly found in an archaeological context. Furthermore, Mr. Kalawe spoke about changes to the practice and noted as the practice of *hōlua* started to die out, sometimes, the *kahua* was repurposed and used as a burial site, thus over time, the function of the *hōlua* changed.

When asked if there are any particular *akua* that are associated with *hōlua*, Mr. Kalawe stated that Lono would be the main *akua* associated with *hōlua*, which is one of the reasons use of the *hōlua* was popular during the Makahiki season. However, he went on to explain that *ali'i* could ride outside of the *Makahiki* season however, this was not common and it was only during Makahiki that the *maka'āinana* (common folks) could participate in this sport. He reiterated that *hōlua* was however a sport/recreation/practice that was almost exclusive to the *ali'i* class. Also, when *hōlua* were built, it was done so for a certain *ali'i*, which gives *hōlua* a particular status in Hawaiian society. Mr. Kalawe opined that it was common for *ali'i* from different areas to have their own *hōlua* but they would gather periodically to challenge each other and they brought together "nothing but the best riders."

When asked about his thoughts on caring for Kāneaka within the context of the cultural landscape of the project area, Mr. Kalawe believed that KS has made efforts to remove trees and vegetation from the slide. He felt that this was an appropriate action especially as it relates to protecting the integrity of the *hōlua*. He explained that if large trees are not removed whether they are within the slide or adjacent to it, these trees have the potential to undermine the construction of the slide. He added that in some parts of the slide, *kūpuna* would install slabs and then place the finishing stones on top, so over the years and with earthquakes, sometimes these sections of the slide are prone to collapse. He felt it is important to address and repair any collapsed sections as part of the long-term preservation of the *hōlua*. When asked how he felt about the use of the *hōlua* in a cultural-educational context, Mr. Kalawe stated that it is important that these kinds of efforts come from the community. He felt it was important to educate and share more about the *hōlua* at Keauhou. He noted that it is possible to ride the less steep sections of the *hōlua* if it is done in a safe manner and in a cultural and educational context. He expressed that this is a part of Hawaiian culture and it is important for people to experience it. In closing, Mr. Kalawe remarked that "we need to reintroduce the *hōlua* culture" and in this way people can understand all aspects of *hōlua*. He felt it was important especially for *ali'i* trust

to restore, preserve, and teach people about *hōlua* as it is an integral part of *ali'i* pastimes. He has been seeing Kona-based *ali'i* trust take pride and ownership in their *hōlua*. In summary, Mr. Kalawe stated, "at the end of the day, our community and our people are going to benefit from it because now they are going to know that there are more *hōlua* slides around." He would like KS to realize that what they have in Keauhou is unique and monumental and it can serve as a gathering place for people to learn about *hōlua*... "we want to keep our culture alive and safeguard what we have left... this is important to the continuation of our *kūpuna* practices."

FLOYD KAHALIOUMI

ASM staff, Lokelani Brandt conducted an in-person interview with Mr. Floyd Kahalioumi on April 5, 2022, on the shores of Keauhou Bay. Born in November 1945 in their family home in Keauhou *mauka*, Mr. Kahalioumi was raised with his maternal grandfather, Mr. Robert Kahalioumi (also known as Grandpa or Papa). Mr. Kahalioumi's maternal lineage traces back to the lands of Keauhou and Kahalu'u. About twenty-one years ago, Mr. Kahalioumi retired from Verizon and continues to reside in Keauhou *mauka*, a short distance from the place where he was born and raised.

He described that as a child, his family had two homes, one *mauka* and *makai*, and they would spend a week or two at their *mauka* home then come down to their *makai* home and spend anywhere from a week to two, then return *mauka*. He noted that their *makai* property was an original *kuleana* that had been in their family for many generations. During certain holidays, such as Memorial Day, the entire family would come down to the *makai* home where they fished, enjoyed the ocean, and cared for their *'ohana* burials. He stated that they used to access their *makai* house from the old road further inland of the bay (identified on the conceptual plan as the Old Kona Road) or they used a small trail that led up 'Ahu'ula Pali to their house. He recalled the front of the house being built about 10 to 12 feet off the ground that overlooked Keauhou bay. The yard was paved with *'ili'ili* and there was an outdoor kitchen and bath.

Aside from taking care of their *kuleana* and burials, he recalled how they also fished. During the nights they fished for species like *'upāpalu* (a species of Cardinal fish), mostly along the south side of the bay and they would throw net for *'anae* (mullet). He recalled walking along the shoreline of the bay and throwing net, which was mostly done on the north side of the bay since the south side was rocky with small cliffs. Mr. Kahalioumi clarified that as children they never ventured into the deeper parts of the bay and any deep-sea fishing was done by Grandpa on his traditional Hawaiian fishing canoe modified with and out board motor. He recalled how Grandpa would gather *he'e* in the north side of the bay while he and his cousin Ronald would wait on the canoe.

In detailing other aspects of Keauhou Bay, Mr. Kahalioumi remembered how the coastal road meandered along the interior part of the bay and on the *makai* side of the road is where the fishermen stored their fishing canoes. He noted that in the past, the stone wall fronting Keauhou Canoe Club was not there so the beach was more expansive. He detailed how the central part of the shoreline was built up with boulders, on top of which were built racks to store the fishing canoes. He added that when the fishermen came in, they would use Hao [*hau*] logs to drag their canoes up the beach. It was common for people who were in the area to assist the fishermen and "*hāpai* (carry) and put [their canoes] on top of the racks so that the canoes were kept safe from high tides and rough seas. The water washing up on the beach would go underneath, keeping the canoes safe." In exchange, the fishermen often gave any helpers a share of fish.

In naming some of the families that he remembered living at Keauhou, Mr. Kahalioumi recalled the Haanio, Hoapili, and the Machado families, the latter of which operated a dry dock out of Keauhou Bay. Sharing what he remembered about the Machado drydock operation, he stated that on the north side of the existing pier is the old boat ramp, which is the ramp they used when they went *holoholo* (lit. walk, ride, sail; also a euphemism to refer to fishing). He added that on the north side of the old boat ramp were old tracks that extended from the water into the Machado drydock. He remarked that the tracks were used mostly for the old charter boats. He explained how the boats would come inside the bay, tie up to the pier where they were scrubbed. Then a trolly that was attached to the tracks would be rolled down towards the shore. From there the boats were loaded on the trolly and the trolly would be pulled inland into the dry dock using a cahle system. Mr. Kahalioumi expressed that there were but few charter boats at Keauhou Bay and only during rough weather did the bay fill up with hoats from elsewhere seeking refuge.

Concerning other land use activities at Keauhou, Mr. Kahalioumi recalled that the area back from the shoreline was used for ranching, which included the Hind family and Pu'uwa'awa'a Ranch. In speaking about the type of vegetation in the area, he recalled the area heing mostly filled with *kiawe*. He added that the old road inland of the hay was just a single-lane dirt road that was used by the ranch. As noted ahove, this is the same road that his family also used to access their *makai* house lot.

In describing some of the structures tbat used to be in and near the project area, Mr. Kahalioumi described a church in the area north of the Hoapili residence. Although he was not certain, he believes this was the site of the original Helani Church. He said that from Keauhou, the church was moved to the north side of Ali'i Drive near Kahalu'u Beach Park and from there it was relocated to Kahalu'u *mauka*. He said that there used to be a house on the Hoapili property and to the west of the Hoapili property was Doc Hill. He remembered a home located near the present-day restrooms at Ka'ili'ilinehe beach and was told that there was also a home a little *mauka* (east) of the restrooms.

When asked about the cultural sites in the area, Mr. Kahalioumi expressed that growing up, they were taught by Grandpa to leave such places alone including the birth site, Mō'īkeha Cave, Lekeleke, or *heiau* located in the Kahalu'u area. He also spoke about the brackish water pond (Ho'okūkū Pond) located near the existing restroom facility and said that he remembered that pond being a little larger and much cleaner.

When asked if he recalled any of the *tsunamis* and how the place was impacted during these events, Mr. Kahalioumi recalled standing on the pier and watching the water drain from the bay. He commented that local people would come down during the *tsunamis* to grab the stranded fish. He shared how he watched a wall of water, which appeared to have stalled near the two points of the bay slowly move inland and refill the bay. He noted that the *tsunamis* he has observed at Keauhou were not like the ones that hit places like Hilo. During one such event, he remembered how he and his cousin caught a *malolo* that got stranded on the pier.

When asked about how the area has changed over the years, Mr. Kahalioumi stated that prior to him completing high school, the concrete pier/parking area was expanded. He noted as far as he could remember, the wooden "finger" pier was already built. He recalled how the trucks and trailers would drive down along the shoreline road, the boats were unloaded using the boat ramp on the north side of the existing pier, then the trucks and trailers would park on the concrete pier. He remembered the construction of the seawall fronting Keauhou Canoe Club. In reflecting on the seawall, Mr. Kahalioumi related how he was told, "if you make the shoreline hard with the stone wall, then the beach going come hard." In clarifying the words he said anytime you build a seawall it changes the beach because it alters the flow of the ocean, which often leads to the erosion of sand and exposure of rocks. He recalled a restaurant being located behind the current Sea Quest Hawaii headquarters and that before the restaurant, it was a yacht club.

When asked about his thoughts on the proposed plans, Mr. Kahalioumi was generally supportive of some aspects of the plan including rerouting traffic flow and the culture and educational components. He did, bowever, want to ensure that locals have access to the pier and the ocean to swim and fish for seasonal species like *halalū* (juvenile *akule*) and *'oama* (juvenile *weke*). He felt that visitors and those coming to partake in the commercial activities should have another area to gather and park. He felt that commercial activities increases traffic congestion along the bay and it deters locals from enjoying the area. He worries that added commercial space anywhere along the bay would draw in more vehicular and pedestrian traffic.

When asked if he thought the proposed project would have an impact on the cultural resources in the area, he worried that increased visitors would continue to impact the place. He hopes that there will be something within the proposed plans that serves the Hawaiian community and includes educational opportunities for the children of Kona (i.e. Kamehameha Schools Campus). He reiterated the importance of ensuring local fishers can continue to come to Keauhou and fish from the pier for *halalū* and the bay for *'oama*. Mr. Kahalioumi believes that the sewer line that runs through the existing volleyball should be relocated elsewhere.

4. IDENTIFICATION AND MITIGATION OF POTENTIAL CULTURAL IMPACTS

The OEQC guidelines identify several possible types of cultural practices and beliefs that are subject to assessment. These include "...subsistence, commercial, residential, agricultural, access-related, recreational, and religious and spiritual customs" (OEQC 1997:1). The guidelines also identify the types of cultural resources, associated with cultural practices and beliefs that are subject to assessment. These include other types of historic properties, both man-made and natural, submerged cultural resources, and traditional cultural properties. The origin of the concept and the expanded definition of traditional cultural property is found in National Register Bulletin 38 published by the U.S. Department of Interior-National Park Service (Parker and King 1998). An abbreviated definition is provided below:

> "Traditional cultural property" means any historic property associated with the traditional practices and beliefs of an ethnic community or members of that community for more than fifty years. These traditions shall be founded in an ethnic community's history and contribute to maintaining the ethnic

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
		bayfront. KS lands at the bay are also significantly impacted by unauthorized uses, trespassing, vandalism, and other unsanctioned activities. Through consultation with lineal descendants and community members it was determined that doing nothing is not a viable option. Guided by KS' mission and vision, the Project aligns with the current KS Strategic Map 2025 which is a strategic planning document aimed to achieve the goal of developing resilient communities by stewarding the ʻāina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP process. Thank you for your participation in the environmental review process.
Barbara Nobriga	I have met with several of you on serval different occasions and have always Let you know my dissatisfaction with the development of Keauhou Bay. It is a disaster and disrespectful of our Alii and Hawaiian people. I grew up down there, our family had a beach house right on the site of the Fair Wind. I would sit on the sea wall at night and hook aweoweo and uu. I played in the baptisimal rock and let the waves wash over me and push me	Thank you for your letter dated April 25, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP)

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Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	Into Kuhalalua which is non existent today, along with our house that went out with the tidal wave. We shipped cattle out of the beach where the pier is. My mother used to rope and drag the pipi to the long boat with the rest of our family. We played and swam ot the black sand beach where the pier is. I learned to swim in Keauhou and would take my horse in swimming. We could not drive from the north side to the south at high tide because there was at least a foot of water covering the road. The manta were always in the bay as we swam from sampan to sampan. Then Mr. Troy Post arrived right out of Texas. He immediately bulldozed the oldest Heiau to make a golf course. The remains are still there in the form of bougainvillea. Then came the massive "kitty litter" box also known as the volleyball court. Construction was also underway for the pier. That was the beginning of the end of beautiful Keauhou. Now Kilinehehe beach was obliterated The memory of Mary Hauanio crawling on the rocks catching opihi and aama is still etched in my mind. We watched Doc Hill build his home Now it was our turn and we built further out on the point in the 60s. We watched the Kona Surf go up as we were directly across the bay. We sold when the Bay got so crowded and run down. Now you folks want to restore the Historic Bay. What are you going to restore? Putting a Boutique where the canoe halau is is ridiculous . Tourist look for culture and history. A sand beach with canoes ready to go is in tune with old Hawaii, not a fancy boutique. Push the kitty litter box mauka, let the beach come back The Fair winds has totally destroyed that side of the Bay In 1973 the Daughters of Hawaii were given outright, the Kamehameha III birth place complete with open space, maintenance and the stipulation that not so much as a rock could be moved without first consulting us. That was good for a few years till a change of management went. From there it wasn't a rock being moved, it was truckloads and no contact with the Daughters. It was in the late 90s I Noticed the driveway into the Fair Winds and asked the the. CEO what happened. His response, "I guess we weren't paying attention. Which has been happening right along.	prepared pursuant to Hawai'i Revised Statues Chapter 343. We thank you for sharing you and your family's history in the bay. Your insight and knowledge of Keauhou and its history have been invaluable during this process. As the steward of approximately 54 acres at Keauhou Bay, Kamehameha Schools (KS) has specific kuleana to maintain and support the management of the bay and its resources. The significant demand and utilization of the bay can and often does create congestion which leads to user conflicts along the bayfront. KS lands at the bay are also significantly impacted by unauthorized uses, trespassing, vandalism, and other unsanctioned activities. Through consultation with lineal descendants and community members it was determined that doing nothing is not a viable option. Guided by KS' mission and vision, the Project aligns with the current KS Strategic Map 2025 which is a strategic planning document aimed to achieve the goal of developing resilient communities by stewarding the 'āina to support resilient economies, cultural landscapes,

EXHIBIT B-3
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-3

Petitioners hereby submit **Exhibit B-3-1 through B-3-5**, consisting of excerpts from the Kamehameha Schools Annual Report 2024.

This exhibit is submitted in response to representations that development at Keauhou Bay, including the proposed bungalow resort, is necessary to generate funding for educational purposes and related initiatives.

The materials included in Exhibit B-3 demonstrate that Kamehameha Schools maintains substantial financial resources, including a reported endowment of approximately $15.2 billion, as well as extensive real estate and investment holdings. Despite these substantial assets, the Annual Report presented by Kamehameha Schools reflects a promotional and narrative format rather than a detailed financial accounting.

Petitioners further assert that the Will establishing Kamehameha Schools requires that a true and complete annual report be provided each year so that the public and beneficiaries may understand how trust funds and resources are managed and expended. Petitioners allege that the document provided does not satisfy this obligation, as it lacks clear and comprehensive disclosure of assets, revenues, expenditures, and land use practices.

Exhibit B-3 is submitted to demonstrate the discrepancy between Kamehameha Schools' substantial financial capacity and its claim that additional development is necessary to generate funding, and to highlight the absence of a complete and transparent annual accounting consistent with the requirements of the governing trust.

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i
Kamehameha Schools Annual Report 2024 —
Endowment Disclosure

ENDOWMENT

Sustaining legacy and empowering futures

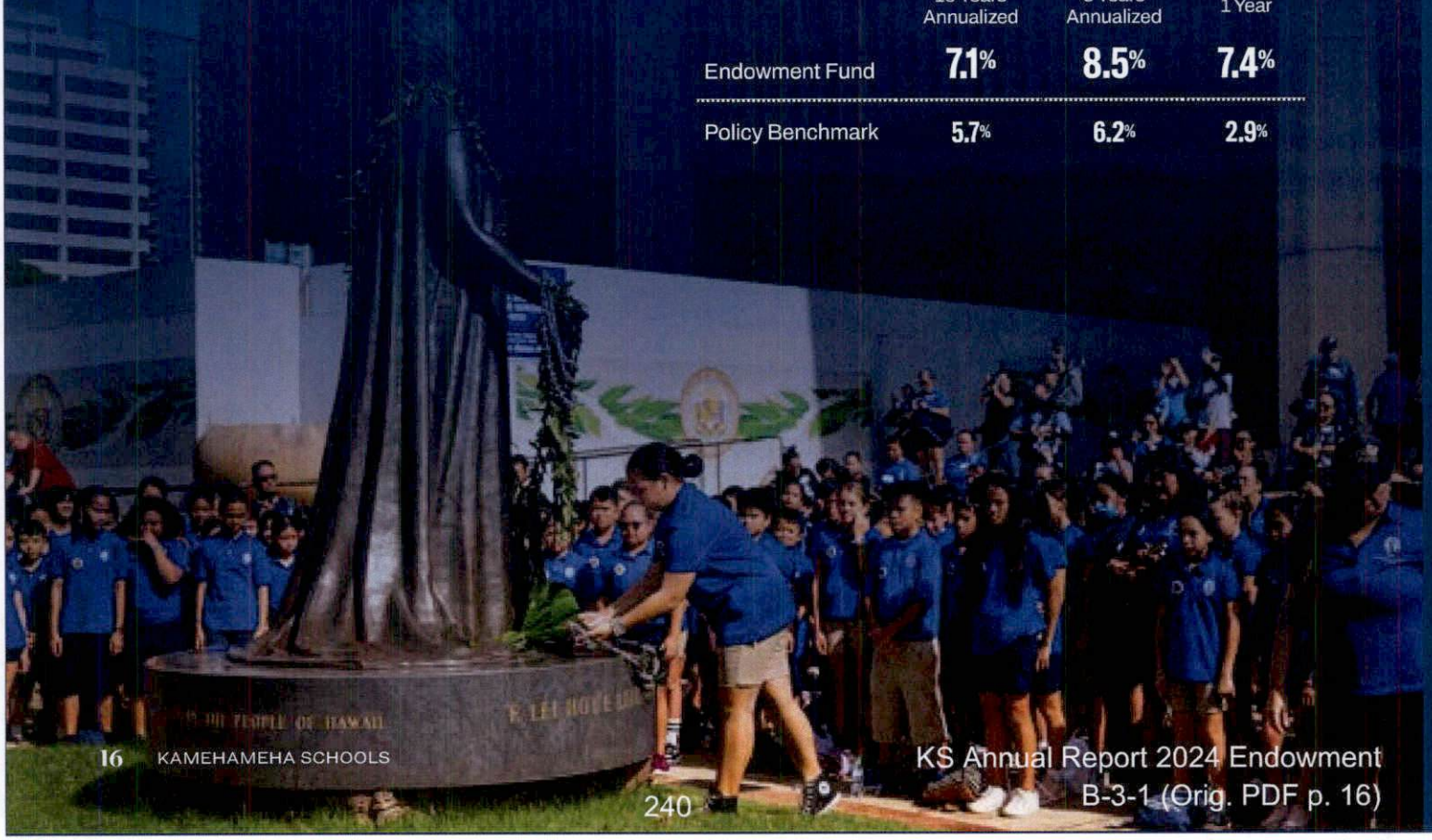
The enduring impact of Kamehameha Schools' mission is made possible by its $15.2 billion endowment, which provides 97% of the funding. With a globally diversified financial assets portfolio of $10.5 billion and $4.7 billion in Hawai'i real estate, the endowment is a cornerstone of KS' ability to deliver lasting value.

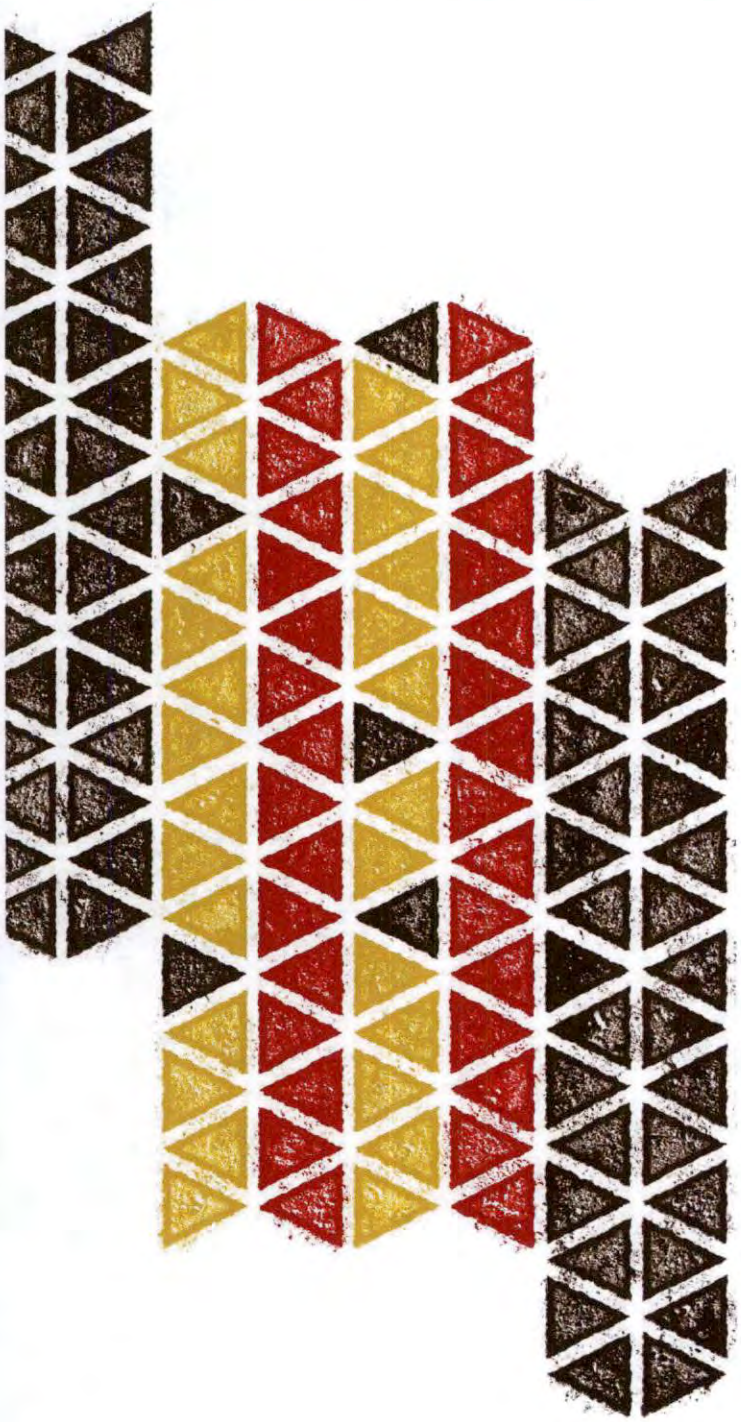
The goal of Kamehameha Schools' endowment is to provide superior risk-adjusted long-term returns to support its mission in perpetuity. The 10-year return added value versus a policy-weighted average of market benchmarks.



INVESTMENT RETURNS

	10 Years Annualized	5 Years Annualized	1 Year
Endowment Fund	7.1%	8.5%	7.4%
Policy Benchmark	5.7%	6.2%	2.9%





Ke Kula ʻo Kamehameha

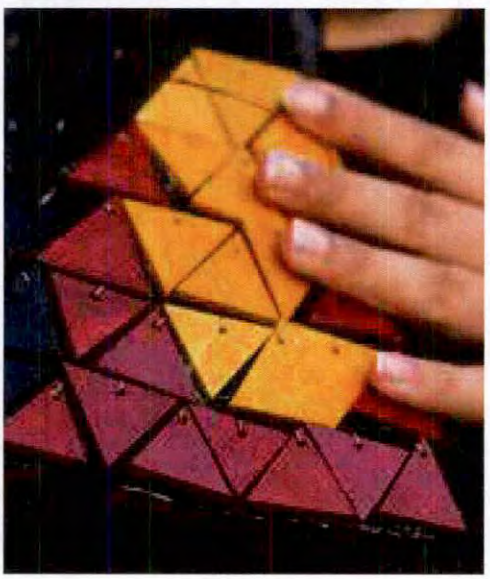
2024 HŌʻIKE KŪ MAKAHIKI

2024

HŌ'IKE KŪ MAKAHIKI O KE KULA 'O KAMEHAMEHA

KAMEHAMEHA SCHOOLS
ANNUAL REPORT
JULY 1, 2023 - JUNE 30, 2024







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Art is one of the many pathways to infuse our cultural identity into education, community, and stewardship of 'āina.

Traditional and modern Hawaiian artistry came together in these vibrant 'ahu 'ula lā'au made by middle school haumāna from Ke Kula 'o Kamehameha Kapālama. Using wood instead of feathers, these regal capes were featured in the Nā'iwa Culture and Fashion Showcase held in May 2024, which was directed and produced by kumu Ikaika Bantolina.

Aloha mai kākou,

Ua huliāmahi kākou no ka pono o ka lāhui i kēia makahiki ma ke kia ʻana i ko kākou manaʻo ma luna o nā keiki ma o ka hoʻoulu a me ka hoʻoikaika ʻana i nā pilina i ka moʻomeheu, pēlā pū me ke kākoʻo a me ka hoʻomāhuahua ʻana aʻe i ka mākia o nā kānaka ʻōiwi e alakaʻi ana i ka holomua o ke kaiāulu.

ʻIke ʻia ka holomua o E Ola! ma nā kahua kula ʻekolu, nā papa K-12, a me nā kula kamaliʻi he 30 ma o ka holomua o nā haumāna, ka hoʻonui ʻana i ka ʻōlelo Hawaiʻi ma nā papa haʻawina, a me ka lilo ʻana o ka ʻāina ʻo ia kekahi kahua hoʻonaʻauao nui e aʻo ʻia ai nā haʻawina koʻikoʻi e pili pono ana i nā haumāna. ʻO ka pahuhopu ka hoʻoulu ʻana i ka manaʻo e aʻo mau nā haumāna a me nā limahana, me ka hoʻokahua ʻana i kā kākou mau hana i ke kuanaʻike Hawaiʻi. Ma kēia mau hana a Ke Kula ʻo Kamehameha e ʻike ʻia ai ke koʻikoʻi o nā kaʻā o ka mauli o ka Hawaiʻi - ʻo ke olakino, ka ʻāina, ka ʻōlelo, ka hoʻāmana, a pēlā aku.

Ua hoʻoikaika ʻia kā kākou mālama ʻana i ka ʻāina ma ke ʻano Hawaiʻi. ʻO kā kākou pahuhopu ka hoʻōla ʻana a me ka hoʻoulu ʻana i nā kulāiwi a me ke kaiāulu e pili pū ana.

ʻO ka ikaika a me ka ʻonipaʻa o ko Lahaina kai hoʻoulu i kā kākou hana, ma Kuʻia kā kākou hana ma Kuʻia, i nā hana hoʻōla a lapaʻau hoʻi i alakaʻi ʻia e ke kaiāulu. I loko o ka pā nō paha a ke Kauaʻula, e hahai ʻia ana nō nā kukui pio ʻole o Lahaina e hoʻihoʻi i ka nani a me ke ola o nēia ʻāina. Lana ka manaʻo, e hoʻomanaʻo mau ʻia ka moʻolelo o kēia wahi a he kumu hoʻohālike nō paha ʻo Lahaina no ka hoʻoulu a me ka hoʻōla hou ʻana i nā kaiāulu ma ka pae ʻāina.

Ma ka hana pū ʻana me ke kaiāulu e ola ai ke ea o ka ʻāina a me ka mauli o kānaka. Ma ka ʻauamo ʻana i ke kuleana ʻo ka hoʻomau ʻana i ke ea e hoʻomau ʻia ai hoʻi ka hoʻoilina o ka wahine hele lā, Ke Aliʻi Bernice Pauahi Bishop, a ola ahuahu ka lāhui.

We cultivated meaningful change for our lāhui during the year by keeping our keiki at the center, activating cultural connections, and amplifying the voices and actions of ʻōiwi leaders driving community transformation.

The inspiring growth of E Ola! across our three K-12 campuses and 30 preschools can be seen in increased student achievement, the inclusion of more ʻōlelo Hawaiʻi throughout our curriculum, and ʻāina serving as essential learning spaces for deeply relevant lessons for our haumāna. We aim to foster lifelong growth mindsets in our learners and employees, grounding ourselves and our work in kuanaʻike Hawaiʻi. Kamehameha Schools' generational efforts reflect all that is central to Kanaka Maoli well-being – our health, ʻāina, language, agency and so much more.

We enhanced culturally rooted stewardship of our unified ʻāina portfolio. Our vision includes restoring both the vitality of our native landscapes as well as the kaiāulu and people connected to these places.

Inspired by Lahaina's strength and resilience, our ongoing work in Kuʻia demonstrates a holistic, community-led approach to healing, recovery and revitalization. The journey ahead will be challenging, and we will follow Lahaina ʻōiwi leaders to help bring back the area's natural abundance. We envision that this special place will one day serve as a model for how we help restore communities across the pae ʻāina.

In close partnership with our kaiāulu, we will continue to exercise ea, the life and breath that uplifts the mutual well-being of ʻāina and kanaka. As we take on the kuleana to advance ea, we see a future in which the legacy of our beloved founder, Ke Aliʻi Bernice Pauahi Bishop, will create and nourish a thriving lāhui.

E OLA MAU!





LEFT:
Kamehameha Schools Trustees (from left): Secretary/Treasurer Jennifer Noelani Goodyear-Kaʻōpua KSK'92, Chair Elliot Kawaihoʻolana Mills, Vice Chair Crystal Kauilani Rose KSK'75, Robert K.W.H. Nobriga KSK'91, and Michelle Kaʻuhane KSK'86

ABOVE:
Livingston "Jack" Wong
Chief Executive Officer







KS Maui haumāna earn top honors for native plant project aimed at aiding Lahaina cleanup

No ka pāhana nui makahiki ʻehā a ʻelua haumāna kālaimeaola AP ma KS Maui, ua kālele ʻo Bennett Takahama lāua ʻo Kadence Merritt i ka hoʻohana ʻana i nā lāʻau ʻōiwi e kōkua i ka hoʻomaʻemaʻe ʻana i nā mea ʻawahia a haumia hoʻi ma nā wahi e like me ka ʻāina ʻo Lahaina, kahi i pōʻino i ke ahi. Ua haku lāua i kūkohu o ke kākini kānana meaola me ka hoʻohana ʻana i ka mauʻu pili. Hoʻohana ʻia ke kākini kānana meaola ana hoʻohālike e hoʻōmo a e hoʻohehe'e hoʻi i nā mea haumia ma mua o ke komo ʻana i nā paipu omo wai e hiki aku ana i ke kai.

Ma ka hoʻokolohua pinepine ʻana i ʻike ai ʻo Takahama lāua ʻo Merritt i ka maikaʻi aʻe o kā lāua kūkohu ma mua o ke ana hoʻohālike i ka hoʻōmo ʻana i ka wai.

"He koʻikoʻi nō kā māua hoʻohana ʻana i kēia mau lāʻau ʻōiwi, a ʻo ia hoʻi nā lāʻau hoʻokahi a ko kākou kūpuna i hoʻohana ai ma nā ʻano hana like ʻole," wahi a Merritt.

Ua puka ka pāhana i ke kūlana mua ma ka Hōʻikeʻike ʻEpekema a Hana ʻEnekinia o ke Kalana ʻo Maui, a puka aku hoʻi ma ke kūlana ʻekolu ma ka Hōʻikeʻike ʻEpekema a Hana ʻEnekinia Kauʻāina o Regeneron ma Los Angeles. E hoʻomau ʻia ka hoʻokolohua ʻana i ke kūkohu me ka manaʻo, e hoʻohana ʻia paha ia kākini ma Lahaina a ma nā ʻāina o Pauahi kekahi.

KS Maui AP biology haumāna Bennett Takahama and Kadence Merritt centered their senior capstone project on utilizing lāʻau ʻōiwi Hawaiʻi to aid toxic cleanup in places like fire-ravaged Lahaina. They built a prototype bio-filtration sock that utilized live pili grass. Standard bio-filtration socks are used to soak up and dissolve pollutants before they reach storm drains that empty into the ocean.

Through rigorous testing, Takahama and Merritt found their pili grass prototype soaked up more water than a standard one.

"We found it very significant to use these Native Hawaiian plants because we know our ancestors found a wide variety of uses for these plants," said Merritt.

The project took the top prize in the Maui County Regional Science and Engineering Fair and the third prize award at the Regeneron International Science and Engineering Fair in Los Angeles. The prototype is undergoing further experimentation and has potential application in Lahaina and on ʻĀina Pauahi.



$523 MILLION
TOTAL EDUCATIONAL SPENDING



- $45M — Spent on debt financing and reserves
- $46M — Spent on other support services
- $56M — Spent on capital projects
- $84M — Spent on scholarships and community investments
- $292M — Spent on K-12 campuses and preschools

More than 2 of 3 haumāna received full or partial financial aid

EXHIBIT B-4
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-4

Petitioners hereby submit **Exhibit B-4-1-1 through B-4-1-3 and B-4-4-1 through B-4-4-3**, consisting of Royal Patent records, genealogical materials, and land award index documentation relating to Keauhou II lands and their historical ownership.

This exhibit includes Royal Patent records identifying land awarded to Lota Kamehameha (Kamehameha V), establishing that portions of the lands at issue derive from Royal Patent grants issued during the Hawaiian Kingdom.

The exhibit further includes land award index materials reflecting multiple land awards and ownership interests associated with the Keauhou II area. Petitioners allege that these records demonstrate that the land composition in the project area is not singular or conclusively established within the administrative record.

Additional materials included in this exhibit provide historical and genealogical context relevant to Keanolani and related royal lineage, supporting Petitioners' position that lands within the project area are tied to complex historical ownership and inheritance patterns.

Petitioners submit Exhibit B-4 to demonstrate that the full chain of title, ownership interests, and lawful authority over all lands within the project area have not been fully disclosed or established. Petitioners allege that reliance on the FEIS without complete title verification and disclosure is improper and undermines lawful decision-making, public trust obligations, and meaningful environmental review.

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No. 7844

ROYAL PATENT.

Upon Confirmation of the Land Commission.

WHEREAS, The Board of Commissioners to quiet Land Titles have by their decision awarded unto

Lota Kamehameha Kuliana Hilu 7715 Apana 17

an estate of **Freehold** less than Allodial, in and to the Land hereafter described, and whereas proper Application having been made to the Minister of the Interior for a Royal Patent on the within described land a Certificate of boundaries having been duly filed, and Whereas the Government Commutation therein was relinquished by resolution of the Privy Council adopted August 27th 1850

THEREFORE, KALAKAUA, by the Grace of God, King of the Hawaiian Islands, by this **Royal Patent,** makes known to all men, that he has, for himself and his successors in office, this day granted and given absolutely, in Fee Simple unto

Lota Kamehameha

all that certain piece of land situate at North Kona known as the Ahupuaa of Kaauhoe 2nd in the Island of Hawaii and described as follows:

"Beginning at the S.W. Corner of Kaauhoe 1st at a rock marked by Crosses and Situated in the bank Mauka of the Shore and South of the Cavern Onanaoikeha, thence the boundary runs along Kaauhoe 1st to the head of the Wolua, which is S. 87° 3' 8" E(true) 3633 ft. from this point and thence the Puu Loa Trig. Station is S. 52° 6' 46" E(true) 3616 ft. by the following boundaries of Kaauhoe 1st N. 79° 30' E(mag) 950 ft. due E.(mag) 2640 ft. thence along Kaauhoe 1st to a pile of Stones Against the Stone wall on the upper side of the "Mauka road" which is S. 87° 49' 34" E(true) 460 8 ft. from this point by the following boundaries of Kaauhoe 1st N. 79° 30' E(mag) 4290 ft. thence along Kaauhoe 1st to Pohakunahaha, which is situated in an old "AA" flow on the makai side of the road leading from Kainaliu to Kealapuali and which is N. 65° 41' 36" E(true) 3016 ft. from this point and thence Mt. Hualalai is N. 7° 2' W.(true) 34527 ft. by the following boundaries of Kaauhoe 1st N. 65° 30' E. (mag) 14520 ft. N. 49° E(mag) 22572 ft. thence along Kaauhoe 1st to a "long old Ahu" which is N. 4° 36' 15" E(true) 5270 ft. from this point and thence W. Hualalai is N. 9° 7' 6" W(true) 29380 ft. by the following boundaries of Kaauhoe 1st N. 39° 30' W(mag) 3102 ft. thence along Kaauhoe 1st to Kahaluu to a pile of Stones on a ridge below Charles Walls house which is N. 14° 6' 39" W(true) 4478 ft. from this point and thence the W. Hualalai trig. Station is N. 8° 14' 50" W(true) 24932 ft. by the following boundary of Kaauhoe 1st N. 55° E. W(mag) 1848 ft. to the boundary of Kahaluu and by the following boundary of Kahaluu.—

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N. 55° W (mag) 25 4/4 ft. thence N. 1° 8' 47" E (true) 82 76 ft. along Naumalumalu to the S. E. corner of Holualoa 1st. thence N. 28° 0' 45" W. (true) 10841 ft along Holualoa 1st to the South peak of Puu Laalaau; thence N. 12° 34' E (true) 6139 ft. along Honuaula to the W. Hualalai trig Station; thence N. 88° 32' 22" E (true) 2097 ft. along Kaupulehu to the S. Hualalai trig. Station; thence S 78° 53' 37" E (true) 24683 ft. along Kaupulehu to the East rim of Maihehakee, the Crater hill farthest down the East Slope of Hualalai; thence N. 87° 22' 42" W. (true) 11383 ft. along Kaupulehu to the South peak of the rivers Crater hill Puu Nahaha, on the upper edge of the Forest; thence S 68° 54' 47" E (true) 32270 ft. along Puu Nahaha to Nacheleleua on the Trail "AA" of the N. Side of the Lava Flow of 1859 and about 30 ft. South of a "Kipuka" and whence the Ohuamoa trig. Station bears N. 37° 43' E (true) 6760 ft. thence S. 30° 26' 37" E (true) 56135 ft. along Nache to the east peak of the cone in the South end of Mokuaweoweo Crater whence the West mauna Loa trig. Station (not quite in view) is N. 20° 22' 48" E (true) 5316 ft. thence S 68° 32' 36" W. (true) 56785 ft. along Kahuehue to the head of Kealia 1st whence the trig Station Halulu at the canoe anahalulu is S 8° W (true) 8204 ft. and the Water pool Komakawai is S 68° 22' 20" W (true) 12300 ft. thence along Kealia 1st, Kaulelii, Kiilae and Honaunau to an Ohia at the head of Honaunau which is N. 23° 27' 54" W (true) 15207 ft. from this point and whence W. Hualalai is N. 21° 9' 11" W (true) 94927 ft. thence N. 16° 47' 33" W (true) 2074 ft. along Honaunau to the S. E. Corner of Kaii 2nd by the following boundary of Honaunau N. 21° W (mag) 1386 ft. thence along Kaii 2nd and Kahauloa 3rd N. 33° 6' 28" W (true) 1482 ft. to a pile of Stones West of Puu Kini Kini called also Wakapele whence the trig Station W. Kini Kini is S. 53° 42' 50" E (true) 1327 ft. (from which W. Kini Kini W. Hualalai is N. 19° 46' 21" W. 79564 ft. by the following boundaries of Kaii 2nd N. 19° W (mag) 547 ft. N. 21° W (mag) 1221 ft. N. 25° W (mag) 1188 ft. N. 21° W (mag) 792 ft. and by the following boundaries of Kahauloa 2nd N. 9° W (mag) 607 ft. N. 13½° W (mag) 719 ft. N. 1° W (mag) 614 ft. N. 4° E (mag) 660 ft. thence along Kealakiekua to a pile of Stones on the Ulmi road which is N. 37° 11' 38" E (true) 18649 ft. from this point and whence W. Hualalai is N. 32° 4' 33" W (true) 69922 ft. by the following boundaries of Kealakiekua N. 82½° E (mag) 3630 ft. N. 71° E (mag) 4818 ft. N. 23½° E (mag) 4477 ft. N. 5° E (mag) 2640 ft. N. 24° W (mag) 2310 ft. N. 25° W (mag) 5940 ft. thence along Kealakiekua, Hokukano and Kalukalu to the highest point of the Crater hill Kikiaola which is N. 25° 15' W (true) 11066 ft. from this point and whence W. Hualalai is N. 38° 21' 39" W (true) 58955 ft. by the following boundaries of Kealakiekua S. 68° W (mag) 6336 ft. and by the following boundaries of Hokukano and Kalukalu N. 9½° W (mag) 1881 ft. N. 7° W (mag) 4427 ft. N. 2½° E (mag) 4554 ft. thence along Hokukano and Kalukalu and Lehuula to Kaanaokiha which N. 74° 30' 10" W (true) 23590 ft. from this point and whence W. Hualalai is N. 12° 43' W (true) 43996 ft. by the following boundaries of Hokukano & Kalukalu N. 85° W (mag) 3960 ft. S. 74° W (mag) 2244 ft. N. 80° W (mag) 924 ft. S. 60½° W (mag) 2112 ft. N. 61° W (mag) 1982 ft. N. 65° W (mag) 1188 ft. S. 81° W (mag) 9900 ft. and by the following boundaries of Lehuula nui N. 25½° W (mag) 4443 ft. thence along Lehuula nui to the trig. Station Lehuula near Jacks goat pens which Station is N. 45° 21' 40" W (true) 2285 ft. from this point and whence W. Hualalai is N. 10° 39' 36" W (true) 42088 ft. by the following boundaries of Lehuula nui N. 42° W (mag) 2475 ft. thence S. 81° 55' 17" W (true) 4173 ft. along Lehuula nui to S. E. corner of Honalo at a "Kipuka" in light woods called Kauhokoolea by the following boundaries of Lehuula nui S. 56° W (mag) 2640 ft. and S 58½° W (mag) 1533 ft. thence N. 19° 31' 29" W (true) 203 ft. along Honalo to a pile of Stones on an "AA" tract at the N. E. corner of Honalo, thence S 72° 16' W (true) 26884 ft. along Honalo to a pile of Stones in a ravine on the lower side of the "Mauka road" thence S 68° 19' 34" W (true) 7752 ft. along Honalo to the end of the ridge Nimoonimo thence S. 86° 36' 30" W (true) 6765 ft. along Honalo to a pile of Stones 30 feet below the Makai road "and just Mauka" of a large rock, and on the North edge of the ridge Kaulikii whence the trig station Kapuahoae is N. 46° 44' 19" E (true) 7625 ft. thence along the Ocean to the point of beginning, which is N. 10° 11' 46" W. (true) 5195 feet from this point. ∞

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Containing an area of 109600 Acres more or less; excepting and reserving to the Hawaiian Government, all mineral or metallic mines of every description.

TO HAVE AND TO HOLD, the above granted Land in ***Fee Simple,*** unto the said Lota Kamehamiha his Heirs and Assigns forever, subject to the taxes to be from time to time imposed by the Legislative Council, equally upon all landed Property held in Fee Simple.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the Great Seal of the Hawaiian Islands to be affixed this 2nd day of June 1887

(sd) Kalakaua Rex

BY THE KING:

The Minister of the Interior,

(sd) L Aholo

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

Genealogical Reference (Public Secondary Source — Keanolani, Wikipedia)
B-4-4-1
248

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en.wikipedia.org/wiki/Keanolani#:~:text=Keanolani%20(July%207%2C%201847%20–,her%20father's%20half-sister%20Ke'elikolani.
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Wikipedia began as an impossible dream. Today, we celebrate 25 years of humanity at its best. Join us

Keanolani

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Contents hide

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Birth and parentage
Upbringing and adulthood
Marriage and descendants
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Appearance hide

Text
- Small
- Standard
- Large

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Color (beta)
- Automatic
- Light
- Dark

Keanolani (July 7, 1847 – June 30, 1902) was a Hawaiian chiefess (ali'i) of the Kingdom of Hawai'i. She was the illegitimate daughter of Abigail Maheha and King Kamehameha V, who reigned from 1863 to 1872, and was born during a liaison between the two when they were students at the Chiefs' Children's School (later renamed the Royal School), a boarding school run by American missionaries for students of Hawaiian royal descent. Keanolani was raised by her father's half-sister Ke'elikōlani. Her illegitimate birth and unacknowledged parentage prevented her from succeeding to the Hawaiian throne when her father died without naming an heir, thus ending the reign of the House of Kamehameha. In 1873, she became a mistress of her uncle by marriage William Hoapili Ka'auwai. In 1874, she became a supporter of the newly elected House of Kalākaua. She married and left descendants. Her name is often abbreviated **Keano** or **Keanu**. In one source, she is referred to as **Keauo'okalau**.[1]

Keanolani	
Born	July 7, 1847 Kaua'i
Died	June 30, 1902 (aged 54) Waikiki, Honolulu, Oahu
Burial	July 2, 1902 Kawaiaha'o Cemetery
Spouse	Lihilihi William Hoapili Ka'auwai (unmarried) Kamali
Issue	Samuela Kekuiapoiwa William Hoapili Ka'auwai II Lot Kapuāiwa Kamehameha Keōpūolani Kali Olga Keahikuni Kekau'ōnohi
Father	Kamehameha V
Mother	Abigail Maheha

Birth and parentage [edit]

Keanolani was born July 7, 1847, on the island of Kaua'i.[2] Her birth occurred five months after her mother, fourteen-year-old Abigail Maheha, had an arranged marriage to a commoner named Keaupuni, an expelled student from Lahainaluna Seminary and servant of her *hānai* (informally adopted) mother, Governess Kekau'ōnohi of Kaua'i. Through Maheha, Keanolani was the granddaughter of High Chief Namalle and High Chiefess Kuini Līliha, who was the Royal Governor of O'ahu from 1829 to 1831 and a political adversary of Queen Ka'ahumanu, the

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en.wikipedia.org/wiki/Keanolani#:~:text=Keanolani%20July%207%2C%201847%20–,her%20father's%20half-sister%20Ke'elikōlani.
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Contents [hide]

(Top)
Birth and parentage
Upbringing and adulthood
Marriage and descendants
References
Bibliography

	Keōpūolani Kāli
	Olga Keahikuni Kekau'ōnohi
Father	Kamehameha V
Mother	Abigail Maheha

Birth and parentage [edit]

Keanolani was born July 7, 1847, on the island of Kaua'i.[2] Her birth occurred five months after her mother, fourteen-year-old Abigail Maheha, had an arranged marriage to a commoner named Keaupuni, an expelled student from Lahainaluna Seminary and servant of her *hānai* (informally adopted) mother, Governess Kekau'ōnohi of Kaua'i. Through Maheha, Keanolani was the granddaughter of High Chief Namaile and High Chiefess Kūini Liliha, who was the Royal Governor of O'ahu from 1829 to 1831 and a political adversary of Queen Ka'ahumanu, the Kuhina Nui (premier) during the reigns of Kamehameha II and Kamehameha III.[3][4][5] Maheha was a former student at the Chiefs' Children's School, later renamed the Royal School, a boarding school run by American missionaries Amos Starr Cooke and his wife Juliette Montague Cooke for students of Hawaiian royal descent. She was declared eligible for the throne of the Kingdom of Hawaii by King Kamehameha III.[6][7][6] However, the fourteen-year-old Maheha had left the school at the insistence of her teachers, and was married off to Keaupuni to cover an unexpected pregnancy.[4][9] Keaupuni was not the biological father of the baby, as was later attested by Mele, a witness in the 1855 divorce suit between him and Maheha.[4]

Her father was not officially identified. However, during and after her lifetime, speculation has focused on two princes of the Kamehameha dynasty: the seventeen-year-old Moses Kekūāiwa, who was the eldest boy at the Royal School, or his sixteen-year-old brother Lot Kapuāiwa, who later became King Kamehameha V. Evidence points toward Lot because Moses was expelled from the school two days before Maheha. Lot had also financially supported Maheha's husband Keaupuni. The entries from the period after September 1, 1845, were also torn out of Lot's school journal.[4][9][10][11]

Upbringing and adulthood [edit]

Keanolani was raised by Princess Ruth Ke'elikōlani, her namesake (one of Ke'elikōlani's secondary name was Keanolani) and the half-sister of Kamehameha V.[12][13] Kamehameha V reigned from 1863 to his death on December 11, 1872, without acknowledging his daughter or naming an heir to the throne, and was succeeded by his cousin Lunalilo.[14][15] Keanolani would not have been eligible to succeed Kamehameha V since the Hawaiian constitution only permitted succession through legitimate lines. Similarly, Albert Kūnuiākea, the illegitimate son of Kamehameha III, had not been considered for the throne in 1854.[16]



While still married to her first husband Lihilihi, Keanolani became the mistress of William Hoapili Ka'auwai, an Anglican chaplain and a high chief of Maulan descent who had divorced her half-aunt Kiliwehi in 1872. During this period, Hoapili and Keanolani were partisans of King Kalākaua, elected as monarch in 1874 after the death of King Lunalilo. Hoapili was

Appearance [hide]

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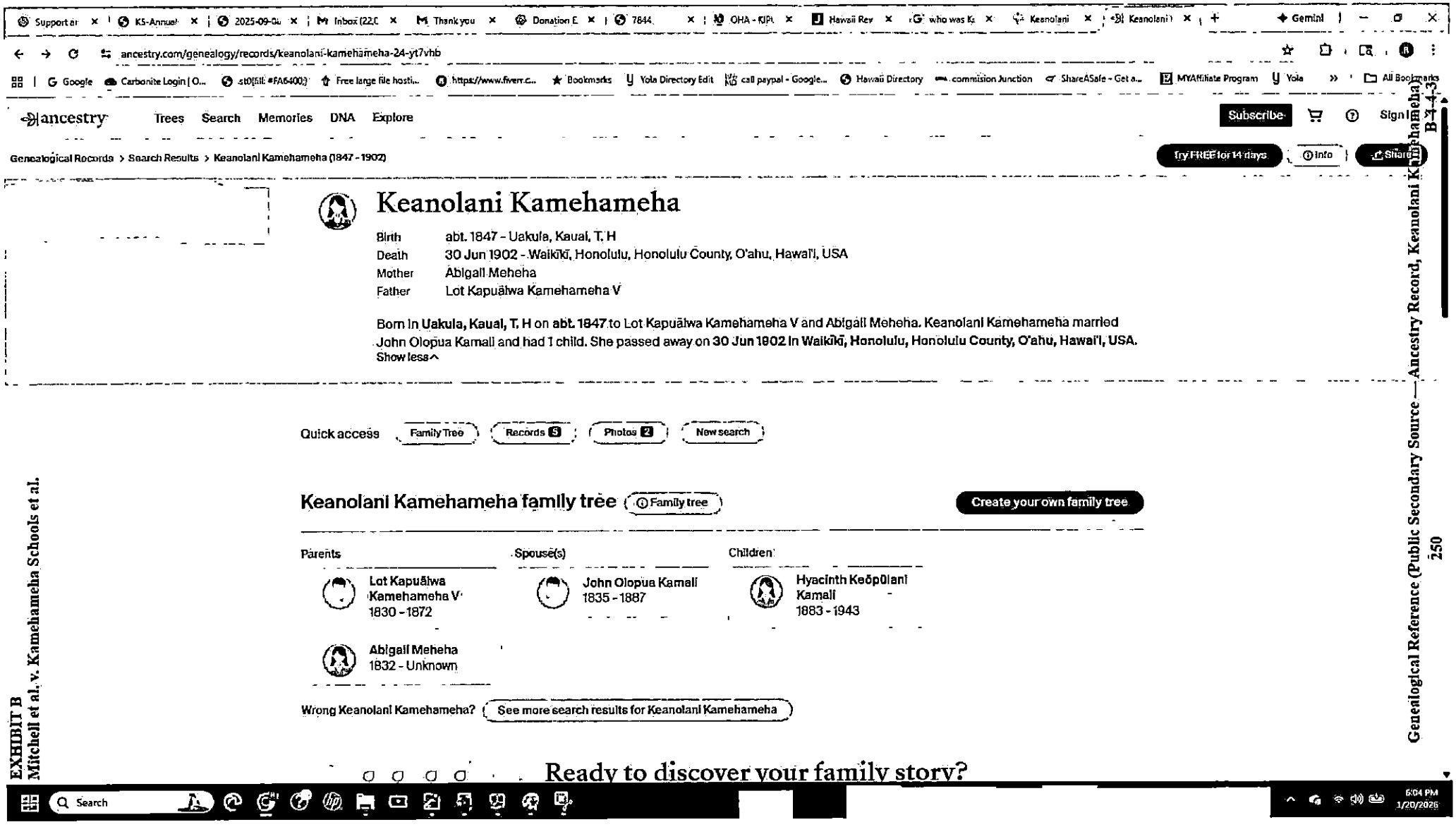

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

Genealogical Reference (Public Secondary Source — Ancestry Record, Keanolani Kamehameha)
B-4-43
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EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-4-5-1 through B-4-5-2

Petitioners hereby submit Exhibit Series B, consisting of Exhibits B-4-5-1 through B-4-5-2, including excerpts from historical "Indices of Awards" records identifying lands awarded through the Māhele and confirmed by the Commission to Quiet Land Titles.

This exhibit series includes documented listings of Land Commission Awards and Royal Patent references, identifying specific awardees, locations, and associated land divisions, including lands attributed to Kamehameha and related ali'i.

The excerpts further demonstrate the existence of multiple recorded awards and parcels within the relevant geographic areas, reflecting the complexity of land distribution and the necessity of examining complete chains of title, heirship, and ownership interests derived from these original awards.

These materials are submitted in support of Petitioners' claims that lands derived from Land Commission Awards and Royal Patents may involve multiple interests and require full disclosure and verification of title and authority prior to reliance, approval, or development.

These materials are true and correct copies of historical land records. Pagination references correspond to the original source materials and associated PDF page numbering.

Partial List of Lands Agreed Upon by the Mahele to Belong to the More Important Aliis and Chiefs and Confirmed to Them by Awards of the Commission to Quiet Land Titles

Awardee	Remarks	L. C. A.	Book	Page	Apana	R.P.	Lands and Location
Kamamalu, Victoria (W) (Continued)							Pohakanele, Hana, Maui Kihapuhala, Hana, Maui Papahawahawa, Hana, Maui Moalii, Lahaina, Maui
Kamehameha, Lot (King Kamehameha V)	Brother of Alexander Liholiho—King Kamehameha IV, V. Kamamalu, Moses Kekuaiwa and half brother of Ruth Keelikolani	7715	10	316	1	2567	Hanakaoo, Lahaina, Maui
		7715	10	621	2	7858	Moanalua, Kona, Oahu
		7715	10	621	3	7860	Waiokama, Lahaina, Maui
		7715	10	622	4	.....	Kahua, Kohala, Hawaii
		7715	10	622	5	4395	Hikiaupea (2), Kohala, Hawaii
		7715	10	622	6	4395	Hawi, Kohala, Hawaii
		7715	10	622	7	.....	Kamano, Kohala, Hawaii
		7715	10	622	8	.....	Hihiuhookahi, Kohala, Hawaii
		7715	10	622	9	.....	Kauapalaloa, Kohala, Hawaii
		7715	10	622	10	7843	Kaupulehu, Kona, Hawaii
		7715	10	622	11	8214	Kaloko, Kona, Hawaii
		7715	10	622	12	7844	Keauhou, Kona, Hawaii
		7715	10	623	13	7845	Puaa, Kona, Hawaii
		7715	10	623	14	.....	Hilea, Kau, Hawaii
		7715	10	623	15	6885	Punaluu, Kau, Hawaii
		7715	10	623	16	8335	Paukaa, Hilo, Hawaii
		7715	9	996	....	2000	House Lot, Honolulu, Oahu
	Given to Trustees B. P. Bishop Estate, Nov. 14, 1890. See Revised Laws 1925, page 2147:						Kaunakakai, Molokai Portion of Kaakaukukui, Oahu Paauau, Kau, Hawaii
	By action of the Privy Council on Aug. 29, 1850, as recorded on page 423 of Vol. 3 of Privy Council Records, a Resolution was passed for his relief as follows: "Resolved that in consideration of the relinquishment of "Kahikinui" on East						

NUMERICAL INDEX OF AWARDS

L. C. A.	Book	Page	Awardee	Location	R. P.	Book	Page	Memo
7715	10	622	Kamehameha, Lota	Kaupulehu, N. Kona, Hawaii	7843	29	179	
7715	10	622	Kamehameha, Lota	Keauhou 2, N. Kona, Hawaii	7844	29	183	
7715	10	622	Kamehameha, Lota	Puaa 1, Kona, Hawaii	7845	29	187	
7715	10	621	Kamehameha, Lota	Waiokama, Lahaina, Maui	7860	29	195	
7715	10	622	Kamehameha, Lota	Kaloko, N. Kona, Hawaii	8214	35	483	
7715	10	621	Kamehameha, Lota	Moanalua, Kona, Oahu	7858	29	211	
7715	10	623	Kamehameha, Lota	Paukaa, Hilo, Hawaii	8335	36	41	
7716	9	261	Keelikolani, R.	Kanahena, Honuaula, Maui	.....	....	.....	
7716	9	261	Keelikolani, R.	Opea, Kona, Hawaii	.....	....	.....	
7716	9	259	Keelikolani, R.	Manananui, Ewa, Oahu	.....	....	.....	
7716	9	260	Keelikolani, R.	Hianaloli, N. Kona, Hawaii	.....	....	.....	
7716	9	260	Keelikolani, R.	Laaloa, N. Kona, Hawaii	.....	....	.....	
7716	9	261	Keelikolani, R.	Hamanamana, Kona, Hawaii	.....	....	.....	
7716	9	260	Keelikolani, R.	Kealia 2, S. Kona, Hawaii	8128	35	137	
7716	9	259	Keelikolani, R.	Waipa, Halelea, Kauai	8142	35	193	
7716	9	259	Keelikolani, R.	Kahikinui, Maui	7791	29	131	
7716	10	623	Keelikolani, R.	Kuhua and Kuia, Lahaina, Maui	8146	35	209	
7717	6	601	Luahiwa	Waihee, Koolaupoko, Oahu	2129	9	177	
7718	Not Awarded							
7719	7	364	Haia	Maomao, Olowalu, Maui	7209	26	767	
7720	3	591	Kahanaukama	Kahauko, S. Kona, Hawaii	.....	....	.....	
7721	7	20	Makaha	Ninole, Kau, Hawaii	7879	30	449	
7722	5	304	Hookala	Kawailoa, Waialua, Oahu	.....	....	.....	
7723	4	72	Hopee	Mananaiki, Ewa, Oahu	6240	23	647	
7724	9	35	Poholapu	Lahaina, Maui	1688	6	359	
7725	Not Awarded							
7726	Not Awarded							
7727	6	15	Paukoa	Malaekahana, Koolauloa, Oahu	7965	34	61	
7728	Not Awarded							
7729	Not Awarded							

EXHIBIT B-4
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES B-4

Petitioners hereby submit **Exhibit Series B-4-6 and B-4-7**, consisting of records and mapping data from the Office of Hawaiian Affairs (OHA) KIPUKA Database relating to **Land Award – Kamehameha, Lota**, associated with lands identified within the Keauhou 2 ahupua'a, North Kona, Hawai'i Island.

This exhibit series includes the following excerpts and corresponding exhibit page numbers:

• Exhibit B-4-6 (Exhibit Page 253): OHA KIPUKA Database – Land Award Record and Mapping (Kamehameha, Lota)
• Exhibit B-4-7 (Exhibit Page 254): OHA KIPUKA Database – Land Award Record and Mapping (Kamehameha, Lota) (continued)

These materials are submitted as evidentiary support regarding land award identification, parcel configuration, and mapping data reflecting Land Commission Award-related areas within Keauhou 2, and are relevant to issues concerning land ownership, title, and the presence of multiple or non-uniform parcels within the project area.

B-4-9

OHA - KIPUKA Database

kipukadatabase.com/kipuka/LandAwards.html?ObjectID=22644&b=2#view2

KIPUKA

He aliʻi ka ʻāina; he kauwā ke kanaka



Land Award - Kamehameha, Lota

Print Add Data

Location	Description	Source	Historic Sites	Links to Other Records	Community Input	Papakilo Database

Mokupuni	Moku	Ahupuaʻa	ʻIli
Hawaiʻi	Kona	Keauhou 2	None Found

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EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Land Award Record (OHA KIPUKA Database)
V, Lota)
B-4-6
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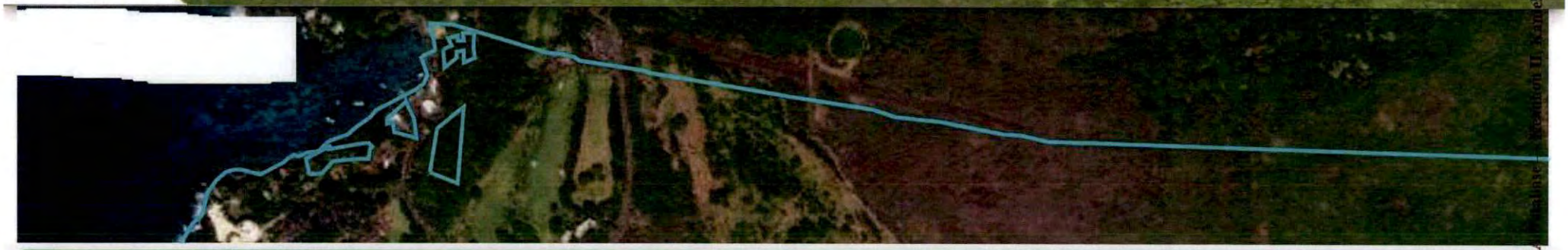
OHA - KIPUKA Database

kipukadatabase.com/kipuka/LandAwards.html?ObjectID=22644&b=2#view2

KIPUKA

He aliʻi ka ʻāina; he kauwā ke kanaka



Land Award - Kamehameha, Lota

Print | Add Data

Location | Description | Source | Historic Sites | Links to Other Records | Community Input | Papakilo Database

Mokupuni	Moku	Ahupuaʻa	ʻIli
Hawaiʻi	Kona	Keauhou 2	None Found

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EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Land Award Record (OHA KIPUKA Database | Keauhou II, Kamehameha V Lota)
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EXHIBIT B-5
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES B-5

Petitioners hereby submit **Exhibit Series B-5-1 through B-5-7**, consisting of selected excerpts from the Final Environmental Impact Statement (FEIS) for the Keauhou Bay Management Plan, including sections addressing groundwater resources, stormwater runoff, drainage, water demand, infrastructure, and related environmental impacts and mitigation measures.

This exhibit series includes the following excerpts and corresponding exhibit page numbers:

- Exhibit B-5-1 (Exhibit Page 255): FEIS Vol. I §4.5 – Groundwater (Existing Conditions)
- Exhibit B-5-2 (Exhibit Page 256): FEIS Vol. I §4.5 – Storm Water Runoff and Drainage (Existing Conditions)
- Exhibit B-5-3 (Exhibit Page 257): FEIS Vol. I §4.5 – Potential Impacts and Mitigation Measures (Groundwater and Surface Waters)
- Exhibit B-5-4 (Exhibit Page 258): FEIS Vol. I §4.5 – Storm Water Runoff and Drainage (Impervious Surface Increase)
- Exhibit B-5-5 (Exhibit Page 259): FEIS Vol. II – DEIS Comment-Response Matrix (Runoff, Erosion, and Water Management)
- Exhibit B-5-6 (Exhibit Page 260): FEIS Vol. II – DEIS Comment-Response Matrix (Water Quality and Agency Review)
- Exhibit B-5-7 (Exhibit Page 261): FEIS Vol. II – Sewage, Wastewater, and Infrastructure Impacts

These materials are submitted as evidentiary support regarding existing environmental conditions, acknowledged risks of runoff, erosion, and infrastructure limitations, projected increases in water demand and impervious surface coverage, and identified concerns relating to wastewater management and potential impacts to groundwater and coastal water quality.

4.5 Groundwater, Surface Water, and Drainage

Existing Conditions

Water resources include surface water (e.g., streams, lakes, rivers and wetlands), groundwater, floodplains, coastal resources, and marine water, and compose the hydrology of a watershed. The watersheds in the Hawaiian Islands are relatively small, steep, and have fast flowing streams with underlying highly permeable volcanic rocks and soils.

Groundwater

On the Island of Hawai'i, groundwater is the primary source of drinking water. In Kona, groundwater occurs as both basal groundwater and high-level (dike-impounded perched) groundwater. The rainfall pattern of the region is responsible for the recharge of the basal aquifer that extends from the upper slopes of Hualālai to the shoreline. The basal lens in Kona is relatively thin and inconsistent due to the low rainfall input and the leakage of groundwater at the coastline. Wells drawing from basal groundwater in Kona are susceptible to salinity if they are drilled too deep or if they are over-pumped. The Project Area is situated in the Keauhou Aquifer System (80901), which is within the Hualālai Aquifer Sector Area on the western slope of the Mauna Loa. The Keauhou Aquifer System currently has an existing usage of 15.4 million gallons per day (MGD) and a sustainable yield of 38 MGD. Brackish water is another groundwater resource reserve type in Kona. Brackish water is created because of seawater intrusion at the shoreline.

The County of Hawai'i adopted Ordinance 11-7, the Hawai'i County Water Use and Development Plan (HWUDP), dated August 2010; and the CWRM granted approval in December 2011. Within the HWUDP, the Keauhou Aquifer System Area (ASYA) was identified to be considered for further evaluation in the HWUDP. In March 2017, the Keauhou Aquifer System, Hawai'i Use and Development Plan (Keauhou HWUDP) was finalized, providing an integrated approach to land use planning and water resource development and an estimate of future water demand projections based on County land use/zoning policies and water use rates for the Keauhou ASYA.

According to the Keauhou HWUDP, there are 47 production wells in the Keauhou ASYA, including 16 municipal, 12 irrigation, one industrial, five agricultural, and 13 wells drilled but categorized as unused (*Figure 4-30).* The properties surrounding Keauhou Bay are served by the County of Hawai'i Department of Water Supply's (DWS) North Kona Water System which is sourced from the Kahalu'u Shaft Wells located further north of the Project Area. The wells feed the Kahalu'u Tanks No. 4 and 4a at an elevation of 310 ft. msl which provide water service to the DWS distribution mains serving the properties surrounding Keauhou Bay.

Additionally, the DOH Clean Water Branch (CWB) implements a beach monitoring program, which focuses on detecting bacterial contamination in Hawai'i's recreational coastal waters. The program is supported by annual federal funding through the Beaches Environmental and Coastal Health (BEACH) Act and is designed to reduce the risk of illness among beach users. As part of this program, the CWB conducts routine monitoring at public beaches statewide, including Keauhou Bay.

According to CWB's dataset on Exceedances During Rain Events (1999–2021), Keauhou Bay recorded one exceedance in May 2005. More recently, in February 2023, a beach advisory was issued due to a high bacteria count detected during routine monitoring, with levels reported at 137 colony-forming units per 100 mL. The cause of the exceedance was undetermined. The DOH noted that Keauhou Bay has historically met acceptable beach threshold levels and that no known sources of fecal contamination were identified.

Storm Water Runoff and Drainage

Like the rest of the Keauhou ASYA, the Project Area consists of moderate to steep slopes of highly permeable volcanic soils, primarily 'a'ā lava rock. Due to the topography of the Project Area, three drainage basins are present that collect and channel rainfall in the makai direction *(Figure 4-31)*. The largest of these, identified here as Drainage Basin A, is comprised of the entire Kāneaka, Ka'ili'ilinehe, Kāmau'ai, and a portion of the Kamohoali'i Zone. Drainage Basin B is comprised of the portion of the Kamohoali'i Zone makai of Old Government Road where the existing commercial facilities are located. Drainage Basis C correlates with the Kaimukī Zone.

Due to the low frequency of substantial rainfall and high permeability of the soils throughout the Project Area, surface runoff generally does not occur in the typical rainfall occurrence. As a result, the Project Area does not contain any visible natural gulches or waterways. Runoff either percolates into the underlying groundwater or evaporates into the atmosphere. Offsite, existing drainage infrastructure is limited to gutters, swales, and inlets to dry wells along Kaleiopapa and Kamehameha Road.

There are no drainage reports or calculations on file with the County of Hawai'i or DOT for the adjacent public roadways or surrounding developed properties. However, existing stormwater runoff peak flow estimates for the three (3) drainage basis within the Project Area are presented in *Table 4-4*.

Table 4-4 Existing Stormwater Runoff Peak Flow Estimates

Project Group	Area (Acres)	Flow from a 10-Year Storm Event/Acre (cfs)	Total Flow from a 10-Year Storm Event (cfs)
Drainage Area A	25.24	1.90	57.70
Drainage Area B	0.61	3.97	2.42
Drainage Area C	2.71	1.82	5.93

Potential Impacts and Mitigation Measures

Groundwater

The proposed improvements are projected to result in an average water demand of approximately 95,879 97,466 GPD. To accommodate the water demand, new water infrastructure is proposed as part of the planned improvements, to connect to the existing infrastructure currently owned and operated by DWS. The new water infrastructure will transmit potable water to the area near the Kauikeaouli birth site, the low-impact lodging, and the facilities at the bayfront. Refer to EIS *Section 4.12.1 Water Supply*, for a detailed analysis of the Project's water demand.

In 2012, Kamehameha Schools and the Water Board of the County of Hawai'i entered into a Water Agreement which reserved 240 water credits to the Project Area as part of Kamehameha School's future plans for the KBMP. The 240 credits being utilized for the Project are existing allocated and entitled credits not dependent on new water source development.

According to the 2017 Hawai'i Water Use and Development Plan Update for the Keauhou Aquifer System (HWUDPU), one of the criteria for designation of a ground water hydrologic unit is if ground water pumpage reaches 90% of the sustainable yield, which would be 34.2 MGD for the Keauhou ASYA. As indicated in the HWUDPU, the projected demand which includes authorized planned uses is below the 90% sustainable yield trigger for designation. As the KBMP is considered an authorized planned use in the HWUDPU as a result of the 2012 Water Agreement with DWS, water withdraws at Kamehameha Schools's maximum use of 240 water credits would not result in adverse impacts to the Keauhou ASYA, including on a cumulative basis with other authorized planned uses.

To accommodate the water demand, a new water supply system is proposed as part of the planned improvements. The new water supply system is proposed to connect to the existing infrastructure currently owned and operated by DWS. The new water system will supply potable water to the area near the Kauikeaouli birth site, the low-impact lodging, and the facilities at the bayfront. However, Kamehameha Schools will consult with the DWS to ensure the Keauhou ASYA has the capacity to honor and support the proposed improvements. Notably, there is an understanding in place between DWS and Kamehameha Schools to develop additional water wells for the West Hawai'i Region.

Additionally, Kamehameha Schools is a member of the Three Mountain Alliance, a watershed partnership of ten members encompassing over one million acres on Hawai'i Island. In 2007, the Three Mountain Alliance prepared a Management Plan that identified management goals, objectives, and operational protocols; and developed strategies for each of its four priority management areas to address the high priority management issues that affect multiple landowners and natural resources across its landscape. Kamehameha Schools, as part of the Three Mountain Alliance, will continue to assist in the preservation and restoration of watersheds in the Keauhou ASYA which will ultimately protect and potentially augment the ground water resources.

Surface Waters

The Project's proposed restoration and expansion of Hoʻokūkū Pond will provide significant benefits to water quality within the pond and contribute to the ecological health of this unique anchialine ecosystem. By removing accumulated sediment and addressing eutrophication, the Project will enhance water clarity and circulation, which will help to reduce algal overgrowth and create an improved habitat for native species. Through the clearing and cleaning of the pond floor, along with constructing subsurface water pockets using boulders, the Project aims to establish conditions that support the resurgence of native species and enhance water quality by promoting a balanced, naturally regulated aquatic environment. The

pond expansion into adjacent grassy areas, framed by native plantings and rock walls, will further support the habitat needs of local species, fostering a sustainable and culturally significant ecosystem.

During Project construction, potential impacts to Ho'okūkū Pond include dust and debris from nearby earthmoving and vegetation clearing occurring in the cultural corridor, which could affect water quality if not properly managed. As pond restoration requires the removal of sediment and debris from the pond floor, there is a risk of suspended sediment entering the water column, leading to temporary turbidity.
To mitigate these impacts, BMPs will be deployed to ensure that construction activities do not negatively impact the pond and surrounding water quality. Erosion and sediment control measures will include using filter socks, silt barriers, and sediment basins to contain and filter any runoff from disturbed areas. As clearing and grubbing progresses for improving walkways and landscaping, only small areas will be disturbed at a time to limit the exposure of bare soil, and any exposed areas will be temporarily covered to prevent erosion. Additionally, BMPs will involve frequent inspections and maintenance of all erosion and sediment control devices, particularly during heavy rainfall, to prevent sediment-laden water from reaching Ho'okūkū Pond or nearby Kaopa Spring.

Marine Waters

All construction activities will be confined to land, with no work planned in ocean waters, thereby limiting potential direct impacts on the bay's water quality. The Project will comply with all NPDES permit requirements, and follow established practices to prevent sediment and pollutants from reaching nearby water bodies during construction.

The existing Project Area lacks active management and does not contain infrastructure to capture or treat stormwater, resulting in untreated runoff that may flow toward the ocean. With implementation of the Project, drainage improvements and best management practices will be introduced to capture and treat runoff on site. These measures will reduce the potential for stormwater-related impacts. As a result, water quality conditions in Keauhou Bay may improve through reduced sediment and pollutant loading. The following section provides a detailed discussion of stormwater and drainage.

Storm Water Runoff and Drainage

Stormwater runoff will be generated at the Project Area with top soil, vegetation, and impervious surface areas replacing porous lava surfaces. As illustrated in *Table 4-5* below, the Project is anticipated to result in a total increase of 340,919 sf of non-permeable surface area. Impervious surfaces, like concrete and asphalt, do not allow water to absorb into the ground as they are solid, non-porous materials that impede water from seeping into the soil beneath.

Table 4-5: Change in Non-Permeable Surface Area

	Existing (sf)	Proposed (sf)	Increase Change(sf)
Roads and Parking	151,183	290,399	139,216
Walking Paths and Lānai	12,252	106,630	94,378
Structures	12,491	119,816	107,325
Total	175,926	516,845	340,919

Table 4-6 presents the proposed stormwater runoff peak flow estimates for the three drainage basins identified within the Project Area.

Exhibit B
Mitchell et al. v. Kamehameha Schools et al.

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	to 13-171. These documents are available via the Internet at http://dlnr.hawaii.gov/cwrm. Our comments related to water resources are checked off below. • We recommend coordination with the county to incorporate this project into the county's Water Use and Development Plan. Please contact the respective Planning Department and/or Department of Water Supply for further information. • We recommend that water efficient fixtures be installed and water efficient practices implemented throughout the development to reduce the increased demand on the area's freshwater resources. Reducing the water usage of a home or building may earn credit towards Leadership in Energy and Environmental Design (LEED) certification. More information on LEED certification is available at http://www.usgbc.org/leed. A listing of fixtures certified by the EAP as having high water efficiency can be found at http://www.epa.gov/watersense. • We recommend the use of best management practices (BMP) for stormwater management to minimize the impact of the project to the existing area's hydrology while maintaining on-site infiltration and preventing polluted runoff from storm events. Stormwater management BMPs may earn credit toward LEED certification. More information on stormwater BMPs can be found at http://planning.hawaii.gov/czm/initiatives/low-impact-development/ • We recommend the use of alternative water sources, wherever practicable. • We recommend participating in the Hawaii Green Business Program, that assists and recognizes businesses that strive to operate in an environmentally and socially responsible manner. The program description can be found online at http://energy.hawaii.gov/green-business-program. • We recommend adopting landscape irrigation conservation best management practices endorsed by the Landscape Industry Council of Hawaii. These practices can be found online at	Potential land erosion due to the implementation of the KBMP has been addressed in the Draft Environmental Impact Statement (DEIS). DEIS Section 4.5, describes stormwater runoff peak flow estimates for both existing conditions and with project implementation. At present, portions of the KS properties at Keauhou Bay are unmanaged and susceptible to runoff and erosion. The Project is expected to result in long-term benefits as permanent sediment control measures and stormwater infrastructure would minimize runoff and erosion. Those strategies may include but are not limited to, detaining, retaining and infiltrating runoff into the ground. Although an operator for the resort has not yet been identified, KS will encourage the use of water efficient practices and alternative water sources whenever practical. Water conservation measures will be implemented in design of the Project and may include, but not be limited to, the following: efficient irrigation systems such a drip system and moisture sensors, utilization of non-potable water for irrigation, drought tolerant plants,

Table 7.2 DEA Summary of Comments and Responses

Comments	Commenter	Responses
	http://www.hawaiiscape.com/wp-content/uploads/2013/04/LICH_Irrigation_Conservation_BMPs.pdf There may be the potential for ground or surface water degradation/contamination and recommend that approvals for this project be conditioned upon a review by the State Department of Health and the developer's acceptance of any resulting requirements related to water quality.	and the use of Water Sense-labeled ultra-low flow water fixtures and toilets. The County Department of Water Supply (DWS) will continue to be consulted as the Project design progresses. Final construction drawings will be reviewed and approved by DWS and the Hawai'i Fire Department. Thank you for your participation in the environmental review process.
State DLNR DOBOR	We have no objections.	Thank you for your letter dated April 21, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge that the Department of Boating and Ocean Recreation has no objections at this time. Thank you for your participation in the environmental review process.
State DLNR DOFAW	The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your request for comments on the EISPN regarding the proposed KBMP for the subject parcels located in Keauhou, on the island of Hawai'i; TMK: (3) 7-8-012:Various & (3) 7-8-010:Various.The proposed project consists of reorienting uses at the bay and establishing new place-based cultural education and revenue-generating opportunities. Management strategies include establishing a Heritage Management Corridor, repositioning and developing commercial bayfront areas and	Thank you for your letter dated April 25, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343.

some sewer lines are quite old. One such line on the East shore of the Bay broke during a significant tidal event. The DEIS does not account for sewer line leakage or the risk from extreme tidal events. This problem needs to be evaluated, and where sewer lines are at risk and need to be replaced by resilient lines such as High-Density Polyethylene (HDPE)."

Mitigation measures would thus entail an assessment and possible upgrading of the sewer lines currently under the project area. The DEIS does not discuss the possible overloading of the current wastewater discharge or the leeching potential. Mitigation measures would also include a study to ascertain whether the addition of a 150-unit resort and other buildings would overload tbe current wastewater discharge used to irrigate the nearby golf course and whether there is leeching into the groundwater and the Bay.

c.) Use of the Boat Ramp and Discharge of Pollutants:

Current usage of the boat ramp results in the discharge of pollutants into the Bay. Most boat owners do not use ocean friendly detergents to washdown the boats, but rather harmful cleaners which go directly into Keauhou Bay. Another product used extensively by commercial fishermen (often late at night) is Clorox bleach, which is essential to sanitizing fish boxes to minimize the proliferation of bacteria, and its transfer to the next catch.

There are very few 2-stroke motors (lubricating oil is injected into the gasoline) left in the fleet, but those that remain most likely account for the majority of the oil that gets in the water especially when the engines are being flushed in the washdown area.

The DEIS fails to discuss these current negative practices. Mitigation efforts might include stopping the use of the current area for washdown and installing a completely new washdown area for boats-one that is fully isolated and prevents wastewater from entering the Bay.

<u>The DEIS adversely and significantly impacts congestion, traffic, and noise in this area:</u>

The construction trucks needed to implement this plan alone will add dust, traffic, and noise to otherwise quiet neighborhood. The DEIS concedes this point.

Once the 150-unit resort is built, assuming at least a two-person occupancy rate per unit with one rental car per unit, congestion will be magnified. The resort will also have employees-additional persons. The DEIS states: "An increase in visitor accommodations will result in an increase in water consumption, wastewater disposal, and solid waste generation. Therefore, there will be increased demand on existing utilities and infrastructure." (DEIS at 4.16) However, there is an inadequate discussion of how these people will impact the area, specifically, their foot traffic and their access to and use of this tiny Bay.

Congestion already exists due to various users of the Bay: Outrigger Kona Resort & Spa guests, the popular Ho'oulu Community Farmers Market visitors, tbe Canoe Club members, tourists visiting cultural sites, customers of Fair Wind Cruises, Dolphin Discoveries, and Sea Quest, kayakers, fishermen, divers, paddlers, snorkelers, swimmers, and park goers. This congestion will be amplified hy those visiting and working at the proposed 150-unit resort, the restaurant, the retail center, and the cultural/educational center.

The DEIS accurately states that the area is already congested: "High demand among the Keauhou Bay user groups has resulted in vehicle, pedestrian, and in-water congestion and conflicts." (DEIS at 2.6.3) The DEIS goes on to state: "Existing vehicle and pedestrian circulation patterns across Keauhou Bay have evolved over time to serve a variety of changing land uses within a small, constrained area. The current situation presents both functional and hazardous conflicts between pedestrians, bicyclists, and vehicles (cars, buses, delivery trucks, and boat trailers), as well as wayfinding challenges along the immediate

Exhibit B
Mitchell et al. v. Kamehameha Schools et al.
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EXHIBIT B 5
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-5

Petitioners hereby submit Exhibit Series B, consisting of **Exhibits B-5-8-1 through B-5-8-6**, including photographic screenshots documenting stormwater runoff, roadway flooding, and drainage conditions at and surrounding Keauhou Bay.

This exhibit series depicts recurring flooding conditions in roadway and shoreline access areas, including standing water accumulation, overflow from storm drainage systems, and direct runoff pathways leading toward the bay. The images further show conditions where stormwater, including roadway pollutants, flows untreated into coastal areas.

The exhibits include visual documentation of existing drainage deficiencies, including areas identified as prone to flooding, as well as runoff entering the bay from developed and paved surfaces. These conditions are relevant to assessing baseline environmental conditions and existing infrastructure limitations within the project area.

These materials are submitted in support of Petitioners' claims that existing stormwater management conditions are inadequate, and that additional development, including increased impervious surfaces such as parking areas, would exacerbate runoff, flooding, and pollutant discharge into Keauhou Bay if not properly disclosed and addressed.

These materials are true and correct copies of photographic documentation of site conditions. Pagination references correspond to exhibit numbering and associated video screenshot timestamps.



EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

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Video Screenshot — Stormwater Runoff, Kauluwai Bay (Aug. 27, 2024)
B-5-8-1

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EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

Video Screenshot — North Keauhou Bay Runoff (Aug. 27, 2024)
B-5-8-2
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EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

Video Screenshot — Oil Sheen in Runoff (Aug. 27, 2024)
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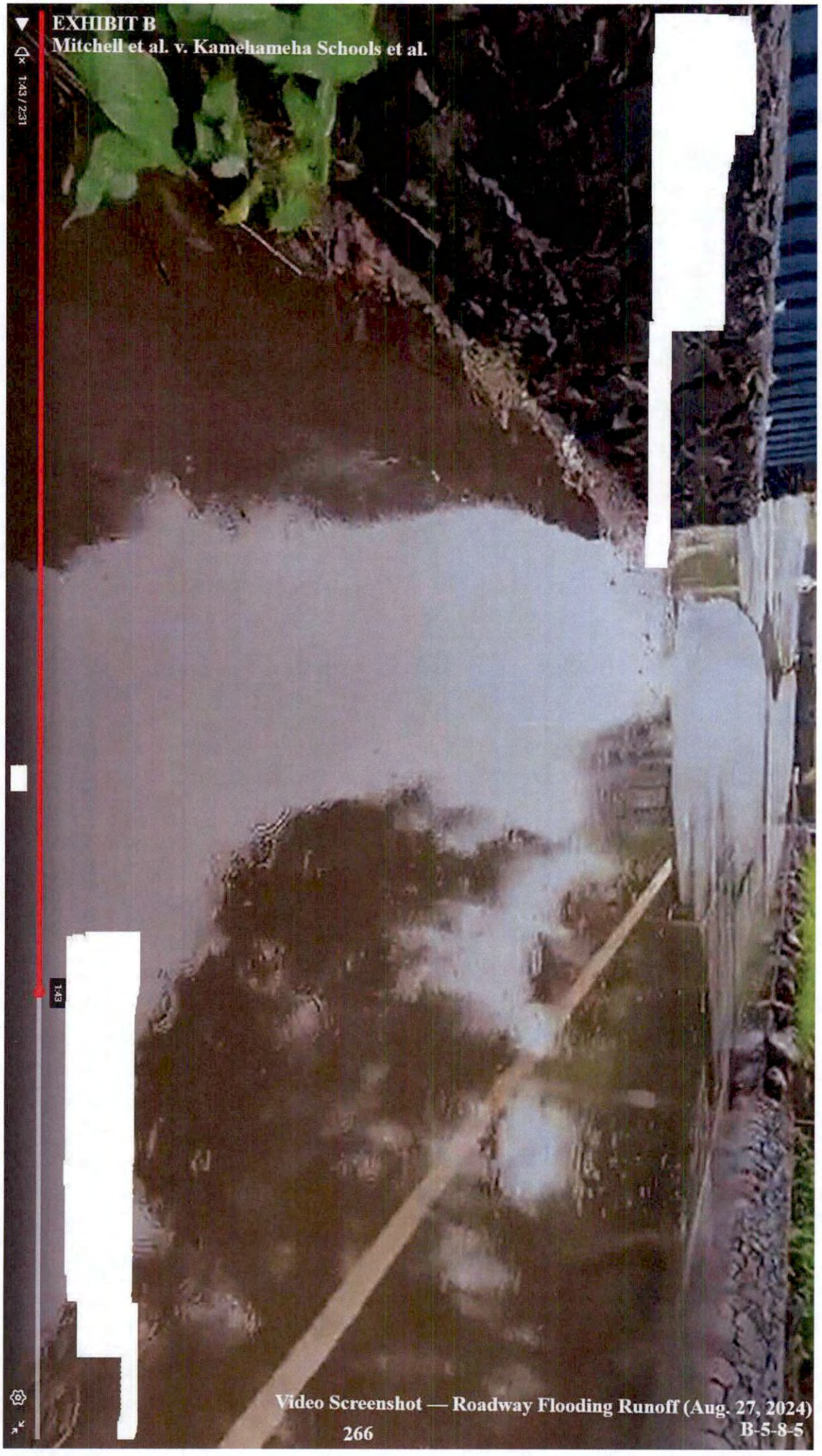
B-5-8-3



EXHIBIT B
Mitchell et al v. Kamehameha Schools et al.

Video Screenshot — Polluted Runoff Entering Bay (Aug. 27, 2024)
B-5-8-4



Video Screenshot — Roadway Flooding Runoff (Aug. 27, 2024)

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

Video Screenshot — Runoff Entering Bay (Aug. 27, 2024)
B-5-8-6

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES B-7 AND B-8

Petitioners hereby submit **Exhibit Series B-7 and B-8**, consisting of Exhibits B-7-1 through B-7-2 and Exhibit B-8, including Final Environmental Impact Statement (FEIS) excerpts addressing projected water demand, water allocation, and the scale of proposed development for the Keauhou Bay Management Plan.

This exhibit series includes the following excerpts and corresponding exhibit page numbers:

- Exhibit B-7-1 FEIS – Projected Water Demand and Water Credits
- Exhibit B-7-2 FEIS – Water Allocation and Infrastructure (continued)
- Exhibit B-8 FEIS – Proposed Development (Approx. 150 Units)

These materials show that the Project identifies a substantially higher water demand, including approximately 97,466 gallons per day and reliance on approximately 240 water credits, while acknowledging that additional water resources and infrastructure approvals have not been fully secured.

Together with Exhibit Series B-6, that is in the Supplemental Index, these materials demonstrate a direct inconsistency between the **approved allocation corresponding to approximately 101 units and the proposed development of approximately 150 units,** as well as reliance on future or unapproved water resources to support that development.

These materials are submitted as evidentiary support demonstrating that the Project exceeds existing water approvals and relies on allocations and infrastructure not secured at the time of FEIS acceptance.

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
— FEIS Vol. II, Table 7.2 — Water Supply Comments and Responses (Dept. of Water Supply and Kamehameha Schools)

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	contact Joshua Hekekia of our office at (808) 587-2845.	the HRS 343 and SMA process to determine if any development activities require a shoreline setback variance. Thank you for your participation in the environmental review process.
County Department of Water Supply	We have re viewed the subject Environmental Impact Statement Preparation Notice and have the following comments. Please be informed that there is an existing 12-inch waterline along Kaleiopapa Street. There are four (4) existing services for some of the subject parcels (Account Nos. 850-1110, 850-11350, 850-11360, and 850-11c 90). Each service has a 5/8-inch meter, which allows an average daily usage of 400 gallons. The Department will note that the average daily water' usage for each service, over the past two (2) years, is more than the allowed amount and exceeds the capacity of the existing meter. Any usage beyond the allowed use will need to be accounted as additional water needed for the project. Please be informed that the applicant has assigned 101 units of water to TMK 7-8-010:044 through an executed Water Agreement with the Water Board, dated April 4, 2012. Additional water could be made available subject to the Water Board's approval. The Department requests that the applicant submit more detailed estimated average daily water demand calculations. The calculations must be prepared by a professional engineer licensed in the State of Hawai'i and should include the number of fixture units (and corresponding gallons per minute demand) for the proposed facilities, as recommended by the adopted Uniform Plumbing Code. The calculations should also include the total estimated average daily water demand (GPD) for the proposed facilities by each service. Based on the calculations provided, the Department will determine the appropriate service connection size(s), facilities charges due, and other requirements for water service.	Thank you for your letter dated April 20, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan prepared pursuant to Hawai'i Revised Statues (HRS) Chapter 343. The following responses are offered to your comments. Thank you for the information regarding the existing water utilities. Section 4.12.1 of the Draft Environment Impact Statement (DEIS) provides detailed estimates of the average daily water demand for the various project components. In total, the Project will result in an average water demand of approximately 97,466.2 GPD which is equivalent to 240 water credits from DWS. KS understands the current assigned water credits designated for the property and is working with

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
— FEIS Vol. II, Table 7.2 — Water Supply Comments and Responses (Dept. of Water Supply and Kamehameha Schools)

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	We will also require that plans be submitted. prepared by a professional engineer licensed in the State of Hawai i, showing the appropriate service lateral installation(s). A reduced pressure type backflow prevention assembly must be installed within five (5) feet of the meter(s) on private property and the installation shall be inspected and approved before water service can be activated. Please note that the Department of Water Supply acknowledges that potable water is Hawai Island's most precious resource and encourages our communities to promote water conservation and reserve the highest equality of water for the most valuable end use, which is the sustenance of life. The Department recommends that the applicant consider appropriate landscape so that additional potable water is not required. Water for landscape irrigation should be provided by alternate methods (i.e. rainwater' catchment, reclaimed or reuse water). The County of Hawai'i, Department of Public Works, and/or State of Hawai'i, Department of Health has guidelines, recommendations. or regulations. regarding these types of systems. Should there be any questions, please contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at (808) 961-8070, extension 256.	DWS to allocate the necessary water credits for this project. Water conservation measures will be implemented in design of the Project and may include, but not be limited to, the following: efficient irrigation systems such a drip system and moisture sensors, utilization of nonpotable water for irrigation, drought tolerant plants, and the use of Water Sense-labeled ultra-low flow water fixtures and toilets. The County of Hawai'i DWS will continue to be consulted as the Project design progresses. Concept drawings will be included in Appendix H of the DEIS and also provided to DWS and HFD for review and comment. Construction documents, including construction plans and calculations of fixture units, will be submitted to DWS and HFD for review and approval after Final EIS and Special Management Area (SMA) approval. Thank you for your participation in the environmental review process.
County Police Department	The above-referenced Courtesy Notification for a Planned Publication of an Environmental Impact Statement Preparation Notice (EISPN) for the	Thank you for your letter dated April 6, 2022, concerning the

3.2.2.3 Resort-Zoned Low-Impact Lodging:

The Project supports the creation of a new, socially responsible low impact resort-zoned lodging for visitors to be appropriately hosted in the region of Kona, affording a meaningful space that could showcase and sustain a supportive program for Native Hawaiian artists, and foster a learning and relationship building space between Hawaiian and non-Hawaiian cultures through the authentic design, management, and operation of a hospitality space. Kamehameha Schools envisions a world-class experience that preserves the authentic natural character of Keauhou Bay. The low-impact lodging has been designed to optimize the existing vacant Kāneaka lands and create a new hospitality option that connects and encourages visitors to explore the cultural, educational, and recreational opportunities that the bay has to offer. The planned resort-zoned low-impact lodging will also be an economic engine for the County and provide employment opportunities for the local community. Revenue generated from the resort-zoned lands is essential to ensure the sustained stewardship of the bay and its resources in perpetuity.

The low-impact lodging is proposed for development on the gently sloping lands mauka of Old Kona Road within the Kāneaka Zone (refer to B3 on *Figure 3-34*). The design concept consists of 43 low-impact, structures, which include two-story lodging units arranged over an approximately eight-acre area of the plateau (*Figures 3-46* -and *3-47*). The majority of the units are designed as 4-plex units while approximately 10% are designed as duplex suites. The mix of types will accommodate a total of 150 units. Each of the units will offer guests with a panoramic view of Keauhou Bay and the Kona coast. The destination is designed to complement other visitor uses and activities with integrated cultural, educational and community uses in close proximity. The building's low profile design and use of native flora and landscaping is also intended to minimize impact to view planes for properties mauka of the Project Area.

Pedestrian and vehicular access to the low impact lodging will be from a driveway off Old Kona Road. The entry drive layout and landscaping are designed to provide an intimate and leisurely feeling upon arrival. At the top of the driveway is a drop-off and welcome area for the main reception building. The welcome area is designed with lava rock treated pavement and lush tropical landscaping to provide guests with a memorable first impression of the significant cultural landscape and view planes of Keauhou (*Figure 4-48, 4-49, and 4-50*). The entry is also designed to orient the view from the hotel entrance towards Keauhou Bay. The lobby's façade is constructed of natural building materials using earthy colors and textures to blend into the surrounding environment.

The entry leads guests to the main lobby which houses the reception area (*Figure 3-51*). The indoor-outdoor lobby is designed with natural wood and interior landscaping to create an airy rustic setting that enhances natural light and air flow. The main reception building will house the lobby check-in lounge, a food and beverage venue, meeting facilities, wellness pavilion, administrative offices, back-of-house spaces, and storage spaces. These spaces are designed as flexible multi-use spaces with ample views and natural daylight, creating an informal and casual atmosphere.

Fronting the lobby's restaurant and bar area is an approximately 4,500 sf. pool and an approximately 3,000 sf. deck (*Figure 3-52, 3-53 and 3-54*). The makai edge of the pool will be bordered by a tier of planters stepping down to a guardrail below. Tropical planters are incorporated to further beautify and blend the pool into the landscape of Kāneaka.

North of the pool area is an approximately 3,000 sf. event lawn surrounded by native gardens. Guests will be able to explore the gardens and use the lawn space for gatherings such as family picnics or an impromptu kanikapila session. The lawn area could also be used for cultural performances and programs like hula or arts and crafts workshops.

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COVER LETTER FOR EXHIBIT B-9

Petitioners hereby submit **Exhibit B-9**, consisting of photographic documentation from a community awareness event held at Keauhou Bay in opposition to the proposed development.

This exhibit depicts organized community outreach efforts conducted at Keauhou Bay, including public engagement, informational displays, and advocacy content directing the public to BigIslandSupport.com/SaveKBay for additional information and opportunities to participate in the environmental review process.

Petitioners further state that, following this event, a similar community awareness event at Keauhou Bay was denied by Kamehameha Schools after Petitioners expressed opposition to the proposed development. Petitioners allege that such denial interfered with the ability of beneficiaries and community members to access, use, and engage with trust lands for educational, cultural, and community purposes, and is relevant to claims concerning beneficiary rights.

This exhibit is submitted to demonstrate the existence of active and organized community opposition, as well as efforts to educate and engage the public regarding environmental, cultural, and land use concerns associated with the Project.

These materials are true and correct copies of photographic documentation from the referenced community event. Pagination references correspond to exhibit numbering.


Please Help SAVE Keauhou Bay
From a Bungalow Resort Development
Last Meeting Coming Soon! Call ASAP an OPPOSE
Go To BigIslandSupport.com/SaveKBay
They Want THEIR Bungalow Resort Here
HELP
Scientifically Proven Development
Take Photo
Share
PLEASE
Help
Save
Keauhou
Bay
Your
Voice
Matters!
Learn How YOU Can Help GO To
BigIslandSupport.com/SaveKBay

EXHIBIT B
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COVER LETTER FOR EXHIBITS B-10 THROUGH B-11

Petitioners hereby submit Exhibit Series **B-10 through B-11**, consisting of excerpts from the Final Environmental Impact Statement (FEIS), including the Cultural Impact Assessment and related archaeological and cultural resource sections concerning Keauhou Bay.

Exhibit B-10-1 through B-10-2 document that the FEIS expressly acknowledges Keauhou Bay as the birthplace of King Kamehameha III (Kauikeaouli), and further describes formal commemorative ceremonies attended by Queen Lili'uokalani and other prominent members of the Hawaiian Kingdom, demonstrating the site's ongoing cultural, historical, and ceremonial significance.

Exhibit B-11-1 through B-11-3 include FEIS Volume I sections addressing cultural resources, archaeology, and the Ka Pa'akai framework. These materials confirm that the FEIS identifies numerous cultural sites, practices, and historical features within the project area, while simultaneously stating that a Ka Pa'akai analysis "will be required" at a later permitting stage rather than being completed prior to FEIS acceptance.

Petitioners submit these exhibits to demonstrate that Respondents recognized the exceptional cultural and historical importance of Keauhou Bay within the FEIS record, including its designation as a royal birthplace and site of continuing cultural practices, while deferring the legally required analysis necessary to identify, assess, and protect those resources prior to project approval.

This exhibit series is further submitted to show that such deferral is inconsistent with the requirements of Hawai'i law, including the Ka Pa'akai framework, which requires identification of cultural resources, assessment of impacts, and specification of protective measures before agency approval and reliance.

These materials are true and correct excerpts from the FEIS and its supporting documentation. Pagination references correspond to exhibit numbering.

> house. Those who wanted to cross, had to swim. Mauka of the village is seen the most famous papa holua in the Islands, a wide road-like stretch, which was laid with grass steeped in kukui nut oil so as to allow the prince and his friends to coast down in the sleighs constructed for the purpose. At the end of the slide was a lanai, where the prince and his friends would don malos and go with their surfboards far out to sea, where the surf would carry them right to the prince's house. Here are also the remnants of the heiau Makole-a. A short distance further south stood the heiau Puu-o-Kaloa. The Hawaiians still look for a dumbbell-shaped cloud to connect it with the heiau of Keeku (See Kahaluu), which is a certain sign of rain. When it appears it is a good time to plant. In harvest time, when improvident ones would beg for food, the proverbial answer was "Where were you when the could laid its hands on Puu-o-Kaloa and Keeku?" South of Keauhou lies KUAMOO, famous as the site of the great battle where the rebel chief Kekuaokalani, who opposed the abolition of the tabu system, fought in 1819, Queen Kaahumanu's army. He was killed, after a sanguinary battle, and with him fell his heroic wife, Manono, who had fought by his side. The graves of the slain are still to be seen. (Kinney 1913:61)

Centennial Commemoration Marking the Birth of Kauikeaouli

In 1914, the Daughters of Hawai'i, an organization founded in 1903, coordinated an elaborate commemorative ceremony to mark the centennial of the birth of King Kauikeaouli. The first of the ceremonies—the unveiling of the stone tablet—was held on March 17 at Kawaiaha'o Church on O'ahu. The tablet was then transported to Keauhou for the follow-up ceremony which was held on August 15. The ceremonies were attended by Queen Lili'uokalani and other noted Hawaiians. An article published in *The Honolulu Advertiser* on March 17 described the ceremony thusly:

> With ceremonies as interesting as they will be unique, the Daughters of Hawaii this afternoon, at Kawaiahao Church, will unveil a stone tablet, which later is to be taken to Keauhou, Kona and inset into the famous Kauikeoauli Stone, a huge saucer-shaped lava rock which marks the birthplace of Kamehameha III, born one hundred years ago today. The tablet, a tribute to the memory of "the beneficent King" will be unveiled by Her Majesty, Queen Liliuokalani, assisted by the High Chiefess Elizabeth Kekaaniau Pratt. The covering of the tablet will be the Royal Standard of Hawaii, loaned by the Queen for the purpose.
>
> Two distinctly Hawaiian features will mark the program. One is to be the chanting of the "Life Giving Prayer," the words of which were chanted over the supposedly dead body of the newly born babe a century ago in the heiau of Keauhou by the high priest, the incantation being answered by the gods and breath coming to the body of the prince. The prayer will be recited by one of the very few living who know it as it has never been written down, and never will be, such is its sacredness in the minds of the Hawaiians. Mrs. Naha Hakuole, who will recite the words, learned them from her mother, to whom they had been imparted by her mother, all by word of mouth. The same lady will chant the koihonua of Kauikeaouli, his genealogy. (The Honolulu Advertiser 1914b:7)

Followiug the ceremonies held at Keauhou on August 15, *The Honolulu Advertiser* published an article detailing that day's events and included photos of the ceremony:

> The ceremonies connected with the dedication of the memorial tablet to mark the birthplace of Kamehameha III were held at Keauhou, Hawaii, Saturday, August 15.
>
> Her Majesty Queen Liliuokalani, attended by her chamberlain, Curtis P. Iaukea and Mrs. Iaukea and a delegation from the Daughters of Hawaii left Honolulu for Kona on the Mauna Loa, Friday, August 14. The ladies in attendance on the Queen included Mesdames C.S. Holloway, A. Ahrens, F.M. Swanzy, E. Henriques, M. Reis, A. Wall, Carrie Robinson, Mrs. Kekuewa, Miss Lucy K. Peabody, and many other prominent in Hawaiian society.
>
> The Mauna Loa also conveyed the granite memorial tablet which was to be dedicated.
>
> Met By Royal Canoes
>
> As the Mauna Loa entered Kailua harbor Saturday morning the steamer was met by a royal double canoe manned by rowers clothed in ancient feathered cloaks and leis of scarlet and yellow. The big double canoe was accompanied by a retinue of canoes filled with warriors in ancient costume.
>
> The stone was lowered into the double canoe and the fleet paddled down the coast to the harbor of Keauhou.

> In the mean time the Queen and her party landed at Kailua and were taken in automobiles overland to Thomas C. White's residence at Keauhou where breakfast was served.
>
> Revival of Old Days
>
> The ceremonies attendant upon the landing of the tablet were an elaborate recrudescence of the ancient customs of the people. the stone was carried on a litter borne by twelve stalwart descendants [Figures 31 and 32] of the warrior chiefs, each clad in costume emblematic of the rank and calling of his ancestors.
>
> A tent awning had been erected in which Liliuokalani sat [Figure 33] surrounded by her high chiefesses and her chamberlain, and from which she viewed the ceremonial.
>
> Delegate to Congress, Jonah K. Kalanianaole and his party were present, and the orator of the day was Rev. Stephen Desha. A very large concourse of Hawaiians was in attendance to do homage to their Alii. The dedication ceremonies were simple, impressive and dignified. After the conclusion of the dedication a luau prepared by the Kona people was served to several thousand who had gathered to take part in the celebration.
>
> The Queen and her party went overland to Hilo and will return to Honolulu on the Mauna Kea this week. (The Honolulu Advertiser 1914a:7)

Additional historical photos of the commemorative events at Keauhou were retrieved from the Hawaiian Mission Houses library and archives and included below as Figures 34 through 38.



Figure 31. Stone tablet being carried by attendants (The Honolulu Advertiser 1914a:7).

In summary, the recommendations provided above are intended to ensure that the activities associated with the proposed Project do not impact any of the above-identified valued cultural resources and traditional customary practices. Upon implementation of the Project's management goals, it is expected that cultural resources will be improved through preservation and stewardship measures and that opportunities for traditional practices will be expanded; thereby enhancing ancestral connection to place.

Ka Pa'akai Analysis

Article XII, Section 7 of the Hawai'i Constitution obligates the State and its agencies "to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible when granting a petition for reclassification of district boundaries" (*Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 [2000]). Under Article XII, Section 7, the State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

On September 11, 2000, the Hawai'i Supreme Court's landmark decision in *Ka Pa'akai O Ka 'Aina v Land Use Commission* established a three-part analytical framework for State and county agencies to address the preservation and protection of traditional and customary rights specific to Hawaiian communities. To effectuate the State's (and its agencies) constitutional responsibility to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interest, the framework addresses the following:

1. Identify whether any valued cultural, historical, or natural resources area present within the petition area, and identify the extent to which traditional and customary Native Hawaiian rights are exercised;
2. Identify the extent to which those resources and rights will be affected or impaired by the proposed action; and
3. Specify any mitigative actions to be taken to reasonably protect native Hawaiian resources and rights if they are found to exist.

Although not required for the acceptance of the EIS, a Ka Pa'akai analysis will be required for obtaining the SMA permit for the Project.

4.1.2 Archaeological Resources

Existing Conditions

An Archaeological Reconnaissance Survey (ARS) and Site Condition Update was prepared by Haun & Associates in May 2022 and is included in *Appendix I*. The objective of the ARS and Site Condition Update is to (a) relocate and update previously identified site condition and documentation, and (b) conduct archaeological reconnaissance of any undeveloped areas to determine if archaeological sites are present and determine the scope of any further field study and potentially appropriate site treatments.

According to the ARS and Site Condition Update, there have been several archaeological and cultural studies conducted for the Project Area and surrounding lands. These studies have included archaeological inventory surveys (AIS), archaeological data recovery projects, subsurface testing, and burial treatment planning. These studies have identified a range of both late Precontact and early Historic residential sites, many of which were associated with elite members of Hawaiian society. Also prevalent in the region are features associated with transportation, opportunistic and more formalized agriculture, temporary and permanent habitation, burials, and ceremony. Collectively, the findings of previous archaeological and cultural investigations conducted within and in the general vicinity of the Project Area allow for a holistic portrayal of past land use and settlement patterns for Keauhou's lands and other contributing factors to the overall cultural landscape.

In 2004, a portion of the 2.6-acre Kaimukī Zone was the subject of an AIS completed by Haun and Associates (Haun and Henry 2007). This initial AIS included approximately 1.08-acres of the specific parcel.

The following sections summarize the previous archaeological surveys near the Project Area, the results of the 2022 ARS and Site Condition Update, and the findings of the 2022 AIS.

4.1.2.1 Previous Archaeological Studies

Since the turn of the 20th century, the Keauhou Bay area has been included in various island-wide thematic or regional surveys including those completed by John F.G. Stokes in 1906, and John E. Reinecke in 1920. These early studies were conducted mostly under the auspices of the Bishop Museum or Bishop Estate, and the early site descriptions, oral traditions, and place name information records are currently on file at the Department of Anthropology at the Bishop Museum in Honolulu.

Major resort development in the 1970s spawned a surge of archaeological studies in the vicinity of Keauhou Bay. These studies began to focus on individual parcels slated for development, most of which were situated along the coast. The number of studies undertaken in the Keauhou Bay area has continued to increase over the last forty years and has revealed evidence of habitation and resource acquisition as well as ceremonial and recreational use of the land. The following discussion centers on previous archaeological studies conducted within and near the current Project Area. The location of the prior studies conducted in the vicinity of the Project Area is shown in *Figure 4-10* and listed chronologically and summarized in *Table 4-2*.

Early Archaeological Investigations (1906-1955)

1906 Stokes

In 1906, under the auspices of the Bishop Museum, John F. Stokes (Stokes and Dye 1991) conducted an island-wide field survey. Although the purpose of Stokes' survey was to document heiau, he sometimes recorded ko'a (fishing shrines) and other miscellaneous structures. Of the approximately fifty heiau recorded in the North Kona District, five were located in Keauhou 1st and 2nd Ahupua'a including Ka'io'ena Heiau or Keahiolo Heiau, 'Ōpūkaha Heiau; Kamau'ai Heiau, Ho'okūkū Heiau or Kaopa Heiau, and Ahu A 'Umi Heiau.

Of these, Stokes was only able to locate and observe the remains of one of these heiau during his survey. The remains of Ka'io'ena (BPBM Site 50-Ha-D4-100; SIHP Site 50-10-37-04621), located on the Kahalu'u and Keauhou 1st boundary at about 400 ft. above sea level consisted of a few pavements or low platforms along the edge of an 'a'ā flow.

Concerning Ōpūkaha Heiau (BPBM Site 50-Ha-D3-5; SIHP Site 50-10-37-3813), Stokes only provided locational data noting that the heiau was in Keauhou 1st "just west of the junction of the Hōlualoa and Keauhou roads" and that he had not seen the heiau.

Of Kamau'ai Heiau (BPMB Site 50-Ha-D3-4; SIHP Site 50-10-37-3812), it was suggested that the heiau may have stood at the base of the high cliff at the site known as Ho'okūkū or Kaopa Heiau, rather than on top of the cliff overlooking Keauhou Bay as previously believed. This conclusion is likely due in part to the fact that the purported site of Kamau'ai Heiau had become a house lot and, "the [then] owner said that he and his people had lived there for a long time and had never heard of a heiau being there" (Stokes and Dye 1991:85).

Of Ahu A 'Umi Heiau, Stokes only mentions its location within Keauhou 2nd and that he had not visited the site. Despite the limited recordation by Stokes, Cordy (2000), who provided a detailed discussion about this inland heiau, reported that Hiram Bingham recorded this site during his visit in 1830.

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Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-12

Petitioners hereby submit Exhibit B-12-1 through B-12-4, consisting of excerpts from the Final Environmental Impact Statement (FEIS), Volume II, documenting comments and responses from the Hawai'i Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife – Nā Ala Hele Trail and Access Program.

Exhibit B-12-1 through B-12-4 demonstrate that DLNR identified the presence of historic trails within the project area, including the Keauhou Trail, Kainaliu Trail, and Old Government Road, and emphasized that these trails represent longstanding public access routes with legal and historical significance. DLNR further raised concerns regarding potential impacts to these trails, public access, and associated cultural and historic resources.

The DLNR comments include specific recommendations to verify archaeological evidence, preserve and honor historic trail alignments, maintain public access, and conduct consultation with Nā Ala Hele staff. The comments further recognize that portions of these trail systems remain under State ownership and are protected under Hawai'i law.

Petitioners submit this exhibit to demonstrate that State agencies identified significant cultural, historic, and public access concerns within the project area, including legally recognized trails, and that such concerns were acknowledged within the FEIS record.

This exhibit is further submitted to show that the Project implicates longstanding public access rights and cultural resources, and that these issues were raised by DLNR during the environmental review process.

These materials are true and correct excerpts from the FEIS. Pagination references correspond to exhibit numbering.

Table 7.2 DEA Summary of Comments and Responses

Comments	Commenter	Responses
	please contact Paul Radley, Protected Species Habitat Conservation Planning Coordinator at (808) 295-1123 or paul.m.radley@hawaii.gov.	
State DLNR DOFAW – Na Ala Hele	The Nā Ala Hele Trails and Access Program within the Division of Forestry and Wildlife, Department of Land and Natural Resources, thanks you for the opportunity to comment on the subject EISPN for the Keauhou Bay Management Plan. We are pleased to see Kamehameha Schools taking actions to protect the sensitive heritage sites in the area and provide interpretation while at the same time easing the congestion and overuse of the area. As the project proposal will potentially impact several historic features, including trails, as well as impact public access, our recommendations are as follows: **Keauhou Trail (SHPD site No. 15243):** The Keauhou Trail is a historic trail that has served as one of the main mauka-makai access trails for the Keauhou ahupua'a for centuries, as shown on boundary survey maps of the mid-1800s and even earlier though oral histories. As such, per the Highways Act of 1892 (codified into State law, HRS 264), the trail alignment continues to be owned by the State of Hawai'i (with the exception of the portions realigned in 2003 for the Bay View Estates project). Within the subject project area, there are various historical alignments, some depicting the trail running straight, and others depicting the trail curving south above the Old Kona Road before heading mauka again. The Management Plan recommendation B4 for a "commercial kīpuka" is concerning due to the potential impacts to the trail alignment and its continual use as publicly accessible land. Additionally, there is historical record of a "Kau Cemetery" area in that same B4 zone. (See Exhibit A and B.) Recommendation: Verify any archaeological evidence for any trail remains, combined with historical map references. Include onsite consultation with Nā Ala Hele staff. Recommendation: Honor the alignment of the Keauhou Trail, even if archaeological evidence has been displaced. Consider utilizing the trail	Thank you for your letter dated April 22, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan prepared pursuant to Hawai'i Revised Statues Chapter 343. We appreciate the resources and information shared. Based on recommendations in your letter as well as during the subsequent consultation meeting and site visit on October 7,2022, two areas within the TMK: 7-8-010:044 portion of the Project Area, totaling 1.97-acres, were re-examined by Haun & Associates in October, 2022, in order to locate the remains of two historic trails (Keauhou Trail: Sites 15243 and Kainaliu Trail: Site 24259). The findings of the survey are included in the 2022 Haun & Associates' ARS and Site Condition Update (Appendix B) and summarized in DEIS Chapter 4.1.2.3. The historical background of these trails in relation to the overall development of the bay over time is discussed in DEIS Chapter 4.1.1.

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	corridor as a pedestrian access incorporated into the interpretive path network. Consult with Nā Ala Hele staff on interpretive signage content. Recommendation: As part of the re-establishment of the Old Kona Road, mark the crossing of the Keauhou Trail with inlaid natural, native stone pavers. **Old Kona Road and Old Cart Road to Kainaliu (SHPD site No. 24259):** Management Plan recommendation E3 proposes to re-establish the Old Kona Road. While this will indeed alleviate vehicular congestion near the coastal sites, special care should be taken in this endeavor as a portion of this road is also a historic trail (site 24259) documented in maps as early as 1885. (See Exhibit C.) We acknowledge that the portion of this trail within the subject project area was sold by the State to Kamehameha Schools via quitclaim deed in 1969, however, the portion mauka of Ali'i Drive to the upland Kainaliu village continues to be owned by the State of Hawai'i, per the Highways Act of 1892 (codified into State law, HRS 264). Recommendation: Verify any archaeological evidence for any remnant precursor trail that escaped the construction of the Old Kona Road, combined with historical map references. Include onsite consultation with Nā Ala Hele staff. Recommendation: Include the re-established Old Kona Road as a public access vehicular easement. Just past the junction with the Keauhou Trail, the alignment of site 24259 continues mauka at a diagonal up to the old mauka village of Kainaliu, where the Old Kona Road continues to round the bay. (See Exhibits A, B, and C.). The "Boutique Resort" (Management Plan recommendation B3) will therefore impact this alignment. With modern County building codes, even with a post-and-pier design, there will need to be substantial grading to create the "Boutique Resort" and its associated infrastructure. Recommendation: Honor the alignment of the Kainaliu Trail, even if archaeological evidence has been displaced. Consider incorporating the trail alignment into the interpretive path network.	The two subject trails are depicted on historic maps of the area as far back as 1885. Aerial imagery of the Keauhou Bay area taken in 1954 show that these trails alignments had remained intact until at least that time. However, the trails do not appear in any subsequent aerial images likely due to the Project Area having been mechanically disturbed and overgrown with vegetation. Using the 1954 aerial imagery, the locations of the two historic trail alignments were cleared of vegetation and systematically examined by Haun & Associates archaeologists. An approximately 1.26-acre corridor was cleared of vegetation and surveyed along the historic Keauhou Trail alignment (Site 15243). The ground surface within this corridor showed evidence of past mechanical grubbing and no remnants of the Keauhou Trail were present. An approximately .71-acre corridor encompassing the alignment of the historic Kainaliu Trail (Site 24259) was cleared of vegetation and surveyed. This corridor also showed evidence of grubbing with the presence of several linear mounds

Table 7.2 DEA Summary of Comments and Responses

Comments	Commenter	Responses
	Incorporate the alignment as part of the pedestrian infrastructure for "Boutique Resort". Consult with Nā Ala Hele staff on interpretive signage content. **Old Government Road (Beach Road)** The Old Government Road along the bay of Keauhou is an ancient trail that linked the many villages along the coast, as evidenced by many early maps, archeological features, and oral histories. Certain sections have "evolved" into modern roads (like Ali'i Drive through Kailua), while other sections are remarkably preserved (like through Kuamo'o). Within the subject area, the continuous access from north to south along this trail corridor has been obscured by auxiliary activities. Recommendation: Honor the alignment of the Old Government Road by designing better continuity for pedestrian access flow, connecting Kamehameha III Road and Kaleiopapa Road. Uphold the commitments of the 2003 MOA and the resulting Cultural Trails Plan. Include onsite consultation with Nā Ala Hele staff. **Consulted Parties** Chapter 8 of the EISPN lists the proposed agencies to be consulted in the drafting of the DEIS. Per HRS 198-D, the Nā Ala Hele Trail and Access Program "shall serve as the centralized information agency for matters relating to the trail and access program." Additionally, per a 2003 MOA between the DLNR and Kamehameha Schools, "NAH has a compelling public purpose to collaborate with [Kamehameha Schools] on the design, landscaping and buffer treatments, and public access for the Keauhou Historic Trail System" and "[Kamehameha Schools] will consult with the Nā Ala Hele staff and the Advisory Council as they develop the overall trail plan for the Resort." Recommendation: Add the Nā Ala Hele Trail and Access Program to the list of consulting agencies, under the Department of Land and Natural Resources. Correspondence and notifications can be directed to Jackson Bauer, Hawai'i Island Trail and Access Program Manager, as detailed below.	created by bulldozer blades. No remnant of the Kainaliu Trail was observed. The KBMP includes actions to honor the alignments of historic trails throughout the property. The planned network of new and improved walking paths throughout the Project Area will increase pedestrian access and provide an intact north-south pathway through the entire site to help recreate the experience of walking along the historic Old Government Road. The KBMP also calls for the re-establishment of the Old Kona Road as a public access vehicular easement, thereby re-opening a historic path that had become overgrown with vegetation and fallen into disuse. The mauka-makai walking experience of the historic Keauhou Trail will also be honored through the establishment of the recreation corridor. This open space corridor area will allow for bay visitors to freely walk from the coastline up to the Old Kona Road. The open space recreation corridor also connects to the network of walking paths situated both above and below 'Ahu'ula Cliff. The history and significance of the known

Table 7.2 DEA Summary of Comments and Responses

Comments	Commenter	Responses
	Recommendation: Present the proposed Management Plan at a meeting of the Nā Ala Hele Advisory Council, per the 2003 MOA. Contact Jackson Bauer, Hawai'i Island Trail and Access Program Manager, as detailed below, to arrange this. Thank you for the opportunity to comment on the subject EISPN for the Keauhou Bay Management Plan. Please feel free to contact me at 808-657-8041 or jackson.m.bauer@hawaii.gov to discuss any questions or comments you may have.	historic trails will be incorporated into interpretive elements along the walking path network. Please see DEIS Chapter 3.2 for a detailed description of the KBMP. DEIS Chapter 4.11 discusses anticipated impacts of the KBMP on pedestrian patters and circulation. Thank you for your participation in the environmental review process.
State DLNR Land Division	We have no comments.	Thank you for your letter dated March 23, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge that the Department of Land and Natural Resources, Land Division, has no comments at this time. Thank you for your participation in the environmental review process.
State Department of Health – Indoor and Radiological Branch	Thank you for your submittal requesting comments for the Environmental Impact Statement Preparation Notice (EISPN) for the Kamehameha Schools (KS) Keauhou Bay Management Plan, Keauhou, Hawaii Island, Hawaii. Project activities shall comply with the following Administrative Rules of the Department of Health: • Chapter 11-39: Air Conditioning & Ventilating • Chapter 11-41: Lead-based Paint Activities • Chapter 11-45: Radiation Noise Control	Thank you for your letter dated March 28, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan prepared pursuant to Hawai'i Revised Statues Chapter 343. The Project will comply with all listed Administrative Rules of the

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
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COVER LETTER FOR EXHIBITS B-14 THROUGH B-15

Petitioners hereby submit **Exhibit Series B-14 through B-15**, consisting of excerpts from the Final Environmental Impact Statement (FEIS), including Biological Resources findings (Volume I) and Draft EIS comment responses (Volume II), addressing endangered species, ecological conditions, and stormwater runoff impacts associated with the proposed development.

Exhibit B-14-1 through B-14-3 include FEIS Volume I biological resource sections stating that no threatened or endangered species were identified within the Project Area during field surveys, while acknowledging that protected species, including Hawaiian monk seals and green sea turtles, are present in nearby coastal waters and may be affected by project activities.

Exhibit B-15-1 through B-15-5 include FEIS Volume II responses to extensive public comments raising concerns regarding stormwater runoff, pollution from development and adjacent golf course activities, degradation of water quality, and impacts to marine ecosystems and endangered species habitat.

These materials demonstrate that commenters identified the existing land area as functioning as a natural filtration system reducing pollutant runoff into Keauhou Bay, and warned that clearing vegetation and adding impervious surfaces would increase runoff, degrade water quality, and harm marine life, including protected species.

The FEIS responses rely on proposed future stormwater infrastructure, best management practices, and subsequent design approvals, rather than providing quantified analysis comparing existing and post-development conditions or demonstrating the effectiveness of mitigation measures.

Petitioners submit this exhibit series to demonstrate that the FEIS acknowledges the presence and potential impact to protected species and sensitive ecological conditions, while relying on generalized mitigation measures and future planning rather than providing a complete, project-specific analysis of runoff impacts, cumulative pollution, and effects on endangered species habitat.

These materials are true and correct excerpts from the FEIS. Pagination references correspond to exhibit numbering.



Figure 4-33 Pond Biota: Filamentous Green Algae, Two Juveniles of the Macrobrachium sp. of Freshwater Prawn, and a Cluster of Red-rimmed Melania Snails

Potential Impacts and Mitigation Measures

The terrestrial field surveys conducted in October 2021 by *AECOS* biologists found no species listed as threatened or endangered by state or federal statutes on any of the Project parcels at Keauhou Bay. All the surveyed parcels are much disturbed or are developed (commercial operations, access roads, public park). The potential does exist that several listed species might transit or utilize the general area on occasion.

Short-term construction related activity will involve clearing and preparing the Project Area for the phased build out of the Project. The plant species identified within the Project Area are consistent with those found in urban environments which are common non-native introduced species and scattered weedy growth. Clearing the Project Area is not anticipated to adversely affect threatened or endangered plant species. To avoid the unintentional introduction or transportation of invasive plant species during the short-term construction period, construction equipment, materials, and personnel will be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

The Project has been designed to ensure that the physical attributes of new development are compatible with the existing landscape. The Project Area was surveyed to ensure that the physical, environmental, and cultural attributes of the area were compatible with the proposed KBMP management goals. The landscape design integrates native plants and landscaping elements that are representative of the natural and cultural landscape. The landscape design also incorporates xeriscape techniques that complements the dry climate, pays tribute to the region's agricultural past, and incorporates planting of native vegetation. Fully built out, the Project will improve the landscape of the Project Area.

Mitigation measures are discussed for specific biological resources in the sections below.

Flora Resources

No plants listed by either state or federal statute as threatened or endangered were found on the Project parcel (DLNR, 1998; USFWS, nd-a). Although 12% of the extant plant species are indigenous natives or early Polynesian introductions ("canoe plants"), none are particularly abundant in the survey area. This percentage of "native" to total species is a typical result for lowland surveys in Hawai'i. Nearly all native plants recorded are rare or uncommon here but widely distributed state-wide and many are represented by plantings and not natural populations. No adverse impacts to rare or culturally sensitive or listed plant species will result from the proposed Project.

Fauna Resources

The findings of the mammalian survey are consistent with the location of the properties and habitats present. Although no rodents were recorded in our survey, it is likely that some of the four established alien Muridae found on Hawai'i—roof rat (*Rattus rattus*), brown rat (*Rattus norvegicus*), Polynesian rat (*Rattus exulans hawaiiensis*), and European house mouse (*Mus musculus domesticus*)—use various resources found within the general Project Area on a seasonal basis. All these introduced rodents are deleterious to native ecosystems and the native fauna dependent on them.

No mammalian species currently protected or proposed for protection under either the federal or State of Hawai'i endangered species programs were detected during the Biological Survey (DLNR, 2015; USFWS, n. d.)

It is probable that Hawaiian hoary bats (*Lasiurus cinereus semotus*) overfly the Project Area on a seasonal basis, as they have regularly been seen foraging and displaying over Keauhou Bay in the fall (David, 2022). The principal impact that construction may pose to bats is during clearing and grubbing phases when vegetation is removed. The removal of vegetation within the Project Area could temporarily displace individual bats using trees for roosting. As bats use multiple roosts within their home territories, the potential disturbance resulting from the removal of the vegetation is likely to be minimal. However, during the pupping season, females carrying their pups may be less able to vacate a roost site as the tree is felled. Further, adult female bats sometimes leave their pups in the roost tree while they forage. Very small pups may be unable to flee a tree that is being felled.

To minimize potential disturbance during the bat birthing and pup rearing season (June 1 through September 15), the Project will avoid disturbing, removing, or trimming any woody plants taller than 15 feet during this period. If work involving such vegetation is necessary, a qualified biologist will first survey the area for bat activity. If Hawaiian hoary bats are detected, the vegetation will remain undisturbed until the end of the pupping season.

Special care will be taken during construction and when trimming or clearing woody plants taller than 15 ft. to minimize any potential adverse effects to the Hawaiian hoary bat (*Lasiurus cinereus semotus*). Between June 1 to September 15, a qualified biologist would survey woody vegetation and trees taller than 15 ft. for Hawaiian hoary bats. If bats are present, that vegetation is not to be disturbed during bat pupping season, between June 1 and September 15.

The Project will incorporate applicable best management practices for work in aquatic environments into both the design and execution of the project to mitigate potential impacts to Hawaiian waterbirds.

To avoid and minimize potential impacts to Hawaiian seabirds, the Project will implement several protective measures, particularly during the breeding, nesting, and fledging seasons, which occur from March 1 to December 15. Because outdoor night lighting can disorient seabirds, the Project will fully shield all outdoor lights so that bulbs are only visible from below. Additionally, the Project will avoid conducting nighttime construction during the fledging period, from September 15 to December 15. These measures are intended to minimize disorientation, prevent collisions with structures, and reduce the likelihood of seabirds becoming grounded and exposed to predators or other hazards.

Both endangered Hawaiian monk seals (*Monarchus* schauinslandi) and the threatened Pacific green sea turtle (*Chelonia myda*s) are regularly reported from Kona waters (David, 2022). Although unlikely, either species could haul out along the shoreline close to the dock or by the beach landing. If either species is detected within 300 ft of ongoing construction, operations must cease and not continue until the animal has departed the area on its own accord. The Project will incorporate applicable best management practices regarding Work in Aquatic Environments into its construction plans.

Overall, non-native fauna was not observed during the survey and no future impacts are anticipated. The KBMP will not have a Federal nexus so critical habitat designation has no impact on this Project.

Invertebrate Resources

The field surveys conducted in 2021 by AECOS biologists did not find any host plants species for the Blackburn's sphinx moth. However, prior to construction, Kamehameha School's will conduct a pre-construction survey of the project site for the presence of non-native tree tobacco to assess whether the Blackburn's sphinx moth may be present within the Project Area. Kamehameha Schools will continue to survey for tree tobacco for the duration of the Project and to remove any tree tobacco less than 3 ft in size.

Upon Project completion, active stewardship will continue through sustained site monitoring, vegetation management, and invasive species control. Maintenance staff will routinely inspect for tree tobacco regrowth to avoid attraction of Blackburn's sphinx moth.

Aquatic Flora and Fauna at Keauhou Bay

Ho'okūkū Pond is an anchialine pool that was a prominent landscape feature at Keauhou Bay and was an important ecological and cultural resource (HHF, 2017). In its current state, the remnant portion of a much larger Ho'okūkū Pond is in an advanced stage of senescence. This is characterized by eutrophic conditions consisting of deep organic sediments, dense filamentous algae growth, and poor water quality.

A phased approach is recommended for the restoration and revitalization of Ho'okūkū Pond to a more pristine condition (*Table 4-10*). Since anchialine pools are focal points of high productivity which provide food for 'ōpae 'ula and other anchialine fauna, increasing the size of this pond habitat will increase the overall productivity and population base of hypogeal crustacea in the surrounding groundwater aquifer. A larger habitat and subsequently larger population of 'ōpae 'ula, will improve the anchialine ecosystem through the eventual natural progression toward a stable community structure, even in conditions with high nutrient load. During excavation and expansion of Ho'okūkū Pond, debris should be removed down to the former level of base rock or below.

Once restored, Ho'okūkū Pond has the potential to be a vital link to Hawaiian culture, values, and traditions of the past in this area. Further study on the cultural use of this anchialine pool and others in the vicinity by Hawaiian inhabitants of Keauhou and Kailua-Kona, will be undertaken and incorporated into the interpretive signage of Ho'okūkū Pond. In addition, if a healthy and sustainable

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		stormwater runoff on-site. This infrastructure will significantly reduce pollutants reaching the ocean, helping to maintain and enhance water quality in Keauhou Bay. Additionally, the Project is adopting Low-Impact Development (LID) practices, which emphasize conserving natural features and employing localized, small-scale stormwater systems that mimic natural hydrologic processes. Prior to construction, a detailed drainage masterplan will be developed to integrate these strategies, including criteria for infiltration systems, stormwater detention and retention, flood analysis, and drainage system schematics. The project's detailed drainage analysis and design will require design review and approval by the County for land use and construction plan approvals subsequent to the FEIS. The Project will be designed to comply with the County Drainage Standards, which include design requirements and regulations to address stormwater impacts within the County of Hawai'i.
Please, Do NOT risk polluting the water in Keauhou Bay by allowing Kamehameha Schools to develop this "bungalow resort" project. Research has shown that developments pollute nearby waters constantly during development and after. Developments have ALWAYS polluted the water in every near-coastal development area. An article entitled, "What is the biggest source of pollution in the ocean?" by NOAA, National Oceanic and Atmospheric Administration, states,"When large tracts of land are plowed, the exposed soil can erode during rainstorms. Much of this runoff flows to the sea, carrying with it agricultural fertilizers and pesticides." It also states,"Eighty percent of pollution to the marine environment comes from the land. One of the biggest sources is called 'nonpoint source pollution',which occurs as a result of runoff." According to the National Library of Medicine, in their article, "Putting the Earth in Play: Environmental Awareness and Sports," the golf industry uses approximately 50 pesticide active ingredients, including chlorpyrifos—an insecticide that is banned for residential use	Kano Leohano	It is not always the case that development inevitably leads to pollution of nearby ocean waters. The impact of development on water quality largely depends on the type of development, quality of infrastructure, and the effectiveness of long-term management practices, as well as responsible construction methods in the short term. The project's stormwater management plan and Best Management Practices (BMPs) are designed to safeguard Keauhou Bay's water quality and marine resources both during and after development. EIS Section 4.5 discusses Project stormwater management and drainage improvements. The Project proposes a comprehensive stormwater management system designed to capture and treat stormwater runoff on-site. This infrastructure will significantly reduce pollutants reaching the ocean, helping to maintain and enhance water quality in Keauhou Bay.

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by the EPA due to developmental hazards. These pollutions and more are being held off from running into the Bay by the trees that would be destroyed and removed if this project were to be allowed.		
Please see that developing Kamehameha Schools Bungalow Resort in Keauhou Bay WILL threaten endangered species due to the unavoidable development and golf course pollution runoff that would happen a lot more often due to taking out the natural pollution filter, that is the trees and the land that is there now. These pesticides will be in the pollution runoff that will enter Keauhou Bay more severely because of the bungalow resort development's pavement. As of right now the trees and land that this development wants to clear and develop into a bungalow resort is a Natural Pollution Filter. It's the pavement that this development wants to put in that will cause a lot of pollution to runoff into Keauhou Bay because this top land that is directly below the golf course (that they want to clear) soaks in the golf course pesticides, fertilizer, weed killer... and is the BEST AND ONLY PROTECTION POLLUTION FILTER Keauhou Bay has from the golf course pollution. These trees and land are saving monk seals and green sea turtles habitat from the golf course pollution and this land MUST BE PRESERVED and CONSERVED as the natural protector for Keauhou Bay hence, for these endangered species habitat. Under Section 2 (b) of the Endangered Species Act - Keauhou Bay MUST BECOME a CONSERVATION AREA for these endangered species because it is their habitat as of today, and to allow a resort development to be built above this bay would threaten the very lives of these endangered species because it will allow golf course toxic pollution and development pollution to run into these species natural habitat, which is Keauhou Bay. Keauhou Bay has trees and land just under the golf course (that Kamehameha Schools wants to clear for their bungalow resort) that protects Keauhou Bay from a lot of algae blooms because it soaks up pollution that is runoff from fertizler, weed killer... in the golf	Donald Robert Berger Stephen Goudreau Sara Irwin Goudreau Lucia Kaplan Rebecca Melendez Roslyn Patrick-Sunnes Deborah Sevy Mayari Sherina Ong Lisa Thatcher Rayann Ebreo Riley Reynolds Sharron Rudolph Curt and Ellen Winningham	EIS Section 4.5 discusses Project stormwater management and drainage improvements. An analysis of existing drainage conditions, proposed infrastructure improvements, and mitigation measures are evaluated. Estimates of existing and projected stormwater runoff peak flows are also provided. To mitigate stormwater runoff, the Project proposes stormwater and drainage improvements designed to minimize runoff entering Keauhou Bay. These improvements include the introduction of permanent Best Management Practices (BMPs), such as sediment control mechanisms and effective stormwater management systems. In the long term, the proposed drainage system, permanent BMPs, and new native landscaping will help capture and treat runoff from the Project Area and upslope areas, decreasing sediment, nutrient, and pollutant levels that might otherwise flow toward Keauhou Bay. Due to the low frequency of substantial rainfall and high permeability of the soils throughout the Project Area, surface runoff generally does not occur in the typical rainfall occurrence. As a result, the Project Area does not contain any visible natural gulches or waterways. Runoff typically either percolates into the underlying groundwater or evaporates into the atmosphere. Kamehameha Schools acknowledges the potential for runoff from the golf course (not owned by Kamehameha Schools) located mauka of the Project Area during heavy rain events. Fertilizers and other nutrient pollutants can be harmful to coastal marine environments by promoting algae growth, which can disrupt marine ecosystems. Currently, the portion of the Project Area between 'Ahu'ula cliff and the golf course is dominated by invasive Guinea grass and koa haole trees, which provide limited ecological or erosion control

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course, and unfortunately when there is a severely heavy rain storm the land up on top of the bay has a greater runoff than normal from the golf course pollution, and pollution foam and algea blooms happen because of it. If you allow a Bungalow Development in Keauhou Bay you WILL be agreeing to pollute this bay for years to come and COMPLETELY CHANGING KEAUHOU BAY'S ECOSYSTEM because the golf course runoff won't have the best protection which is the natural trees and land that can soak up the polluted water most of the year and polluted foam algae blooms will happen a lot more often. Does this EIS have any studies or reports on the extra runoff pollution due to clearing land and adding pavement? This needs to be fully known because you will be changing an entire ecosystem to build a bungalow resort. Because it rains in Keauhou Bay many nights out of the year and the land they want to clear absobs the golf course toxins so this bay is not as severly polluted as it will be with pavement and development, and when serious storms come Keauhou Bay won't stand a chance because the land can't keep ALL golf course pollutions out during this time and pavement won't even come close. If you clear this land, this kind of algae bloom will happen a lot more often and end up killing a lot of coral and marine life as stated in the many articles that will follow. One of these articles is in the Global Coral Reef Alliance. They researched the reef before and after a golf course development, and even though this development is not a golf course development, it is still a development and it will also be located just under a golf course and this will allow the pollution from the golf course to come down to the bay a lot more often becuase the natural land that soaks up this pollution will be gone. Has this EIS done any kind of research about the algea blooms that happen after a serious storm becuase of the golf course runoff pollution?		benefits. The Project does not propose the removal of native forests. The project's stormwater management plan and Best Management Practices (BMPs) are designed to safeguard Keauhou Bay's water quality and marine resources both during and after development. EIS Section 4.5 discusses Project stormwater management and drainage improvements. The Project proposes a comprehensive stormwater management system designed to capture and treat stormwater runoff on-site. This infrastructure will significantly reduce pollutants reaching the ocean, helping to maintain and enhance water quality in Keauhou Bay. Additionally, the Project is adopting Low-Impact Development (LID) practices, which emphasize conserving natural features and employing localized, small-scale stormwater systems that mimic natural hydrologic processes. Prior to construction, a detailed drainage masterplan will be developed to integrate these strategies, including criteria for infiltration systems, stormwater detention and retention, flood analysis, and drainage system schematics. The project's detailed drainage analysis and design will require design review and approval by the County for land use and construction plan approvals subsequent to the FEIS. The Project will be designed to comply with the County Drainage Standards, which include design requirements and regulations to address stormwater impacts within the County of Hawai'i.
There would also be tremendous runoff damage into Keauhou Bay and the surrounding area during the building	David Hill	EIS Section 4.5 discusses Project stormwater management and drainage improvements. An analysis of existing drainage

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phase of this enormous project. GOLF COURSE POLLUTION KILLS MARINE LIFE AND DRASTICALLY CHANGES ECOSYSTEMS. These pesticides will be in the pollution runoff that will enter Keauhou Bay more severely should the natural habitat of the trees be removed and replaced with pavement. This is unavoidable! The pavement from this development will cause pollution to runoff into Keauhou Bay because this treed land that will become a housing development is situated directly between the golf course and the Bay. These trees, which absorb all the pollution from the golf course is the BEST AND ONLY PRDTECTION POLLUTION FILTER Keauhou Bay has from the golf course pesticides, fertilizer and weed killer. These trees and land are saving monk seals and green sea turtles habitat from the golf course pollution and this land MUST BE PRESERVED and CONSERVED as the natural protector for Keauhou Bay and for these endangered species habitat. Under Section 2 (b) of the Endangered Species Act - Keauhou Bay MUST BECOME A CONSERVATION AREA for these endangered species. It is currently their habitat, and to allow a large resort development to be built above this bay clearly threatens the lives of these endangered species by allowing golf course toxic pollution and development pollution to run into these species natural habitat of Keauhou Bay. Though this development is not a golf course development, it is located just below a golf course and exposes the bay to the pollution from the golf course by removing the proven natural filter of the trees and natural ecosystem. Has this EIS done any kind of research about the algae blooms that happen after a serious storm because of the golf course runoff pollution? If you allow a Bungalow Development in Keauhou Bay you WILL be agreeing to pollute this bay for years to come and COMPLETELY CHANGING and possibly DESTROYING KEAUHOU BAY'S ECOSYSTEM. Does this EIS have any studies or reports on the extra runoff pollution due to clearing land and adding pavement? This needs to be fully assessed because you will be changing an entire ecosystem	Kaleihua Kamaka Kellie Kilcuo William Lim Jenni Lund Rebecca Melendez Alicia Morrier Belinda Pate Jo Quinn Jason Rigmaiden Bryn Stites Wim Verkaok Jyn Watson Celia Murry Maebrie Bettinardi	conditions, proposed infrastructure improvements, and mitigation measures are evaluated. Estimates of existing and projected stormwater runoff peak flows are also provided. To mitigate stormwater runoff, the Project proposes stormwater and drainage improvements designed to minimize runoff entering Keauhou Bay. These improvements include the introduction of permanent Best Management Practices (BMPs), such as sediment control mechanisms and effective stormwater management systems. In the long term, the proposed drainage system, permanent BMPs, and new native landscaping will help capture and treat runoff from the Project Area and upslope areas, decreasing sediment, nutrient, and pollutant levels that might otherwise flow toward Keauhou Bay. Due to the low frequency of substantial rainfall and high permeability of the soils throughout the Project Area, surface runoff generally does not occur in the typical rainfall occurrence. As a result, the Project Area does not contain any visible natural gulches or waterways. Runoff typically either percolates into the underlying groundwater or evaporates into the atmosphere. Kamehameha Schools acknowledges the potential for runoff from the golf course (not owned by Kamehameha Schools) located mauka of the Project Area during heavy rain events. Fertilizers and other nutrient pollutants can be harmful to coastal marine environments by promoting algae growth, which can disrupt marine ecosystems. Currently, the portion of the Project Area between 'Ahu'ula cliff and the golf course is dominated by invasive Guinea grass and koa haole trees, which provide limited ecological or erosion control benefits. The Project does not propose the removal of native forests. The project's stormwater management plan and Best Management Practices (BMPs) are designed to safeguard Keauhou Bay's water quality and marine resources both during and after development. EIS Section 4.5 discusses Project stormwater management and drainage improvements. The Project proposes a comprehensive

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to build a bungalow resort. It rains in Keauhou Bay many nights out of the year and this kind of pollution will kill the beautiful and necessary coral in the Bay. If it's being drastically hurt by runoff water from developments, Keauhou Bay waters won't stand a chance if development above the bay is allowed. Keauhou Bay is a much smaller ecosystem. (Right now Keauhou Bay has a lot of trees and is very natural, this is what helps stop runoff.) By contrast, close to 100 percent of the rain that falls on concrete and other hard surfaces produces runoff. One inch of rain falling on an acre of hardened surface produces 27,000 gallons of runoff.		stormwater management system designed to capture and treat stormwater runoff on-site. This infrastructure will significantly reduce pollutants reaching the ocean, helping to maintain and enhance water quality in Keauhou Bay. Additionally, the Project is adopting Low-Impact Development (LID) practices, which emphasize conserving natural features and employing localized, small-scale stormwater systems that mimic natural hydrologic processes. Prior to construction, a detailed drainage masterplan will be developed to integrate these strategies, including criteria for infiltration systems, stormwater detention and retention, flood analysis, and drainage system schematics. The project's detailed drainage analysis and design will require design review and approval by the County for land use and construction plan approvals subsequent to the FEIS. The Project will be designed to comply with the County Drainage Standards, which include design requirements and regulations to address stormwater impacts within the County of Hawai'i.
Please, Do NOT risk polluting the water in Keauhou Bay by allowing Kamehameha Schools to develop their bungalow resort project. Research has shown that developments pollute nearby waters constantly during development and after. Developments have ALWAYS polluted the water in every near coastal development area. The trees you want to take down keep the runoff pollution from the golf course from going into the Bay. These pollutions and more are being held off from running into the Bay by the very trees you want to take down. Let's not forget the marine life that will be threatened by excess pollution and traffic.	Danica Ann Barretto Susie Jenkins Nawahine Kahoopii Veronique Leferink Ellen Manko Heather Masunaga Jasmin McCracken Michelle Melendez	It is not always the case that development inevitably leads to pollution of nearby ocean waters. The impact of development on water quality largely depends on the type of development, quality of infrastructure, and the effectiveness of long-term management practices, as well as responsible construction methods in the short term. The project's stormwater management plan and Best Management Practices (BMPs) are designed to safeguard Keauhou Bay's water quality and marine resources both during and after development. EIS Section 4.5 discusses Project stormwater management and drainage improvements. The Project proposes a comprehensive stormwater management system designed to capture and treat stormwater runoff on-site. This infrastructure will significantly reduce pollutants reaching the ocean, helping to maintain and enhance water quality in Keauhou Bay.

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-16

Petitioners hereby submit **Exhibit B-16**, consisting of excerpts from the Final Environmental Impact Statement (FEIS), Volume III, Appendix K — Biological Assessment (Natural Resources Assessment) for lands at Keauhou Bay.

Exhibits B-16-1 through B-16-4 include biological survey findings and impact analysis addressing avian species, seabirds, mammals, and other ecological resources within and surrounding the Project Area. These materials state that no threatened or endangered species were identified within the Project Area during field surveys, while simultaneously acknowledging that multiple protected and endangered species—including Hawaiian hoary bats, Hawaiian monk seals, green sea turtles, and seabirds—may transit, forage, or utilize the surrounding area and may be affected by project activities.

The Biological Assessment further identifies potential impacts associated with vegetation removal, construction activities, and artificial lighting, including disturbance to roosting habitats, risks to seabirds from lighting disorientation, and the need to halt construction activities when protected species are present within proximity of the Project Area.

Petitioners submit this exhibit to demonstrate that the FEIS relies on the absence of observed species within surveyed parcels while acknowledging the presence, movement, and vulnerability of protected species in the surrounding environment, and identifies potential impacts requiring avoidance and mitigation measures.

These materials are true and correct excerpts from the FEIS. Pagination references correspond to exhibit numbering.

tree tobacco (*Nicotiana glauca*), a common weed in the islands. We did not record tree tobacco in the area nor were any other plants in the Family Solanaceae observed.

Avian Resources

The findings of the avian survey are consistent with the location of the property and habitats present there. As previously mentioned, one of the species detected is a native species. Pacific Golden-Plover is an indigenous migratory shorebird species that nests in the high Arctic during the late spring and summer months, returning to Hawai'i and the tropical Pacific to spend the fall and winter months each year. The birds usually leave Hawai'i and return to the Arctic in late April or the very early part of May. Pacific Golden-Plover is a commonly countered shorebird throughout the Hawaiian Islands during late summer through mid-spring months.

Waterbirds

No waterbirds were detected during this survey and no suitable habitats exist for either of the two endangered Hawaiian waterbirds: Hawaiian Coot (*Fulica alai*) or the endemic sub-species of the Black-necked Stilt (*Himantopus mexicanus knudseni*) found on the Kona coast. Nēnē (*Branta sandvicensis*) is present in North Kona, but so far not seen in the Keauhou area (David, 2022).

Seabirds

It is possible that the endangered Hawaiian Petrel (*Puffinus sandwichesis*), Band-rumped Storm-Petrel (*Hydrobates castro*), and the threatened Newell's Shearwater (*Puffinus newelli*) over-fly the Project area between April and the middle of December each year in small numbers. The primary cause of mortality in Hawaiian Petrels and Newell's Shearwaters in Hawai'i is thought to be predation by alien mammalian species at the nesting colonies (USFWS, 1983; Simons and Hodges, 1998; Ainley et al., 2001). Collision with man-made structures is considered the second most significant cause of mortality of these seabird species in Hawai'i. Nocturnally flying seabirds, especially fledglings on their way to sea in the summer and fall, can become disoriented by exterior lighting. Disoriented seabirds may collide with man-made structures and, if not killed outright, become easy targets of opportunity for feral mammals (Hadley, 1961; Telfer, 1979; Sincock, 1981; Reed et al., 1985; Telfer et al., 1987; Cooper and Day, 1998; Podolsky et al., 1998; Ainley et al., 2001; Hue et al., 2001; Day et al., 2003). No suitable nesting habitat exists within or close to the project area for any of the three seabird species discussed here.

The principal potential impact that the construction of the proposed project poses to protected seabirds is the increased threat that birds will be downed after becoming disoriented by lights associated with the project during the nesting season. The two main areas that outdoor lighting could pose a threat to these nocturnally flying seabirds is if, 1) during construction it is deemed expedient, or necessary to conduct night-time construction activities, 2) following build-out, the potential operation of security lighting during the seabird nesting season.

- If night-time construction activity or equipment maintenance is proposed during the construction phases of the project, all associated lights should be shielded, and if flood/work lights are used, they should be placed on poles that are high enough to allow the lights to be pointed directly at the ground (Reed et al., 1985; Teller et al., 1987). Deleterious impacts to transiting seabirds can be avoided if construction occurs during daylight hours and all outdoor lighting installed is fully "dark sky compliant" (HDLNR-DOFAW, 2016). HDLNR recommends avoiding construction-related night-time lighting between September 15 and December 15 (DLNR, 2022).

Hawaiian Hawk

Hawaiian Hawk (*Buteo solitarius*) was not recorded during this survey, nor expected as this species is rarely seen at the low elevations of the Keauhou area (David. 2022). The proposed redevelopment of these lands will not have adverse impacts on this state-listed species.

Mammalian Resources

The findings of the mammalian survey are consistent with the location of the properties and habitats present. Although no rodents were recorded in our survey, it is likely that some of the four established alien Muridae found on Hawai'i—roof rat (*Rattus rattus*), brown rat (*Rattus norvegicus*), Polynesian rat (*Rattus exulans hawaiiensis*), and European house mouse (*Mus musculus domesticus*)—use various resources found within the general project area on a seasonal basis. All of these introduced rodents are deleterious to native ecosystems and the native fauna dependent on them.

No mammalian species currently protected or proposed for protection under either the federal or State of Hawai'i endangered species programs were detected during the course of this survey (DLNR, 2015; USFWS, n. d.).

Hawaiian hoary bat

It is probable that Hawaiian hoary bats overfly the project area on a seasonal basis, as they have regularly been seen foraging and displaying over Keauhou Bay in the fall (David, 2022). The principal impact that construction may pose to bats is during clearing and grubbing phases when vegetation is removed. The removal of vegetation within the project area could temporarily displace individual bats using trees for roosting. As bats use multiple roosts within their home territories, the potential disturbance resulting from the removal of the vegetation is likely to be minimal. However, during the pupping season, females carrying their pups may be less able to vacate a roost site as the tree is felled. Further, adult female bats sometimes leave their pups in the roost tree while they forage. Very small pups may be unable to flee a tree that is being felled.

- Potential adverse impacts from such disturbance can be avoided or minimized by not clearing woody vegetation taller than 4.6 m (15 ft) between June 1 and September 15, the period in which bats may have pups.

Other Resources of Potential Concern

Both endangered Hawaiian monk seals (*Monarchus schauinslandi*) and the threatened Pacific green sea turtle (*Chelonia mydas*) are regularly reported from Kona waters (David, 2022). Although unlikely, either species could haul out along the shoreline close to the dock or by the canoe club beach landing.

- If either species is detected within 100 m (300 ft) of ongoing construction. operations must cease and not continue until the animal has departed the area on its own accord.

Critical Habitat

No federally delineated Critical Habitat for any species occurs within the Project area (USFWS, nd-b). There is no equivalent designation under State of Hawai'i endangered species statutes.

Summary Conclusions

The terrestrial field surveys conducted in October 2021 by *AECOS* biologists found no species listed as threatened or endangered by state or federal statutes on any of the project parcels at Keauhou Bay. All of the surveyed parcels are much disturbed or are developed (commercial operations, access roads, public

park). The potential does exist that several listed species might transit or utilize the general area on occasion. These include: Black-necked Stilt, Nēnē, Hawaiian Petrel, Band-rumped Storm-Petrel, Newell's Shearwater, Hawaiian monk seal, and Pacific green sea turtle. In all such cases, the general precaution applies whenever an endangered animal species is observed within 100 m (300 ft) of on-going construction activity: work potentially disturbing to the animal should cease until the animal departs the area voluntarily. Only the endangered Hawaiian hoary bat is deemed to potentially utilize resources within the project area. Adverse impacts to this species could occur if trees over 4.6 m (15 ft) in height are removed between June 1 and September 15.

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EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS B-17 THROUGH B-18

Petitioners hereby submit Exhibit Series B-17 through B-18, consisting of photographic evidence and publicly available informational materials documenting the presence of protected marine species, ecological conditions, and the environmental sensitivity of Keauhou Bay and surrounding coastal waters.

Exhibit B-17 includes photographic evidence of a green sea turtle observed swimming within Keauhou Bay, as well as a Hawaiian monk seal resting within the bay area, demonstrating that protected marine species actively use Keauhou Bay for habitat, including haul-out and resting behavior. The monk seal photograph demonstrates actual use of the area for resting, contradicting prior statements that monk seals would not come ashore or utilize the shoreline in Keauhou.

Exhibits B-18-1 through B-18-13 include publicly available materials from governmental, scientific, and educational sources describing protected marine species in Hawai'i, including Hawaiian monk seals, sea turtles, manta rays, and other marine life, as well as applicable protections under the Endangered Species Act and related conservation frameworks. These materials further demonstrate that Keauhou Bay is widely recognized as a biologically active marine area, including its identification as "Manta Village," a known aggregation site where manta rays gather due to plankton availability and ecological conditions.

The materials also document that Hawai'i contains a disproportionately high number of endangered species and that marine ecosystems are highly sensitive to land-based sources of pollution, including stormwater runoff, sedimentation, nutrients, and contaminants associated with coastal development. Scientific and agency sources included in this exhibit series explain that such runoff can degrade water quality, disrupt plankton communities, and harm coral reefs and marine species that depend on clean coastal waters.

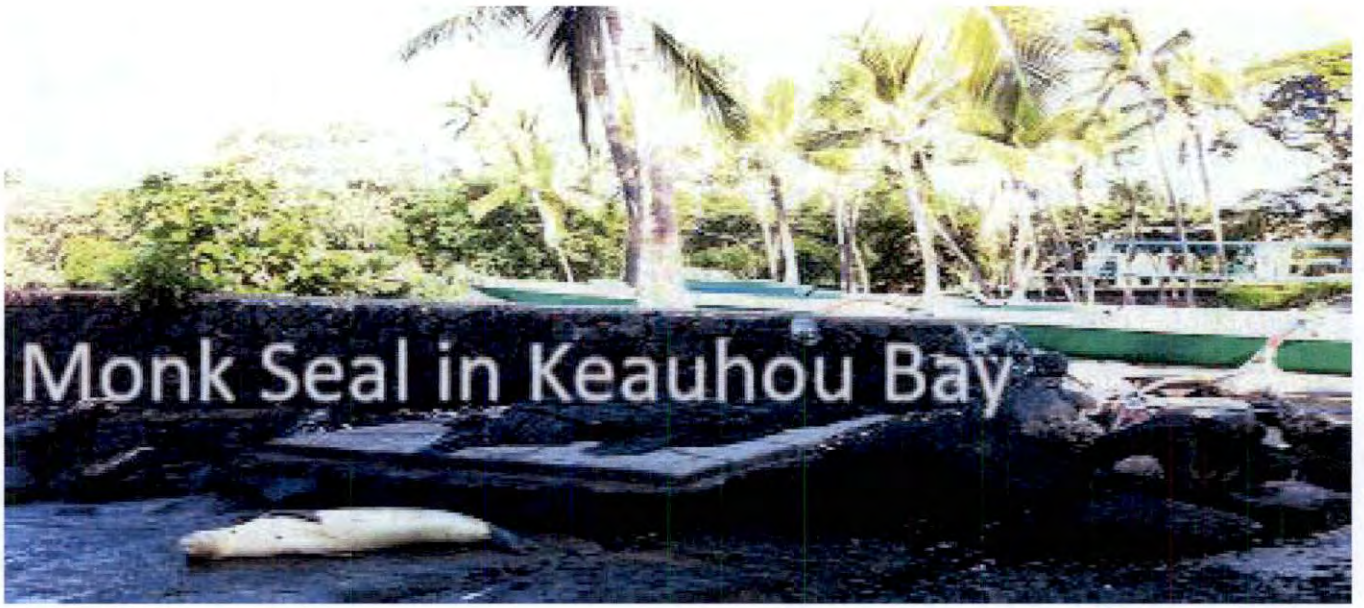
Petitioners submit this exhibit series to demonstrate that Keauhou Bay is an actively used habitat for protected species, is recognized as an ecologically significant marine area, and that increased runoff and development-related impacts pose a risk to water quality, marine life, and ecological balance within the bay.

These materials are true and correct copies of photographic and publicly available sources. Pagination references correspond to exhibit numbering.

EXHIBIT B

Mitchell et al. v. Kamehameha Schools et al.

Photographic Evidence of Protected Monk Seal Resting on Shore in Keauhou Bay



Keauhou Community Photo

Swimming Green Sea Turtle
in
Keauhou Bay
EXHIBIT 'B'
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B-17-2
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Endangered Species Evidence | About the Animals - Hawai'i M | Inbox (19,035) - rebeccasaddre | Pueo - Wikipedia | KBayinfo | BigIslandSupport.co | Gemini

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About the Animals

Certain marine animals including Hawaiian monk seals, sea turtles, dolphins, and whales in Hawaiian waters are protected either under the Marine Mammal Protection Act (MMPA) or the Endangered Species Act (ESA), or both. The MMPA and the ESA prohibit any "taking" of marine mammals or endangered species in the U.S. Under these laws a "take" is defined as the hunting, harassment, capture, harm, pursuit, shooting, wounding, killing, trapping, capture, collection, or an attempt to do any of these things. These animals are also protected under Hawai'i State statutes.

Hawai'i's seabirds are protected under the Migratory Bird Treaty Act (MBTA) which prohibits the catching, possession, injuring, killing and other actions impacting seabirds, their eggs or body parts, or attempting to do any of these things.

Extinctions are currently occurring at a rate that is unprecedented in human history. Each plant, animal, and their physical environment is part of an ecosystem and part of a much more complex web of life. Because of this, the extinction of a single species may cause a series of negative events to occur that affect many other species, ultimately including humans.

Species diversity is part of the natural legacy we leave for future generations and those that come after us deserve the opportunity to enjoy the same natural world we experience.

People cause the problems in the current health of our environment. But people can also positively affect changes in our ecosystems and help protected species sustain and recover by learning about the

Hawai'i makes up less than 0.2% of U.S. land, but over 25% of species found on the nation's endangered species list are endemic to Hawai'i, earning it the rather unflattering title of "the endangered species capital of the world.

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A nightly Manta Talk in the Manta Learning Center. Photo: Courtesy of Sheraton Kona

Manta rays are big business in Kailua-Kona, where local outfitters estimate some 80,000 people come to snorkel and dive with them each year.

The manta tours are done nightly, where big spotlights attract the plankton on which the graceful giants feed. The filter feeding rays congregate in two locations along the Kona coast—an area called Garden Eel Cove not far from the airport, and off the back porch of the Sheraton Kona Resort and Spa at Keauhou Bay.

Last week, the Sheraton hosted a weeklong event with talks about the biology and ecology of rays, and one invited Hawaiian cultural practioners, Roxanne Kapuaimohalaikalani Stewart, shared her perspective on *hahalua* (mantas). Long before Hawaii Island's resident population of manta rays entranced visitors on Kailua-Kona's popular snorkeling and diving tours, Native Hawaiians held the graceful creatures in high regard.

Stewart, a Hawaiian cultural specialist with the nonprofit organization Kai Palaoa, says manta rays are mentioned in the second *wa* (section) of the *kumulipo*, the Hawaiian creation chant. "Hawaiians recognize the need to honor life within the *kai* (ocean)," she says. "There was a hierarchy given to the animals of the sea. There are the simple animals like coral and fish, and the higher forms—the deep divers who go where we cannot go."

On Saturday evening, after a performance by a visiting hula *halau* (troupe) whose motions evoked the movements of the manta, Stewart told a small crowd of around two-dozen attendees why mantas may have been so revered



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The **Protected Species Program** (PSP), is a part of the State of Hawai'i, Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR), and is responsible for conserving, protecting, and enhancing the protected marine animal species found in Hawaiian waters. The PSP does this through public outreach and education, invasive predator management, pono (responsible) fishing advocacy, animal and habitat monitoring, marine debris removal, stranding response, and more.

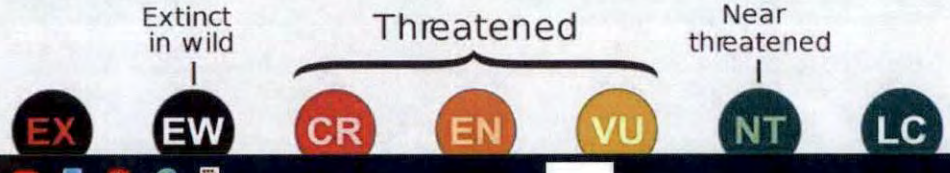
The IUCN Red List

Each threatened species is listed in the International Union for Conservation of Nature Red List of Threatened Species (IUCN Red List) established in 1964. IUCN Red List categories and criteria were used to create the Red List Index (RLI), which is essentially a list of species that have undergone an extinction assessment. Governmental organizations use the RLI to track species' progress and make crucial decisions to stop the loss of biodiversity. It displays trends in the total extinction risk for each species.

How does the IUCN Red List Work?

For a species to be added to the IUCN Red List, it must go through an assessment process, after which its extinction risk status is assigned from a selection of eight different categories:

- **Extinct** –When there is no reasonable doubt that the last individual of a taxon has died.
- **Extinct in the Wild** – Only present in captive or naturalized populations outside its original range.
- **Critically Endangered** – Extremely high risk of extinction in the wild.
- **Endangered** – Very high risk of extinction in the wild.
- **Vulnerable** – High risk of extinction in the wild.
- **Near Threatened** – Close to qualifying for a threatened category or is likely to qualify in the near future.
- **Least Concern** – Low risk of extinction in the wild. Includes widespread and abundant species.
- **Data Deficient** – Inadequate information for extinction risk assessment.



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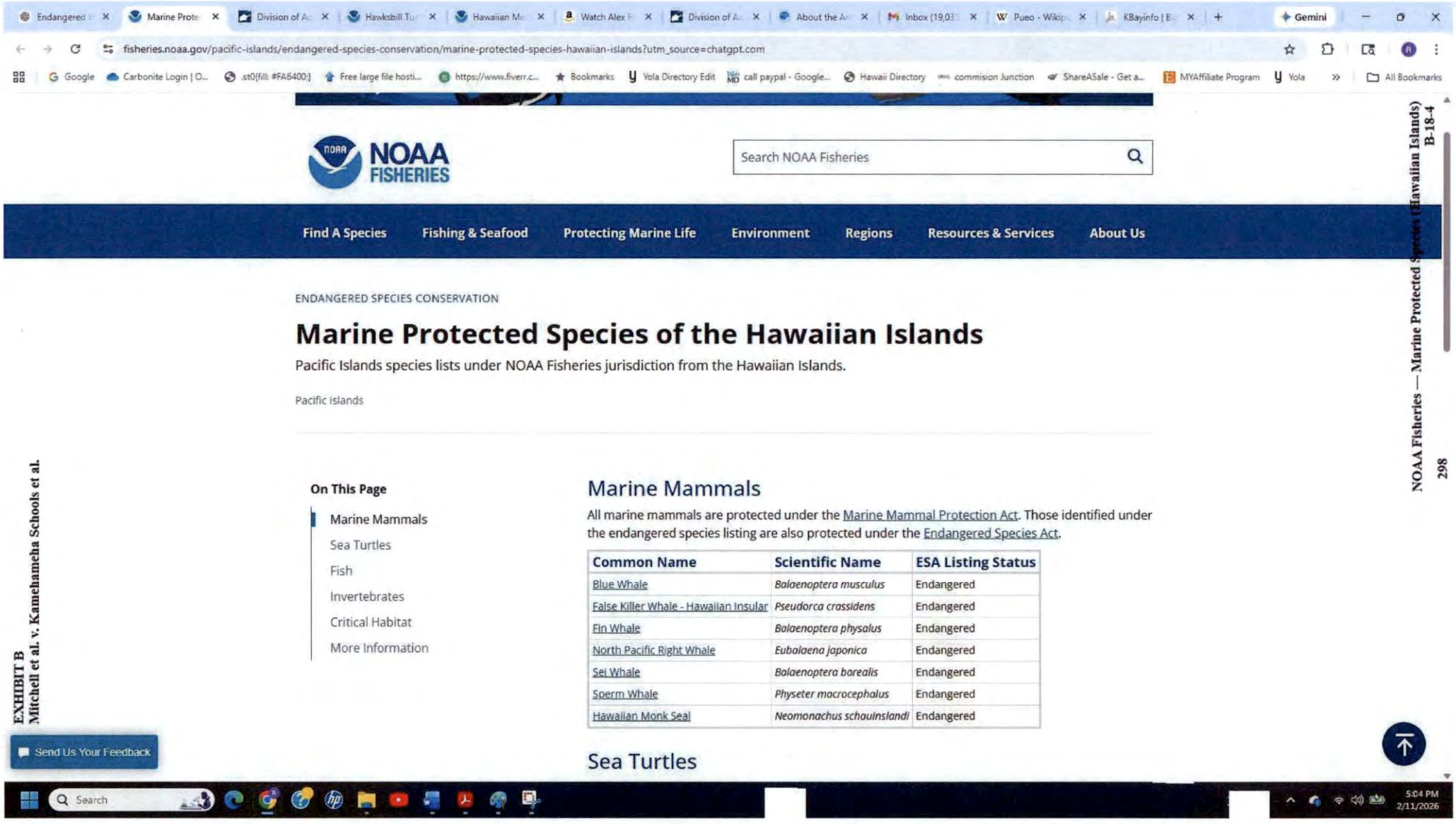

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ENDANGERED SPECIES CONSERVATION

Marine Protected Species of the Hawaiian Islands

Pacific Islands species lists under NOAA Fisheries jurisdiction from the Hawaiian Islands.

Pacific Islands

On This Page

- Marine Mammals
- Sea Turtles
- Fish
- Invertebrates
- Critical Habitat
- More Information

Marine Mammals

All marine mammals are protected under the Marine Mammal Protection Act. Those identified under the endangered species listing are also protected under the Endangered Species Act.

Common Name	Scientific Name	ESA Listing Status
Blue Whale	*Balaenoptera musculus*	Endangered
False Killer Whale - Hawaiian Insular	*Pseudorca crassidens*	Endangered
Fin Whale	*Balaenoptera physalus*	Endangered
North Pacific Right Whale	*Eubalaena japonica*	Endangered
Sei Whale	*Balaenoptera borealis*	Endangered
Sperm Whale	*Physeter macrocephalus*	Endangered
Hawaiian Monk Seal	*Neomonachus schauinslandi*	Endangered

Sea Turtles

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NOAA Fisheries — Marine Protected Species (Hawaiian Islands) B-18-4

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- Fish
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Hawaiian Monk Seal	*Neomonachus schauinslandi*	Endangered

Sea Turtles

All sea turtles are protected under the Endangered Species Act.

Common Name	Scientific Name	ESA Listing
Central North Pacific Green Turtle	*Chelonia mydas*	Threatened
Hawksbill Turtle	*Eretmochelys imbricata*	Endangered
Leatherback Turtle	*Dermochelys coriacea*	Endangered
North Pacific Loggerhead Turtle	*Caretta caretta*	Endangered
Olive Ridley Turtle	*Lepidochelys olivacea*	Threatened

Fish

Common Name	Scientific Name	ESA Listing
Giant Manta Ray	*Mobula birostris*	Threatened
Oceanic Whitetip Shark	*Carcharhinus longimanus*	Threatened

Invertebrates

Common Name	Scientific Name	ESA Listing
Coral	*Acropora globiceps*[1]	Threatened
Fluted Giant Clam*	*Tridacna squamosa*	Proposed threatened[2]
True Giant Clam*	*Tridacna gigas*	Proposed endangered

[1] Only within the Northwest Hawaiian Islands and not the main Hawaiian Islands.

[2] Proposed threatened, but under section 4(e) of the ESA for similarity of appearance (89 FR 60498).

*Both these species were introduced for aquaculture.

Critical Habitat

Common Name	Scientific Name	Status
False Killer Whale - Hawaiian Insular	*Pseudorca crassidens*	Designated
Green Turtle	*Chelonia mydas*	Proposed

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Common Name	Scientific Name	ESA Listing
Giant Manta Ray	*Mobula birostris*	Threatened
Oceanic Whitetip Shark	*Carcharhinus longimanus*	Threatened

Invertebrates

Common Name	Scientific Name	ESA Listing
Coral	*Acropora globiceps*[1]	Threatened
Fluted Giant Clam*	*Tridacna squamosa*	Proposed threatened[2]
True Giant Clam*	*Tridacna gigas*	Proposed endangered

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*Both these species were introduced for aquaculture.

Critical Habitat

Common Name	Scientific Name	Status
False Killer Whale - Hawaiian Insular	*Pseudorca crassidens*	Designated
Green Turtle	*Chelonia mydas*	Proposed
Hawaiian Monk Seal	*Neomonachus schauinslandi*	Designated
Pacific Coral	-	Designated

More Information

- Find A Species and learn more about their biology and population status, where they live, the threats they face, and how we are conserving and studying each species.
- Marine protected species of American Samoa
- Marine protected species of the Mariana Islands

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Endangered Species Act

The Endangered Species Act of 1973 provides a framework to conserve and protect endangered and threatened species and their habitats both domestically and abroad.

National

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Section 3. Definitions
Section 4. Determination of Endangered Species and Threatened Species
Section 5. Land Acquisition
Section 6. Cooperation with the States
Section 7. Interagency Cooperation
Section 8. International Cooperation
Section 8A. Convention Implementation
Section 9. Prohibited Acts
Section 10. Exceptions
Section 11. Penalties and Enforcement
Section 12. Endangered Plants
Section 13. Conforming Amendments
Section 14. Repealer
Section 15. Authorization of Appropriations
Section 16. Effective Date

Section 2. Findings, Purposes, and Policy

(a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the

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Section 9. Prohibited Acts
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Section 12. Endangered Plants
Section 13. Conforming Amendments
Section 14. Repealer
Section 15. Authorization of Appropriations
Section 16. Effective Date
Section 17. Marine Mammal Protection Act of 1972
Section 18. Annual Cost Analysis by the Fish and Wildlife Service
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(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

Section 3. Definitions

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Endangered Species Act of 1973

12 languages

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Appearance hide

Text
- Small
- Standard
- Large

Width
- Standard
- Wide

Color (beta)
- Automatic
- Light
- Dark

The **Endangered Species Act of 1973** (**ESA**; 16 U.S.C. § 1531 et seq.) is the primary law in the United States for protecting and conserving imperiled species. Designed to protect critically imperiled species from extinction as a "consequence of economic growth and development untempered by adequate concern and conservation", the ESA was signed into law by President Richard Nixon on December 28, 1973. The U.S. Supreme Court described it as "the most comprehensive legislation for the preservation of endangered species enacted by any nation".[1] The purposes of the ESA are two-fold: to prevent extinction and to recover species to the point where the law's protections are not needed. It therefore "protect[s] species and the ecosystems upon which they depend" through different mechanisms.

For example, section 4 requires the agencies overseeing the ESA to designate imperiled species as threatened or endangered. Section 9 prohibits unlawful 'take,' of such species, which means to "harass, harm, hunt..." Section 7 directs federal agencies to use their authorities to help conserve listed species.[2] The ESA also serves as the enacting legislation to carry out the provisions outlined in The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).[3] The Act is administered by two federal agencies, the United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS).[4] FWS and NMFS have been delegated by the Act with the authority to promulgate any rules and guidelines within the Code of Federal Regulations to implement its provisions.

Endangered Species Act of 1973

Other short titles	Endangered Species Act of 1973
Long title	An Act to provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.
Acronyms (colloquial)	ESA
Enacted by	the 93rd United States Congress
Effective	December 27, 1973
Citations	
Public law	93–205
Statutes at Large	87 Stat. 884
Codification	
Titles amended	16 U.S.C.: Conservation
U.S.C. sections created	16 U.S.C. ch. 35 §§ 1531-1544.
Legislative history	

History [edit]

Calls for wildlife conservation in the United States increased in the early 1900s because of the visible decline of several species.[5] One example was the near-extinction of the

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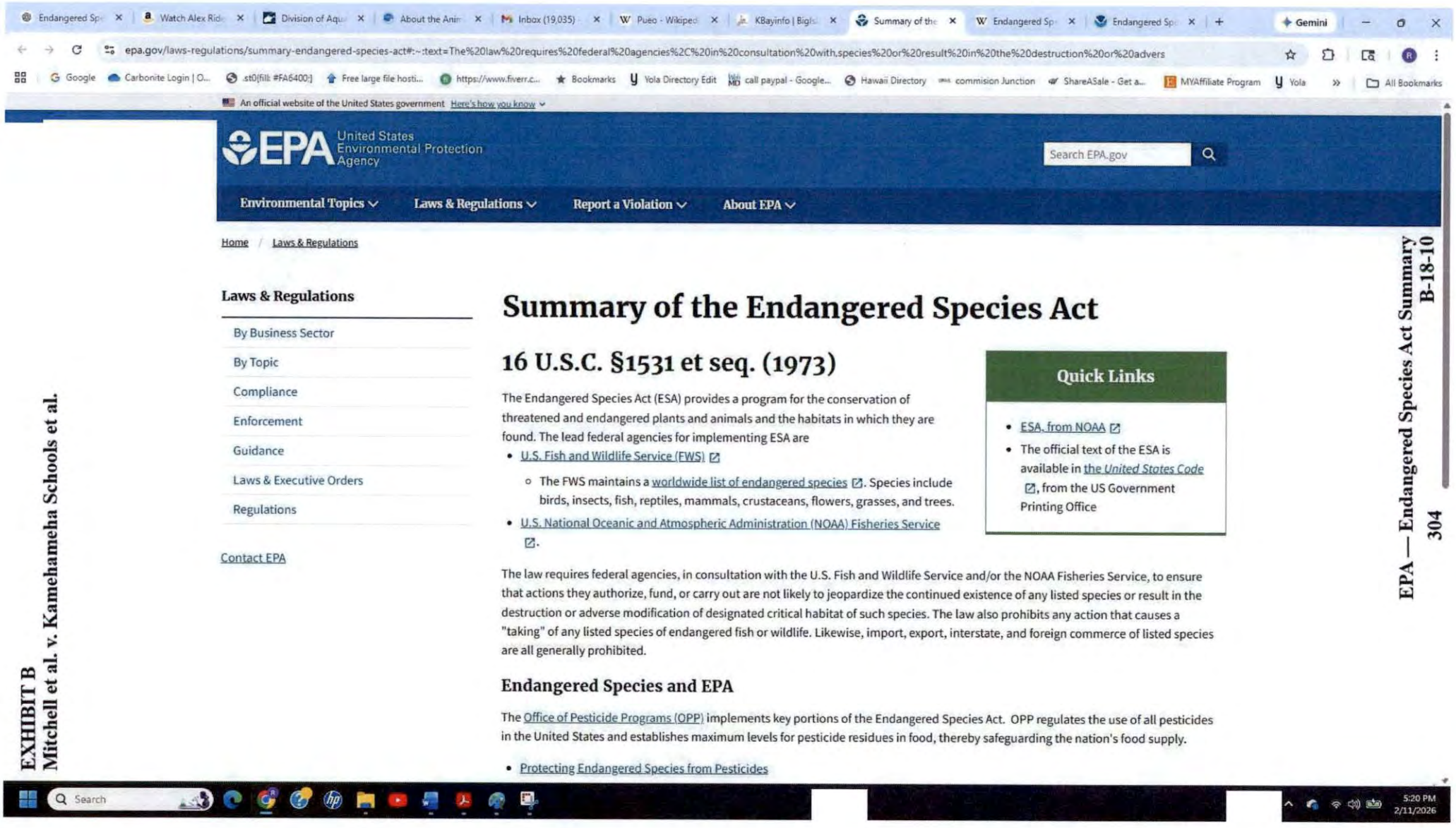

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Manta & Snorkel Kona — Manta Ray Village
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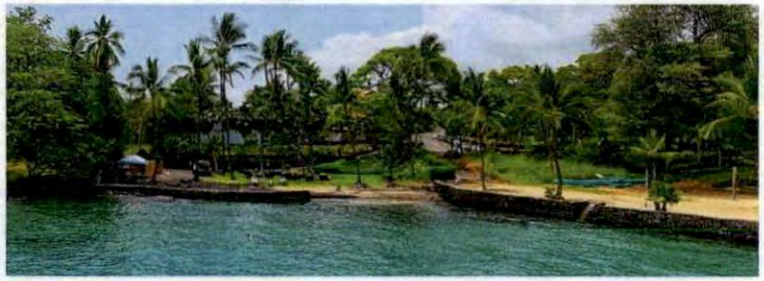
themantasnorkelco.com/post/the-history-of-manta-ray-village-from-hotel-innovation-to-global-attraction#:~:text=Kona's%20Manta%20Ray%20Village%20is,a%20little%20bit%20of%20serendipity.
Google | Carbonite Login | O... | .st0{fill: #FA6400;} | Free large file hosti... | https://www.fiverr.c... | Bookmarks | Yola Directory Edit | call paypal - Google... | Hawaii Directory | commision Junction | ShareASale - Get a... | MYAffiliate Program | Yola | All Bookmarks

Updated: May 17, 2025



Kona's Manta Ray Village is now renowned as a premier destination for unforgettable manta ray encounters, but its origins are a fascinating tale of innovation, nature, and a little bit of serendipity. In this post, we delve into the history of Manta Ray Village and explore how a hotel's creative idea transformed into a world-famous natural phenomenon.

The Early Beginnings: A Light in the Dark

Back in the early 1970s, everything began when the Kona Surf Hotel opened its doors. The hotel had a novel idea: provide guests with an illuminated view of the ocean at night. To bring this vision to life, bright floodlights were installed along the beachfront. Little did anyone know that these lights would become a beacon for plankton, the tiny organisms that form the base of the marine food chain. As the plankton began to flourish under the floodlights, Manta Rays—drawn by this abundant food source—started congregating in the area. Over time, these gentle giants learned to associate the lights with their next meal. The hotel quickly discovered that they had inadvertently created a natural attraction; guests could watch the graceful manta rays right from their rooms or while

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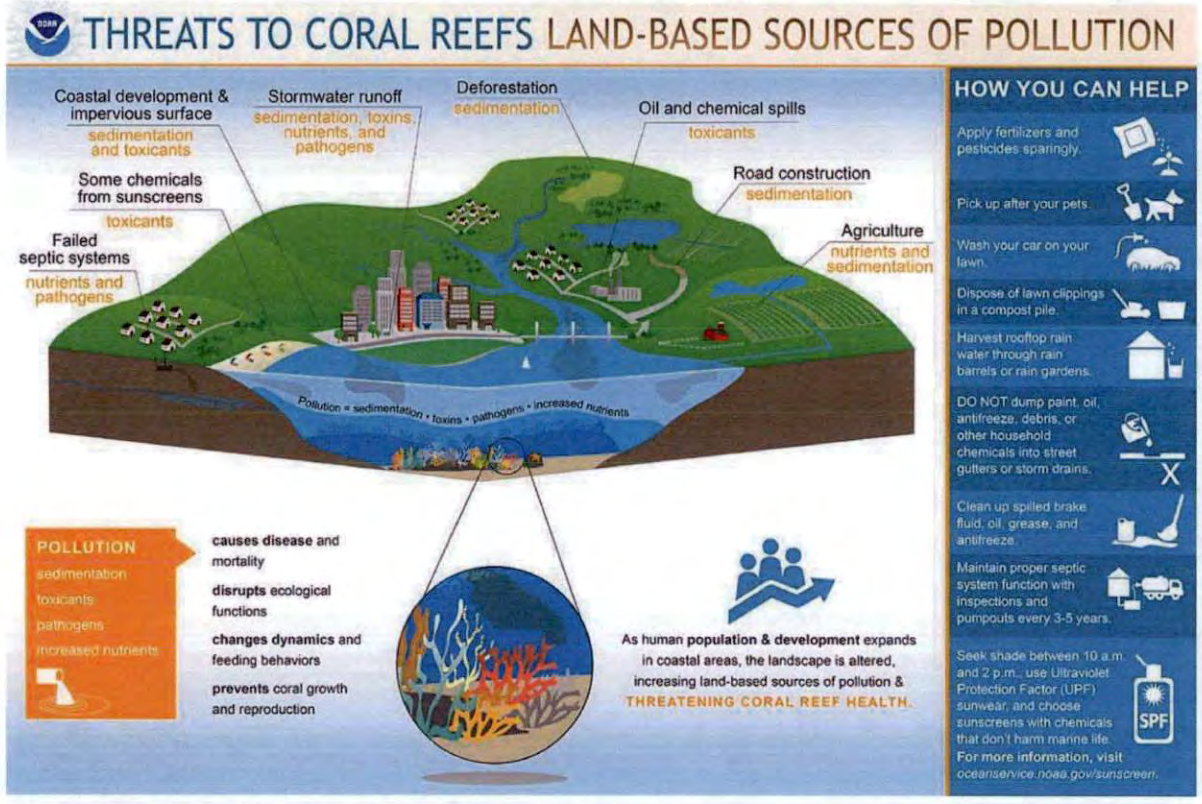
Many serious coral reef ecosystem stressors originate from **land-based sources**, most notably **toxicants**, **sediments**, and **nutrients**.



As human population and development expands in coastal areas, the landscape is altered, increasing land-based sources of pollution and threatening coral reef health. Download this infographic | Infographic Text

NOAA Infographic

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EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

frontiersin.org/journals/marine-science/articles/10.3389/fmars.2023.1200757/full

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Outline

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1 Introduction
2 Materials and methods
3 Results
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Data availability statement
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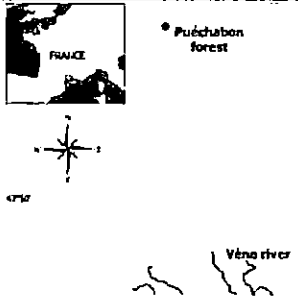
Funding

Figures and Tables

Figure 1



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Abstract

The Mediterranean region is undergoing an increase in the frequency and intensity of extreme rainfall events, resulting in terrestrial runoffs that can affect aquatic environments in coastal regions. The goal of this study was to investigate the effects of terrestrial runoff on natural coastal planktonic assemblages. For this purpose, an *in situ* mesocosm experiment was conducted in May 2021 in the Mediterranean Thau Lagoon. A terrestrial runoff event was simulated in duplicate mesocosms by adding natural forest soil that was left to maturate naturally for two weeks in river water. After the addition of maturated soil, the abundance and diversity within the planktonic food web, from viruses to metazooplankton, were monitored for 18 days. The addition of maturated soil to the terrestrial runoff treatment greatly depressed the light availability in the mesocosms and potentially enhanced flocculation and sedimentation in the mesocosms, resulting in an immediate negative effect on phytoplankton, decreasing the chlorophyll-*a* (Chl-*a*) concentration by 70% for 12 days. Afterward, remineralized nutrient in the terrestrial runoff treatment induced a subsequent positive effect on phytoplankton, which resulted in a diatom bloom and an increase in picophytoplankton and cyanobacteria abundance toward the end of the experiment. Overall, the Chl-*a* concentration was 30% lower in the terrestrial runoff treatment over the 18 days of experiment, whereas bacteria were 15% more abundant than in the control. This suggests that over the course of the experiment, the addition of maturated soil favoured bacteria instead of phytoplankton at the base of the planktonic food web. The addition of the maturated soil was detrimental for all protozooplankton groups and mixotrophic dinoflagellates, but seemed to favour metazooplankton, notably mollusk larvae, copepod nauplii, and rotifers. This implies that in the terrestrial runoff treatment, the preferential pathway for biomass transfer was through the direct consumption of bacteria and/or phytoplankton by metazooplankton. Therefore, in Thau Lagoon, after a terrestrial runoff, the transfer of biomass within the planktonic food web would potentially be more efficient by promoting direct transfer from the base to the top of the food web, subsiding intermediate trophic levels such as protozooplankton.

1 Introduction

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EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS B-19

Petitioners hereby submit **Exhibit Series B-19**, consisting of U.S. Environmental Protection Agency (EPA) water quality data and excerpts from the Final Environmental Impact Statement (FEIS) regarding water quality conditions at Keauhou Bay.

Exhibit B-19-1 includes EPA documentation identifying Keauhou Bay (Assessment Unit HI713293) as an **"Impaired (Issues Identified)"** waterbody and listed under Section 303(d) of the Clean Water Act, demonstrating that the bay does not meet applicable water quality standards.

Exhibits B-19-2 and B-19-3 include FEIS Volume I excerpts discussing marine waters, beach monitoring, and water quality conditions at Keauhou Bay. While the FEIS references general statewide impairment statistics and monitoring programs, it does not clearly disclose or analyze the EPA designation of Keauhou Bay itself as an impaired waterbody. Instead, the FEIS emphasizes limited exceedances and suggests that the bay has generally met acceptable thresholds, without addressing its formal impaired status.

These materials demonstrate a discrepancy between federal water quality data and the FEIS disclosure, where the EPA identifies Keauhou Bay as an impaired waterbody requiring attention, while the FEIS omits or minimizes this designation and fails to provide a complete and project-specific analysis of existing water quality impairment and its implications for additional development and runoff impacts.

Petitioners submit this exhibit series to demonstrate that baseline environmental conditions were not fully or accurately disclosed, and that the FEIS fails to adequately address known water quality impairments in evaluating the impacts of the proposed development.

These materials are true and correct copies of publicly available EPA data and FEIS excerpts. Pagination references correspond to exhibit numbering.

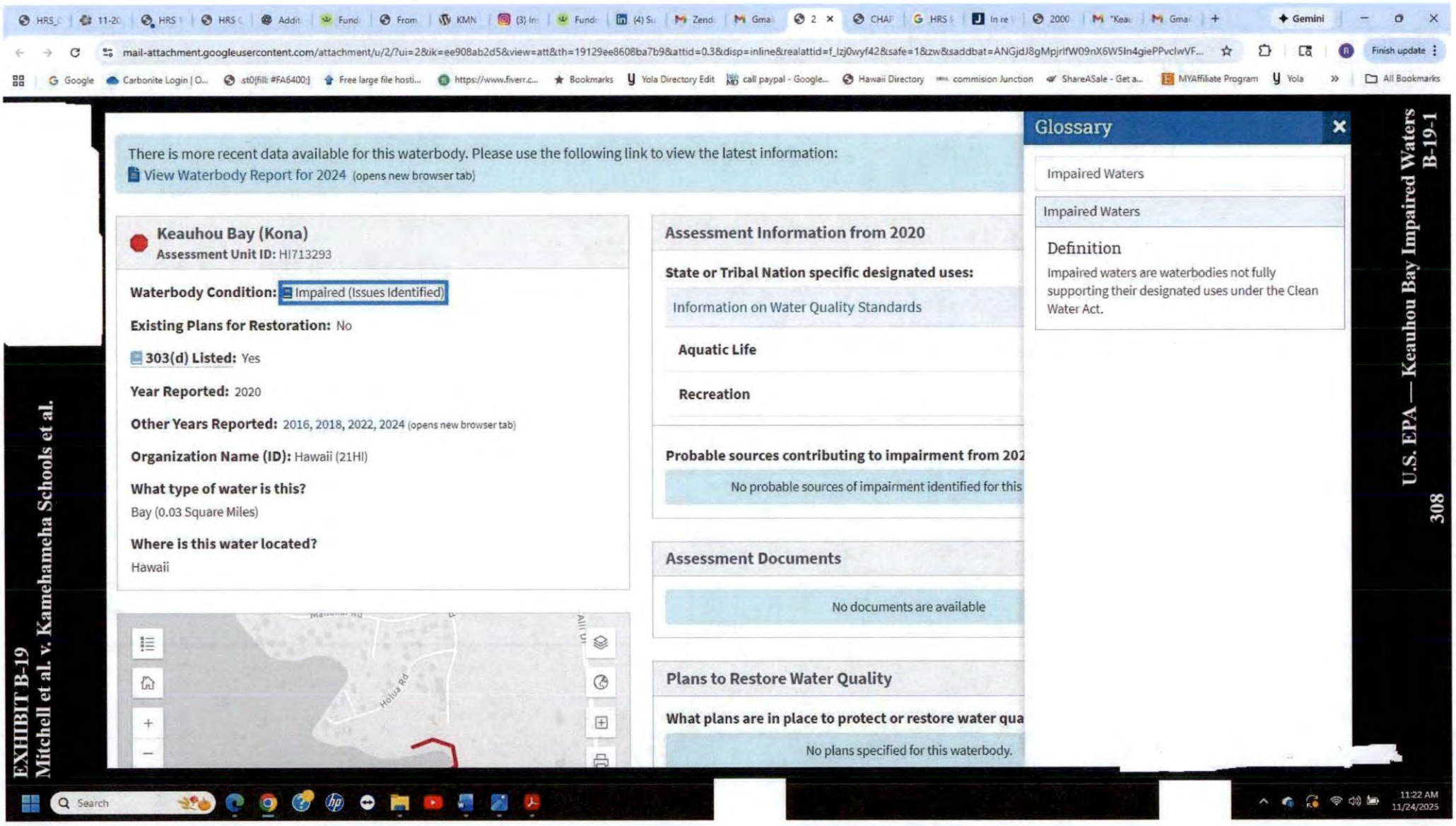

EXHIBIT B-19
Mitchell et al. v. Kamehameha Schools et al.

U.S. EPA — Keauhou Bay Impaired Waters
B-19-1
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Surface Waters

According to the HWUDP, Wai'aha Stream is the only perennial stream located within the Keauhou ASYA due to the high permeability of the basaltic lava flows from Mauna Loa and Hualālai volcanoes. In the wettest part of the rain belt, a few small springs may occur, such as Wai'aha Springs.

Two natural water features surrounding Keauhou Bay include the freshwater Kuhalalua Spring (fronts Sea Quest) and brackish water Ho'okūkū Pond (located at the base of 'Ahu'ula Cliff). Kuhalalua Spring (SIHP No. 29266), also referred to as Kaopa Spring by the Daughters of Hawai'i, is enclosed by an approximately ten ft. by 15 ft. stacked basalt rock walls. A small opening was added on the makai side to allow water to flow in and out. Freshwater springs created microenvironments ideal for certain species of fish and shellfish. Ho'okūkū Pond (SIHP No. 24263) measures approximately eight ft. wide and 15 ft. long. It is enclosed in a stacked basalt rock wall about three ft. high, in the shallow water level. The pond's water level is subterraneously connected to the ocean and rises and falls with the tides, typical for an anchialine pond. The pond Ho'okūkū Pond was largely filled and raised by four ft. in 1953-54 to make way for the widening and realignment of the Beach Trail. Additionally, a *Biological Survey of Ho'okūkū Pond* was prepared by G70 in March 2022 and found that the pond suffers from eutrophication due to settling of sediments, algal growth and poor water quality (G70, 2022).

Marine Waters

The Hawai'i State DOH is obligated by the Clean Water Act (CWA) Sections 303(d) and Section 305(b) to report on the State's water quality on a two-year cycle. The CWA Section 305(b) requires states to describe the overall status of water quality statewide, and the extent to which water quality provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allows recreational activities in and on the water. The CWA Section 303(d) requires states to submit a list of waters that do not attain applicable water quality standards (WQS). Waters that do not meet State WQS may be targeted for further monitoring activities to develop Total Maximum Daily Loads (TMDLs), to plan and evaluate CWA Section 319 nonpoint source pollution control projects and set requirements for NPDES permits and Section 401 Water Quality Certifications (WQC). A TMDL report is a water pollution reduction plan that determines the amount of each pollutant the impaired water body can assimilate and still meet water quality standards and assigns load allocations to all identified point sources and non-point sources for each pollutant.

The 2024 State of Hawaii Water Quality Monitoring and Assessment Report, known as the Integrated Report (IR), was prepared to meet the requirements for CWA Section 303(d) and Section 305(b). The IR lists impaired water bodies that do not meet State WQS and prioritizes impaired water bodies for TMDL development as "low," "medium," or "high" based on the number of pollutants not attaining state WQS, severity of exceedances, resource availability, and realistic schedule of completion.

The 2024 IR incorporates data collected from November 1, 2017, to October 31, 2019, to provide a snapshot of water body conditions throughout the State and carries over the assessment results from previous IRs.

The 2024 IR concludes that of the 151 marine water bodies assessed statewide, 143 (95%) do not attain water quality standards for at least one or more conventional pollutants. Turbidity was the leading cause of impairment statewide. The 2024 IR identifies Keauhou Bay as an impaired water body in need of a TMDL, assigning it a low priority.

Additionally, the DOH Clean Water Branch (CWB) implements a beach monitoring program, which focuses on detecting bacterial contamination in Hawai'i's recreational coastal waters. The program is supported by annual federal funding through the Beaches Environmental and Coastal Health (BEACH) Act and is designed to reduce the risk of illness among beach users. As part of this program, the CWB conducts routine monitoring at public beaches statewide, including Keauhou Bay.

According to CWB's dataset on Exceedances During Rain Events (1999–2021), Keauhou Bay recorded one exceedance in May 2005. More recently, in February 2023, a beach advisory was issued due to a high bacteria count detected during routine monitoring, with levels reported at 137 colony-forming units per 100 mL. The cause of the exceedance was undetermined. The DOH noted that Keauhou Bay has historically met acceptable beach threshold levels and that no known sources of fecal contamination were identified.

Storm Water Runoff and Drainage

Like the rest of the Keauhou ASYA, the Project Area consists of moderate to steep slopes of highly permeable volcanic soils, primarily 'a'ā lava rock. Due to the topography of the Project Area, three drainage basins are present that collect and channel rainfall in the makai direction *(Figure 4-31)*. The largest of these, identified here as Drainage Basin A, is comprised of the entire Kāneaka, Ka'ili'ilinehe, Kāmau'ai, and a portion of the Kamohoali'i Zone. Drainage Basin B is comprised of the portion of the Kamohoali'i Zone makai of Old Government Road where the existing commercial facilities are located. Drainage Basis C correlates with the Kaimukī Zone.

Due to the low frequency of substantial rainfall and high permeability of the soils throughout the Project Area, surface runoff generally does not occur in the typical rainfall occurrence. As a result, the Project Area does not contain any visible natural gulches or waterways. Runoff either percolates into the underlying groundwater or evaporates into the atmosphere. Offsite, existing drainage infrastructure is limited to gutters, swales, and inlets to dry wells along Kaleiopapa and Kamehameha Road.

There are no drainage reports or calculations on file with the County of Hawai'i or DOT for the adjacent public roadways or surrounding developed properties. However, existing stormwater runoff peak flow estimates for the three (3) drainage basis within the Project Area are presented in *Table 4-4*.

Table 4-4 Existing Stormwater Runoff Peak Flow Estimates

Project Group	Area (Acres)	Flow from a 10-Year Storm Event/Acre (cfs)	Total Flow from a 10-Year Storm Event (cfs)
Drainage Area A	25.24	1.90	57.70
Drainage Area B	0.61	3.97	2.42
Drainage Area C	2.71	1.82	5.93

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-20

Petitioners hereby submit **Exhibit B-20**, consisting of the transmittal letter submitted by G70 on behalf of Kamehameha Schools to the State of Hawai'i Office of Planning and Sustainable Development for publication of the Final Environmental Impact Statement (FEIS) for the Keauhou Bay Management Plan.

The transmittal letter, dated August 26, 2025, confirms that the FEIS was formally submitted for publication in *The Environmental Notice* and that the document was prepared pursuant to Chapter 343, Hawai'i Revised Statutes, and HAR Chapter 11-200.1. The letter further states that the FEIS includes responses to all substantive comments received during the Draft EIS review period and was simultaneously filed with the County of Hawai'i Planning Department as the accepting authority.

This exhibit is submitted to establish the official submission and procedural representation of the FEIS by the project preparer and applicant, including the assertion of compliance with statutory and regulatory requirements governing environmental review.

Petitioners submit this exhibit to demonstrate the formal representations made in connection with FEIS submission and acceptance, which are relevant to evaluating whether the environmental review process complied with applicable legal standards.

These materials are true and correct copies of the FEIS transmittal letter. Pagination references correspond to exhibit numbering.

111 S. King Street
Suite 170
Honolulu, HI 96813
808.523.5866
www.g70.design

August 26, 2025

Ms. Mary Alice Evans, Director
State of Hawai'i
Office of Planning and Sustainable Development
Environmental Review Program
235 South Beretania Street, Room 702
Honolulu, Hawai'i 96813

Subject: Kamehameha Schools, Keauhou Bay Management Plan
Final Environmental Impact Statement
Tax Map Keys (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
Keauhou, Island of Hawai'i, Hawai'i

Dear Ms. Evans:

On behalf of the Applicant, Kamehameha Schools, G70 submits the Final Environmental Impact Statement (EIS) for the Keauhou Bay Management Plan for publication in the September 8, 2025, edition of *The Environmental Notice.*

The FEIS consists of three volumes and has been prepared pursuant to Chapter 343, Hawai'i Revised Statutes (HRS), and Title 11, Chapter 200.1, Hawai'i Administrative Rules (HAR). The FEIS includes copies of all written comments received during the 45-day public consultation period for the Draft EIS, as well as responses to all substantive comments.

In accordance with HAR §11-200.1-5(e)(6)(C), the Final EIS document package has been simultaneously filed with the County of Hawai'i Planning Department as the accepting authority.

Should you have any additional questions, please contact me at (808) 523-5866.

Sincerely,

GROUP 70 INTERNATIONAL, INC., dba G70

Mark Kawika McKeague, AICP
President

cc:
Mr. Alex Roy, Planning Department

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS B-22-1 THROUGH B-22-2

Petitioners hereby submit Exhibit **Series B-22-1 through B-22-2,** consisting of photographic excerpts from the Final Environmental Impact Statement (FEIS) depicting existing recreational, cultural, and community uses at Keauhou Bay, including the Keauhou Canoe Club and associated shoreline areas.

Exhibit B-22-1 includes FEIS Volume III Figure 55, showing the Keauhou Canoe Club shoreline storage area and adjacent open space, as well as a historical photograph of the same area, demonstrating longstanding use and continuity of shoreline access and activity.

Exhibit B-22-2 includes FEIS Volume I Figures 3-14 and 3-15, depicting the Keauhou Canoe Club facility and an existing volleyball court, further demonstrating established recreational and community use of the project area.

These materials demonstrate that the project area is actively used for community recreation, cultural practices, and shoreline activities, including canoe paddling and public gathering.

Petitioners submit this exhibit series to demonstrate the existing baseline use of the area and the presence of established community and cultural activities that may be impacted by the proposed development.

These materials are true and correct excerpts from the FEIS. Pagination references correspond to exhibit numbering.



Figure 55. View of Keauhou Canoe Club in the location of the former Machado drydock, view to the north.



Figure 56. 1963 photograph showing the then-new wooden pier and Machado home in background (Kona Historical Society).



Figure 3-14 **Keauhou Canoe Club Facility**

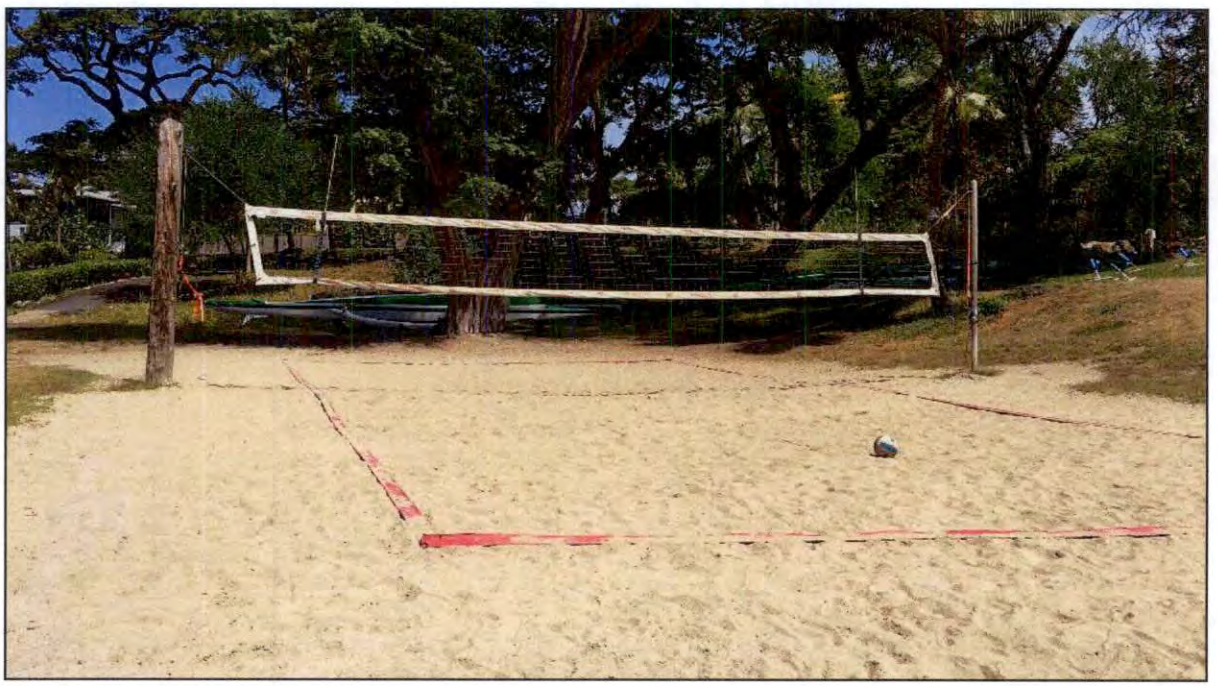

Figure 3-15 **Volleyball Court**

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-23

Petitioners hereby submit Exhibit B-23, consisting of genealogical documentation identifying Sarah Kapamaikela Makahilahi Kamehameha and her lineage, as reflected in publicly available historical and family record sources.

This exhibit is submitted in conjunction with Exhibit B-4-1 (Royal Patent held by King Kamehameha V for Keauhou Bay lands), Exhibit B-4-4 (genealogical records), Exhibit A-4-44 (HRS §532-8 — Kindred of Half Blood), and HRS §172-11 (Land Patents on Land Commission Awards), and is intended to further support and corroborate the identified chain of lineage associated with lands derived from Royal Patent and Land Commission Award grants.

The materials included in Exhibit B-23 provide additional documentation of familial relationships and historical context relevant to the ownership, inheritance, and succession of interests connected to the Keauhou Bay lands, where King Kamehameha V, through Exhibit B-4-1, holds the Royal Patent. HRS §172-11 further establishes that land patents issued upon Land Commission Awards inure to the benefit of heirs and assigns of the original award holder, establishing the legal relevance of genealogical lineage in determining lawful ownership and succession.

Petitioners submit this exhibit to demonstrate that genealogical records and lineage evidence, together with applicable inheritance and land patent law, are directly relevant to questions of land title, succession, and lawful authority, and must be fully examined where lands derive from Royal Patents or Land Commission Awards.

These materials are true and correct copies of publicly available genealogical records. Pagination references correspond to exhibit numbering.

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

FamilySearch — Sarah Kapamaikela Kamehameha
B-23
314

Change amendment | Investigate Kameha | Sarah Kapamaikela M | Keanolani Kameham | Kuleana: A Story of | Change.org - The wo | Petition - Petition to | Inbox (22,114) - reb | Inbox (535) - bigisla

ancestors.familysearch.org/en/KWJC-386/sarah-kapamaikela-makahilahila-kamehameha-1868-1951

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FamilySearch

SIGN IN | CREATE ACCOUNT



Sarah Kapamaikela Makahilahila Kamehameha

1868–31 October 1951 • KWJC-386

Brief Life History of Sarah Kapamaikela

When Sarah Kapamaikela Makahilahila Kamehameha was born in 1868, in 'Ula'ino, Maui, Hawaii, United States, her father, Mo'i Lota Kapuāiwa Kalanimakua Ali'iōlani Kalanikupuapa'ikalaninui Kamehameha V, was 38 and her mother, Malia Nika Pilihale, was 14. She married Joseph Kailipuahilo Aikau in 1891, in Hāna, Maui, Kingdom of Hawaii. They were the parents of at least 2 sons and 3 daughters. She died on 31 October 1951, in Wailuku, Maui, Hawaii, United States, at the age of 83, and was buried in Waikapu, Maui, Hawaii, United States.

MORE

Sources (22)



Sarah Kaninan in household of Frank Kaninan, "United States Census, 1920"

Sarah Makahilchila, "Hawaii, Marriages, 1826-1954"

Sarah Makahilahila, "The Church of Jesus Christ of Latter-day Saints, Record of Membe...

VIEW ALL

Photos and Memories (4)









Do you know Sarah Kapamaikela? Do you have a story about her that you would like to share? Sign In or Create a FREE Account

Parents and Siblings

Mo'i Lota Kapuāiwa Kalanimakua Ali'iōlani Ka...
1830–1872

Malia Nika Pilihale
1854–1926

Siblings (1)

Sarah Kapamaikela Makahilahila Kamehameha

Family Time Line

Spouse and Children | Parents and Siblings

1840 1860 1880 1900 1920 1940 1960 1980 2000 2020 2040

Frank Mioi Kaninau 1881–1932

Sarah Kapamaikela Makahilahila Kamehameha 1868–1951

Marriage: 9 April 1915

Josephine Kaninau 1906–Deceased

Joe Kaninau 1901–Deceased

Elizabeth Kalili Aikau 1903–1986

Edith Keonaona Kaninau 1917–1931

Rebecca Ka'ahanui Kaninau 1919–2004

Spouse and Children

Frank Mioi Kaninau
1881–1932

Sarah Kapamaikela Makahilahila Kamehameha
1868–1951

Marriage
9 April 1915
Wailuku, Maui, Hawaii, United States

Children (5)

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EXHIBIT C
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS C

Petitioners hereby submit **Exhibit Series C-1 through C-2**, consisting of governing trust documents and sworn declaration evidence relating to the purpose, obligations, and use of Kamehameha Schools trust lands, including Keauhou Bay.

Exhibit C-1 includes excerpts from the Will of Princess Bernice Pauahi Bishop, which establishes the charitable trust and its purpose, stating that trustees are to "devote a portion of each year's income to the support and education of orphans and others in indigent circumstances," and further requires that trustees provide an annual report accounting for the management, expenditures, and use of trust assets.

Exhibit C-2 includes the Declaration of Daisy Mitchell, a Petitioner, documenting the denial and cancellation of community and educational events at Keauhou Bay based on opposition to the proposed development. The declaration further describes interference with longstanding community practices and the impact on access to trust lands intended for beneficiary use.

These materials demonstrate that Kamehameha Schools holds Keauhou Bay lands in trust for educational and beneficiary purposes, while the actions described in the declaration reflect restrictions and interference with community, educational, and beneficiary uses of those lands.

Petitioners submit this exhibit series to demonstrate the governing trust obligations and the inconsistency between those obligations and the conduct affecting access, use, and community practices at Keauhou Bay.

These materials are true and correct copies of trust documents and sworn declaration evidence. Pagination references correspond to exhibit numbering.

EXHIBIT C
Mitchell et al. v. Kamehameha Schools et al. Third Circuit Court of The State of Hawai'i

SOME IMPORTANT EXCERPTS FROM THE LAST WILL & TESTAMENT OF THE LATE HONORABLE BERNICE PAUAHI BISHOP

Information on the Bishop ESTATE

(Compiled by: Selection/Screening Committee of the Ad Hoc Committee for A Hawaii Trustee March, 1974)

DATE: October 31, 1883

1. These two excerpts are from the Will of Princess Ruth Keelikolani dated January 24, 1883:

"I give and bequeath forever to my beloved younger sister (cousin), Bernice Pauahi Bishop, all of my property, the real property and personal property from Hawaii to Kauai, all of said property to be hers."

"All these lands, and pieces of land given as above to certain parties for their lifetime, shall again revert at their death or any of them to my beloved younger sister (cousin). Bernice Pauahi Bishop in accordance with my first devise above set forth."

Charles Reed Bishop and Rudolph W. Meyers were appointed by Ruth as the executors of her will.

2. Article 13 of the will states the major purpose of the Estate:

"I give, devise and bequeath all of the rest, residue and remainder of my estate real and personal, wherever situated unto the trustees below named, their heirs and assigns forever, to hold upon the following trusts, namely: to erect and maintain in the Hawaiian Islands two schools, each for boarding and day scholars, one for boys and one for girls, to be known as, and called the Kamehameha Schools."

She also directed her 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."

A 1910 Supreme Court case, SMITH vs. LINDSAY (20-Hawaii-262)-determined that the above provision applied:

"To support and education at the Kamehameha Schools only and not to support independent of education."

3. Article 13 gives the trustee wide discretionery powers in the disposition of the kinds of the lands of the estate:

"For the purposes aftoresaid I grant unto my said trustees full power to lease or sell any portion of my real estate, and to reinvest the proceeds and the balance of my estate in real estate, or in such other manner as to my said trustees may seem best."

4. Article 13 also gives the Trustees the power to regulate admissions:

"I also give unto my said trustees full power to make all such rules and regulations as they may deem necessary for the government of said schools and to regulate the admission of pupils, and the same to alter, amend and publish upon a vote of a majority of said trustees."

5. Article 13 further states how the Estate is to be reviewed:

"I also direct that my said trustees shall annually make a full and complete report of all receipts and expenditures, and of the condition of said schools to the Chief Justice of the Supreme Court, or other highest judicial officer in this country; and shall also file before him annually an inventory of the property in their hands and how invested, and to publish the same in some Newspaper published in said Honolulu."

6. Article 13 - Teachers are to be Protestant:

"I also direct that the teachers of said schools shall forever be persons of the Protestant religion, but I do not intend that the choice should be restricted to persons of any particular sect of Protestants."

EXHIBIT C
Mitchell et al. v. Kamehameha Schools et al.

DECLARATION OF DAISY MITCHELL

I, Daisy Mitchell, declare as follows:

1. I am over the age of eighteen (18), competent to testify, and have personal knowledge of the facts stated in this declaration.

2. I am a Petitioner in this action and a member of the Hawaiian community that has long used Keauhou Bay for cultural, educational, and community gatherings.

3. I personally organized and planned a Hawaiian community and cultural event scheduled to take place on December 20 at the Keauhou Bay Canoe Club.

4. The December 20 event was intended to be a peaceful Hawaiian community gathering connected to cultural practice and community education at Keauhou Bay.

5. Prior to the scheduled date, I was informed that the event would not be allowed to proceed. I was further informed that Kamehameha Schools instructed, directed, or pressured the Keauhou Bay Canoe Club to deny the event because of opposition by myself and others to Kamehameha Schools' proposed bungalow resort development at Keauhou Bay.

6. The denial of my December 20 event was not based on safety concerns, scheduling conflicts, capacity limits, or neutral facility rules, but was explicitly tied to the fact that the event organizers opposed what Kamehameha Schools intends to do at Keauhou Bay.

7. I am also aware that a separate Hawaiian community event scheduled for April 12 at Keauhou Bay Park was canceled after a reservation deposit had been paid. I understand that the Nolen Kahulamu received a call by Wally who directly told him that the event was canceled because it opposed the proposed resort, and the $130 deposit was not returned despite the cancellation being initiated by Kamehameha Schools.

8. Hawaiian cultural gatherings, canoe club events, and community uses at Keauhou Bay are long-standing traditional and customary practices. Denying or blocking these events because of opposition to development constitutes discriminatory and retaliatory conduct that interferes with protected Hawaiian cultural practices.

9. Hawaiian beneficiaries should not be required to seek permission, pay deposits, or face retaliation in order to use Hawaiian endowed trust lands for cultural and

community purposes. Keauhou Bay is land held in trust for the benefit of Hawaiian people and should not be used as a means to suppress dissent or silence community opposition.

10. The denial of my December 20 2025 event and the cancellation of the April community event has caused harm by chilling speech, discouraging participation in cultural practices, and creating fear that access to Keauhou Bay will be restricted or revoked based on political viewpoint.

11. I make this declaration in support of the First Amended Petition for Judicial Review to document discriminatory treatment, retaliatory conduct, and unlawful interference with Hawaiian cultural practices occurring at Keauhou Bay.

I declare under penalty of perjury under the laws of the State of Hawai'i that the foregoing is true and correct.

DATED: 8 April, 2026

AT: Keauhou Makai, Hawai'i

DAISY MITCHELL

Declaration

EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS M

Petitioners hereby submit **Exhibit Series M-1 through M-17**, consisting of publicly available news articles, reports, and supporting materials addressing landfill capacity, waste management, infrastructure limitations, water supply conditions, and related environmental and public service issues on Hawai'i Island.

Exhibit M-1 through M-3 include reporting from Big Island Now and Hawai'i Public Radio documenting restrictions on waste disposal, limited landfill capacity, and the continued transport of waste across the island to West Hawai'i facilities, reflecting ongoing constraints on landfill infrastructure.

Exhibit M-4 through M-9 include reporting and public discussion regarding traffic fatalities, roadway congestion, and public safety concerns, demonstrating increasing strain on transportation systems and infrastructure capacity.

Exhibit M-10 through M-12 include documentation of electrical service disruptions, conservation advisories, and rolling power outages resulting from generation shortfalls and system limitations on Hawai'i Island.

Exhibit M-13 through M-16 include reporting regarding drought conditions, water supply monitoring, and water conservation notices issued to residents and communities, reflecting limitations on available water resources and the need for usage restrictions.

Exhibit M-17 includes reporting identifying the Keauhou aquifer as a resource subject to increased oversight and potential conservation designation, further demonstrating the sensitivity and importance of water resources in the project area.

These materials collectively demonstrate that Hawai'i Island is experiencing ongoing limitations in landfill capacity, transportation systems, electrical infrastructure, and water supply, all of which are relevant to cumulative impacts, infrastructure demand, and long-term environmental and planning considerations.

Petitioners submit this exhibit series to demonstrate that existing infrastructure constraints and environmental conditions are material to evaluating project impacts, yet were not fully investigated or analyzed in the FEIS, including cumulative effects on land use, waste management systems, public safety, water resources, and essential services.

These materials are true and correct copies of publicly available sources. Pagination references correspond to exhibit numbering.

ChatGPT | Big Island Now poll No. 27: Wh | Gemini
bigislandnow.com/2023/09/11/big-island-now-poll-no-27-whats-the-best-way-to-extend-the-life-of-the-big-islands-only-remaining-landfill/
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Big Island Polls

Big Island Now poll No. 27: What's the best way to extend the life of the Big Island's only remaining landfill?

September 11, 2023 · 2:30 AM HST

52 Shares

7 COMMENTS

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1 minute

A A A

The West Hawai'i Sanitary Landfill, the only working landfill on the Big Island since the Hilo Landfill closed permanently 3 years ago, has about 20 to 25 years before it reaches capacity.



Hawai'i County Environmental Management Commission Chairperson Georjean Adams recently

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Hawai'i County Environmental Management Commission Chairperson Georjean Adams recently said trying to find a new landfill site on the island is near impossible.

So what will the County do?

Commissioners think they've come up with a good idea: an ordinance that would limit the amount of recyclable materials going into the island's one remaining landfill. The proposed new law, still in it's early stages of development, would help divert more green waste, metals, plastics, paper, paperboard and glass away from the landfill off Queen Ka'ahumanu Highway in Waikōloa.

The goal is to slow down the timeline for the landfill reaching capacity, lengthening its lifetime.

Recycle Hawai'i Board of Directors President Kristine Kubat said the nonprofit agrees with the intent of the proposed measure; however, she would prefer to first see an outright ban on single-use plastic. She added that there's a lot more to discuss.

Conversations are happening now, so we wanted to pick your brain about what can be done to keep the west side landfill around as long as possible while the County works toward reaching goals related to climate resiliency, renewable energy, sustainable agriculture and zero waste.

What's the best way to extend the life of the Big Island's only remaining landfill?

This Poll Has Already Ended

- Ban recyclables from entering the landfill.
- Expand the landfill's size.
- Close the landfill and find a new space.
- Ban green waste from entering the landfill.
- Put in place an islandwide ban on single-use plastics.

EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.

Big Island Now — Landfill Capacity and Infrastructure Constraints M-1-2
319

ChatGPT | Big Island Now poll No. 27 resu | Gemini
bigislandnow.com/2023/09/17/big-island-now-poll-no-27-results-more-than-one-solution-needed-to-help-extend-life-of-west-hawaii-landfill/
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Big Island Polls

Big Island Now poll No. 27 results: More than one solution needed to help extend life of West Hawai'i landfill

September 17, 2023 · 2:30 AM HST

162 Shares
1 COMMENT

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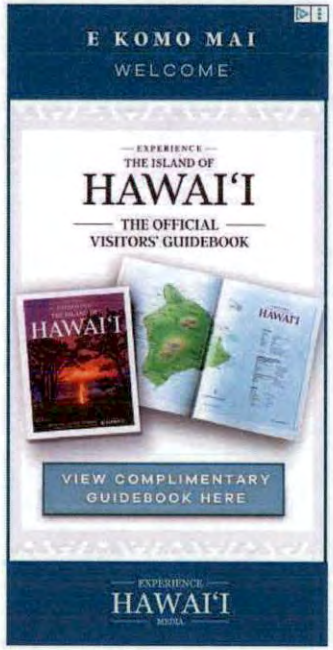
4 minutes

A A A

Big Island Now readers seem to agree that there's likely no single solution for slowing down the timeline of the West Hawai'i Sanitary Landfill reaching capacity.





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The West Hawai'i Sanitary Landfill, the only remaining landfill on the Big Island, is forecast to reach capacity within the next 20 to 25 years. (File photo)

Of the 900 total votes in our most recent poll, which asked people to weigh in on the best way to extend the life of the Big Island's only remaining landfill, all of the above was the most popular answer, garnering 274 votes, or 30%.

The West Hawai'i landfill became the island's only one after the Hilo Landfill closed three years ago. It only has about 20 to 25 years left before it can no longer be used to store rubbish.

The second most popular choice was creating more opportunities for the public to recycle plastics, metals, paper, paperboard and glass, which got 169 votes, or 18% of the vote. That was followed by expanding the landfill's size with 123 votes, or 13%.

Offering curbside pick up by Hawai'i County of recyclables and rubbish came in fourth with 84 votes, or 9%, and putting an islandwide ban on single-use plastics in place rounded out the top five responses with 66 votes, or 7%.

The County recently secured a $1.5 million grant from the U.S. Environmental Protection Agency, which will be dedicated to enhancing recycling infrastructure and waste management systems on the Big Island, specifically for a city-scale reusable food ware and refillable bottle system in Hilo.

Several readers also suggested encouraging more composting, which was not among the choices; however, 52 voters, or 5%, did choose the none of the above option.

One reader said bringing green waste to landfills is very climate unfriendly, costly and wasteful of space. There are many effective ways to compost greens at home, no matter where you live or the size of your hale (house).

Yes, people can compost at home, but another reader said they don't want to live with the vermin it attracts. So if the County can't help residents divert more of their green waste and expand services to their homes, it could at least expand days, hours and capacity to accept it. Perhaps more green waste-only transfer station sites could be created and food and compostable yard



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News

A county commission drafts ordinance aiming to ban recyclables at West Hawai'i landfill

By Megan Moseley
September 6, 2023 · 1:00 AM HST
* Updated September 6, 2023 · 2:02 PM

120 Shares | 3 COMMENTS

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4 minutes

A A A

Hawai'i County's Environmental Management Commission is developing an ordinance that aims to prohibit the amount of recyclable materials ending up in the island's only working landfill.

During a commission meeting on July 26, Ramzi Mansour, Hawai'i County Director of Environmental Management, told commissioners the West Hawai'i Sanitary Landfill only has 20 to 25 years left before it reaches capacity.

With the Hilo Landfill permanently closed in 2020, the clock is ticking for the island's sole dump. Commission chairperson Georjean Adams said it's a good time to start looking into solutions.

Adams said the proposed ordinance is in its early stages and is more about getting the conversation started about how to prevent unnecessary, or recyclable items — green waste, metals, plastics, paper, paperboard and glass — from ending up in the rubbish dump, located off Queen Ka'ahumanu Highway in Waikōloa.

"Trying to site a new landfill is close to impossible," Adams said. "So what are we going to do? So I was looking around, and the commission agreed, to look deeply into the idea of diverting the recyclables out and at least slow the filling up of the landfill."



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Are We Doomed?

What's Up With Hawaii's Garbage Dumps?

Everyone wants to throw away their trash, but no one wants a landfill in their backyard. Yet dumps across the state are rapidly filling up.

By Claire Caulfield / January 13, 2020

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You can subscribe to Civil Beat's podcasts on Apple Podcasts, Spotify, SoundCloud and your favorite podcast app.

Land use in an island state is of premium concern, and a number of Civil Beat readers sent us questions about the future of landfills in Hawaii.

Episode 9 of "Are We Doomed? And Other Burning Environmental Questions" poses these questions from Oahu, Kauai and the Big Island to experts.



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The Big Island

Late last year Hawaii County closed the South Hilo Sanitary Landfill after 50 years. Now all the island's trash is trucked to the west side of the island.

Hilo resident Doug Arnott is concerned about the cost and carbon impact of transporting trash from the most populous city to the Puuanahulu landfill, more than 70 miles away.

When brainstorming possible solutions, a nearby rock quarry caught his eye and he thought it would be a great place for a landfill.

"We have a number of very large hole-in-the-ground quarries in Hilo and we're going to spend millions of dollars in fuel, which is not ecological these days, when we have these massive holes in the ground?" he said.

William Kucharski, director of the county Department Of Environmental Management, thought Arnott's idea was interesting but had concerns about transferring land ownership, the quarries' proximity to neighborhoods and if dump trucks would be able to access the quarry.

And while a number of other states have converted quarries into landfills, none on Hawaii Island are quite big enough, said University of Hawaii Geology professor Scott Rowland via email.

With a planned expansion, the Puuanahulu landfill isn't expected to close for another 188 years.

Joe Miller, who lives in Hawaiian Acres, wants the landfill to last even longer. He told the "Are We Doomed?" podcast he's specifically concerned that bulky construction and debris, or C&D, waste is taking up too much room.

Waste Composition Estimates, Hawaii Island



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Waste Composition Estimates, Hawaii Island

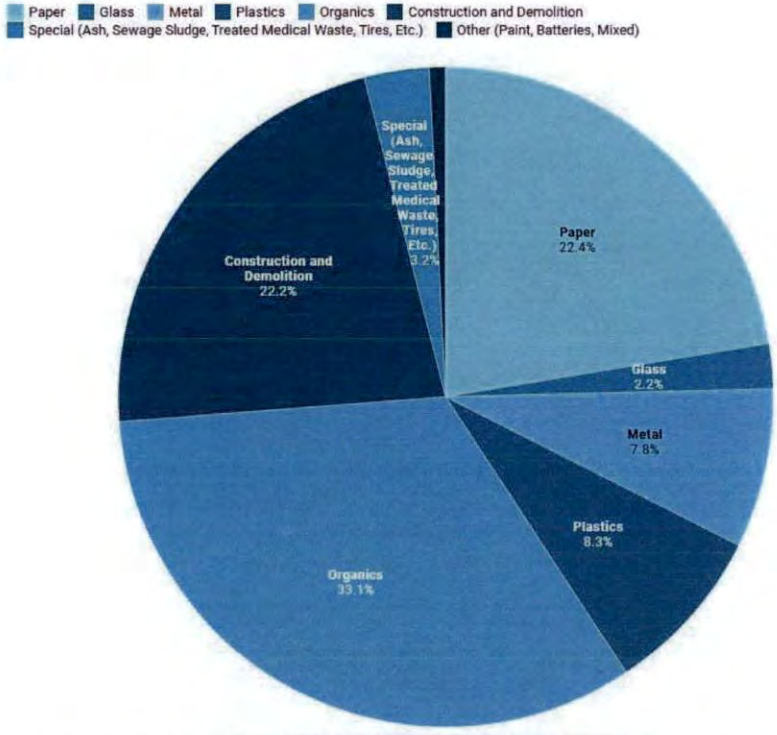

Chart: Claire Caulfield/Civil Beat • Source: County of Hawaii Department of Environmental Management • Get the data • Created with Datawrapper

Kucharski would love to see new landfills on the west and east side of the island dedicated solely to asphalt, rebar, concrete and other demolition debris.

But there are no plans to build construction debris landfills on the Big Island for the same reason more of this refuse isn't recycled into new building projects: money.

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waste360.com/landfill/hawaii-deals-with-burgeoning-waste-management-problem

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Landfill

Hawaii Deals with Burgeoning Waste Management Problem

As landfills face closure and waste-to-energy projects stall, various counties in Hawaii are dealing with waste management issues.

Waste360 Staff, Staff, Informa - Waste360
January 10, 2020

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from environmental advocates.


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Hawaii Island is in the enviable position of having a landfill with anywhere from 20 to 100 years of capacity left to take in trash. But the island still wrestles with significant issues like plastic products that are no longer being recycled.

For the past four decades, trash from the east side of Hawaii Island has been dumped in a landfill outside of Hilo. But now trash from all parts of the island is being trucked to a facility north of Kona.


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News

Hawai'i County extends waste restrictions at East Hawai'i Sort Station

December 9, 2025 · 10:15 AM HST

60 Shares

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1 minute

A A A

Existing restrictions for commercially generated waste have been extended at the East Hawai'i Regional Sort Station through June 30, 2026.

The County of Hawai'i Department of Environmental Management has restricted waste larger than five cubic yards. Commercially generated waste in excess of that amount must be transported to the West Hawai'i Sanitary Landfill.

A five-cubic-yard load will fit in a standard-sized pickup truck with an eight-foot-long bed filled to the top of the cab.

The Sort Station, located adjacent to the closed South Hilo Sanitary Landfill, is open from 7 a.m. to 4:15 p.m. every day.

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hawaiipublicradio.org/local-news/2020-01-09/hawaii-island-has-decades-of-landfill-space-but-still-faces-challenges-in-dealing-with-its-waste

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Hawaii Island Has Decades of Landfill Space But Still Faces Challenges In Dealing With Its Waste

Hawai'i Public Radio
Published January 9, 2020 at 5:00 AM HST

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EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.

Hawai'i Public Radio — Hawai'i Island Landfill Space Challenges
M-7-2
330

Hawaii Island is in the enviable position of having a landfill with anywhere from 20 to 100 years of capacity left to take in trash. But the island still wrestles with significant issues like plastic products that are no longer being recycled.

For the past four decades, trash from the east side of Hawaii Island has been dumped in a landfill outside of Hilo. But now trash from all parts of the island is being trucked to a facility north of Kona.

The South Hilo Sanitary Landfill predates current federal regulations from the Environmental Protection Agency, known as Subtitle D, which mandate environmental safety measures like industrial plastic liners and collection systems for contaminated runoff known as leachate.

Officials with Hawaii County and the state Department of Health have been discussing the eventual closure of the facility since Subtitle D took effect in 1991. But county waste managers say their groundwater monitoring showed no signs of adverse impact from the landfill, leading them to prolong its life.

The calculus changed in 2019, when Hilo landfill reached capacity. State regulators chose not to approve an expansion and Hawaii County announced that it would close the Hilo landfill before the end of the year. That closure became official in November, when the facility stopped accepting new deposits of trash.

Work is already underway to permanently close the facility. The process involves covering the mountain of trash with sand and gravel, before topping it with an impermeable plastic liner.



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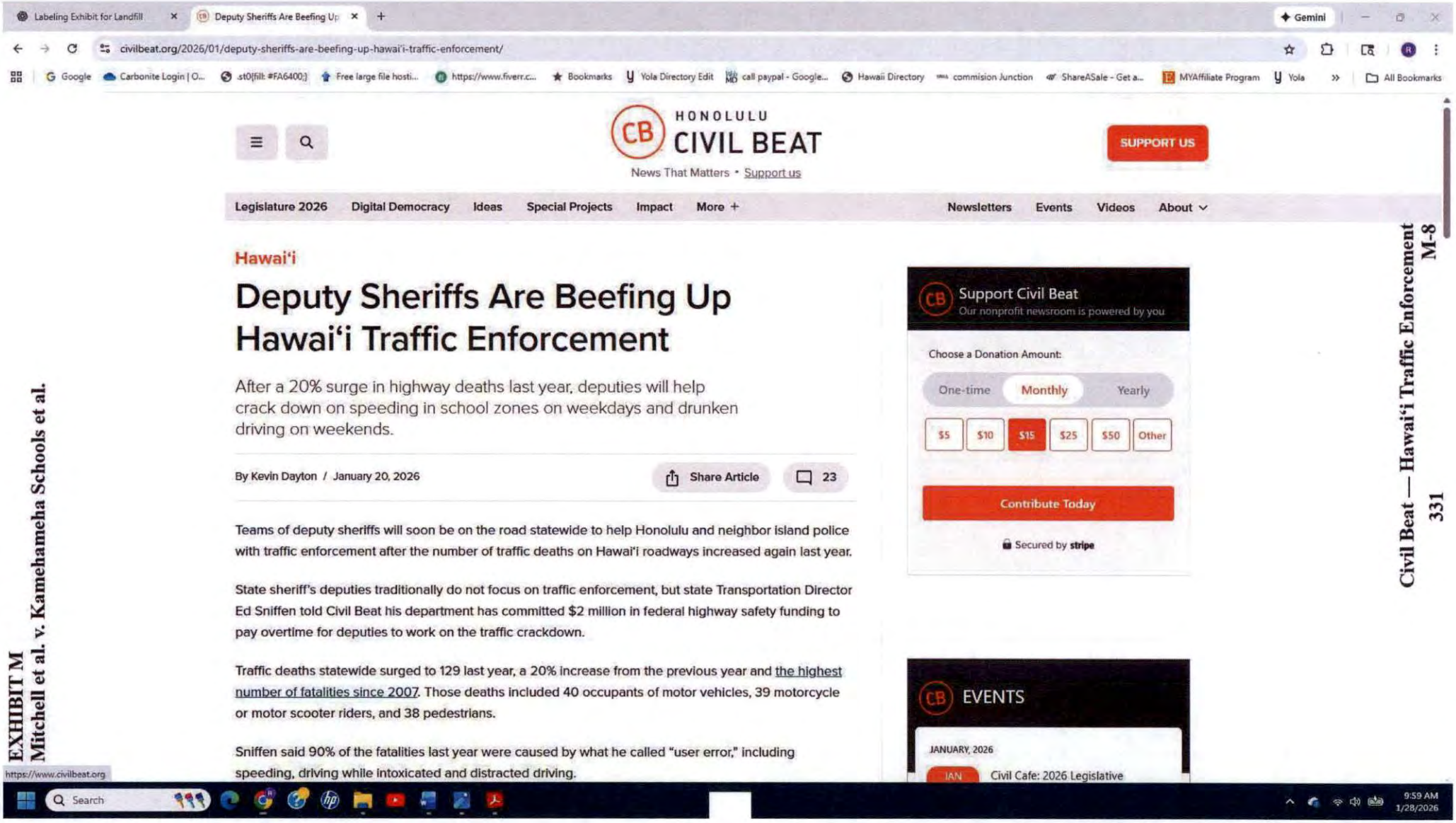

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Civil Beat — Hawai'i Traffic Enforcement
M-8
331

Labeling Exhibit for Landfill | New report shows Hawaii Islan | Gemini

reddit.com/r/BigIsland/comments/1cv46bo/new_report_shows_hawaii_island_traffic_fatalities/

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r/BigIsland • 2y ago
galloway188

New report shows Hawaii Island traffic fatalities are up over 100% from last year



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r/Oahu • 5mo ago

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r/Oahu • 2mo ago

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Reddit (r/BigIsland) — Traffic Fatalities Report
M-9-1
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CorpCarrot • 2y ago

On big island I'm noticing more people driving recklessly. Tailgating, switching lanes a lot. Overall just being less patient.

I live in HPP and the fact is we don't have the road infrastructure to handle the population growth we've seen. Everyone is getting fed up with the traffic and is driving worse in response.

Just my two cents.

40

Griegz • 2y ago

> Tailgating, switching lanes a lot

Which is almost pointless. In the kind of traffic we see in the morning, these people are risking a car accident to shave a few seconds off a 30-60 minute commute.

19

CYYA • 2y ago

Noticing this too.

1

Libertinelass • 2y ago

Yeah it's kinda scary. I try not to be out at night. Theres so so many people driving drunk too in my area. I know a bunch of locals that drive smashed or show up drunk at my house and I'm like ack As of yesterdays motorcycle MVA there's been 18 fatalities. Last year this time there was 8.

6

[deleted] • 2y ago

Any indication on what roads, if any, have the highest incidence of traffic fatalities?

10

[deleted] • 2y ago

I think mostly have been on Saddle, Hāmākua and Kona side this year so far. IMO Saddle and Kona side are the most dangerous I've ever seen...

4

[deleted] • 2y ago

I don't like driving to Kona. Saddle has been generally okay for me but I've seen the news reports of head-on collisions and I drive maybe once a year to Kona. Once I do get to Kona, it's people on my ass and narrow roads, it's a definite different feel from Hilo to Mountain View. Even Hamakua coast and Waimea have been chill for me, although I only drive there every 3 months. I just don't like driving in Kona and I'm from SouthernCalifornia/L.A. traffic. Hilo has always been pretty nice, occasional bad

r/BigIsland • 3mo ago

Big Island drought lingers despite some rain - Hawaii Tribune-Herald



39 upvotes · 8 comments

r/BigIsland • 4mo ago

If all tourism stopped, what would the new Hawaii look like and how long would it take t...

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r/Oahu • 5mo ago

'There is a lot at stake': Hawaii's growing palm tree problem. It's ...



62 upvotes · 9 comments

r/maui • 1mo ago

Is Hawai'i Being Left Behind?



61 upvotes · 43 comments

r/BigIsland • 5mo ago

Hawaii Relief Program

36 upvotes · 10 comments

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Being Haole on Big Island

59 upvotes · 129 comments

r/BigIsland • 7mo ago

Which town or city in Hawaii do you think has the best quality of life?

58 upvotes · 89 comments

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Reddit (r/BigIsland) — Traffic Fatalities Discussion
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M-9-2

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nextdoor.com/agency-detail/hi/hawaii-county/power-outage-alerts-2/

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Power Outage Alerts

Hawaii County real-time power outage alerts provided by PowerOutage.us

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Power Outage Alerts
powered by PowerOutage.us · 25 Sep · Edited

⚠️ Hawaiian Electric Company issued a power outage alert in Hawaii County
---
[Update 9/25 12:24PM] ✅ Power is now restored.
[Update 9/25 11:44AM] Affecting: 977 customers.

- Alert issued at: 9/25 11:03AM.
- Area: Keauhou Punahele Condos, Komohana Kai, Kilohana Kai, and more.
- Affecting: 934 customers.
- Cause: Unknown.
- Estimated service restoration: 9/25 3:00PM.

Power outage details | Hawaiian Electric Company
hawaiianelectric.com

Chats

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spectrumlocalnews.com/hi/hawaii/news/2024/03/25/hawaii-island-customers-urged-to-reduce-electricity-use-through-april?utm_source=chatgpt.com

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Hawaiian Electric urges all Hawaii Island residents and businesses to cut back on electricity use where possible through April. (Getty Images/Kinga Krzeminska)

COMMUNITY

Hawaii Island customers urged to reduce electricity use through April

BY SARAH YAMANAKA | HILO
PUBLISHED 9:00 AM ET MAR. 26, 2024

HILO, Hawaii — An unusual combination of the unavailability of several large generators that are experiencing mechanical problems, are at reduced output or undergoing maintenance is forcing Hawaiian Electric to ask all its customers on Hawaii Island to reduce or shift their electricity use through April.

What You Need To Know

- Hawaii Island customers may see alerts asking them to conserve energy, especially on days when there isn't much wind that generates up to 15% of electricity
- When alerts are issued, Hawaiian Electric is asking customers to take immediate action to minimize electricity use
- Even when no alerts are issued, customers — including hotels and large retailers — are urged to reduce electricity use as much as possible, especially between 5 and 9 p.m. on weekdays
- If there is not enough electricity to meet demand, Hawaiian Electric may initiate rolling outages of up to an hour around the island

In addition, the company said the largest generator, an independent power producer that sells electricity to Hawaiian Electric, is offline with significant mechanical issues. The plant generates 60 megawatts or nearly one-third of the typical peak demand of 180 megawatts on the island.

According to a news release, Hawaiian Electric is using its resources and working with independent power producers to return units to full capacity as soon as possible.

One of the company's larger generators is scheduled to return from an overhaul on the mainland around mid-April. Until then, power generation will be "extremely tight," especially if output from wind, solar and hydroelectric sources is lower than usual.

Hawaii Island customers may see alerts asking them to conserve energy, especially on days when there isn't much wind that generates up to 15% of electricity.

When alerts are issued, Hawaiian Electric is asking customers to take immediate action to minimize electricity

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graphic by BIVN

Rolling Power Outages Occur On Hawai'i Island Sunday Night

by Big Island Video News
on Apr 14, 2024 at 9:20 pm

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STORY SUMMARY

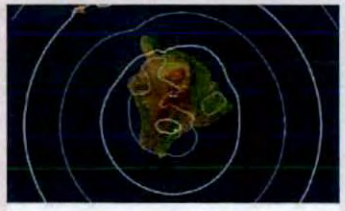
ISLAND OF HAWAI'I - Emergency officials say brief rolling outages are being intiated Sunday night due to generator shortfall on the Big Island.



Volcano Village Clears Ashfall, As Next Kilauea Eruption Forecasted



Governor Green Delivers 2026 State Of The State Address



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Hawaiian Electric has been warning customers that such outage alerts could occur at any time, through the month of April. This is the first time the outage notification has come from the Hawai'i County Civil Defense agency.



Not Enough Power Supply On Hawai'i Island? (Mar. 26, 2024)

Hawaiian Electric reported the outages would begin at around 8:45 p.m. Sunday night. "The emergency outages impact various areas around the island," the utility company wrote in a social media post. "Timing will depend on customer usage and available generation."

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Hawai'i Water Supply Closely Monitored As Severe Drought Continues

by Big Island Video News
on Nov 6, 2023 at 3:28 pm

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STORY SUMMARY

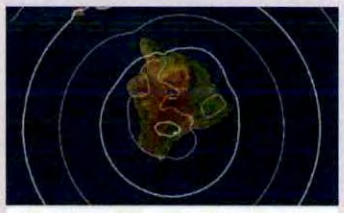
HAWAI'I COUNTY - Officials say a special focus will be placed on the South Kohala Water System, which is more susceptible to drought conditions.



Volcano Village Clears Ashfall, As Next Kīlauea Eruption Forecasted



Governor Green Delivers 2026 State Of The State Address



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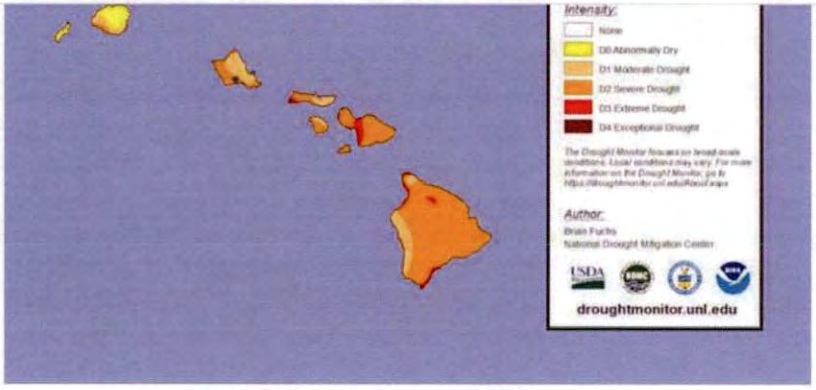

map courtesy U.S. Drought Monitor, background color added by BIVN

(BIVN) – With an ongoing drought on the island of Hawai'i, the Hawai'i County Department of Water Supply says it is closely monitoring its 23 public water systems, with a "special focus" placed on the South Kohala Water System.

As the November 2nd **U.S. Drought Monitor detailed**, most of the Big Island is under a D2 Severe Drought, with a few spots of D3 Extreme Drought along the windward coast of Ka'ū, leeward North and South Kohala, and an area on the northern slope of Maunakea.

On Monday, the Department of Water Supply issued a news release saying it will work to "continue fulfilling its mission to provide customers with an adequate and continuous supply of safe drinking water in a financially responsible manner."

Water officials
peak in Janua

UPDATE
Updated Water Restriction Notice For Kawaihae, South Kohala Resorts

UPDATE
Hawaiian Electric Issues Final Power Restoration Update

Alzheimer's Begins When You Can't Say This Word
U.S. Brain Review
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Water officials said that due to the drought – which is expected to intensify and peak in January/February 2024 – there is a need to use drinking water wisely. The South Kohala Water System is of particular concern because it "primarily uses stream or surface water that is more susceptible to drought conditions than water from underground aquifers".

From the DWS news release:

> If DWS' pumping capabilities cannot sustain the water needs of all customers and the public served by a respective water system, DWS will have to ask those customers to reduce their water use. Measures could include a request to cut back on irrigation, undertake 10 percent voluntary conservation, or comply with a mandatory 25 percent reduction notice so DWS can maintain an adequate supply of safe drinking water for all customers. Water customers can do their part by fixing common household water leaks, irrigating efficiently, and switching to low-flow toilets.

Earlier this year, National Weather Service Senior Service Hydrologist Kevin Kodama warned that rainfall deficits could impact agriculture and water supply, especially for residents using rainfall catchment systems. "Out of season" fires will also be possible due to the continued presence of dry fuels.

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bigislandnow.com/2025/10/14/drought-conditions-prompt-water-conservation-notice-in-south-kohala/?utm_source=chatgpt.com

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News

Drought conditions prompt water conservation notice in South Kohala

October 14, 2025 · 8:40 AM HST

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A A A

Prolonged lack of rainfall and dry conditions have prompted Hawai'i County to issue a water conservation notice for both residential and commerical accounts in South Kohala till further notice.

Hawai'i County's Department of Water Supply is asking customers to reduce water use by at least 10%. Affected areas include Āhualoa to Waiemi Subdivision, including Honokaia, Pu'ukapu, Nienie, Waimea Town, Lālāmilo Farm Lots, portions of Mana Road, portions of Māmalahoa Highway, Anekona Estates and Kānehoa Subdivision.

The county offers the following steps to help conserve water:

- Wash only full loads of laundry and dishes
- Check faucets and pipes for leaks
- Do not let water run when washing hands, shaving, or brushing teeth
- Reduce showering times

All affected water customers should limit water use for dust control and irrigation. Find other water-saving tips by clicking on the "Conservation" tab at www.hawaiidws.org.

To reach the DWS, call 808-887-3030 or 808-961-8050 during normal business hours, 808-961-8790 for after-hour emergencies, or email: dws@hawaiidws.org.



BIG ISLAND EVENTS

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UPCOMING FEATURED EVENTS:


Wed, Jan 28, 2026 · ...
2026 Lunar New Year Celebration


Every Thursday · 4:0...
The Queens' Culinary Market





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East Hawaii News

Hakalau residents asked to reduce water use because of arid conditions

October 14, 2025 · 12:13 PM HST

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A A A

A 10% water conservation notice for customers in the Hakalau area of East Hawai'i is in effect until further notice.

Customers affected include those along:

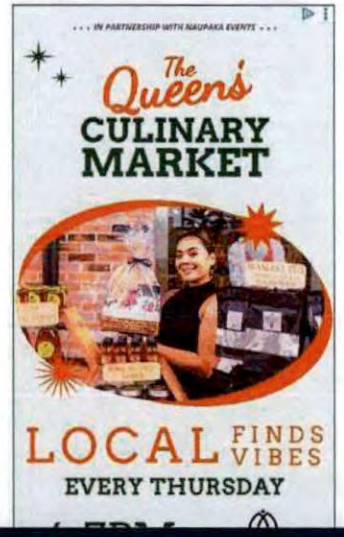
- **Hawai'i Belt Road, between the 14 and 15.5-mile markers.**
- **Māmalahoa Highway (Highway 19).**
- **Chin Chuck Road.**
- **Hanamalo Loop.**
- **Any side roads and lanes.**

Hawai'i County Department of Water Supply says the request for customers in the affected area to reduce their water usage by 10% comes because of a prolonged lack of rainfall and significant reduction in spring flows.

The department also offered these conservation tips:

- **Wash only full loads of laundry and dishes.**
- **Check faucets and pipes for leak.**
- **Do not let water run when washing hands, shaving or brushing teet.**
- **Reduce showering times.**





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Alameda also wants the legislators to accept a bill that Big Island Rep. Sue Lee Loy is pushing to create the Waiākea Community Development District, with two seats set aside for Hilo residents, to tackle the master planning of the once-thriving Banyan Drive.

The area, which is currently under the jurisdiction of the state Department of Land and Natural Resources, encompasses Liliu'okalani Gardens, Reeds Bay Beach Park, Coconut Island and the condemned Uncle Billy's Hilo Bay Hotel, which is in the final phase of being demolished.

Lee Loy hopes to revitalize the historic space with guidance from the community.

"It will give the county more control of the area and its development," the mayor said.



The Waiākea Peninsula in Hilo. (From the Hawai'i Community Development Authority Waiākea Peninsula web page)

Alameda is also hoping the county retains oversight of the Keauhou aquifer, which the state is looking to designate as a conservation area. This would enable the state Commission and Water Resource Management to more closely monitor the use of the water.

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EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS M

Petitioners hereby submit **Exhibit Series M-18 through M-20**, consisting of excerpts from the Final Environmental Impact Statement (FEIS), Volume II, Draft EIS Comment Response Matrix, addressing stormwater runoff, water quality impacts, and responses to public comments concerning Keauhou Bay.

Exhibit M-18 includes FEIS responses acknowledging concerns regarding sedimentation, nutrient loading, and degraded conditions in Ho'okuku Pond and surrounding coastal areas, while referencing general stormwater management measures and Best Management Practices without providing quantified analysis comparing existing and post-development conditions.

Exhibit M-19 includes FEIS responses expressly acknowledging that no comparison was provided between current and proposed impervious surface coverage, despite comments identifying this omission as critical to evaluating runoff impacts, pollutant transport, and effects on marine resources.

Exhibit M-20 includes FEIS responses to comments identifying Keauhou Bay as an impaired water body under Section 303(d) of the Clean Water Act, where the FEIS relies on proposed future infrastructure, wastewater connections, and generalized mitigation measures rather than providing a complete, project-specific analysis demonstrating compliance with applicable water quality protections.

These materials demonstrate that, while significant concerns were raised regarding stormwater runoff, sedimentation, nutrient transport, and impaired water conditions, the FEIS responses rely on future planning, design approvals, and generalized mitigation measures, and do not cure identified deficiencies or provide a complete analysis of existing versus post-development conditions.

Petitioners submit this exhibit series to demonstrate that the FEIS fails to adequately investigate and analyze stormwater impacts, cumulative pollution, and water quality conditions affecting Keauhou Bay, including impacts to an already impaired water body.

These materials are true and correct excerpts from the FEIS. Pagination references correspond to exhibit numbering.

EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.
FEIS Vol. II — DEIS Comment Response Matrix
Context page preceding impervious surface critique

Summary of Draft EIS Comments and Responses		
Comments	Commenter	Responses
		EIS Section 4.5 discusses Project stormwater management and drainage improvements. The Project proposes a comprehensive stormwater management system designed to capture and treat stormwater runoff on-site. This infrastructure will significantly reduce pollutants reaching the ocean, helping to maintain and enhance water quality in Keauhou Bay. All construction activities will be confined to land, with no work planned in ocean waters, thereby limiting potential direct impacts on the bay's water quality.
The second example in the DEIS attests to a degraded environment in Ho'okuku Pond (KBMP Section 4.6). The report cites deep organic sediments and dense filamentous algae mats and includes photodocumentation of such (Figure 4-32). These characteristics suggest that runoff carries at least sediment from upland towards the shore (albeit perhaps from a small subwatershed). Surface runoff may also carry excessive nutrients, as evidenced by the algae mats, though the source of nutrients may be the cited "good connection to the basal aquifer and a subterranean pathway to the marine environment" (see also Figure 4-31). Finally, the suggestion that Ho'okuku Pond might be affected by harmful bacteria suggest that Keauhou Bay is at least at risk of such contamination. There is no documentation suggesting that the sedimentation or excessive nutrients (or potentially pathogenic bacteria) are limited to Ho'okuku Pond, and the condition of Ka'ili'ilinehe Beach suggests sedimentation impacts are more widespread. Furthermore, sediment and nutrients are well known examples of development-related impacts to marine environments generally, and corals specifically (for nutrients see Silber et al. 2018 and DiAngelo & Wiedenmann 2014; for sedimentation see Rogers 1990 and Tuttle & Donahue 2022). The DEIS assesses potential impacts of sedimentation by asserting that infiltration is adequate in general, and "strategies...will be implemented." However, there is no comparison between the current impervious	Nicholas Buhbe	The EIS notes that the 2020 State of Hawai'i Water Quality Monitoring and Assessment Report, known as the Integrated Report (IR), identifies Keauhou Bay as an impaired water body. Turbidity was the leading cause of impairment. Nonpoint sources of pollution in the State primarily consist of cesspools, agricultural land use, urban land use, and feral ungulate destruction and soil erosion in conservation lands. A significant number of non-Kamehameha Schools properties in the vicinity of Keauhou Bay remain on cesspool systems. The Project, however, will manage wastewater by directing all generated wastewater through a new sewer main along Old Kona Road. This main will connect to the existing sewer infrastructure, allowing for proper treatment and reducing the potential for pollutants to reach the ocean. EIS Section 4.12.2 discusses wastewater treatment and disposal. EIS Section 4.5 discusses Project stormwater management and drainage improvements. An analysis of existing drainage conditions, proposed infrastructure improvements, and mitigation measures are evaluated. Estimates of existing and projected stormwater runoff peak flows are also provided. To mitigate stormwater runoff, the Project proposes stormwater and drainage improvements designed to minimize runoff entering Keauhou Bay. These improvements include the introduction of permanent Best Management Practices (BMPs), such as sediment control mechanisms and effective stormwater management

EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.
FEIS Vol. II — DEIS Comment Response Matrix
"No comparison between current and proposed impervious surface coverage"

Summary of Draft EIS Comments and Responses		
Comments	Commenter	Responses
surface coverage and that proposed, and as such there is no data presented on which to develop an appropriate level of mitigation. Current conditions at Ho'okuku Pond document that infiltration has been insufficient at a lower degree of development than that proposed, and no evidence is provided which documents that existing runoff is safely accommodated in uplands or by Keauhou Bay. Furthermore, while infiltration may be a good strategy to prevent sedimentation (if low impact development practices are implemented and maintained), the hydrological connectivity of the site produces a potential nutrient, bacteria, and contaminant transport pathway from the Project development area to the shoreline. The reduction in vegetative cover and replacement of those areas with hardscape or irrigated/horticulturally maintained areas promote such transport and may increase exposure of and effects on downgradient marine environmental resources. Such sensitive resources, considering their innate and cultural value, deserve at least as much attention as the assessment of flora and avian species in Section 4.6.		systems. In the long term, the proposed drainage system, permanent BMPs, and new native landscaping will help capture and treat runoff from the Project Area and upslope areas, decreasing sediment, nutrient, and pollutant levels that might otherwise flow toward Keauhou Bay. Additionally, the Project is adopting Low-Impact Development (LID) practices, which emphasize conserving natural features and employing localized, small-scale stormwater systems that mimic natural hydrologic processes. Prior to construction, a detailed drainage masterplan will be developed to integrate these strategies, including criteria for infiltration systems, stormwater detention and retention, flood analysis, and drainage system schematics. The project's detailed drainage analysis and design will require design review and approval by the County for land use and construction plan approvals subsequent to the FEIS. The Project will be designed to comply with the County Drainage Standards, which include design requirements and regulations to address stormwater impacts within the County of Hawai'i. All construction activities will be confined to land, with no work planned in ocean waters, thereby limiting potential direct impacts on the bay's water quality. The Project will comply with all NPDES permit requirements and follow established practices to prevent sediment and pollutants from reaching nearby water bodies during construction. The existing Project Area lacks active management and does not contain infrastructure to capture or treat stormwater, resulting in untreated runoff that may flow toward the ocean. With implementation of the Project, drainage improvements and best management practices will be introduced to capture and treat runoff on site. These measures will reduce the potential for stormwater-related impacts, improving current conditions. The Project will be constructed entirely on land and does not include any direct discharges to coastal waters. As a result, water

EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.
FEIS Vol. II — DEIS Comment Response Matrix
KS/G70 response relying on future assurances rather than curing deficiency

Summary of Draft EIS Comments and Responses		
Comments	Commenter	Responses
		quality conditions in Keauhou Bay are not expected to worsen and may improve through reduced sediment and pollutant loading.
"The following comments pertain specifically to water quality issues affecting Keauhou Bay. The draft EIS does not address these nor accounts for the fact that the State and the EPA list Keauhou Bay as an Impaired Water Body under section 303 D of the Clean Water Act (CWA). 3 That law requires that impacts to the Bay be mitigated and that further impairment does not occur. This requirement under the law has not been met." Please reject Kamehameha Schools EIS because Keauhou Bay is listed as Impaired under the Environmental Protection Act for Clean Water and this development will add more pollution into the bay. "The Clean Water Act (CWA) is the primary Federal statute regulating the protection of the nation's water. The CWA aims to prevent, reduce, and eliminate pollution in the nation's water in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters", as described in CWA section 101(a). A stated goal of the CWA is to eliminate discharge of pollutants into navigable waters, as that term is defined in CWA § 502(7) and corresponding case law." I have attached a screenshot of Keauhou Bay on the EPA Impaired water list and here is the link for Keauhou Bay (Kona) Assessment Unit ID: HI713293 https://mywaterway.epa.gov/waterbody-report/21HI/HI713293/2020 The goal of the Clean Water Act (CWA) is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C §1251(a)" and Kamehameha Schools Bungalow Resort will devastate the entire ecosystem in Keauhou Bay.	Rebecca Melendez	The EIS notes that the 2020 State of Hawai'i Water Quality Monitoring and Assessment Report, known as the Integrated Report (IR), identifies Keauhou Bay as an impaired water body. Turbidity was the leading cause of impairment. Nonpoint sources of pollution in the State primarily consist of cesspools, agricultural land use, urban land use, and feral ungulate destruction and soil erosion in conservation lands. A significant number of non-Kamehameha Schools properties in the vicinity of Keauhou Bay remain on cesspool systems. The Project, however, will manage wastewater by directing all generated wastewater through a new sewer main along Old Kona Road. This main will connect to the existing sewer infrastructure, allowing for proper treatment and reducing the potential for pollutants to reach the ocean. EIS Section 4.12.2 discusses wastewater treatment and disposal. EIS Section 4.5 discusses Project stormwater management and drainage improvements. An analysis of existing drainage conditions, proposed infrastructure improvements, and mitigation measures are evaluated. Estimates of existing and projected stormwater runoff peak flows are also provided. To mitigate stormwater runoff, the Project proposes stormwater and drainage improvements designed to minimize runoff entering Keauhou Bay. These improvements include the introduction of permanent Best Management Practices (BMPs), such as sediment control mechanisms and effective stormwater management systems. In the long term, the proposed drainage system, permanent BMPs, and new native landscaping will help capture and treat runoff from the Project Area and upslope areas, decreasing sediment, nutrient, and pollutant levels that might otherwise flow toward Keauhou Bay. Additionally, the Project is adopting Low-Impact Development (LID) practices, which emphasize conserving natural features and

EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT M-21

Petitioners hereby submit Exhibit M-21, consisting of a substantive comment excerpt contained within the Final Environmental Impact Statement (FEIS), Volume II, addressing baseline environmental conditions, sedimentation, nutrient loading, and water quality concerns affecting Keauhou Bay and surrounding coastal resources.

This exhibit documents observed shoreline degradation, sediment accumulation, and nutrient impacts within Ho'okuku Pond and adjacent marine areas, and identifies the absence of supporting data necessary to evaluate runoff, contamination pathways, and cumulative environmental effects. The comment further identifies that no comparison was provided between existing and proposed impervious surface coverage, leaving the level of impact and necessary mitigation unsupported by analysis.

The exhibit additionally highlights the lack of baseline studies, absence of quantified pollutant and sediment transport analysis, and failure to assess groundwater connectivity and potential transport of nutrients, bacteria, and contaminants to Keauhou Bay. It further explains that, without such analysis, the extent of impacts to marine resources—including coral, water quality, and shoreline conditions—cannot be determined.

Petitioners submit this exhibit to demonstrate that the FEIS fails to adequately investigate existing environmental conditions or provide a sufficient baseline analysis necessary to evaluate project impacts, mitigation requirements, and cumulative effects on Keauhou Bay.

This material is a true and correct excerpt from the FEIS. Pagination corresponds to exhibit numbering.

Two parts of the KBMP provide documented cases of degradation: Section 2.3 of the document cites a 1954 account of Kauikeaouli's birth:

- "The queen-mother [Keōpūolani] had just bathed in the cold water near the southern extremity of Ke-au-hou's formerly picturesque white sand-beach, and a few steps into the sea, where slowly gushed the now mostly destroyed sea-spring of Ku-hala-lua."

A comparison of this passage to the current Ka'ili'ilinehe Beach shoreline (see Figures 3-12 and 3-13) shows a heavily modified shoreline and very little, if any, of a white sand beach. I observe that the existing beach sand is at best mixed with volcanic/basalt cobbles (and aesthetically dissimilar) and at worst contaminated with runoff-generated sediment and asphalt (no technical evaluation has been conducted). The proposed Project, despite attesting to improving the "shoreline access" acknowledges that no project elements are at the shoreline, and thus the project indirectly preserves the degraded beach while proposing elements which may further degrade the beach and shoreline more broadly (through additional stormwater/runoff generated sedimentation due to increase in hardscape/impervious surfaces [Figure 3-35] and potential nutrient/contaminant/bacteria transport via groundwater, for example, as discussed below).

The second example in the DEIS attests to a degraded environment in Ho'okuku Pond (KBMP Section 4.6). The report cites deep organic sediments and dense filamentous algae mats and includes photodocumentation of such (Figure 4-32). These characteristics suggest that runoff carries at least sediment from upland towards the shore (albeit perhaps from a small subwatershed). Surface runoff may also carry excessive nutrients, as evidenced by the algae mats, though the source of nutrients may be the cited "good connection to the basal aquifer and a subterranean pathway to the marine environment" (see also Figure 4-31). Finally, the suggestion that Ho'okuku Pond might be affected by harmful bacteria suggest that Keauhou Bay is at least at risk of such contamination. There is no documentation suggesting that the sedimentation or excessive nutrients (or potentially pathogenic bacteria) are limited to Ho'okuku Pond, and the condition of Ka'ili'ilinehe Beach suggests sedimentation impacts are more widespread. Furthermore, sediment and nutrients are well known examples of development-related impacts to marine environments generally, and corals specifically (for nutrients see Silber et al. 2018 and DiAngelo & Wiedenmann 2014; for sedimentation see Rogers 1990 and Tuttle & Donahue 2022).

The DEIS assesses potential impacts of sedimentation by asserting that infiltration is adequate in general, and "strategies…will be implemented." However, there is no comparison between the current impervious surface coverage and that proposed, and as such there is no data presented on which to develop an appropriate level of mitigation. Current conditions at Ho'okuku Pond document that infiltration has been insufficient at a lower degree of development than that proposed, and no evidence is provided which documents that existing runoff is safely accommodated in uplands or by Keauhou Bay. Furthermore, while infiltration may be a good strategy to prevent sedimentation (if low impact development practices are implemented and maintained), the hydrological connectivity of the site produces a potential nutrient, bacteria, and contaminant transport pathway from the Project development area to the shoreline. The reduction in vegetative cover and replacement of those areas with hardscape or irrigated/horticulturally maintained areas promote such transport and may increase exposure of and effects on downgradient marine environmental resources. Such sensitive resources, considering their innate and cultural value, deserve at least as much attention as the assessment of flora and avian species in Section 4.6.

C. Summary: Marine Resources of Keauhou Bay Require Additional Evaluation

The Project proposes to remove acres of forest to construct a resort comprised of 43 homes with 150 bedrooms, build a new road connecting the north and south ends of the bay, build commercial kiosks, construct a cultural center and construct a commercial/retail center on the eastern end of Keauhou Bay. As you and the State of Hawaii are aware, coral, fish and other flora and fauna can be particularly susceptible to harm from excess sediment, toxic pollutants and nutrient loading in shallow bays like Keauhou Bay. In order to determine what the potential ecological impacts to Keauhou Bay are, at minimum the past studies cited should be reviewed to determine if shoreline communities are potentially affected by the current level of development and sedimentation/nutrient impacts apparent at Ho'okuku Pond ("KBOM DEA, Feb 2016" was cited vaguely in the text as a bay-wide assessment, but was not included in the DEIS references, nor in Appendices F or G). The 2016 study might be appropriate to consider as a baseline study, which is particularly important to assess conditions and impacts (see Rogers 1990). In this case, the 2016 study could be reviewed to consider the spatial distribution of coral cover (for example), and additional assessments might be undertaken at a similar intensity to those prioritized for Ho'okuku Pond (Table 4-9). Surveys before development should be undertaken (to confirm 2016 conditions), after the development activity is complete (to assess impacts from grading, concrete pouring, road construction, etc.), and thereafter on a periodic basis (to evaluate impacts of the cumulative 'built-out' conditions). Additional study elements might include analysis of the health of the coral, an assessment to determine what the historical sedimentation rate is within the bay, quantify pollutants and nutrients within sediments or groundwater flowing into the bay, a bacteriological assessment, and identifying potential sources of impacts. Such a study should include a comparison of Keauhou Bay conditions to a nearby reference site to determine the relative degree of environmental change over time (or lack thereof). The study should analyze the potential impacts from the development, and analyze what mitigation measures, if any, might be needed to protect recreational users of Keauhou Bay as well as sensitive flora and fauna within the bay (including coral and fish populations) prior to or during construction, or if additional measures are necessary for various development components. For example, the questions: "What acreage of infiltration basins are necessary to accommodate runoff from X acres of impervious surfaces?" and "Will additional groundwater flows result in worse water quality in a restored Ho'okuku Pond or along the Keauhou Bay recreational shoreline?" might be addressed. Such studies would not only inform the public and regulatory agencies of the project impacts, but also inform the design of potential mitigation measures. Depending on the results of initial studies, alternative levels of development and/or mitigation measures might be evaluated. However, without the foregoing analysis, it is nearly impossible to determine the extent of project impacts on Keauhou Bay marine resources.

D. Conclusion

It is my understanding that the purpose of an EIS is to conduct sufficient research and studies to inform the public of existing conditions in a Project area and provide assessments of Project impacts to the public and regulatory agencies. As part of this assessment, mitigation measures should be considered to reduce Project impacts. In this instance, it does not appear that adequate review of existing data from Keauhou Bay has been undertaken despite evidence of sedimentation, excessive nutrients, and potential bacteria issues. Additional work is necessary to assess existing conditions and analyze the potential impacts from the Project. An adequate assessment of mitigation measures is also necessary not only to complete the DEIS, but also to appropriately inform the public and regulatory agencies of the Project impacts.

EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS M-22 THROUGH M-25

Petitioners hereby submit Exhibit Series M-22 through M-25, consisting of selected excerpts from *In re Water Use Permit Applications (Waiāhole Ditch), 94 Hawai'i 97 (2000)*, addressing scientific uncertainty, the precautionary principle, and the State's duties in managing and protecting public trust resources.

Exhibit M-22 includes discussion recognizing that environmental and biological data are often preliminary and incomplete, and that decision-making must proceed with an understanding of such uncertainty.

Exhibit M-23 includes the Court's articulation of the precautionary principle, emphasizing that where there are threats of serious environmental harm, lack of full scientific certainty must not be used as a basis to delay protective action.

Exhibit M-24 includes additional discussion regarding water use standards and the evaluation of proposed uses in relation to public interest and resource protection.

Exhibit M-25 includes the Court's holding that the burden of proof rests on the applicant seeking to use public trust resources, and that the State has an affirmative duty to actively protect those resources, including consideration of cumulative impacts and long-term effects.

Petitioners submit this exhibit series to demonstrate that, under Hawai'i law, uncertainty in environmental data requires greater—not lesser—protection of public trust resources, and that the burden remains on the applicant and decision-makers to ensure that environmental impacts are fully evaluated and avoided where necessary.

These materials are true and correct excerpts of the cited decision. Pagination corresponds to exhibit numbering.

establish instream flow standards in instituting a program for instream use protection, see supra note 4. The Commission found that the interim restoration of windward stream flows had a "positive effect," FOFs at 17-18, and that "generally, the higher the volume of instream flow and closer the stream flow approaches its natural pre-diversion levels, the greater the support for biological processes in the stream and its ecosystem," COLs at 32. Thus, according to the Commission, "in general, it is expected that additional flows to the streams would increase the native biota habitat." FOFs at 17. A more conclusive determination of the necessary instream flows, however, remained elusive. The Commission explained:

> The Commission has found it difficult to quantify an instream flow that corresponds to a biological condition for a given flora or fauna. As a result, the methods used on the continental United States to determine an appropriate instream flow have proven unsuitable in Hawaii. The Water Code provides for the establishment and modification of both interim and permanent instream flow standards on the assumption that scientific data will eventually provide firm knowledge about streams upon which to reach some permanent solution. Haw. Rev. Stat. § 174C-71. Unfortunately, such firm knowledge will require considerably more work and is years away. Until that scientific knowledge is available, stream management decisions will require a methodology that recognizes the preliminary and incomplete nature of existing evidence. Given the long term work needed to define an ecologically necessary flow in a particular stream, the Commission will need to amend "interim" instream flow standards periodically until permanent standards can be adopted. . . .
>
> From the long term vantage point of science, the biological and environmental evidence regarding streams is preliminary. The data collection is just beginning. The conclusions are tentative. In some areas, experts are even hesitant to offer opinions. For the foreseeable future, it will be necessary to manage and protect streams through a system of working presumptions rather than on the basis of firm scientific knowledge.

COLs at 16. The Commission nonetheless maintained:

> Where scientific evidence is preliminary and not yet conclusive regarding the management of fresh water resources which are part of the public trust, it is prudent to adopt "precautionary principles" in protecting the resource. That is, where there are present or potential threats of serious damage, lack of full scientific certainty should not be a basis for postponing effective measures to prevent environmental degradation. . . . In addition, where uncertainty exists, a trustee's duty to protect the resource mitigates in favor of choosing presumptions that also protect the resource.

Id. at 33 (emphasis added).

The Commission also reviewed the legal requirements for issuance of water use permits under the Code.[6] Although the various requests for water collectively exceeded the flow of the ditch, the Commission concluded that, "[a]t least for the near term, water quantities in excess of the amended interim instream flow standard and subject to the conditions affecting

---

[6] HRS § 174C-49(a) (1993) mandates:

> To obtain a permit pursuant to this part, the applicant shall establish that the proposed use of water:
>
> (1) Can be accommodated with the available water source;
>
> (2) Is a reasonable-beneficial use as defined in section 174C-3;
>
> (3) Will not interfere with any existing legal use of water;
>
> (4) Is consistent with the public interest;
>
> (5) Is consistent with state and county general plans and land use designations;
>
> (6) Is consistent with county land use plans and policies; and
>
> (7) Will not interfere with the rights of the department of Hawaiian home lands as provided in section 221 of the Hawaiian Homes Commission Act.

supplemental flows[7] are available at the present time to satisfy water use permit applicants for those existing and future offstream uses identified in the [D&O] . . . ." Id. at 23. Based on this conclusion, the Commission further ruled that the statutory requirement of "reasonable-beneficial use"[8] could be fulfilled, particularly with respect to agricultural uses, by a "prima facie showing" of reasonableness and consistency with the public interest. Id. at 24-25. The Commission reasoned:

> [I]n this case, a variety of management and legal factors postpone the need to fully analyze the affirmative "public interest" tests in the context of deciding "reasonable beneficial use." Among these factors are: 1) the obligation not to waste; 2) the release into windward streams of permitted, but not used, ground water; 3) the release into windward streams of unallocated ground water; 4) the ditch operation and management plan; 5) conservation measures; 6) the availability of alternative sources (ground water and reusable wastewater);[9] 7) the four year non-use

---

7 As explained below, the Commission created a "buffer" of unallocated water for initial release in the streams and future allocation for offstream use.

8 HRS § 174C-3 (1993 & Supp. 1999) defines "reasonable-beneficial use" as "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest."

9 The Commission acknowledged that various leeward parties had access to leeward ground water. Campbell Estate, for example, still held 35 mgd in well permits, FOF 788, and Del Monte was profitably using its own ground water wells to irrigate lands for which it sought ditch water, FOF 793-74. The Commission also noted the limited use of reclaimed water for irrigation, but concluded that reclaimed water was not presently available, in view of concerns regarding use of reclaimed water over potable aquifers and health regulations limiting such use to certain kinds of crops. FOF 677-786; D&O at 8. The Commission, nevertheless, stated that it would "revisit and, if appropriate, reduce existing ground-water permits if reclaimed water becomes available and is allowable, subject to economic and health considerations." D&O at 8.

absence of direction from the relevant statutes or rules, that party applying for use of public trust lands for private commercial purposes bore the burden of proof); cf. Robinson, 65 Haw. at 649 n.8, 658 P.2d at 295 n.8 (noting that, under the common law, "[t]he burden of demonstrating that any transfer of water was not injurious to the rights of others rested wholly upon those seeking the transfer").

The constitution designates the Commission as the primary guardian of public rights under the trust. Haw. Const. art. XI, section 7. As such, the Commission must not relegate itself to the role of a mere "umpire passively calling balls and strikes for adversaries appearing before it," but instead must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decisionmaking process. Save Ourselves, 452 So.2d at 1157 (citing Calvert Cliffs' Coordinating Comm. v. United States Atomic Energy Comm'n, 449 F.2d 1109, 1119 (D.C. Cir. 1971); Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608, 620 (2d Cir. 1965))); see also Debates, in 2 Proceedings, at 857 (statement by Delegate Fukunaga) ("Thus, under [article XI, section 7], the State must take an active and affirmative role in water management."). Specifically, the public trust compels the state duly to consider the cumulative impact of existing and proposed diversions on trust purposes and to implement reasonable measures to mitigate this impact, including the use of alternative sources. See, e.g., Save Ourselves, 452 So.2d at 1157-58; Payne, 312 A.2d at 94; Kootenai, 671 P.2d at 1092-93; Hamilton v. Diamond, 349 N.Y.S.2d 146, 148-49 (N.Y. App. Div. 1973), appeal denied, 34 N.Y.2d 516 (1974). The trust also requires planning and decisionmaking from a global, long-term

EXHIBIT M
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COVER LETTER FOR EXHIBITS M

Petitioners hereby submit **Exhibit Series M-26 through M-28**, consisting of public petitions reflecting widespread community opposition, public engagement, and expressed concerns regarding the proposed development at Keauhou Bay and its impacts on environmental resources, infrastructure capacity, and lands held in trust.

Exhibit M-26 includes a petition calling for investigation into Kamehameha Schools' land use practices and compliance with the terms and intent of the Pauahi Will.

Exhibit M-27 includes a petition addressing concerns related to unsafe overdevelopment on Hawai'i Island, including strain on infrastructure, natural resources, and public services.

Exhibit M-28 includes a petition opposing resort development at Keauhou Bay.

All three petitions were organized, circulated, and submitted by Petitioner Rebecca Melendez and reflect substantial and ongoing community participation and opposition.

These materials demonstrate that community concerns were not isolated, but widespread, organized, and clearly communicated, including through petitions submitted prior to and during the environmental review process. The volume, consistency, and substance of these petitions reflect significant public interest and raise material concerns relevant to environmental review, land use decision-making, and trust obligations.

Petitioners submit this exhibit series to demonstrate that substantial community opposition and documented public concerns were presented and must be meaningfully considered in evaluating the adequacy of the FEIS and the lawfulness of its acceptance and reliance.

These materials are true and correct copies of publicly submitted petitions. Pagination references correspond to exhibit numbering.

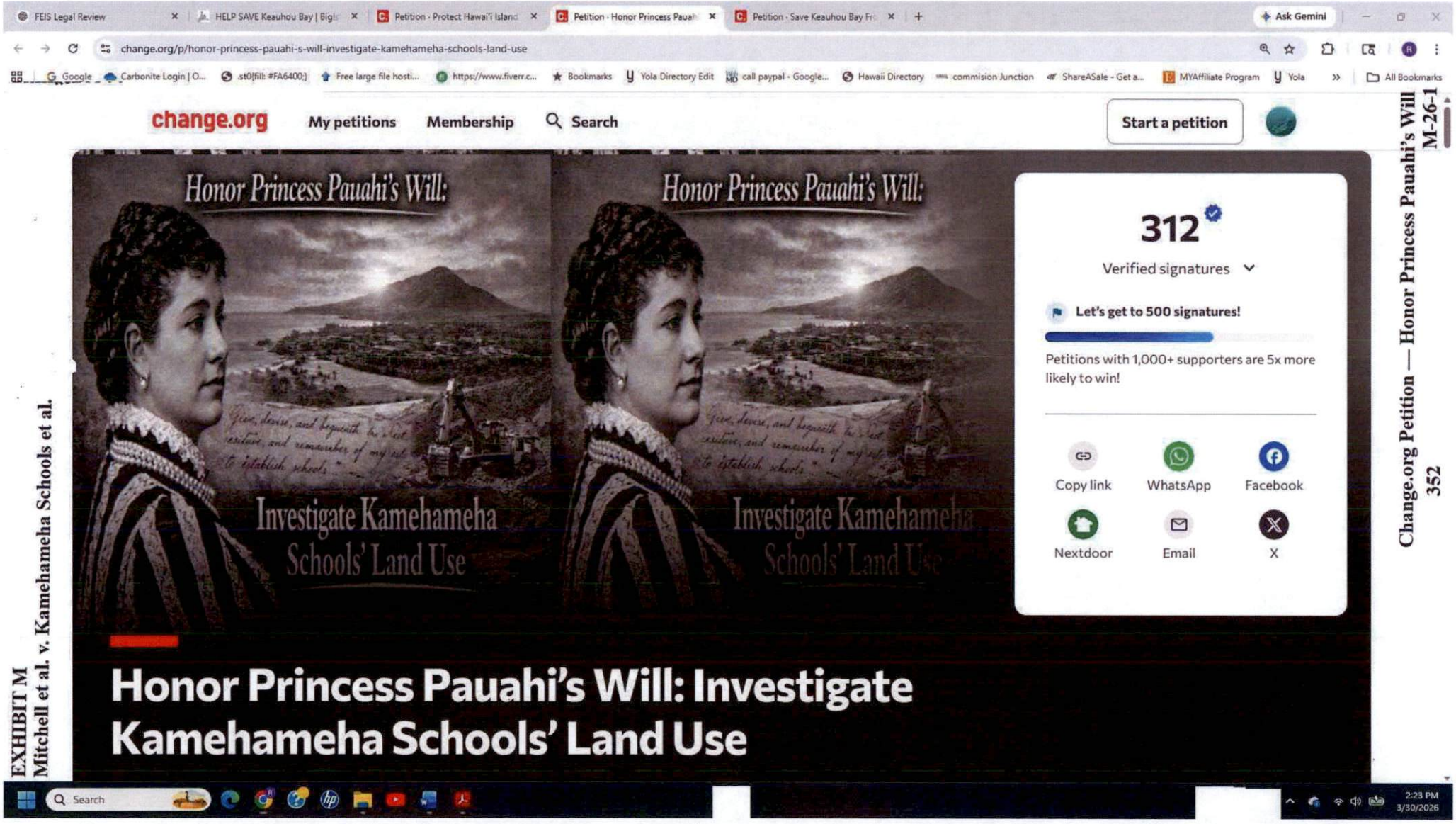
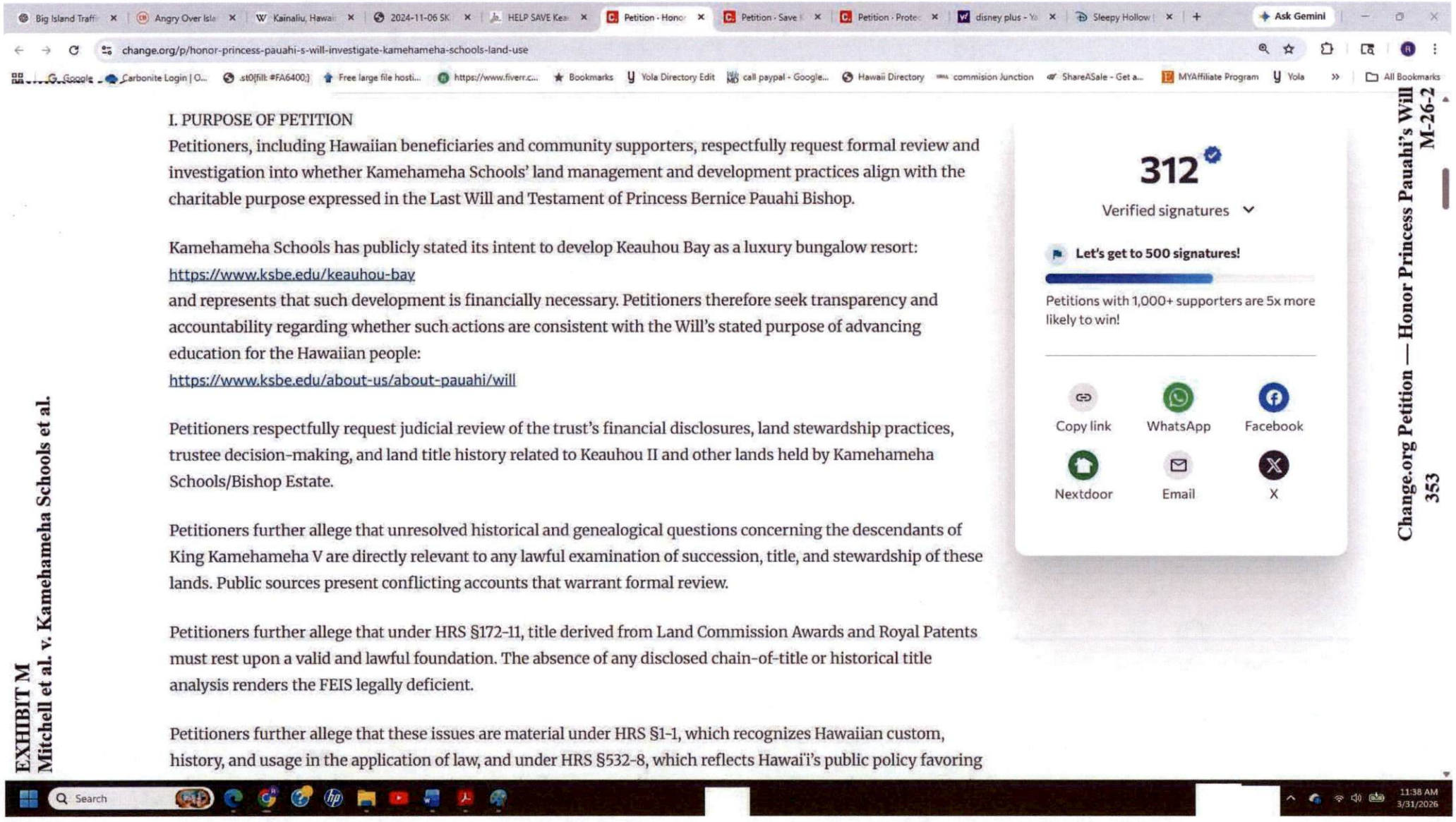


EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.

Change.org Petition — Honor Princess Pauahi's Will
M-26-1
352



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change.org/p/honor-princess-pauahi-s-will-investigate-kamehameha-schools-land-use

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I. PURPOSE OF PETITION

Petitioners, including Hawaiian beneficiaries and community supporters, respectfully request formal review and investigation into whether Kamehameha Schools' land management and development practices align with the charitable purpose expressed in the Last Will and Testament of Princess Bernice Pauahi Bishop.

Kamehameha Schools has publicly stated its intent to develop Keauhou Bay as a luxury bungalow resort:
https://www.ksbe.edu/keauhou-bay
and represents that such development is financially necessary. Petitioners therefore seek transparency and accountability regarding whether such actions are consistent with the Will's stated purpose of advancing education for the Hawaiian people:
https://www.ksbe.edu/about-us/about-pauahi/will

Petitioners respectfully request judicial review of the trust's financial disclosures, land stewardship practices, trustee decision-making, and land title history related to Keauhou II and other lands held by Kamehameha Schools/Bishop Estate.

Petitioners further allege that unresolved historical and genealogical questions concerning the descendants of King Kamehameha V are directly relevant to any lawful examination of succession, title, and stewardship of these lands. Public sources present conflicting accounts that warrant formal review.

Petitioners further allege that under HRS §172-11, title derived from Land Commission Awards and Royal Patents must rest upon a valid and lawful foundation. The absence of any disclosed chain-of-title or historical title analysis renders the FEIS legally deficient.

Petitioners further allege that these issues are material under HRS §1-1, which recognizes Hawaiian custom, history, and usage in the application of law, and under HRS §532-8, which reflects Hawai'i's public policy favoring

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Verified signatures
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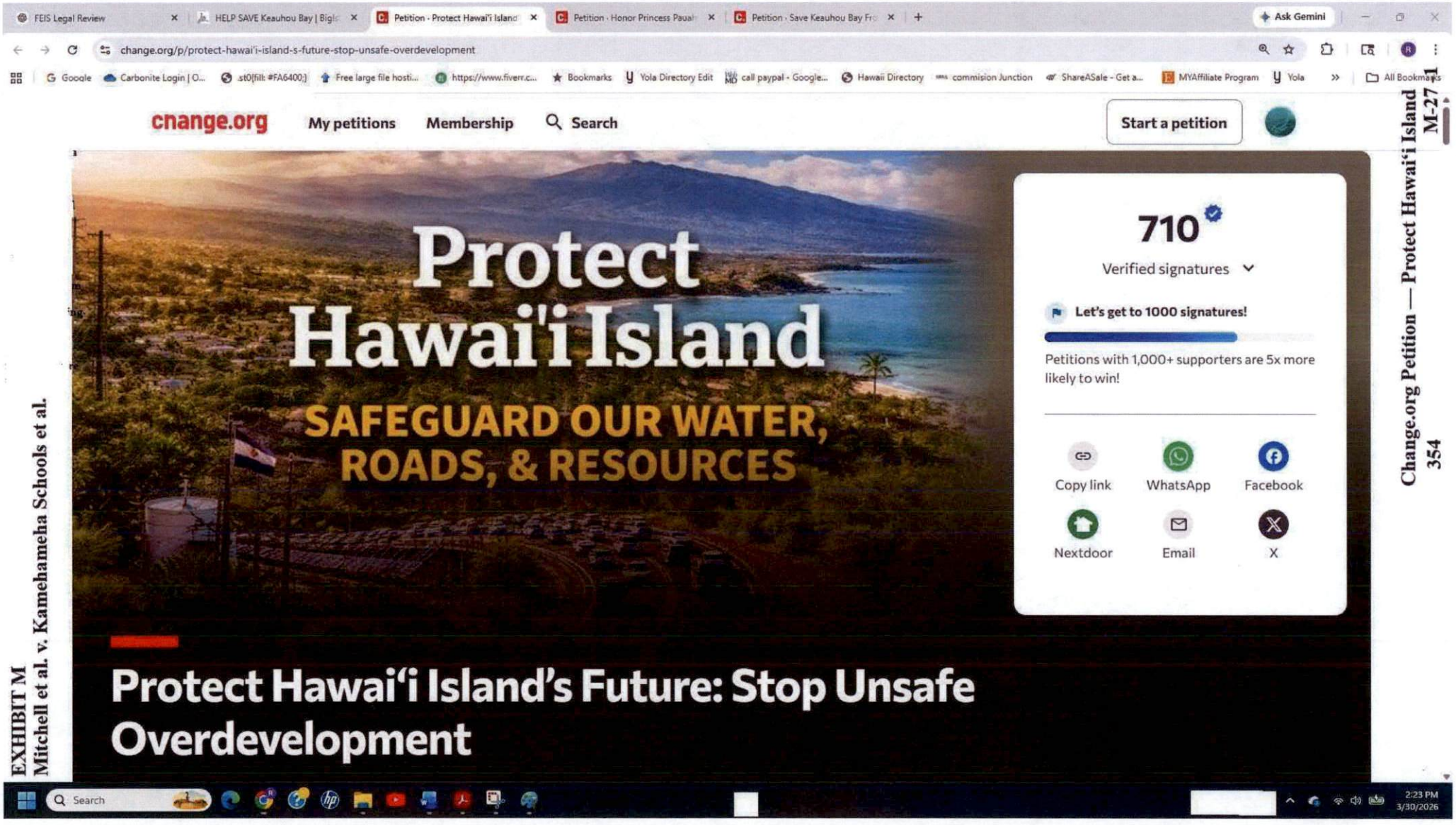
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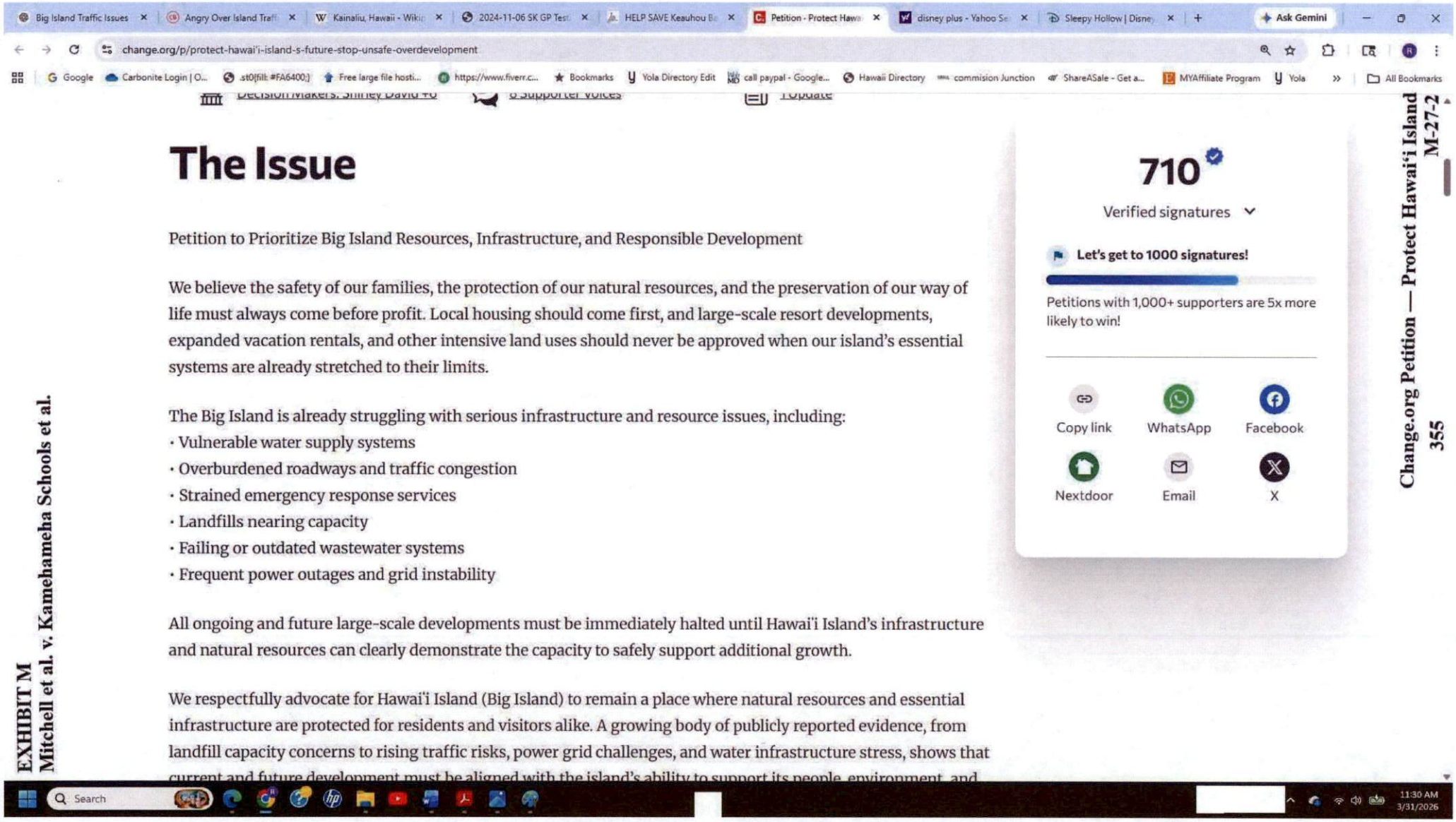

The Issue

Petition to Prioritize Big Island Resources, Infrastructure, and Responsible Development

We believe the safety of our families, the protection of our natural resources, and the preservation of our way of life must always come before profit. Local housing should come first, and large-scale resort developments, expanded vacation rentals, and other intensive land uses should never be approved when our island's essential systems are already stretched to their limits.

The Big Island is already struggling with serious infrastructure and resource issues, including:
- Vulnerable water supply systems
- Overburdened roadways and traffic congestion
- Strained emergency response services
- Landfills nearing capacity
- Failing or outdated wastewater systems
- Frequent power outages and grid instability

All ongoing and future large-scale developments must be immediately halted until Hawai'i Island's infrastructure and natural resources can clearly demonstrate the capacity to safely support additional growth.

We respectfully advocate for Hawai'i Island (Big Island) to remain a place where natural resources and essential infrastructure are protected for residents and visitors alike. A growing body of publicly reported evidence, from landfill capacity concerns to rising traffic risks, power grid challenges, and water infrastructure stress, shows that current and future development must be aligned with the island's ability to support its people, environment, and

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FEIS Legal Review | HELP SAVE Keauhou Bay | Bigl | Petition · Protect Hawai'i Island | Petition · Honor Princess Pauahi | Petition · Save Keauhou Bay Fro | Ask Gemini

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Save Keauhou Bay From Becoming a Big Crowded Resort

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Keauhou Bay is the birthplace of King Kamehameha III; it should be conserved for its historical and cultural significance, such as canoe paddling, fishing, baptisms, life celebrations, unanimous meetings, yoga practices, and more.

Kamehameha Schools wants to make the canoe club smaller to make room for more tourists and this violates the Cultural Impact Statement Law.

If they are allowed to build 43 buildings with 150 rooms, it will bring in hundreds of tourists to small Keauhou Bay as 150 X 3 people equals 450 people. This will overcrowd and pollute Keauhou Bay for years to come.

Also, the endangered species inhabit Keauhou Bay include the Monk Seal, Green Sea Turtle, Hawksbill Turtle, and the Hawaiian Hoary Bat. Under the Endangered Species Act of 1973, "The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved..." https://www.fisheries.noaa.gov/national/endangered-species-conservation/endangered-species-act

This is an Act their Bungalow Resort will violate because of the pollution their development will cause.

Keauhou Bay is declared "Impaired Water" by US EPA. Under Section 303 D of the Clean Water Act, "...develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by states..." https://www.epa.gov/tmdl

Their resort development will contribute to more pollution to Keauhou Bay, thereby violating the Clean Water Act.

Health.hawaii.gov states Keauhou Bay's Natural Ground Cover has been protecting the bay from golf course pollution for years. https://health.hawaii.gov/epo/files/2013/09/Stormwater-MS4-Presentation-HEF-7.15.14.pdf

"If polluted runoff reaches the ocean, it can wreak havoc on marine life, including endangered green sea turtles."

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EXHIBITS M
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS M

Petitioners hereby submit **Exhibit Series M-30 through M-31,**

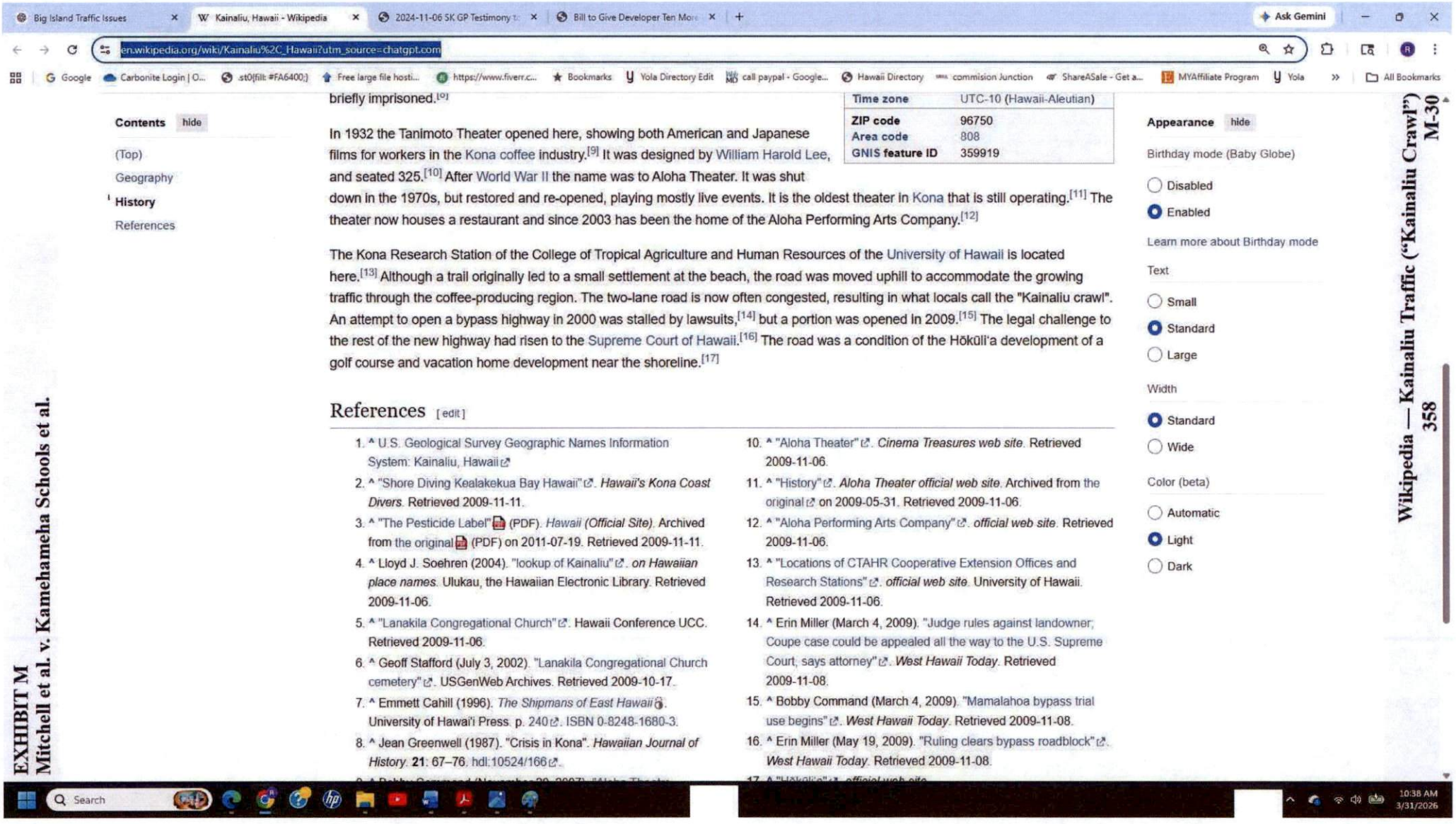
Traffic Congestion and Transportation Infrastructure Constraints

The following materials are submitted as separate exhibits, consisting of sources addressing roadway congestion and transportation infrastructure limitations:

- **Exhibit M-30:** Wikipedia – Kainaliu "Crawl" Traffic Congestion
- **Exhibit M-31:** Civil Beat – Island Traffic Jams and Infrastructure Solutions

These materials are submitted to demonstrate that transportation systems are already operating under strain and are subject to persistent congestion and capacity limitations.

The attached materials are true and correct copies of publicly available sources.



Big Island Traffic Issues | Kainaliu, Hawaii - Wikipedia | 2024-11-06 SK GP Testimony t | Bill to Give Developer Ten More | Ask Gemini

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briefly imprisoned.[9]

Time zone	UTC-10 (Hawaii-Aleutian)
ZIP code	96750
Area code	808
GNIS feature ID	359919

In 1932 the Tanimoto Theater opened here, showing both American and Japanese films for workers in the Kona coffee industry.[9] It was designed by William Harold Lee, and seated 325.[10] After World War II the name was to Aloha Theater. It was shut down in the 1970s, but restored and re-opened, playing mostly live events. It is the oldest theater in Kona that is still operating.[11] The theater now houses a restaurant and since 2003 has been the home of the Aloha Performing Arts Company.[12]

The Kona Research Station of the College of Tropical Agriculture and Human Resources of the University of Hawaii is located here.[13] Although a trail originally led to a small settlement at the beach, the road was moved uphill to accommodate the growing traffic through the coffee-producing region. The two-lane road is now often congested, resulting in what locals call the "Kainaliu crawl". An attempt to open a bypass highway in 2000 was stalled by lawsuits,[14] but a portion was opened in 2009.[15] The legal challenge to the rest of the new highway had risen to the Supreme Court of Hawaii.[16] The road was a condition of the Hōkūli'a development of a golf course and vacation home development near the shoreline.[17]

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Geography
History
References

Appearance hide

Birthday mode (Baby Globe)
Disabled
Enabled
Learn more about Birthday mode

Text
Small
Standard
Large

Width
Standard
Wide

Color (beta)
Automatic
Light
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EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.

Community Voice

Angry Over Island Traffic Jams? Let's Talk About Solutions

A major shift needs to be made away from personal cars as the primary mode of transportation.

By Jacob Wiencek
February 29, 2024 · 6 min read

39



Civil Beat — Island Traffic Jams M-31-1

359

The past few weeks I have repeatedly made the mistake of trying to drive on Oahu between the hours of 3 p.m. and 7 p.m. The traffic was unbearable. A sea of stuck cars and halting movement.

As I sat in my car, the anger in me began to subside and I thought about how we can fix this.

About the Author



Jacob Wiencek

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The H-1 is the only mechanism to move vehicle traffic through Honolulu. It has been in existence without ANY modifications for 60 years. With...

wailani1961 · 2 years ago

Big Island Traffic Issues | Angry Over Island Traffic Jams? | Kainaliu, Hawaii - Wikipedia | 2024-11-06 SK GP Testimony t | Bill to Give Developer Ten More | Ask Gemini
civilbeat.org/2024/02/angry-over-island-traffic-jams-lets-talk-about-solutions/?utm_source=chatgpt.com
Google | Carbonite Login | O... | st0{fill: #FA6400;} | Free large file hosti... | https://www.fiverr.c... | Bookmarks | Yola Directory Edit | call paypal - Google... | Hawaii Directory | commision Junction | ShareASale - Get a... | MYAffiliate Program | Yola | All Bookmarks

On the Big Island, the mayor had to issue an emergency order shutting down Waipio Valley Road due to overuse and poor prior maintenance. Not even Kauai is immune to the problem of heavy traffic.

Our physical infrastructure is simply inadequate to the demands of 21st century Hawaii.



Traffic is a statewide issue. Pictured is bottlenecked traffic in Paia, Maui. (Ludwig Laab/Civil Beat/2022)

The major shift needs to be away from personal cars as the main mode of transport. We are our own source of traffic, and we have

analysis and opinion on public affairs in Hawai'i. We want to showcase smart ideas about the future of Hawai'i, from the state's sharpest thinkers, to stretch our collective thinking about a problem or an issue. Email news@civilbeat.org to submit an idea.

EXHIBIT M
Mitchell et al. v. Kamehameha Schools et al.

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EXHIBITS R
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT R

Petitioners hereby submit **Exhibit R-1,** this exhibit contains email correspondence dated January 17, 2023, between Petitioner Rebecca Melendez and Hawai'i County Planning Department staff member Alex J. Roy, M.Sc. The correspondence documents that, prior to the Draft Environmental Impact Statement (DEIS) process, both the County and the project applicant were aware of a public petition opposing the proposed Keauhou Bay resort, which had already garnered nearly 5,000 signatures at that time.

The County's response expressly acknowledges awareness of the petition and confirms that the applicant was also aware of its existence. This exhibit is submitted to demonstrate early knowledge of substantial public opposition and to support Petitioners' position that such opposition was known and required meaningful consideration within the environmental review process.

EXHIBIT R
Mitchell et al. v. Kamehameha Schools et al.

Tue, Jan 17, 2023, 11:03 AM

Rebecca Melendez <bigislandtalk@gmail.com>

to ALEX.ROY

Aloha Alex,

Kamehameha Schools will be submitting their EIS draft to turn historical Keauhou Bay into another resort area.

Have you seen my change.org/savetheland petition? There are almost 5,000 signatures opposing this resort.

Have you read the thousands of comments on why people want to save this local Bay from becoming an over crowd bay?

Do you know who else I can contact and what else I can do to help save this sacred Bay from becoming another over crowded tourist area?

Thank you,

Sincerely,

Rebecca Melendez

R

Roy, Alex <Alex.Roy@hawaiicounty.gov> Tue, Jan 17, 2023, 11:32 AM

to me

Ms. Melendez,

I have seen the petition, and the applicant is aware of the petition also. I have not read all the comments but I am aware of the issues surrounding this area. During the Draft EIS process you will be able to submit comments on the proposed project; the applicant is required to respond to all comments. Note that similar comments (like a form letter or petition) may be addressed in bulk format.

Additionally, if the EIS is accepted and the applicant submits for the SMA permit (SMA Major) it will go before the Leeward Planning Commission at one of their regularly scheduled public meetings - you should have ample opportunity to make your concerns known to all those making the decision to approve or deny the project. I am just the reviewer on the project, I do not make determinations.

Thank you,

Alex J. Roy, M.Sc.

Planning Department

County of Hawai'i
Zoning & Subdivision Code Update
Project Website: COHcodeupdate.com

EXHIBITS R
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS R

Petitioners hereby submit **Exhibit R-2-1 and R-2-2**, these exhibits contain excerpts from the Final Environmental Impact Statement (FEIS) identifying agency contact information and designated email addresses for the submission of written public comments. The exhibit includes the listed agency contact, Alex Roy of the County of Hawai'i Planning Department, and the official email address provided for receiving public comments regarding the proposed action.

This exhibit is submitted to demonstrate the channels through which public participation and comment submission were directed during the environmental review process, and to establish the identified points of contact and communication relied upon by Respondents.

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Action type

Applicant

Other required permits and approvals

Special Management Area Use Permit (Major); Shoreline Setback Variance; and Various Site, Grading, Building and Infrastructure Approvals

Discretionary consent required

Special Management Area Use Permit (Major)

Agency jurisdiction

County of Hawai'i

Approving agency

County of Hawai'i Planning Department

Agency contact name

Alex Roy

Agency contact email (for info about the action)

Alex.Roy@hawaiicounty.gov

Email address for receiving comments

KeauhouBay@g70.design

Agency contact phone

EXHIBIT R
Mitchell et al. v. Kamehameha Schools et al.

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County of Hawai'i Planning Department

Applicant

Kamehameha Schools

Applicant contact name

Marissa Harman

Applicant contact email

Keauhoubay@ksbe.edu

Applicant contact phone

(808) 982-0830

Applicant address

Kawaiha'o Plaza, 567 S King St
Honolulu, HI 96813
United States
Map It

Is there a consultant for this action?

Yes

Consultant

G70

Consultant contact name

Kawika McKeague

Consultant contact email

KeauhouBay@g70.design

Consultant contact phone

(808) 523-5866

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1/29/2026

EXHIBITS R
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS R

Petitioners hereby submit **Exhibit R-3-1 through R-3-15**, This exhibit contains a written comment submission dated July 1, 2024, from Petitioner Rebecca Melendez to the Hawai'i County Planning Department and project-related recipients during the Draft Environmental Impact Statement (DEIS) comment period. The submission presents detailed environmental, scientific, and community-based concerns regarding the proposed Keauhou Bay bungalow resort project.

The correspondence includes citations to scientific literature and agency sources addressing coastal development impacts, stormwater runoff, coral reef degradation, marine ecosystem disruption, and infrastructure constraints on Hawai'i Island. The submission further raises concerns regarding increased traffic, resource limitations, and cumulative impacts associated with the proposed development.

This exhibit is submitted to demonstrate that substantive, evidence-based comments were timely provided during the DEIS process, placing Respondents and the project applicant on notice of specific environmental, cultural, and infrastructure concerns requiring meaningful consideration and response within the environmental review process.

From: **Rebecca Melendez** <rebeccasaddress@gmail.com>
Date: Mon, Jul 1, 2024 at 12:04 PM
Subject: PLEASE DON'T ALLOW BUNGALOW RESORT IN KEAUHOU BAY
To: Roy, Alex <Alex.Roy@hawaiicounty.gov>, 221053-01 KS Keauhou Entitlements <KeauhouBay@g70.design>, <Keauhoubay@ksbe.edu>

Dear County of Hawai'i Planning,

This is my revised letter with scientific proof that developments have caused serious damage to the Hawaiian Islands coastline, and if you allow a Bungalow Resort to be built in Keauhou Bay by Kamehameha Schools, you will be causing Keauhou Bay to be several polluted for years to come. It will never be the same again!

Please, Do NOT risk polluting the water in Keauhou Bay by allowing Kamehameha Shools to develop their bungalow resort project, because it is scientifically proven that developments will ALWAYS have rain runoff that will pollute nearby waters constantly during develoment and after.

Please, read the Scientific articles below written by NOAA, National Oceanic and Atmospheric Administration and other professional organizations, that prove that developments have ALWAYS polluted the water in every coastal developmented area.

The coral all over Hawai'i has had extremely high mortality rates, due to developments near ocean areas throughout the years, and development in Keauhou Bay will be devastating to the coral, reef fish, and all Aquatic Life there, and even the Manta Rays that go there to eat zooplankton from the Manta Ray tours at night, and they eat it during the day in that area as well because they need to eat 5 times their body weight in zooplankton daily. Please see the cited information below.

"SO, HOW MUCH PLANKTON DOES YOUR AVERAGE MANTA RAY EAT? 19,200,000. Nineteen million two hundred thousand, give or take a few thousand.

That is the number of plankton pieces a ten-foot manta ray must consume weekly to stay alive."

The above information was taken from Manta Ray
Advocates https://mantarayadvocates.com/how-much-plankton-do-mantas-eat/

If you allow this bay to be develoment you will be allowing all types of marine life to die and there is NO WAY to stop this from happening because polluted runoff rain water from developments can't be fully stopped. It is what has happened in ALL coastal develoments.

Please read the Scientific proof below.

Reason #1 It's Been Proven Developments Severely Pollute Nearby Waters

Article by National Oceanic and Atmospheric Administration, AKA NOAA, "Coral Bleaching is occurring more frequently in Hawai'i. Across the Hawaiian Archipelago, coral bleaching has increased in frequency and severity since 1996. The last major bleaching event in 2014-2015 had catastrophic Impacts state-wide...

This was the third major bleaching episode in Hawai'i over the last 6 years. The frequency of these events is unprecedented in the archipelago. NOAA scientists and partners have determined that the key drivers of the bleaching were environmental factors (such as heat stress, depth, and surface light) and human impacts (sewage effluent and urban run-off). " https://www.fisheries.noaa.gov/feature-story/cautionary-tale-2019-coral-bleaching-event-hawaii#:~:text=Coral%20Bleaching%20Is%20Occurring%20more,had%20catastrophic%20impacts%20state%2Dwide.

This article is by the Coral Reef Alliance here in Hawai'i. "An ecosystem under threat Hawai'i's reefs face major global and local threats including climate change, overfishing, and sediment and nutrient pollution caused by sewage and stormwater runoff...

When it rains, flash floods carry stormwater and large amounts of sediment downstream to the ocean. Just offshore, once-thriving coral reefs are now struggling to survive." https://coral.org/en/where-we-work/hawaiian-islands/#:~:text=Hawai%CA%BBi's%20reefs%20face%20major%20global,into%20Hawai%CA%BBi's%20waterways%20every%20day.

This article states that runoff is a leading source in coral degradation. Article by National Oceanic and Atmospheric Administration, AKA NOAA, "Land-based sources of pollution are a leading cause of coral reef degradation in the Main Hawaiian Islands. Water quality is impacted by urban runoff, failing sewage systems, unpaved roads, farms, land clearing, and development." https://www.coris.noaa.gov/monitoring/status_report/docs/Hawaii_status_report_forweb.pdf

This article is a Research Article by PLOS ONE and their motto is,"We're driving change in research integrity and publication ethics." This is some of their artcile information, "Coral taxonomy and local stressors drive bleaching prevalence across the Hawaiian Archipelago in 2019...

We found little evidence for acclimation by reefs to thermal stress in the main Hawaiian Islands. Moreover, our findings illustrate how detrimental effects of local anthropogenic stressors, such as tourism and urban run-off, may be exacerbated under high thermal stress. In light of the

forecasted increase in severity and frequency of bleaching events, future mitigation of both local and global stressors is a high priority for the future of corals in Hawai'i." https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0269068

The Chesapeake Bay has a foundation that is trying to save it due to runoff pollution that was caused by developments, and the Chesapeake Bay is a lot bigger than Keauhou Bay. If it's being drastically hurt by runoff water from developments, Keauhou Bay waters won't stand a chance if development above the bay is allowed because this bay is very small.

This Article is by the Chesapeak Bay Foundation, Saving a National Treasure states, "...runoff is a significant source of harmful nitrogen pollution that continues to grow…

As rainwater and snowmelt run off our streets, parking lots, lawns, and other surfaces, they pick up pet waste, pesticides, fertilizer, oil, and other contaminants. If the draining water doesn't evaporate or soak into the ground where it can be filtered, it flushes straight into local creeks, rivers, and the Chesapeake Bay, adversely affecting water quality and aquatic life.

Only 10 to 20 percent of rain that falls in forests, fields, and other natural areas runs off, with the rest absorbed by soil and plants, where it is filtered before reaching aquifers or local waterways. (Right now Keauhou Bay has a lot of trees and is very natural, this is what helps stop runoff.) By contrast, close to 100 percent of the rain that falls on concrete and other hard surfaces produces runoff. One inch of rain falling on an acre of hardened surface produces 27,000 gallons of runoff.

Stormwater runoff pollution threatens Chesapeake Bay and it's rivers and streams…Polluted runoff is one of the most harmful sources of pollution to the Bay and its waters. And much of it starts right in the urban and suburban neighborhoods where we live." https://www.cbf.org/issues/polluted-runoff/index.html#:~:text=Besides%20carrying%20pollutants%20that%20harm,them%20are%20placed%20in%20jeopardy.

If that is what runoff is doing to the Chesapeake Bay, the effects of runoff will be even more devestating to Keauhou Bay because it is so much smaller than the Chesapeake Bay.

Coral reefs are known to be highly negatively impacted by developments because, "Impacts from land-based sources of pollution including coastal development,...can impede coral growth and reproduction, disrupt overall ecological function, and cause disease and mortality in sensitive species." https://oceanservice.noaa.gov/facts/coral-pollution.html#:~:text=Impacts%20from%20land%2Dbased%20sources,and%20mortality%20in%20sensitive%20species.

Article by Environmental Evidence, "Coastal development and runoff lead to sedimentation, which directly impacts coral recruitment, growth, mortality, and ecosystem services that coral

reefs
provide." https://environmentalevidencejournal.biomedcentral.com/articles/10.1186/s13750-020-00200-0#:~:text=Coastal%20development%20and%20runoff%20lead,services%20that%20coral%20reefs%20provide.

Developments can't fully stop polluting because runoff is from rain during development and after. Article by NOAA, "One of the most significant threats to reefs is pollution. Land-based runoff and pollution discharges can result from dredging, coastal development...This runoff may contain sediments, nutrients, chemicals, insecticides, oil and debris.

When some pollutants enter the water, nutrient levels can increase, promoting the rapid growth of algae and other organisms that can smother
coral." https://oceanservice.noaa.gov/education/tutorial_corals/coral09_humanthreats.html#:~:text=This%20runoff%20may%20contain%20sediments,organisms%20that%20can%20smother%20corals.

Another article by NOAA, "Coral reefs also are affected by leaking fuels, anti-fouling paints and coatings, and other chemicals that enter the water... (All of those are show up in every development project.)

Among the most damaging pollutants on coral reefs is sediment, which can remain suspended in the water or be deposited on the coral surface (i.e., turbidity and sedimentation, respectively) and can contain toxicants, pathogens, and nutrients, all of which impact coral growth, recruitment, and
survival" https://oceanservice.noaa.gov/education/tutorial_corals/coral09_humanthreats.html#:~:text=This%20runoff%20may%20contain%20sediments,into%20the%20atmosphere%20within%20days.

Reason #2 It's Been Proven Resort Developments KILL Marine Life

The manta rays go to Keauhou Bay every night to eat zooplankton and if you allow this development that WILL have runoff water, you WILL be causing zooplankton to be seriously affected because as this artcle by MarinBIO states, "Zooplankton are also sensitive to their environment and like phytoplankton—a change in zooplankton concentration can indicate a subtle environmental change. Zooplankton are highly responsive to nutrient levels, temperatures, pollution, food that is not nutritious, levels of light, and increases in predation. As well as providing an essential link in the marine food chain (which is an understatement), the diversity of species, amount of biomass and abundance of zooplankton communities can be used to determine the health of an ecosystem...

Here is another article that proves runoff from development in this area will hurt and kill plankton, by **Frontiers in Marine Science, "Effects of an experimental terrestrial runoff on the components of the plankton food web in a Mediterranean coastal lagoon** The main result observed in the present study was that the effects of the simulated terrestrial runoff spread along the plankton food web, significantly affecting all trophic levels of the natural plankton community studied. This occurred in a relatively short time considering that the experiment lasted less than three weeks. The lower light availability in the terrestrial runoff treatment compared to the control resulted in a net decrease of approximately one-third of Chl-*a* concentration and phytoplankton abundance over the entire experiment." https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2023.1200757/full

"Zooplankton are also affected by levels of pH, heavy metals, calcium, and aluminum. Nutrients like nitrogen and phosphorus will affect the prey of zooplankton (like algae, protozoa and bacteria), indirectly affecting zooplankton survival. Scientists are still putting together pieces of the zooplankton puzzle. Some questions include how nutrient levels found in algae can influence the growth and behavior of zooplankton. Another question important to marine and human life is how toxins and pollution will affect this crucial link in the food chain" This information is in article by
MarineBIO. https://www.marinebio.org/creatures/zooplankton/#:~:text=Zooplankton%20are%20also%20sensitive%20to,light%2C%20and%20increases%20in%20predation.

Here is a research article by Environmental Research Laboratory, United States Environmental Protection Agency that discusses, "Toxic Effects of Pollutants on Plankton There are four main sources of aquatic pollution: industrial wastes, municipal wastes, agricultural run-off, and accidental spillage. Non-point sources, such as automobile exhausts, add appreciable amounts of pollutants to air that may enter aquatic systems in rainfall or dry fall-out. These sources add pesticides, heavy metals, oil, petroleum products, and a large number of organic and inorganic compounds to water. Lakesand oceansserveassinksfor many pollutants. Plankton comprise a large portion of the living matter in natural waters and function in biogeochemical cycles. They are affected by pollutants, transfer them to sediments and other organisms,and function in their biologicaltransformation." https://scope.dge.carnegiescience.edu/SCOPE_12/SCOPE_12_3.6_chapter12_257-274.pdf

The above articles show that development of Keauhou Bay WILL hurt plankton life in the area because of the pollutant runoff that WILL happen during the development and after, and if this happens this could cause the manta ray food source to disappear and that will be devistating for the manta rays eating habits, as well as cause the manta rays to not show up in this area, in turn taking away many lively hoods from locals on the island that depend on the manta ray tour for their income.

Reason #3 It's Been Proven an Increase in Human Population Destroys Coral Reefs

If a Bungalow Resort is allowed to be built in Keauhou Bay, it will forsure bring a serious increase in human traffic. "Easily visible trends in human population dynamics combined with well-established and tested ecological theory give a clear, intuitive, yet quantifiable guide to the severity of survival challenges faced by coral reefs. Management challenges and required actions can be clearly shown and, contrary to frequent claims, no scientific ambiguity exists with regards to the serious threat posed to coral reefs by humankind's continued numerical increase." This is in the article by National Library of Medicine National center for Biotechnology Information PubMed. https://pubmed.ncbi.nlm.nih.gov/33293007/#:~:text=Denser%20coastal%20populations%20and%20greater,to%20more%20runoff%20and%20siltation.

This article is by ABC NEWS, "This is how tourists are destroying coral reefs in Hawaii The less people at a certain site, the more coral there are, the research found. The millions of tourists who flock to the shores of Hawaii every year are wreaking havoc on its natural environment -- especially the coral reefs, which are at risk all over the world, a new study said. The most popular coral reefs on the Hawaiian islands are likely being degraded by the very visitors they attract, according to a study published Monday in Nature Sustainability." https://abcnews.go.com/US/hawaiian-coral-reefs-degrading-popular-tourist-sites-scientists/story?id=96308858#:~:text=The%20less%20people%20at%20a,there%20are%2C%20the%20research%20found.&text=The%20millions%20of%20tourists%20who,world%2C%20a%20new%20study%20said.

If you allow this resort to be developed, you will be destroying the coral reefs in the bay because this bay is extremly small and used by a lot of locals already for fishing, canoing, swimming, snorkeling, paddle boarding, surfing, boating...it can't afford more use by many thousands more people yearly.

If you allow Keauhou Bay to be development there will be a higher population in the bay and that will hurt the coral in the bay as well, because it's known that, "Denser coastal populations and greater wealth will lead to reef degradation by coastal construction. Denser populations inland will lead to more runoff and siltation. Effects of human perturbations can be explored with metapopulation theory since they translate to increases in patch-mortality and decreases in patch-colonization (= regeneration). All such changes will result in a habitat with overall fewer settled patches, so fewer live reefs." This information was taken from Science Direct https://www.sciencedirect.com/science/article/abs/pii/S0065288120300328#:~:text=Aquaculture%20will%20alleviate%20some%20fishing,to%20more%20runoff%20and%20siltation.

Another article by Nature Sustainablity, "Coral reefs and coastal tourism in Hawaii Coral reefs are popular for their vibrant biodiversity. By combining web-scraped Instagram data from tourists and high-resolution live coral cover maps in Hawaii, we find that, regionally, coral reefs both attract and suffer from coastal tourism. Higher live coral cover attracts reef visitors, but that visitation contributes to subsequent reef degradation. Such feedback loops threaten the highest quality reefs, highlighting both their economic value and the need for effective conservation management." https://www.nature.com/articles/s41893-022-01021-4.epdf?sharing_token=wsakgQNhaJhjJAnWAq453tRgN0jAjWel9jnR3ZoTv0PyGzA5lc_H0O1zcHNIP3ASnhcgKRy6_vKLPw49dbmBYoXSg3Y1MgQiGBZsapdGUHi7O1SLbu9x5Pr3xED4Kxl4T0sJlvgQ1a72ZRt3rUbraxpodJd2AoNlSmWSuxB7JjEDdpJj8OGJpx71TJWdCfXvFKJlZYeNdcJj3Sw_dnaUg5lZlhcjPBDImmaH15yqT5Q%3D&tracking_referrer=abcnews.go.com

Reason #4 a Resort Development WILL Increase Traffic on Already Severly Trafficed Roads

The Big Island already has a serious problem with traffic on the island because of a lack of infrastructure that in places a bigger road can't be built due to cliffs on one side and homes on the other side.

Allowing another resort to be developed will bring more cars that will lead to a lot more traffic that the island can not handle, please read the articles below by different NEWS companies that prove this point.

This NEWS article by Hawai'i News Now, "Report shows alarming surge in Hawaii Island traffic deaths The Hawaii Police Department's Traffic Services Section released a new report showing a dramatic increase in both major crashes and fatal accidents from last year.

The startling statistics show a dramatic increase in the number of year-over-year traffic fatalities on the Island of Hawaii, revealing major crashes are up more than 12% and traffic fatalities are up more than 100%." Please watch their video on their link below because it is a professional report on Big Island traffic problems. https://www.hawaiinewsnow.com/2024/05/18/new-report-shows-hawaii-island-traffic-fatalities-are-up-over-100-last-year/

With more tourists comes more accidents,more traffic, and more traffic deaths. Please read this article by KHON 2 NEWS, "Hawaii Island has most traffic fatalities in state, This time last year Hawaii island was at five traffic deaths, as of April 1, 2024, they're at 14.

Seven of which happened in the last two weeks...

Chief Moszkowicz said the police force is small compared to the size of the island and response times can take 15 to 20 minutes.

"We don't have the resources like in the small space of Oahu where you can saturate an area to control speeding, that just doesn't exist here," he added." https://www.khon2.com/local-news/7-traffic-fatalities-for-hawaii-island-in-march/

The traffic on Big Island has increased drastically and safety issues and infrastructure needs to be addressed before adding more resort developments.

Please read this article because what it says about Oahu is the same for Big Island. The traffic problems they talk about are the same issues here on Big Island, and this article also gives one Big Island example, "On the Big Island, the mayor had to issue an emergency order shutting down Waipio Valley Road due to overuse and poor prior maintenance." https://www.civilbeat.org/2024/02/angry-over-island-traffic-jams-lets-talk-about-solutions/

Please, watch the NEWS video from the link below on aerial footage in Hilo because the footage shown is the same thing that is happening on Alii Drive and Queen K HWY, and for the same reasons.

There are 2 developments already on Alii Dr. being built as of today, and more are scheduled for this road in the near future, and Alii Dr. and Queen K HWY are the roads Kamehameha Schools Bungalow Resort will be using if approved and they are already seriously congested.

These roads have the exact same traffic congestion as Hilo, with the exact same problems. Traffic is extremely slow aready.

The worry on Kona side is tsunami evacuations rather than lava evacuations, and in this kind of traffic, not everyone will be able to get to safer ground, especailly if you allow another resort to be developed in this area when traffic is already at a crawl every week day and sometimes on weekends as well.

See the photo below that proves this point in Kona, and here is the NEWS article by KITV NEWS that talks about Hilo and the same thing is happening in Kona on the roads Kamehameha Schools wants to develop their resort, "Hawaii Island traffic jams could have safety impact. In the event of an evacuation, Mayor Mitch Roth acknowledges that will make the Traffic Jam up even worse. But says, he is working with The State on a solution." https://www.kitv.com/news/local/hawaii-island-traffic-jams-could-have-safety-impact/article_b06a5374-5a6a-11ed-8d23-8313ef8c4c19.html

There was a crash on Alii Dr. and when there is an accident on this road, it turns into only one lane that needs a flagger to help direction traffic. and that adds even more traffic to this already seriously congestion road, and Kamehameha Schools wants to add a resort on this road, and that will increase the traffic even more.

Here is the Island News video on the crash on Alii Dr. https://www.youtube.com/watch?v=-FQSsnPDji8

Please see from these articles that traffic on Big Island is deadly already and adding another resort will be devistating to the island.

Please read this Path article, HAWAI'I COUNTY'S VISION ZERO INITIATIVE

A motorcyclist is in critical condition after a collision with a car. A driver accidentally hits and kills a pedestrian. It seems that not a day goes by without the news reporting on a traffic crash on Hawai'i Island.

"That's just Big Island traffic," is a common sentiment. But what if we didn't have to accept this endangerment of vehicle drivers, motorcyclists, and pedestrians as a way of life?"

This was taken from Path as well as The Law of the Splintered Paddle below https://pathhawaii.org/hawaii-countys-vision-zero-initiative/

The Law of the Splintered Paddle

Hawaiian history tells us that young Kamehameha was once an aggressive chief. The story goes that the young chief even chased after two fishermen in a Puna fishing village. While pursuing them, his foot got stuck in a crevice, and one of the fishermen struck Kamehameha over the head with his paddle in defense, which splintered into pieces.

After the incident, Kamehameha recognized that it was wrong to misuse his power and learned compassion. Years later, Kamehameha declared a new law, "K?n?wai M?malahoe" or "the Law of the Splintered Paddle." Meant to protect the innocent and vulnerable from unprovoked attacks, this law proclaimed that the defenseless (especially k?puna and keiki) across Hawai'i be able to sleep safely on the side of the road, unharmed.

The law provided for the safety of non-warriors during wartime and became the first written law of the Kingdom of Hawai'i. After being added back in 1978, the law is part of Hawaii's State Constitution today.

It is symbolic of servant leadership, reinforcing the importance of:

- Caring for and serving one's people
- Knowing and doing what is pono (right)
- Standing for the principle that leadership privilege is earned
- Taking kuleana (responsibility) for those we serve

- Doing so with compassion, love, and respect

"We take that to mean that anyone who uses our roadways should be able to do so without fear of harm," explains Tina."

The Law of the Splintered Paddle is also on Kamehameha Schools website, so they should want to help make Big Island roads become safer and not add to the traffic and possible traffic death toll problem. https://www.ksbe.edu/article/the-lessons-of-the-law-of-the-splintered-paddle-ring-true-200-years-after-k

Besides a resort development in Keauhou Bay causing runoffs that will severly pollute the bay as the above research and science articles have shown above causing marine life to die, it will also increase in the bay's population that will seriously add to damaging even more coral, plankton and all marine life as well, and the island has severe traffic issues already with increased death tolls rising, and a resort development in Keauhou Bay will totally increase even more traffic in these already severely congested traffic areas.

Reason #5 The Big Island Doesn't Have the Resources and Infrastructure for Another Resort

Please see the articles below because the Big Island doesn't have the resources or infrastructure to safely add another resort development on island and these other NEWS and Research articles prove this point.

1) Hawaii Deals with Burgeoning Waste Management Problem

As landfills face closure and waste-to-energy projects stall, various counties in Hawaii are dealing with waste management issues. Waste360 Staff January 10, 2020

"Hawaii Island is in the enviable position of having a landfill with anywhere from 20 to 100 years of capacity left to take in trash. But the island still wrestles with significant issues like plastic products that are no longer being recycled." https://www.waste360.com/landfill/hawaii-deals-with-burgeoning-waste-management-problem

2) "Big Island Now readers seem to agree that there's likely no single solution for slowing down the timeline of the West Hawai'i Sanitary Landfill reaching capacity.

The West Hawai'i Sanitary Landfill, the only remaining landfill on the Big Island, is forecast to reach capacity within the next 20 to 25 years." https://bigislandnow.com/2023/09/17/big-island-now-poll-no-27-results-more-than-one-solution-needed-to-help-extend-life-of-west-hawaii-landfill/

3) Hawaii Island Has Decades of Landfill Space But Still Faces Challenges In Dealing With Its Waste Hawai'i Public Radio Published January 9, 2020 at 5:00 AM HST

"Hawaii Island is in the enviable position of having a landfill with anywhere from 20 to 100 years of capacity left to take in trash. But the island still wrestles with significant issues like plastic products that are no longer being recycled.

For the past four decades, trash from the east side of Hawaii Island has been dumped in a landfill outside of Hilo. But now trash from all parts of the island is being trucked to a facility north of Kona." https://www.hawaiipublicradio.org/local-news/2020-01-09/hawaii-island-has-decades-of-landfill-space-but-still-faces-challenges-in-dealing-with-its-waste

4)"What happens to Hawaii Island's trash and recyclables? BY MICHELLE BRODER VANdyke HAWAII ISLAND PUBLISHED 11:30 AM ET DEC. 17, 2022 By Michelle Broder Vandyke Hawaii Island PUBLISHED 11:30 AM ET Dec. 1The future of the landfill

The West Hawaii Landfill will be full in about 20 years. Finding a location for the next landfill is a concern, according to the DEM officials. They said it will be challenging to find a location for a future landfill because of stringent regulations and costs related to planning, environmental regulations, design and construction that will take many years to complete. It will also require community support." https://spectrumlocalnews.com/hi/hawaii/news/2022/12/15/what-happens-to-hawaii-island-s-trash-and-recyclables--

5) "The overwhelming plastic waste Hawaii visitors leave behind
By Natasha BourlinAug 24, 2023

Hawaii saw more than 9 million visitors last year. Those tourists' first stops are often big-box and convenience stores, where they buy bottled water, plastic sand toys, single-use bodyboards, noodles, floaties and inner tubes for their trips." https://www.sfgate.com/hawaii/article/plastic-waste-hawaii-visitors-leave-behind-18286076.php

6) "A county commission drafts ordinance aiming to ban recyclables at West Hawai'i landfill By Megan Moseley September 6, 2023 · 1:00 AM HST
* Updated September 6, 2023 · 2:02 PM

Hawai'i County's Environmental Management Commission is developing an ordinance that aims to prohibit the amount of recyclable materials ending up in the island's only working landfill." https://bigislandnow.com/2023/09/06/new-draft-ordinance-aims-to-ban-recyclables-at-west-hawaii-landfill/

7) " Hawai'i County issues mandatory 25% water restriction for North Kona August 7, 2023 · 5:21 PM HST

A mandatory 25% water restriction has been issued for various communities in North Kona due to the failure of the Honokōhau Deepwell over the

weekend." https://bigislandnow.com/2023/08/07/hawaii-county-issues-mandatory-25-water-restriction-for-north-kona/

8) "Hawai'i Water Supply Closely Monitored As Severe Drought Continues by Big Island Video Newson Nov 6, 2023 at 3:28 pm STORY SUMMARY

HAWAI'I COUNTY - Officials say a special focus will be placed on the South Kohala Water System, which is more susceptible to drought conditions." https://www.bigislandvideonews.com/2023/11/06/water-supply-closely-monitored-as-hawai%CA%BBi-under-severe-drought/

9) "Big Island Concerns About Water Quality Prompt A Lawsuit Over A Kona Sewage Plant Kealakehe sewage plant discharges more than 1 million gallons of wastewater into a lava pit near the ocean. By Paula Dobbyn / February 6, 2024

Settlement talks are scheduled in an environmental lawsuit involving a county-operated Big Island sewage plant in Kona." https://www.civilbeat.org/2024/02/concerns-about-water-quality-prompt-a-lawsuit-over-a-kona-sewage-plant/

10) "Researchers find sewage from an oceanfront Big Island community reaches nearshore waters Hawai'i Public Radio | By Russell Subiono, Sophia McCullough Published December 20, 2021 at 5:56 PM HST

There are nearly 50,000 cesspools on the Big Island, with tens of thousands posing a risk to water resources, according to the Hawai'i Department of Health." https://www.hawaiipublicradio.org/the-conversation/2021-12-20/researchers-find-sewage-from-an-oceanfront-big-island-community-reaches-nearshore-waters

11) "Kona coast faces stark wastewater tradeoffs Current situation

There are approximately 88,000 cesspools across the state, releasing more than 200,000 cubic meters of wastewater per day to the environment. https://www.hawaii.edu/news/2021/09/10/kona-stark-wastewater-tradeoffs/

We ask that you start figuring out how this can never happen again? These are the kind of issues that need to be resolved before you approve more development.

12) "BIG ISLAND NEWS HECO restores power after initiating emergency outages on Big Island by: Elizabeth 'Ufi Posted: Jan 30, 2024 / 09:43 AM HST Updated: Jan 30, 2024 / 04:15 PM HST

An unexpected loss of several large Hawaii Electric generators left some residents on Big Island without power for parts of the morning on Tuesday, Jan. 30." https://www.khon2.com/big-island-news/heco-initiates-30-min-rolling-outages-after-loss-of-generators/

13) Hawai'i State News Update: Hawaiian Electric initiates rolling outages throughout Big Island
February 13, 2024 · 5:23 PM HST
* Updated February 14, 2024 · 4:21 PM

The emergency outages are being initiated in various areas around the entire island to prevent loss of power to an even greater number of customers. The timing and extent of the outages will depend on the amount of demand on the system and the availability of generators." https://bigislandnow.com/2024/02/13/hawaii-island-customers-asked-to-reduce-electricity-use/

14) "LOCAL NEWS

HECO issues rolling power outages around Big Island by: Emily Cervantes Posted: Feb 13, 2024 / 05:11 PM HST Updated: Feb 13, 2024 / 09:12 PM HST Hawaiian Electric initiated rolling outages for Big Island after several large generators became unavailable and reduced output Tuesday night."
https://www.khon2.com/local-news/heco-releases-conservation-alert-for-big-island/

15) "Here's how power outages can have repercussions for Hawai'i's water supply Hawai'i Public Radio | By Savannah Harriman-Pote
Published February 13, 2024 at 10:59 AM HST

Water departments on O'ahu and Hawai'i Island have advised customers to conserve water ahead of possible storm-related power outages this month.

But what does the power grid have to do with the water supply?

It is impossible to separate Hawai'i's power system from its water system, said Kawika Uyehara, deputy director of Hawai'i County's Department of Water Supply." https://www.hawaiipublicradio.org/local-news/2024-02-13/residents-on-hawaii-island-and-oahu-are-asked-to-conserve-water-amid-power-outages

16) U.S. Hawaii is "on the verge of a greater catastrophe," locals say, as water crisis continues
By Li Cohen

Updated on: April 11, 2024 / 8:23 AM EDT / CBS News

In Hawaii, one of the most important sayings is ola i ka wai, "water is life" — a phrase that not only sums up what it means to exist on an island, but what it means to live, period. But now, one

of the largest of the island chain's land masses is facing a triple threat to its sole freshwater source, and if it isn't addressed soon, one community member says, "we're in deep trouble."

https://www.cbsnews.com/news/hawaii-water-crisis-climate-change/

17) NewsHawai'i County issues mandatory 25% water restriction for North Kona
August 7, 2023 · 5:21 PM HS

A mandatory 25% water restriction has been issued for various communities in North Kona due to the failure of the Honokōhau Deepwell over the weekend.

https://bigislandnow.com/2023/08/07/hawaii-county-issues-mandatory-25-water-restriction-for-north-kona/

18) Hawai'i Water Supply Closely Monitored As Severe Drought Continues

by Big Island Video News
on Nov 6, 2023 at 3:28 pm

(BIVN) – With an ongoing drought on the island of Hawai'i, the Hawai'i County Department of Water Supply says it is closely monitoring its 23 public water systems, with a "special focus" placed on the South Kohala Water System.

https://www.bigislandvideonews.com/2023/11/06/water-supply-closely-monitored-as-hawai%CA%BBi-under-severe-drought/

This is a map of Power Outages on the Big Island. This map wouldn't have been created if Power Outages were not a problem. https://www.hawaiianelectric.com/safety-and-outages/power-outages/hawaii-island-outage-map

Please, give Tax Breaks to all homes that provide solar and/or wind turbine to there homes to help with power issues on the island.

20) "Hawaiian Electric is reporting that several large generators on the Big Island are experiencing a range of issues and may lead to the need for rolling outages if supply does not meet demand."

https://www.reddit.com/r/BigIsland/comments/1bnuar3/hawaiian_electric_is_reporting_that_several_large/?rdt=52660

21) "NewsHawaiian Electric asking Big Island customers to conserve power due to down generators

March 25, 2024 · 11:49 AM HST

According to the utility company, this is an usual situation as the large generators are experiencing mechanical problems resulting in a reduced output. The largest generator, an independent power producer that sells electricity to Hawaiian Electric, is offline with significant mechanical issues.

The plant generates 60 megawatts or nearly one-third of the typical peak demand of 180 megawatts on the island."

https://bigislandnow.com/2024/03/25/hawaiian-electric-asking-big-island-customers-to-conserve-power-due-to-down-generators/

All the articles above show that a resort development will damage Keauhou Bay coral and marine life and, Big Island resources and infrastructure are currently being negatively affected from the development that is on island already, and there are years of new development that have already been approved, before having safe resources and infrastructures for new developments.

With these scientifically proven articles by some of the most professional scientists in the world, they say the a serious population increase, as well as development and resort runoff that happens because of parking lots, and... with all coastal developments, it will be dangerous for Keauhou Bay to be development because it will damage the marine ecosystems in the area.

Please, save Keauhou Bay's marine life and help the island's resources by saying NO to a Bungalow Resort built by Kamehameha Schools because all of these articles prove it would be extremely damaging to the waters at Keauhou Bay.

Thank you,

Sincerely,

Rebecca Melendez

EXHIBITS R
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS R

Petitioners hereby **submit Exhibits R-4-1 through R-4-56, R-4-132 through R-4-140, and R-4-141 through R-4-152,** consisting of DEIS comment submissions, petitions, community input, and supporting materials documenting substantive concerns regarding the proposed project.

This exhibit contains the written comments submitted by Petitioner Rebecca Melendez during the DEIS comment period, together with all materials transmitted in connection with that submission.

The submission includes detailed environmental, cultural, and legal objections to the proposed development, including concerns regarding water quality, sediment runoff, coral reef impacts, endangered species, shoreline access, infrastructure capacity, and traditional and customary practices.

The R-4 submission further includes multiple petitions containing thousands of signatures, together with extensive written comments from community members, including residents, practitioners, and visitors, all expressing opposition to the proposed resort development. These materials document widespread and sustained opposition, including detailed concerns regarding environmental degradation, cultural impacts, overdevelopment, and strain on local infrastructure. The petitions and accompanying comment records include numerous individualized statements explaining the basis for opposition and demonstrate that these concerns were substantive, specific, and widely shared.

Also included are scientific and supporting materials submitted during the DEIS comment process as part of the R-4 submission and provided with that submission, including R-4-132 through R-4-140, consisting of water quality comments and analysis by Richard H. Bennett, Ph.D., and R-4-141 through R-4-152, consisting of scientific water quality research summaries addressing groundwater discharge, subterranean estuary conditions, nutrient fluxes, and nearshore coastal water impacts.

All materials were submitted as part of the DEIS comment process and were before Respondents prior to FEIS acceptance.

Gmail **Rebecca Melendez <bigislandtalk@gmail.com>**

Zendo Kern AND EVERYONE Please OPPOSE Keauhou Bay Bungalow Resort because it WILL CAUSE SERIOUS NEGATIVE IMPACT

Rebecca Melendez <bigislandtalk@gmail.com> Tue, Aug 6, 2024 at 1:02 PM

To: keauhoubay@ksbe.edu, planning@hawaiicounty.gov, "Roy, Alex" <Alex.Roy@hawaiicounty.gov>, rebecca.villegas@hawaiicounty.gov, heather.kimball@hawaiicounty.gov, "Kagiwada, Jennifer" <jennifer.kagiwada@hawaiicounty.gov>, sue.leeloy@hawaiicounty.gov, ashley.kierkiewicz@hawaiicounty.gov, matt.kanealii-kleinfelder@hawaiicounty.gov, "Galimba, Michelle M." <michelle.galimba@hawaiicounty.gov>, "Inaba, Holeka" <holeka.inaba@hawaiicounty.gov>, cindy.evans@hawaiicounty.gov

Aloha All City Council, Hawai'i Planning and Zendo Kern,

Kamehameha Schools is trying to develop Keauhou Bay and it goes against the Cultural Impact Statement Law, and the EPA for Clean Water Act because Keauhou Bay is on the Impaired list Assessment Unit ID: HI713293 https://mywaterway.epa.gov/waterbody-report/21HI/HI713293/2020.

Also, Kamehameha Schools has completely IGNORED this petition that OPPOSES their development resort in Keauhou bay because when I presented this petition to them, Marissa Harman told me, "Those signatures are just tourists" and there are many signatures that ARE tourists. The exact tourists that they want to rent too in their Bungalow Resort Development, and these people are signing a petition OPPOSING this resort development.

Also, there are thousands of signatures on this petition that are the Hawaiian people and locals, and I have sent Kamehameha Schools these signatures and the comments from this petition so they can read what Hawaiians, locals and tourists are saying about why they are OPPOSING their resort development and Kamehameha Schools has NOT read or considered that these comments have value in anyway.

There are over 6,198 signatures as of Aug. 5th and these signatures and comments HAVE A RIGHT TO BE ACKNOWLEDGED AND THEY HAVE VALUE TO BE HEARD, THESE PEOPLE MATTER AND IT IS CULTURAL LAW THEY MUST BE ACKNOWLEDGED!

Here is the petition link: https://www.change.org/p/save-keauhou-bay-from-becoming-a-big-crowded-resort?utm_source=share_petition&utm_medium=custom_url&recruited_by_id=92a53560-1e91-11e5-b4ef-b94e90cedbdd

Please read and acknowledge this petition and the 6,198 signatures (grows daily with more signatures and comments) on this petition and acknowledge the comments from the Hawaiian people, locals and tourists on this petition because I have coped ALL of comments as of today and added them below.

Petition: **Save Keauhou Bay From Becoming a Big Crowded Resort**

Keauhou Bay is historical sacred land. It's also a small commercial and quiet residential area, with a local canoe club that uses the bay daily, local volleyball groups that play there daily, families BBQ every weekend, hold funeral services, baptisms local kids enjoy swimming, and visitors enjoy paddle boarding and kayaking all the time without a crowd.

Read their information on this link **https://www.ksbe.edu/keauhou_bay/**

It's possibly the last untouched historical area that has not been seriously developed and it has been a comfortable and quiet bay for locals and visitors alike for many years without a big resort crowd.

The beach is just over the size of one volleyball court that is there, with an even smaller park on the other side. It doesn't have a crowded feel and it's not big enough to become a resort area.

It is also the historical site of the birthplace of the Hawaiian people's King Kamehameha III. The area holds much history and is a very sacred area to everyone, especially the Hawaiian people.

Developers are considering building this area up and putting 150 Resort-style bungalows in this very historical, quiet, charming, and small commercial and residential area that many people have enjoyed as it is for many decades.

Not only is the area not big enough for a new resort, but there is also already a nice hotel at the point of this bay and Time Share homes right next to that.

Both of those work very well with this area and offer tourists a lot of fun places to stay without taking away from the land, its history, quietness, all the local activities, and the small commercial buildings that have been there for many years.

Updating the commercial builds that are already there would be great, and adding a nice cultural center there would be nice for everyone as well, not just tourists having bungalows.

To have a cultural center where people can learn more about the land, and the Hawaiian people can have a place of their own at King Kamehameha III's birthplace would be great.

Creating a walkway so the disabled can get from the Northside to the Southside would be another great add, but NOT building 150 new bungalows for a lot of people who don't even live here, who will then crowd the bay because the bay will be the focus for them staying there.

Now, besides putting another resort in this area, they want to open up the old road that has been beautifully overgrown with native plants and is located just above the canoe club and goes right through King Kamehameha III's birth site.

This will bring a lot of traffic right through this beautiful historical place where many locals hold family funerals, baptisms, birthday parties... It will overcrowd this very small special area that locals and visitors have been using for many decades, in many different loving ways.

Putting a road in could also increase the temperature there because of the pavement, and the traffic that will then pass through this beautiful, historical, sacred, and quiet area will be huge.

Trees shade this area right now very well and also help keep the erosion down by helping stop a lot of mud and debries from going into the ocean after big tropical storms that the island has sometimes. Without trees the bay could be extra muddy.

Plus, they want to add more commercial shops to Keauhou Bay, and Keauhou Shopping Center has a lot of empty For Lease stores available. To create more shops when there are shops empty and For Lease in Keauhou Shopping Center just above the bay, is not being sustainable and using what we already have.

Please HELP SAVE Keauhou Bay from becoming a big Resort area. It is one of the last historically untouched areas on the island that has not been overdeveloped and has been fully enjoyed completely by locals and visitors for many decades.

Comments for the above petition:

Reasons for signing

See why other supporters are signing, why this petition is important to them, and share your reason for signing (this will mean a lot to the starter of the petition).

Lisa Lopez1 day ago

Please stop building and adding more to areas that need open space...it's too crowded already.

Elizabeth A Goehner2 days ago

Want to save Kealakekua Bay from being destroyed by more new developments

Gina Harvey2 days ago

It is important to protect small communities and special ecosystems from over development which puts too much strain on these areas.

Kathryn Matlock2 days ago

I live in Keauhou and want to have this beautiful part of Hawaii NOT ruined. Kamehameha Schools lets all of the hillside behind go. It is full of coquis as brush just waiting for a fire! Take care of the land you are already supposed to be RESPONSIBLE for!

Keri Johns3 days ago

The people who live here and pay taxes should come first..Hawaiians should have homes first!!

Judy MacDonald3 days ago

Keauhou Bay is a historical site that should be preserved for residents and visitors use.

Glonda Jennings5 days ago

I have been a visitor to this location and it is perfect just the way it is !

Ladislas Szabo5 days ago

To keep Hawai'i beautiful, and to protect our sea life.

Cyndi Wong6 days ago

Welina mai kākou, This sacred place is the birthplace of Kauikeaouli, King Kamehameha III longest reigning monarch of Hawaii and should be preserved for generations to come. Please preserve Keauhou! E mālama i kēia ʻāina kapu. Mahalo

Terri Yoshinaga7 days ago

Problem: Kamehameha Schools wants Keauhou Bay to become a Bungalow Resort. This is a VERY small bay. The Resort will have 105 rooms that means 200+ more people in this small area. This will have serious negative impacts on the bay like more pollution, traffic congestion, negatively affect the endanger species there and more!

Ron Dias1 week ago

Ron Dias

Kathleen Delorme1 week ago

Turning this into a resort will lead to over-crowding, congestion, pollution and environmental and social problems unneeded by the area to flourish and sustain life respectfully!

Janet Berketa1 week ago

this project is very environmentally destructive, and bad for our climate.

Fran copp1 week ago

The Keauhou Bay should be protected as is bc the island needs to be protected for the recreation of the residents. It would be ruined if that many units for short term rentals were

put in such a small place. It would pollute the environment and change the habitat for the animals that live there for the benefit of the golf course. In 10-20 years the place would be trashed. It's a small location not able to handle the traffic, and trash. Government is here to serve the community not promote a business that cause irreparable harm to the people and animals who leave. We don't want it.

Karen Kenyon2 weeks ago

I believe that preserving the bay is absolutely vital — this project does not do this. It will also add to traffic and increase noise for those with condos in the area.

Elizabeth Martin2 weeks ago

There is too much development in Kona with no regard for the sacred spaces which are demolished for the GREED of developers. STOP ruining this beautiful sacred island!

patrice rammer2 weeks ago

Patrice Rammer

Jennifer Cramer2 weeks ago

Jennifer Cramer

annie jay2 weeks ago

We need to stop overbuilding and destroying such delicate ecosystems.

GAry Pfahl2 weeks ago

I want keauhou to remain undeveloped! Leave the area alone to enjoyed by locals and visitors as it is!!

Michelle Melendez2 weeks ago

I want to save the bay!

Jennifer Lund2 weeks ago

Enough is enough. Short term financial gain is not worth it. Environmental Impact: Pollution Risk: Developments pollute nearby waters both during and after construction. Endangered Species: Habitat for federally protected green sea turtles and endangered monk seals. Development will threaten these species due to pollution and human disturbance. Golf Course Runoff: Golf course pesticides and fertilizers lead to harmful algae blooms, killing coral and marine life. The removal of the trees that act as a natural filter will allow golf course runoff to pollute the Bay. Increased Human Activity: More tourists and residents will increase noise, water, and light pollution, further disturbing marine life. Motor Vehicle Pollution: Increased traffic from the resort will lead to more oil and heavy metal runoff into the bay. Noise Pollution: Construction and increased human activity will disrupt marine life, particularly cetaceans. Stormwater Runoff: Development will increase impervious surfaces, leading to higher stormwater runoff and pollution. Sea Foam Toxins: Pollutants in runoff can

lead to toxic sea foam, affecting air quality and marine health. Scientific Evidence: NOAA & Other Studies: Developments have always polluted coastal waters, harming marine ecosystems. Coral Reefs: Runoff from developments causes coral bleaching and death, as evidenced in Hawai'i and other coastal areas. Plankton Decline: Pollutants from runoff kill plankton, crucial for manta rays' diet, leading to ecosystem collapse. Algae Blooms: Pollution runoff causes algae blooms, smothering coral reefs and killing marine life. Ecosystem Research: Studies show significant negative impacts on marine ecosystems from development-related runoff. Legal Concerns: Endangered Species Act: Development violates the act's mandate to conserve habitats for endangered species. Hawaii Conservation Laws: Local statutes require conservation of indigenous aquatic life and their ecosystems. Conservation Mandate: Federal and state laws emphasize conserving ecosystems that support endangered species. Infrastructure Issues: Resource Strain: Big Island already faces water shortages, limited landfill capacity, and power conservation needs. Inadequate Infrastructure: Existing infrastructure cannot support additional strain from a large resort development. Waste Management: Big Island's landfill is nearing capacity, and new developments will exacerbate waste issues. Water Crisis: Ongoing drought and water contamination issues make additional strain from new developments unsustainable. Power Conservation: Big Island is currently experiencing power shortages and rolling blackouts, and new developments will increase demand. Case Studies: Chesapeake Bay: Coastal developments cause significant harm due to runoff, a situation Keauhou Bay could face. Hawaiian Islands: Existing research shows developments lead to severe degradation of coral reefs and marine life. Global Examples: Similar coastal developments worldwide have resulted in long-term environmental damage. Community Impact: Local Use: Keauhou Bay is a popular spot for local activities such as boating, fishing, canoeing, paddle boarding, snorkeling, manta night dives, surfing, and swimming. Tourist Impact: Increased tourist activity will further degrade natural resources and disturb local wildlife. Economic Considerations: Tourism Dependence: Manta ray tours and other eco-tourism activities depend on a healthy marine environment. Local Economy: Damage to the bay's ecosystem will negatively affect local businesses reliant on marine tourism. Long-Term Costs: Environmental degradation will lead to long-term economic costs, outweighing short-term development gains. Conclusion: Long-Term Impact: Allowing the bungalow resort will permanently alter and likely destroy Keauhou Bay's ecosystem. Conservation Priority: Emphasis on conserving the bay as a natural habitat for endangered species and marine life. Community Responsibility: Urge decision-makers to consider the long-term environmental, economic, and community impacts before approving the development

Ann Eshabarr2 weeks ago

This is sacred land. There's enough going on already on the bay so leave it alone. I am very concerned about traffic and more water pollution. This is a terrible idea.

Yemaya Indira Duby2 weeks ago

Save this fragile eco-system!!

Ru Carley2 weeks ago

Very concerned & opposed to more tourist accommodations as we face less and less housing. Greedy developers, enough is enough!

Lori Sceales2 weeks ago

We do not need, nor want, this kind of development!

Anne Yelken2 weeks ago

Sacred land should be protected and kept pristine. Keep the Bay intact with its beauty and historical value. Leave it as it is!

marsha stafford2 weeks ago

We do not have the roads nor infrastructure for more development

Stéphane Kunicki3 weeks ago

Over développement on the island has already lead to destruction of coral reefs and natural … Read more

Barbara Jossy3 weeks ago

Too much development already.

cathy costa3 weeks ago

Iam signing it because I grew up there and it is our grama land Victoria kamamalu She never relinquished it

Lilli Leong4 weeks ago

He ali'i ka 'āina, he kauwā ke kanaka. Stop selling our wahi pana to people who can not possibly understand.

ann mooney4 weeks ago

no more development, please.

Sherri Bugenhagen4 weeks ago

I believe that this area should be saved from development and let it continue as is... a very scared area♡ leave it as is!!

Veronica Duguran4 weeks ago

We need to keep our beaches and town how it is. How we grew up,where our kids can grow up. We get moving forward but at the same time we need Hawaii to stay Hawaii and not make it look like Oahu.

Allison Shapiro4 weeks ago

It's a special and sacred place! Let's protect it.

Mary Bradley4 weeks ago

I love visiting the Big Island because of the vibe. Another big resort development will ruin this place and I'll take my tourist money elsewhere. This island cannot sustain more development. More development makes the rich richer and robs the the people of the island. The environment cannot withstand more development.

Jen Ball4 weeks ago

I have come to this area for years, and it would be travesty to build yet another hotel in a time of global warming and climate change. The Outrigger can barely keep it together! No more big hotels!

Ashlee Johnson1 month ago

We need natural wild places, not more homes

Jennifer Stabrylla1 month ago

So many people have enjoyed the bay as it is for decades. We appreciate it as a serene spot with access to swimming and paddling and quiet times. I am certain that that will all be taken away by development, and we cannot abide losing this spot and the desecration of a truly sacred space.

Janene Lasswell1 month ago

This project is not in alliance with the general plan for Hawaii County. County residents need more affordable housing in areas already zoned for residences. County residents need more beach parks for free recreation, for which this bay is zoned, according to the 2045 General Plan. Bishop Estate/KSBE had net assets of 11B (eleven billion) dollars on their 2022 Form 990. Enough is enough.

Cory Harden1 month ago

enough hotels already!

Marjorie Erway1 month ago

It's an inappropriate development for the area.

Louise Pape1 month ago

Far too much of our resources are being destroyed- we MUST save whatever is left. Money has taken us over far too much. Mahalo

Crista Morones1 month ago

Because its an HISTORICAL SACRED BAY!!!

Robert Kirkpatrick1 month ago

Have you seen what the manta tours has done to keauhou? It's so overcrowded you can even park! Where the people gonna go? Enough is enough already!

Vanecia Lourenco1 month ago

I want the Hawaiian culture to stay alive

Hana Wilhovsky2 months ago

Construction of hotels or places for tourists would eliminate the small businesses that are able to provide educational and fun opportunities for those visiting. Lack of tourist education can cause ignorance and destruction of the natural environment that makes Hawaii so beautiful.

Olivia Payne2 months ago

If I was in the same shoes as the locals I would not want disrespectful people harming the island and treating it as a piece of trash

Aubrey Featherston2 months ago

This is a incredibly beautiful spot and I'd hate to see it get bulldozed over and become in accessible

Jenn Dant2 months ago

Coastal development can cause chronic sedimentation, sewage effluent, industrial discharge, changes waterflow and run off which can affect coral. contributing to climate change, increasing ocean acidification, and threatening coral reef ecosystems.

elliott Glover2 months ago

The bay needs saving

Amaya Dorman Mackenzie2 months ago

Truly a beautiful and sacred site. Seeing the amount of unused property which already exists on the island in and of itself wasteful, but then to add yet more vacation homes to a place which has deep meaning is insensitive and shortsighted. As the description of the petition here says, … Read more

Max Hollomon2 months ago

Natural beauty and animals should be protected we see too many get lost to progit

Alexandra Saffery2 months ago

Locals can't even afford the hotels. We need money and development on our schools, roads, hospitals, open space, shoreline access. Not more strain and tourism

Rick Davis2 months ago

I live in Holualoa and paddleboard almost every day in Keauhou Bay. The waters are pristine, filled with life, and uncrowded. I often see manta, dolphin, sea turtles, shark and many other kinds of fish. ... Read more

caroline MARONGIU2 months ago

We don't need this resort. The island needs to stay wild and authentic. Destroying such a beautiful place is disgusting and disrespectful for the land and native .

Virginia Garza2 months ago

Virginia garza

Devra Dynes2 months ago

Big Island has very few beaches to enjoy. Don't want pockets of Honolulu scattered all around Island! Tourism has high costs for all; look what's happened to Kailua??

Mary Burke Monroe2 months ago

There are enough resort type developments on the West side of the Big Island already. Keauhou Bay is much too small and this type of development would destroy the peace and tranquility of the area. There is already a hotel and time share units in the direct vicinity. There is no need for further congestion and destruction of this sacred site.

Machaela Bailey2 months ago

There is way too much tourism on island yes it brings in money but it also brings car accidents over populating sicknesses like covid and invasive species being brought here enough already there's no more room and it's causing way too many issues for all of us!!!

Carolan Cash2 months ago

No more development. There's a resort already. Enough. Our infrastructure cannot handle more and more.

Lorrie Taylor2 months ago

No more tourist based development!

William Morris2 months ago

Too much development already. Losing Hawaii identity.

sarah coatts2 months ago

Keauhou Bay is historical sacred land.

Big Island Love3 months ago

We do not need more resorts !

Carrie Lee Hedrick1 year ago

This bay is beautiful and should not be changed.

Lyn Acia1 year ago

It's in an unnecessary location that doesn't allow our community to access the small park and beach. The coastlines on each side are already difficult to get too. This is one of the last places for our picnic gatherings

Lucas Felipe1 year ago

Pelo meio ambiente

Leiana Sine1 year ago

Enough of our land has been exploited for the continents money

bini easley1 year ago

Such a small historical place leave it alone

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Andrew Roberts1 year ago

This is a very special spot where you still can canoe paddle and feel like you're still living in Hawaii. Just come down and watch the kids playing in the water and fishing. This is where we locals can still just hang out.

julia pena1 year ago

There are enough resorts here already. we need more diverse sustainability not resorts. Malama the Aina and the Aina will malama you.

Mary Peaks1 year ago

The preservation of this areas historical grounds is very important.

Maddy Snyder1 year ago

There are enough resorts! Save the bay

cheryl shultz1 year ago

HI go with my mom to watch the water.I can't believe that they want to displace numerous people who live in donor's and also elderly that live close by but think of the local tourism that the Big Island will loose Fair Winds and hula Kai operate out of the pier why sentence

them also I believe there is a script coming but most of they area you want to be bungalows is the set for Baywatch Hawaii why.

David Pursley1 year ago

stop colonizing

Mary De Mars1 year ago

Preserve this beautiful place

Patricia Godfrey1 year ago

Keauhou Bay is too small for another resort. Kamehameha 3 's birthplace should not just be a plaque in the middle of a resort.

Betty Beck1 year ago

No more resorts needed, keep our beach as is.

Wayne Hemby1 year ago

Overdevelopment should be opposed. Developers are outrunning the infrastructure and drawing too many people into areas that are already stressed. It needs to stop

Joanne A Martinez1 year ago

Please we do not need a big resort crowd & tourist bungalows on this sacred birthplace of King Kamehameha 111 to destroy the cultural activities of Native Hawaiians here.

Janet Scanlan2 years ago

Kia Hobais should be retained as a harbor, and not turned into yet another resort.

Gayle Chavez2 years ago

It is a treasure the way it is!

Anna Nazaryan2 years ago

Keahou bay needs to be protected. There are enough resorts already on this island.

Alysha Kahaloa2 years ago

This is one of the last untouched beaches we have on Hawaii Island. I believe it should stay a sacred place because we already have other resorts and houses in the area. As a native Hawaiian with children, it makes me more appreciative of my sacred land and upbringing

LISA Cabral2 years ago

Lisa N Cabral

Loretta Pedersen2 years ago

I have been to this beautiful spot, and I remember Victor Llanes from being in Kona many years ago.

cristian younan2 years ago

This is an important space for locals, and another big resort where all the profit leaves the islands is a huge step in the wrong direction for the state.

Debbie Wareham2 years ago

Not every square inch needs to be built on. Aole to construction.

Valerie Wong2 years ago

Stop over building. Especially if it's for out of town buyers. Hawaii should ban the sale of real estate to people who don't pay income tax in the State of Hawaii. And charge a large tax to those who already do....and use that money to build affordable housing and care for the homeless, and to fund quality security cameras and "Rapid Deploy System" for all 911 Operators. Keep Hawaii safe and beautiful. Take care of the people and the aina.

annette otoole2 years ago

We need to preserve our coastlines, their history and the wildlife for future generations, there are already too many tourist resorts on the BI. SICK AND TIRED OF GREEDY CORPORATIONS DESTROYING THE AINA. ENOUGH!!!

gena kenny2 years ago

please don't develop this sacred land

Noelle Cowell2 years ago

Supporting

Mikaela Volpicelli2 years ago

Signing this to support my friend and her family □

Jennifer Mitchell2 years ago

We don't need any more resorts in Keauhou.

Malia Miyasato2 years ago

It is beautiful as is. Why let more of our beaches/bays go to tourist. Why ruin something locals have access to

Ronda Hoxsie2 years ago

We don't need another resort. Keep the small town residential feeling.

molly wallace2 years ago

Hawaii needs to stay Hawaii - we don't need more resorts pushing the people out of Hawaii.

Madelynn Brown2 years ago

I am a tourist and saw what the land meant to the locals and I believe is should remain with the locals.

Paul Koenigshofer2 years ago

This historical and sacred place has already become over-used and abused by all the tour/ snorkel companies bringing in hundreds of carloads of tourists each day and night! Shame on the DLNR for issuing permits to these greedy tour companies! More traffic at all hours, more pollution from all the motors in the water, and alot more noise and litter. We don't want yet another poor decision from the planners and government down here! It's already suffering from too many people coming down here every day and night, and now they want to destroy what is left with a huge development and parking lot? You want this beautiful place to turn into Mauifornia? Save Keauhou! Save our way of life and Aina. Too much tourism is killing Hawai'i. Each year, each decade the important and beautiful spots are vanishing, to become just like any other ordinary place in the World. Don't let this happen! PK

bini easley2 years ago

Please leave this bay alone it is not big enough to support 100's of tourists enough already

Kahoku Benson2 years ago

Our Aina should stay our Aina!

Frank Rom2 years ago

Worked and lived in Keauhou Bay for 24 years. It is developed enough...Keep Keauhou country.

Kaylen Taomia2 years ago

Communities should have a say in land use. Preserve the land from non community usage.

Rebecca Roberts2 years ago

This area is already overcrowded.

Jessica Valentine2 years ago

Leave it be! Don't need to commercialize every single beautiful place in the world.

Mary E Wilson2 years ago

We need to leave some of this island in its pristine condition. K Hoebe is not big enough to support a tourist attraction that they are contemplating on building. Leave Keauhou Bay as it is right now.

Lucia Kaplan2 years ago

Keauhou Bay is a special place for native Hawaiians to connect with their cultural heritage. It is already crowded with commercial businesses. It does not need more which only brings tourists crowding the site. I m opposed to more building projects at Keauhou Bay.

Nick Kerridge2 years ago

Keep keahou the same & don't change a thing

Marcine McBride2 years ago

These developers have no right to obliterate the normal and healthy recreation area already there.

Olga Elkaslasy2 years ago

I am signing because the land belongs to local people

Robin Aspman-OCallaghan2 years ago

I am signing because these islands are too developed as is and there should be every effort to determine what areas are still relatively close to their natural settings and not just another place for another short term rental.

Cynthia Luafalemana2 years ago

Another sold out land for profit!!! When will enough sell out be enough????

William Wood2 years ago

I want to save the bay

MarinA Monarrez2 years ago

Es muy importante!

Nicole Namordi2 years ago

We need to keep the Aina, AINA!!

Gregory erikson2 years ago

That would just be tragic!

Dan Lucchesi2 years ago

More land abuse..... GQP EVIL ROTTEN BASTARDS..... August 6, 2019 Dear Americans, THE PLAGUE Ring around the polls Republicans on their toes Much to disclose Really foes Time to expose..... (published Dec. 1992) I thank the Democrats for all they have done, over the 76 years of my life. We need to speak to the people about Republican hindrance and how they have effected our countries progress and hurt most of our citizens. Starting with, President Obama, we need to inform our citizens; how the Republicans refused to pass Democratic legislation, spell out HOW it affected the country and "we citizens." Every time a congressman or congresswomen speak, have at least 1 example. Unstable 45 should be exposed.. The robber barons have been the Democratic down fall. They are the real enemies! EXPOSE Our Governments self-serving bureaucracy Corporate greed/lack of responsibility Peoples' prejudice/loss of integrity Organized religion, the medical community Scores more, ripping-off humanity America! The land of the free!? We need to get coverage on local News channels. Even the fox brainwashed, watch the local News. Save our Country from crimes against all Americans and the Constitution. Continue to fight. Sincerely DRL P.S. Especially the police racist policies. Name the Democratic bills that are being pigeonholed!

Sondra Olson2 years ago

I am signing for all the reasons given. Hawaii does not need more commercial ventures. The true beauty & appreciation of Hawaii is in enjoying nature. Please hands-off. In 20 years, so many will be so grateful for that decision in an over-crowded, commercially motivated island that has displaced it's native inhabitants.

Skye Felidae2 years ago

Aina over profit. Listen to your hearts not your wallets

Sahara Lawrence2 years ago

I love as is!

Pamela Greenaway2 years ago

Keauhou Bay can not withstand that level of development.

Lisa DiNatale2 years ago

This has been a very special place for me since 1980!

carla baker2 years ago

We don't need any more peaceful places taken over

Alice Finen2 years ago

I believe we need to protect our sacred spaces. Listen to the voices of the indigenous people. Stop turning every piece of land into something marketable.

Jessica Feustel2 years ago

Sacred ground should be kept sacred. It provides something that is hard to find in the world

Robert B. Demotta2 years ago

I was raised there in the early 90's and cant see beautiful Keauhou go to some bungalows! Let's all kokua in keeping Keauhou in its original beauty. I dont even have to explain but if you know, you know!

Nalu Frias2 years ago

That's where I grew up

Ciari Kealoha-Albarado2 years ago

fuck colonization

Jayden Dougherty2 years ago

This local spot should not be ruined by tourism

Karla Garcia2 years ago

This ain't right.

Megan Matthews2 years ago

bc I love my island

Paul Howard2 years ago

No

Sarah Machado2 years ago

Please don't spoil Keauhou. Or if you insist in going forward, be a zero-waste resort and give a good kama'aina pricing!

Kathy Arnold2 years ago

Please keep Hawaii the beautiful, natural place we all look forward to visiting!

Sherrell Watson2 years ago

Enough with the resorts! Leave Keahou bay as it is for everyone to enjoy.

Kawaipio Kauahi2 years ago

We do NOT NEED ANYMORE HOTELS IN RHIS AREA!!

John Bunnell2 years ago

This property is an important cultural and recreational resource.

Rosalie Lenta2 years ago

Keep Kona Country!!!

Meredith Stapp Ozbil2 years ago

The developer seems to contradict themselves, in one hand they say there is a feeling of exclusivity with all the athletic and commercial activities that local families cannot enjoy it and on the other hand they want to build a boutique resort for the 1% tourists - so the Bay can be enjoyed exclusively by wealthy tourists?

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dolores burke2 years ago

Marine ecosystems are extremely fragile, more development along this shoreline is not responsible .

Mark Enomoto2 years ago

Shame on you Kamehameha Schools!

David Hunt2 years ago

I ♥ KEAUHOU BAY. Please preserve Keauhou's culture and beauty.

janice palma-glennie2 years ago

I've lived in or near keauhou for most of my 40 years in hawaii. The resources of the bay are limited, lovely, and cherished by local residents for all they provide for the health and welfare of we humans and the environment upon which we depend. Creating another exclusive enclave for the rich is far from what is needed to protect Hawai`i nei from the ravages it's experienced in the past and is experiencing every minute by those who would exploit her.

Marla Steele2 years ago

I have been here and enjoyed that it was not an over developed exploited tourist destination. I loved the chill vibe and natural beauty

Angela Mowinski2 years ago

Keep kona beautiful and prestine

Mark Handy2 years ago

Because Beth Athens asked me too and places like this need to be protected

Janet Myhre2 years ago

Hawaii should be returned to the natives. They should decide on any changes to their historical sites.

Janet2 years ago

Leave this sacred space alone...

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Anna Anderson2 years ago

Sounds like a good idea

Christy Tappy2 years ago

Keahou Bay is a pristine Bay that us largely untouched and enjoyed by locals. Don't destroy this special place.

Elizabeth Hartig Burkart2 years ago

Keep the charm of this end of Alii quiet, peaceful and a place where tourists can come to see what the real Hawaii is like. There are already plenty of rentals/accommodations and areas that cater to the tourist trade on Big Island. Be careful what you wish for....just ask some of the other islands. It's ok to say NO.

Ellen Walton2 years ago

Keep Hawaiian lands Hawaiian!!!

Marlies Lee2 years ago

Please remember the Hawaiian people and don't take over every bit of beautiful ocean front, it's their land not ours!

Brooke Torres2 years ago

I'm signing because my child loves to spend time at the bay swimming and also fishing.

Sangpaguita Julian2 years ago

WE DO NOT NEED MORE HIGH RISE HOTELS. KINGDOM OF HAWAII, OUR PAE AINA, KEEP THE KINGDOM OF HAWAII IN THE HANDS OF THE KANAKA MAOLI

Mary Shannon2 years ago

I am from the Big Island. Our family has enjoyed Keauhou Bay for all our lives. It is beautiful the way it is... no need to build or upgrade. We love it the way it is now.

Lisa Diaz2 years ago

I care about protecting historic Keauhou Bay Ahupua'a ecosystem and our community. New resort development for tourism at the proposed large scale is totally inappropriate for Keauhou Bay. Keauhou Shopping Center has vacant space - they should not build more. Instead- make this area more accessible for our community, families and improve the small beach area making a park & managing trash. Allow the Hawaii County transit Trolley to access the bus stop on Kaleiopapa Street so people can access the bay without a car would improve sustainability and reduce pollution. We need to protect this area for it's cultural, historical and ecosystem - NOT over develop it for tourists and profit!

David Russell2 years ago

We don't need any more development in Hawai'i.

Dan Greene2 years ago

To preserve the beauty and health of Keahou bay

Denise Smith2 years ago

STOP THIS MADNESS!!! NO MORE RESORTS!!

Vanessa Lemus2 years ago

Free Hawaii

Nina Lominario2 years ago

No more development on our shore lines

Kira Mahoe2 years ago

I'm signing because this has to stop! We are not the mainland we will never be the mainland. We have more than enough resorts here. 'A'ole!

Christopher Embernate2 years ago

I don't want to see another resort in our favorite play, R and R places

Leah Aquino2 years ago

Enough already.

Annabel Distefano2 years ago

ENOUGH ALREADY! NO MORE DEVELOPEMENT AT KEAUHOU BAY! WE NEED TO PRESERVE WHAT'S LEFT OF THIS PRECIOUS, SACRED LAND!

Kayla Wolf2 years ago

This needs to stay as is. No changes please.

Karen Foster2 years ago

Leave it alone! Stop being greedy!

Edward Malinowski2 years ago

At some point you have to think about when enough development is enough. Nothing will be gained by developing this area except additional exploitation of people and culture that has been exploited enough.

Leina Wolcott2 years ago

Pleas let Keauhou be! It's already suffered from pollution

Don Nosler2 years ago

I lived in Kona for almost 7 years and spent a lot of time snorkeling playing cards and partying on that beach. So many great memories. Keep it the way it is please…

Lydia Hooser2 years ago

Keep Keauhou Bay the way it for our residents and our community

Peter Fitch2 years ago

Let's keep this area of old Hawaii as is. Enough with the development. Have we learned nothing?

Jeanie Johnson2 years ago

It isa sacred place. One of the last to preserve amid the surrounding commercialization and destruction.

Sue Haas2 years ago

Protect the bay!

Stacey Bongiorno2 years ago

It would be a shame to loose Keahou Bay it should remain as is.

Toni Devaux2 years ago

I want to preserve the historical Keauhou bay

Jane Taylor2 years ago

This is well written and I agree, especially about the road. however i believe the comment period is over and i hope some were signed in time!

Gay Graham2 years ago

I have seen far too many developments of this nature on Kaua`i and how severely they have impacted the historical, cultural and uniqueness that is Hawaiian. I hope that this petition and those preserving Hawaii's integrity are successful.

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Lori Bradford2 years ago

I care!

Promise Roback2 years ago

It's meant for the public and everywhere is being taken over. It should be public since the pier is right there. They also have group gatherings there to learn about the history. Outsides should stop trying to take native peoples land.

Leinaala Gonsales2 years ago

Hawaii belongs to the natives.

Tiare Makaio2 years ago

I don't want this turned into a resort..

Paula Williams2 years ago

Native Hawaiian sites must be preserved.

Lawrence Mangauil2 years ago

I was born and raised here in Kona from baby time we need place to eat go play and be free from all Buildings 濫濫濫□

Anthony Marvin2 years ago

I live on island and I constantly watch as locations I went to as a kid being turned into resorts or theist hot spots, it's sad because it's slowly pushing out the locals and removing areas that we can bring our own children

Brittney Kainoa2 years ago

This should not happen

J Mulloy2 years ago

You want to live in a places that has tourists, but you don't want to live in a tourist town.

Barbara Underwood2 years ago

Many reasons!!!! Don't build this!!

Margaret Parsons2 years ago

Resorts are the antithesis if everything I love about the Big Island.

Taylor Bear2 years ago

fuck the gentrification of our Ā'ina

Tevita Lavaka2 years ago

It's been a an amazing outlet for youth to stay out of trouble, stay fit, and have fun. I've had some amazing memories there and it would be a shame to lose such an amazing place near to me.

Ashli-Nikol Alley2 years ago

This is my home.

Nick Correa2 years ago

Keauhou is a local hang out not a tourist attraction. Too many favorite local beaches are getting turned into this and it needs to fuckin stop.

Desialee Cabalar2 years ago

All of the local spots are being blocked off by gates or homes with gated communities. This is not fair the local who were born and raised here should not be locked out of their own land just because greed and money. We have something the rich want until they fully pollute and destroy it and then they no longer want it. Hawaii/ Big island is known to a lot of tourist as the relaxing island. I do not have a problem with tourist but when you buy here on this island as a vacation home now your crowding the island so eventually it will be like Oahu where no one really thinks of it as a vacation spot. Just come stay the week and go home. We have many many many hotels and condos that can't be full all year round. Support those places that are already built.

Lisa Suttles2 years ago

Kahona is paradise and should stay as such

James Ellis2 years ago

The big island is getting crowded enough with another resort.

Sean Dooley2 years ago

There are enough beach resorts, where can the residents go when they all become resorts.

Renee Shove2 years ago

This would make me so very sad. Why do rich people feel like they need to take everything away from us and give it to the tourists?? What a shame.

Daven Haalilio2 years ago

This is my home and I don't know why you would touch an area that's been fine since forever.

Malle Zablan2 years ago

Strictly against! Thank you, Malle Zablan

Laurie Decasa2 years ago

Stop!!

Marlaina Gloor2 years ago

We don't need another resort!

Sandy Jilton2 years ago

I was a resident on Hawaii Island for 12 years. I honor the history of this historic place and the natural beauty that only it can offer. The tourism industry will destroy this area if more accommodations are constructed. Honor this place.

Kelly Sorenson2 years ago

I lived there and I care.

Laurie Teitelbaum2 years ago

I love the place to congratulate with friends. I feel that we need to keep it available for all of hawaiian residents to congregate. Please keep it for our children.

Cindy Holton2 years ago

Maintain local traditions and protect waterfront beaches!

Lori Watson2 years ago

Save the historical areas before it's gone.

GinnyJo Minamishin2 years ago

This is King Kamehameha the third birth place and hold significant historical and sacred mana to the island of Hawaii. There is no more need to take and replace what is already there !!!! This piece of Hawaii, that still is used by keauhou canoe club and and an area for little family gathering, such as Picnics and paddle boarding. Not to mention the boat ramp for fisherman and fishing grounds around the area. This place is well taken care of by the locals of the big island and hold significant Hawaiian history!!! We don't need any more hotels, condos, homes on this beach front property. It is a respectable play ground for our children

and adults as well from land to water. Please save hawaii and our sacred land and history from being over built for greed and control.

Kaulahoolai Pilago2 years ago

The resort on Keahou point is way more than enough. The entire Alii drive is hotels, resorts, condos, vacation rentals, and multimillion dollar properties. Why must our community always conform to the greedy desires for people to exploit Hawaii. When you build stuff like this, the area that we all grew up in and have cherished memories in turns into a sad perversion of what it once was.

Julie Steinbach2 years ago

I love this island because it's not over crowded and all resorts. We love it the way it is.

Ana Tuppein2 years ago

The ocean is a sacred place, especially keahou bay. The increase of tourism in that area will be detrimental to marine life, especially the manta rays that reside in that area.

Jasmin McCracken2 years ago

Just wrong... no. please don't pave paradise to put up a parking lot. There is PLENTY of places for tourists to stay already. Too many.

Ellie Tyler2 years ago

Keep Hawaii the way it is!

Matthew Kerr2 years ago

Why ruin a good thing?

Vickie Pruitt2 years ago

We already have way too many resorts on this island, This island will end up just like the rest, overcrowded with tourists.

Paul Dagdag2 years ago

30 + resident of the Kealakekua/Keauhou ahupua'a and have witnessed the influx of traffic on both Alii and Hwy 19 roads. Adding another resort will only add more congestion to a problem of poor infrastructure.

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Rochelle Morais2 years ago

This is a beautiful bay that should be protected and not be overrun by a resort

Stephen Dossey2 years ago

Aloha aina keep Kona country

Kimberly Kekina2 years ago

We don't need another resort !

cathy costa2 years ago

This is our history and culture No desecration

braxston bailey2 years ago

Stop the Building!

Paul Dagdag2 years ago

The place is already crowded. We need better roads and alternative routes before more development is built!

Paula Goleta2 years ago

I'm an outrigger paddler and enjoy the sport. This club lent us canoes to race in Hawaii.

Michele Vinz2 years ago

We need to preserve more land on the islands.

Edwin Gaspar2 years ago

The area is Historical we dont need any more hotels let alone more people moving here and squeezing out local people native to Hawaii.

Katie Lynn2 years ago

Keauhou Bay is a precious and sacred place. It deserves to stay that way. The focus should be on housing solutions for residents (in appropriate areas) and land stewardship. Not more resorts destroying the natural and historical sites.

Brooke Morrow2 years ago

No more building

Luis Pagan2 years ago

Kolohe

Alexis MacLeod2 years ago

I'm signing because there are not enough unspoiled places left in the world.

Alex Dullam2 years ago

I play volleyball down here on the weekends and I don't want to lose something that makes me happy

Kandie Kato2 years ago

I love Hawaii, not developing every square inch

Katie McKillop2 years ago

Please keep Keauhou just as it is. This is a historical area that needs to be kept natural with care. Aloha.

Maile Silva2 years ago

This place is an amazing place that we love and don't want it gone

Mystery-Lynn Freitas2 years ago

Hawaii needs more HOUSING for Hawaiians before we desecrate more land to serve tourists who don't live here. We need to preserve the land and beach space and act as stewards of the land - not pave over paradise and put up more parking lots.

Kylee-Anne Kihe2 years ago

I'm signing because we have so much resorts! Not only do we have so much resorts but there is so much history behind keahou and putting a resort there would just the defeat the purpose of why keahou bay is there and why it's so important

Marquesa Calderon2 years ago

Respect the locals!!

Gabrielle Provencher2 years ago

This is a sacred place for the Hawaiian people that should be left alone and not developed.

David Locke2 years ago

Enuf! Don't turn this place into a Joni Mitchell song.

Jordan Bever2 years ago

Resorts are gross

Heather Harvey2 years ago

This is my favorite local spot to still swim, boat, and surf. If we over populate it, it will kill off the local wildlife and human life. Please stop killing the coral □ and livelyhood. It's the

first place I ever played volleyball on the island. Its where I go to meditate and swim in clean water. Away from the tourist □□□

Teddy Alejandro2 years ago

Stop corporations.

Rachel Curnel Struempf2 years ago

Save our beach! Please don't develop it!

Joseph Jardin2 years ago

I've paddle there for so long you can't just take that down

Lakin Ferris2 years ago

We don't need another resort on this island. That's a significant tourist and local spot where plenty people go to have fun. Putting a resort there would ruin it.

Robin Akau2 years ago

I believe there should be recreational spaces in our community.

Carolina Medina2 years ago

Please sign. When is enough going to be ENOUGH!??若

Aka 0022 years ago

I love this court! would be a shame to get rid of it.... one of the very few nice beach courts on the kona side.

Aaron Lanuza2 years ago

This is a wonderful space for volleyball and beach time with my family

Jasper Felipe2 years ago

volleyball

LaVerne Curry2 years ago

We have enough developments. We need places for our local residents to gather and enjoy our Aina. We need to keep the volleyball courts and the canoe hale for locals.

Elisha Vierra2 years ago

I want to keep keauhou bay the way it is and all it's artifacts

Matthew Idom2 years ago

There's no need for a resort, it's only greed.

Frida Marie2 years ago

I NEED TO AND THATS NOT OKAY TO DO !

Evan Curry2 years ago

I have lived here all my Life we can not let our island get over run with this kind of stuff. How about tear down the condos and build more volleyball courts

Davin Long2 years ago

I really don't want it to go I love the volleyball court and another resort hell nah!

Teah Van Bergen2 years ago

This land belongs to the people

Linda Mutch2 years ago

Appalling plan for this land. We have more than enough resort developments. Please show respect and keep Keauhou Bay sacred and peaceful.

Ann nichols2 years ago

This is a terrible idea for this historic area creating traffic, congestion and ruining community character. Owner at Kanaloa at Kona.

Francis Hogue2 years ago

Historical! Leave it alone

Vivianmalia Faagata2 years ago

Ancestral connection

Beverly Connelly2 years ago

I've experienced this sacred park & beach and see the history and benefit of it being easily available for locals and visitors alike. Over developing is a fine line and a new proposal of additional resort dwellings would be a tipping point for preserving access to this space. Please consider this pocket to be important enough to protect

Mary E Wilson2 years ago

Development of these beautiful bays and coastlines has to stop! It's ruining the ecosystems of the ocean

Leslie Rae Schmitz2 years ago

This development is completely unnecessary and will do no good only harm. The existing hotel Outrigger sits half empty and the Keauhou Shopping center commercial space is mostly vacant. The traffic corridor will be hugely disruptive. This cannot be built.

Trina Alapai2 years ago

Enough is enough!!! Listen to the Hawaiian people and do right by them. Respect. 👌🏻

Darlene Daboling2 years ago

Please keep Keauhou Bay the way it is. PLEASE PRESERVE. Please respect Hawaii and not give to greedy people who care not about us.

ANTHONY RODRIGUES2 years ago

These are luxury condos. A bungalow is a single level unit. Why don't they build it at the former Keauhou Beach Hotel? Or Kona Lagoon. No major development should be allowed till the Alii Highway is installed.

Janie Workman2 years ago

Keeping ancient Hawaiian culture is important!

Linda` Ronske2 years ago

Save this beautiful historic site. Build your bungalows somewhere else. This public site will then become off limits to everyone but the rich living there.

Deni Alley2 years ago

This is a sacred area and not big enough for more tourism. Respect the Āina and the folks living here. A'ole development!

Diane Neuman2 years ago

This is outrangeous. There are plenty of resorts already.

Jeanne Alford2 years ago

We need to protect and embrace these sacred, neighborhood places and not allow big money and commercial developments to come in and destroy them.

Makanani Kaaua2 years ago

Enough development for visitors use.

gretel pate2 years ago

This is sacred land. Get yer paws off it!

Jeanne Roberts2 years ago

Kam Schools Capital has a monopoly on bays and access in Keaouhou and a pattern of taking away access from the community. Look at what they have done to Heeia Bay!

Deby Quandt2 years ago

Another resort is not needed, this peaceful place is needed.

Susie Cysewski2 years ago

That area needs to stay natural. Enough condos and shops already in Keauhou. Use the money to help Naive Hawaiians build homes.

Deborah Heun2 years ago

We have enough big resorts don't take away another bay

Christine Tucci2 years ago

We vacation there

Patti Donohue2 years ago

I want to save this area from further development.

Sheila Braithwaite2 years ago

Because I have lived on a barrier island that was ridiculously over built causing all kinds of traffic issues and environmental trauma to the National Park it abutted. Spaces like this are so important for residents and guests. Celebrate it...don't destroy it□

Pamela Welden2 years ago

There is already an Outrigger Resort there. It needs renovation and reopening of its restaurant venues - that's plenty for that small little bay.

siobhan radway2 years ago

WTF!

Sabrauna Hedenberg2 years ago

KEEP HAWAII IN HAWAIIAN HANDS

Caleb Hoffman2 years ago

Keep Hawaii's natural beauty!

Rhys Ward2 years ago

I grew up there and don't want to see it change in a negative way.

Austin Llanes2 years ago

To much buildings

Sarah Kamanu2 years ago

Keauhou bay already has a perfect balance of visitors and locals. There is no space for yet another resort of any kind to be built! The harbor is small, it is already maxed out on tourists, boats and humans

Janis Prinslow2 years ago

I'm signing because there aren't any places left on the Kona side of the island that aren't overcrowded!

Janis Prinslow2 years ago

I'm signing because nobody should be developing on a bay front with waters rising, and no place else to go that's not overcrowded!

Thomas Pinkert2 years ago

Let's get more affordable housing for local people instead.

Eliza Wille2 years ago

This area does not have the infrastructure to support more development and run off into the bay will further compromise the reef and water quality.

Esther Quam2 years ago

This bay needs to be left just the way it is. It's one of our only playing grounds left for the local people of and our keikis to enjoyed without all the mainland humbug , and crowds.. There going to destroy the ocean. Leave it be!!!!!

Debbie Hecht2 years ago

Keep Keahou Bay accessible. The cess pools along the north side need to be replaced by sewers.

Barbara Celello2 years ago

The Keauhou Bay Area is a favorite area for locals and has been for years. The many activities that occur regularly begin and end there. Making unneeded changes would spoil its existence, not to mention robbing those who continue to honor Hawaiian legacy.

Asha Keddy2 years ago

I want to preserve the beauty and history for all

Joshua Pickering2 years ago

Keep Keahou Bay natural!

Valerie Vaughan2 years ago

Not every beautiful bay needs a resort 💔

Deeson patterson2 years ago

It's good

Tyler Wood2 years ago

My brother and I grew up there, I still come back when I go see my family. It's been through (and is going through) enough tourist abuse. Leave it be.

Kathy Roney2 years ago

In my lifetime, I've witnessed Oahu go from a peaceful tropical oasis to an overpopulated tourist site. Allowing this development will take away why many of us chose to live on Hawaii Island and at Keauhou Bay. We don't always need to cater to the tourist and greed. Malama `Aina!

Sally Rankin2 years ago

When is enough, enough!?! Kamehameha Schools claims to be ashamed of how they have managed the `aina at the bay, but this plan clearly proves they have no shame when it comes to properties they consider financially underachieving, no matter the cost.

nathan percifield2 years ago

Keauhou Bay i sacred

1

Bryan Gazaui2 years ago

Less is more, keep the beaches cleaner save water sacred beaches keep sacred

sharon willeford2 years ago

A sacred place for the local people!!! Don't OverDevilop Kona !!!!

Jacque Green2 years ago

I am handicapped and elderly.. I can't get in the water where there is waves. This is one of the few places I can go!❤

Erin Hamar2 years ago

My brother's and grandmother's ashes are in this bay. I go here to be with them. If they build a resort here how can I? Plus I paddled for Keauhou canoe club. Where will they paddle? I am strongly against this! No no no!!!!

Mike Dennis2 years ago

I love Keauhou Bay and raised my kids there. I have paddled there for almost 30 years. It's a treasure.

Amanda Nixon2 years ago

Keauhou does not need and cannot handle more condos or resorts. No no no to more development on our already fragile over crowded coast.

Here is another petition that has 444 signatures (grows daily with more signatures and comments) as of Aug. 5th and it speaks about Big Island resources. It proves that the Big Island DOES NOT have the resources for another Big Resort Development.

Petition Link: https://www.change.org/p/help-prioritize-big-island-developments-to-keep-island-s-resources-safe-for-all

Petition: **Help Prioritize Big Island Developments to Keep Island's Resources Safe for ALL**

We stand to keep The Big Island in a place where the Island's resources and infrastructure are safe for the entire population and visitors.

We stand and say homes for locals should MATTER more than mass vacation rentals.

If a home has multiple dwellings, we ask that one could be a vacation rental and the rest should be housing for locals. Local housing needs to come before vacation rentals.

This is an island and it would help the island to have a building stipulation in where the developer has to sell a high percentage to Hawaiians, and locals who have lived here for many years, to help keep the increase in population at a resonable rate for the island's resources and infrasture.

We ask that you read all articles below about Big Island resources and learn that the island's resources are limited and are already being affected negatively.

All the development that has already been built, and the many years of new development that has been approved for the future, will affect the island's resources, and we ask that you STOP and look at Big Island resource to make sure that the island has the needed resources for all the develoment that has been built and the approved development that will be built in the future, before approving even more developments, for the safety of all who live here and visit here.

We stand and ask that you stop before approving more and more developments and learn what is happening to the island's resources and what will happen to the island's resources after the years of development that is already scheduled for the future.

Because the island's resources are being severally impacted as of today.

What will future development do to the island's resources if there are already resource issues happening today?

Please, learn how to take island resources seriously because you have approved many more years of development to come and today the island's resources are having issues.

What will the future look like if you keep approving more developments and don't start look and taking the island's resources seriously?

Read the articles below to learn what is happening to Big Island Resources

1) Hawaii Deals with Burgeoning Waste Management Problem
As landfills face closure and waste-to-energy projects stall, various counties in Hawaii are dealing with waste management issues. Waste360 Staff January 10, 2020

"Hawaii Island is in the enviable position of having a landfill with anywhere from 20 to 100 years of capacity left to take in trash. But the island still wrestles with significant issues like plastic products that are no longer being recycled." **https://www.waste360.com/landfill/hawaii-deals-with-burgeoning-waste-management-problem**

2) "Big Island Now readers seem to agree that there's likely no single solution for slowing down the timeline of the West Hawai'i Sanitary Landfill reaching capacity.

The West Hawai'i Sanitary Landfill, the only remaining landfill on the Big Island, is forecast to reach capacity within the next 20 to 25 years." **https://bigislandnow.com/2023/09/17/big-island-now-poll-no-27-results-more-than-one-solution-needed-to-help-extend-life-of-west-hawaii-landfill/**

3) Hawaii Island Has Decades of Landfill Space But Still Faces Challenges In Dealing With Its Waste Hawai'i Public Radio Published January 9, 2020 at 5:00 AM HST

"Hawaii Island is in the enviable position of having a landfill with anywhere from 20 to 100 years of capacity left to take in trash. But the island still wrestles with significant issues like plastic products that are no longer being recycled.

For the past four decades, trash from the east side of Hawaii Island has been dumped in a landfill outside of Hilo. But now trash from all parts of the island is being trucked to a facility north of Kona." **https://www.hawaiipublicradio.org/local-news/2020-01-09/hawaii-island-has-decades-of-landfill-space-but-still-faces-challenges-in-dealing-with-its-waste**

4)"What happens to Hawaii Island's trash and recyclables? BY MICHELLE BRODER VANdyke HAWAII ISLAND PUBLISHED 11:30 AM ET DEC. 17, 2022 By Michelle Broder Vandyke Hawaii Island PUBLISHED 11:30 AM ET Dec. 1The future of the landfill

The West Hawaii Landfill will be full in about 20 years. Finding a location for the next landfill is a concern, according to the DEM officials. They said it will be challenging to find a location for a future landfill because of stringent regulations and costs related to planning,

environmental regulations, design and construction that will take many years to complete. It will also require community
support." **https://spectrumlocalnews.com/hi/hawaii/news/2022/12/15/what-happens-to-hawaii-island-s-trash-and-recyclables--**

5) "The overwhelming plastic waste Hawaii visitors leave behind
By Natasha BourlinAug 24, 2023

Hawaii saw more than 9 million visitors last year. Those tourists' first stops are often big-box and convenience stores, where they buy bottled water, plastic sand toys, single-use bodyboards, noodles, floaties and inner tubes for their
trips." **https://www.sfgate.com/hawaii/article/plastic-waste-hawaii-visitors-leave-behind-18286076.php**

6) "A county commission drafts ordinance aiming to ban recyclables at West Hawai'i landfill
By Megan Moseley September 6, 2023 · 1:00 AM HST
* Updated September 6, 2023 · 2:02 PM

Hawai'i County's Environmental Management Commission is developing an ordinance that aims to prohibit the amount of recyclable materials ending up in the island's only working landfill." **https://bigislandnow.com/2023/09/06/new-draft-ordinance-aims-to-ban-recyclables-at-west-hawaii-landfill/**

7) " Hawai'i County issues mandatory 25% water restriction for North Kona August 7, 2023 · 5:21 PM HST

A mandatory 25% water restriction has been issued for various communities in North Kona due to the failure of the Honokōhau Deepwell over the
weekend." **https://bigislandnow.com/2023/08/07/hawaii-county-issues-mandatory-25-water-restriction-for-north-kona/**

8) "Hawai'i Water Supply Closely Monitored As Severe Drought Continues by Big Island Video Newson Nov 6, 2023 at 3:28 pm STORY SUMMARY

HAWAI'I COUNTY - Officials say a special focus will be placed on the South Kohala Water System, which is more susceptible to drought
conditions." **https://www.bigislandvideonews.com/2023/11/06/water-supply-closely-monitored-as-hawai%CA%BBi-under-severe-drought/**

9) "Big Island Concerns About Water Quality Prompt A Lawsuit Over A Kona Sewage Plant Kealakehe sewage plant discharges more than 1 million gallons of wastewater into a lava pit near the ocean. By Paula Dobbyn / February 6, 2024

Settlement talks are scheduled in an environmental lawsuit involving a county-operated Big Island sewage plant in Kona." **https://www.civilbeat.org/2024/02/concerns-about-water-quality-prompt-a-lawsuit-over-a-kona-sewage-plant/**

10) "Researchers find sewage from an oceanfront Big Island community reaches nearshore waters Hawai'i Public Radio | By Russell Subiono, Sophia McCullough Published December 20, 2021 at 5:56 PM HST

There are nearly 50,000 cesspools on the Big Island, with tens of thousands posing a risk to water resources, according to the Hawai'i Department of Health." **https://www.hawaiipublicradio.org/the-conversation/2021-12-20/researchers-find-sewage-from-an-oceanfront-big-island-community-reaches-nearshore-waters**

11) "Kona coast faces stark wastewater tradeoffs Current situation

There are approximately 88,000 cesspools across the state, releasing more than 200,000 cubic meters of wastewater per day to the environment. **https://www.hawaii.edu/news/2021/09/10/kona-stark-wastewater-tradeoffs/**

We ask that you start figuring out how this can never happen again? These are the kind of issues that need to be resolved before you approve more development.

12) "BIG ISLAND NEWS HECO restores power after initiating emergency outages on Big Island by: Elizabeth 'Ufi Posted: Jan 30, 2024 / 09:43 AM HST Updated: Jan 30, 2024 / 04:15 PM HST

An unexpected loss of several large Hawaii Electric generators left some residents on Big Island without power for parts of the morning on Tuesday, Jan. 30." **https://www.khon2.com/big-island-news/heco-initiates-30-min-rolling-outages-after-loss-of-generators/**

13) Hawai'i State News Update: Hawaiian Electric initiates rolling outages throughout Big Island February 13, 2024 · 5:23 PM HST
* Updated February 14, 2024 · 4:21 PM

The emergency outages are being initiated in various areas around the entire island to prevent loss of power to an even greater number of customers. The timing and extent of the outages will depend on the amount of demand on the system and the availability of generators." **https://bigislandnow.com/2024/02/13/hawaii-island-customers-asked-to-reduce-electricity-use/**

14) "LOCAL NEWS

HECO issues rolling power outages around Big Island by: Emily Cervantes Posted: Feb 13, 2024 / 05:11 PM HST Updated: Feb 13, 2024 / 09:12 PM HST Hawaiian Electric initiated rolling outages for Big Island after several large generators became unavailable and reduced output Tuesday night."
https://www.khon2.com/local-news/heco-releases-conservation-alert-for-big-island/

15) "Here's how power outages can have repercussions for Hawai'i's water supply Hawai'i Public Radio | By Savannah Harriman-Pote
Published February 13, 2024 at 10:59 AM HST

Water departments on O'ahu and Hawai'i Island have advised customers to conserve water ahead of possible storm-related power outages this month.

But what does the power grid have to do with the water supply?

It is impossible to separate Hawai'i's power system from its water system, said Kawika Uyehara, deputy director of Hawai'i County's Department of Water Supply." **https://www.hawaiipublicradio.org/local-news/2024-02-13/residents-on-hawaii-island-and-oahu-are-asked-to-conserve-water-amid-power-outages**

16) U.S. Hawaii is "on the verge of a greater catastrophe," locals say, as water crisis continues
By Li Cohen

Updated on: April 11, 2024 / 8:23 AM EDT / CBS News

In Hawaii, one of the most important sayings is ola i ka wai, "water is life" — a phrase that not only sums up what it means to exist on an island, but what it means to live, period. But now, one of the largest of the island chain's land masses is facing a triple threat to its sole freshwater source, and if it isn't addressed soon, one community member says, "we're in deep trouble."

https://www.cbsnews.com/news/hawaii-water-crisis-climate-change/

17) NewsHawai'i County issues mandatory 25% water restriction for North Kona
August 7, 2023 · 5:21 PM HS

A mandatory 25% water restriction has been issued for various communities in North Kona due to the failure of the Honokōhau Deepwell over the weekend.

https://bigislandnow.com/2023/08/07/hawaii-county-issues-mandatory-25-water-restriction-for-north-kona/

18) Hawai'i Water Supply Closely Monitored As Severe Drought Continues

by Big Island Video News
on Nov 6, 2023 at 3:28 pm

(BIVN) – With an ongoing drought on the island of Hawai'i, the Hawai'i County Department of Water Supply says it is closely monitoring its 23 public water systems, with a "special focus" placed on the South Kohala Water System.

https://www.bigislandvideonews.com/2023/11/06/water-supply-closely-monitored-as-hawai%CA%BBi-under-severe-drought/

This is a map of Power Outages on the Big Island. This map wouldn't have been created if Power Outages were not a problem. **https://www.hawaiianelectric.com/safety-and-outages/power-outages/hawaii-island-outage-map**

Please, give Tax Breaks to all homes that provide solar and/or wind turbine to there homes to help with power issues on the island.

20) "Hawaiian Electric is reporting that several large generators on the Big Island are experiencing a range of issues and may lead to the need for rolling outages if supply does not meet demand."

https://www.reddit.com/r/BigIsland/comments/1bnuar3/hawaiian_electric_is_reporting_that_several_large/?rdt=52660

21) "NewsHawaiian Electric asking Big Island customers to conserve power due to down generators

March 25, 2024 · 11:49 AM HST

According to the utility company, this is an usual situation as the large generators are experiencing mechanical problems resulting in a reduced output. The largest generator, an independent power producer that sells electricity to Hawaiian Electric, is offline with significant mechanical issues.

The plant generates 60 megawatts or nearly one-third of the typical peak demand of 180 megawatts on the island."

https://bigislandnow.com/2024/03/25/hawaiian-electric-asking-big-island-customers-to-conserve-power-due-to-down-generators/

The articles above show that Big Island resources are currently being negatively affected from the development on island, and there are years of new development that has already been approved, and even more development is still being approved before learning if the island's resources can handle more development.

This needs to STOP, and island resources need to be addressed and taken seriously.

We stand to say LEARN WHAT IS HAPPENING TO THE ISLAND'S RESOURCES before approving more development because this is an island, and if there is not enough resources for the developments that are here now, how will there be enough resources for the developments you have approved for the future?

If the island doesn't have enough resources for the developments as of now, there won't be enough resources for developments that have not been approved as of yet, and we ask that you say NO to ALL future developments until you FULLY understand that the island's resources can accomodate future develpments.

We stand and say that Big Island resources needs to be FULLY considered before any more new development is approved for the safety of ALL who live here and visit.

There are many, many developments that have been approved for years to come and we stand and say we need to learn how the island's resources will be affected when these developments are finished before you keep approving more and more developments!

We stand and say NO DEVELOPING ON BURIAL GROUND. The history of the island needs to be preserved and the burial grounds need to be respected at all costs.

We stand and ask to make it mandatory for vacation rentals and ALL resorts and hotels to provide drinking water machines to their guests to help stop all the empty water bottle waste on the island.

We stand and ask to make it mandatory for vacation rentals and ALL resorts and hotels to provide shampoo, conditioner, body wash in bulk containers rather than continuously using small, different containers for every new guest, to help stop all the empty bottles waste in the limited landfill.

We ask for an Enviormental Impact Report to be done to learn what is safe for Big Island resources with future developments and the population that live here now and will move here in the future.

How can we be sure to have enough landfill, water, sewer, power...for everyone? This needs to be learned.

Also, there are mostly only 2 lanes throughout the entire Big Island and some places where cars cannot pull over if an ambulance needs to get by.

The traffic has seriously increased and if the island's population keeps increasing there will be hours and hours of constant serious traffic in the near future, how will ambulances get by in emergencies?

What if there is a tsunami and people need to get to higher ground? Will they be able to get to higher ground in a safe time without the infrastructure to accomodate the increase in population?

We stand and ask that you start increasing the infrastructure to accomodate the traffic before you approve more developments.

The island's small road infrastructure isn't made for a high population and that needs to be taken seriously.

We ask for another hospital to be built, as well as a trauma center and dive chamber to be put on the island to accommodate all types of injuries because of all the years of new future development that you have already approved, these buildings will be needed.

Alii Drive is only two lanes and right now there are three huge developments in progress, and over 10 more acres of land on this street has just been approved for even more development on this street.

Did you research to learn how this one road can handle more development before your approval?

Did you research and check on the island's resources before you approved this and many other developments all over the Big Island?

We stand to say, stop development to learn how roads will handle all the new homes that you have already approved for years to come before more development is approved because right now there is serious traffic issues all over Big Island?

We stand to say what are you doing about the growth in homeless on the island? We stand and ask that this be taken seriously.

What about parking?

All of the Big Island towns have parking issues, especially during high tourist seasons and especially Ironman.

The land at the bottom of Henery St. has been for sale for a new resort for years and the town needs parking. Would it be possible to use that land for town parking instead of another resort?

With more subdivisions comes more cars and the island towns are already overcrowded with parking issues. How will parking Improve with more houses? Is the Hawaii Planning Department considering the parking issues?

There is vacant land next to Lavern's in Kona town, can you build a parking lot there?

We stand and ask for you to find a way to improve the parking issues before approving more development because parking and traffic are increasing.

There are over 50,000 cesspools on The Big Island. We stand to say that all cesspools be upgraded or converted into a toilet such as the one below ASAP, to stop waste water pollutin in the ocean around the island.

Please, give Tax breaks to all those who change from a cesspool to a toilet such as the Cinderella Cinder **https://cinderellaeco.com/en-us** this does not use water and is a way to get rid of cesspools so they stop polluting the ocean that we all swim in today.

If you agree with this info, please sign this petition.

There are many new homes that have been approved for future development and are currently being built right now and today, the island has many resources issues before these developments are complete.

This petition states that we strongly OPPOSE approving new development applications because the island's resources are currently having serious issues, as you can see from the

articles above, and many more homes have already been approved for future years of developments.

You need to learn how island resources will be affected by these years of future developments before aproving more developments.

There are many big black and white signs on vacant lands that have development application information and Tax Map Key numbers for new developments and they are all over the island. What will the island become if you don't start taking island resources seriously?

The safety of all our lives is in your hands. Please, take that seriously!

Thank you for your support!

Please read these comments because these comments and signatures MATTER AND DESERVE TO BE ACKNOWLEGED BECAUSE THEY ARE THE HAWAIIAN PEOPLE, LOCALS AND TOURISTS!

Reasons for signing the above petition

See why other supporters are signing, why this petition is important to them, and share your reason for signing (this will mean a lot to the starter of the petition).

Kristina Libbey1 week ago

If the island is not protected, there will be no island. Respect the land. Respect the people.

Francesca LAFONTAINE-CÔTÉ2 weeks ago

For me it is so important to protect the nature and the biodiversity of Hawai'i. There is enough tourism and enough accommodations for tourists and the priority should be to preserve and protect the marine life and environment , not to make money ! Animals were there first and they must be respected and preserved.

Jennifer Lund2 weeks ago

Environmental Impact: Pollution Risk: Developments pollute nearby waters both during and after construction. Endangered Species: Habitat for federally protected green sea turtles and endangered monk seals. Development will threaten these species due to pollution and human disturbance. Golf Course Runoff: Golf course pesticides and fertilizers lead to harmful algae blooms, killing coral and marine life. The removal of the trees that act as a natural filter will allow golf course runoff to pollute the Bay. Increased Human Activity: More tourists and residents will increase noise, water, and light pollution, further disturbing marine life. Motor Vehicle Pollution: Increased traffic from the resort will lead to more oil and heavy metal runoff into the bay. Noise Pollution: Construction and increased human activity will disrupt marine life, particularly cetaceans. Stormwater Runoff: Development will increase impervious surfaces, leading to higher stormwater runoff and pollution. Sea Foam Toxins: Pollutants in runoff can lead to toxic sea foam, affecting air quality and marine health. Scientific Evidence: NOAA & Other Studies: Developments have always polluted coastal waters, harming marine ecosystems. Coral Reefs: Runoff from developments causes

coral bleaching and death, as evidenced in Hawai'i and other coastal areas. Plankton Decline: Pollutants from runoff kill plankton, crucial for manta rays' diet, leading to ecosystem collapse. Algae Blooms: Pollution runoff causes algae blooms, smothering coral reefs and killing marine life. Ecosystem Research: Studies show significant negative impacts on marine ecosystems from development-related runoff. Legal Concerns: Endangered Species Act: Development violates the act's mandate to conserve habitats for endangered species. Hawaii Conservation Laws: Local statutes require conservation of indigenous aquatic life and their ecosystems. Conservation Mandate: Federal and state laws emphasize conserving ecosystems that support endangered species. Infrastructure Issues: Resource Strain: Big Island already faces water shortages, limited landfill capacity, and power conservation needs. Inadequate Infrastructure: Existing infrastructure cannot support additional strain from a large resort development. Waste Management: Big Island's landfill is nearing capacity, and new developments will exacerbate waste issues. Water Crisis: Ongoing drought and water contamination issues make additional strain from new developments unsustainable. Power Conservation: Big Island is currently experiencing power shortages and rolling blackouts, and new developments will increase demand. Case Studies: Chesapeake Bay: Coastal developments cause significant harm due to runoff, a situation Keauhou Bay could face. Hawaiian Islands: Existing research shows developments lead to severe degradation of coral reefs and marine life. Global Examples: Similar coastal developments worldwide have resulted in long-term environmental damage. Community Impact: Local Use: Keauhou Bay is a popular spot for local activities such as boating, fishing, canoeing, paddle boarding, snorkeling, manta night dives, surfing, and swimming. Tourist Impact: Increased tourist activity will further degrade natural resources and disturb local wildlife. Economic Considerations: Tourism Dependence: Manta ray tours and other eco-tourism activities depend on a healthy marine environment. Local Economy: Damage to the bay's ecosystem will negatively affect local businesses reliant on marine tourism. Long-Term Costs: Environmental degradation will lead to long-term economic costs, outweighing short-term development gains. Conclusion: Long-Term Impact: Allowing the bungalow resort will permanently alter and likely destroy Keauhou Bay's ecosystem. Conservation Priority: Emphasis on conserving the bay as a natural habitat for endangered species and marine life. Community Responsibility: Urge decision-makers to consider the long-term environmental, economic, and community impacts before approving the development

Alexis Stubbs2 weeks ago

I'm not opposed to development, but I AM adamantly opposed to irresponsible development that neglects community input, resources, and access. I strongly opposed development that exploits what's left of our natural resources and Shorelines for the sake of profit. Too much already. Enough is enough. No more.

mark isomura1 month ago

Keep Kona country NO MORE STOLEN LANDS

KATHI BALBI1 month ago

Hospitals need to be updated first. Fix what you have before you build any more new construction.

melissa Sobkowicz1 month ago

We need to work on the current infrastructure prior to more development.

Marcy O'Malley1 month ago

Enough is enough! The County needs to deal with its neglected infrastructure before allowing anymore "Resorts"

Pali Mench1 month ago

No development until adequate infrastructure. Roads, water, electric, sewer, schools. All of these are already overburdened.

Carolan Cash2 months ago

Getting dangerous as more and more folks moving here. Plus all the proposed developments. Give us a break

Timothy Sullivan2 months ago

Keep Hawaii Hawaiian

Ferol Kolons4 months ago

I'm tired of all this development with no infrastructure. I spend so much time stuck in traffic and it's raining my life in Hawaii. I can't imagine being stuck in an ambulance that is stuck in traffic. People will die and then they'll sue the state. Infrastructure before construction!

Amy Lee5 months ago

The beauty and historical values are very significant. Sea turtles will loose their homes and/or became endangered. It's time to put a stop to the greedy people developing the land. What else must we endure?

Fatima Ayoubi1 year ago

It's important to preserve local lifestyle

Caroline Norcross1 year ago

Hawaiian lands as not just for tourists and the rich.

Andrea Kania1 year ago

The land should not be destroyed. Focus on locals being able to afford housing. Stop the greed.

Justin Porter1 year ago

Needs to be a halt on wealthy mainlanders rushing the B.I. driving up house pricing. Many of these people don't even live here FULL-TIME.

linda johns1 year ago

There are too many homeless locals

Joanne A Martinez2 years ago

Big Island residents are impacted by all the high end development promoted by real estate business, the planning department and Mayor driving the high cost to live on the island beyond affordability. Native Hawaiians r forced to leave their homeland replaced by wealthy mainlanders changing Native Hawaiian & local culture to include political views not favorable to long-established residents on Big Island. Hawaii County is becoming not much different than stateside culture. We are losing our uniqueness & delicate ecostructure is being damaged.

Lauren Kamauu2 years ago

We need to be able to live here too! We shouldn't be priced out of our homes

Susan Collins2 years ago

Local families are priced out of housing market.

Annette Reyes2 years ago

The laws should be that any residential property that is sold in Hawaii, must be sold to other residents that have lived here as full time residents for 5 consecutive years or more, immediately before the actual buying of the residence. Proof must be submitted including 5 years or more of their income taxes filed in Hawaii as full time residents.

Pam Shultise2 years ago

We need affordable housing!

Jana Serion2 years ago

Jana Serion

Kurt Faut2 years ago

Simply put, the traffic on Kamehameha III Road, should this project be completed, will be similar to that fronting Hulihe'e Palace and the pier. Tourists clamoring to swim and recreate on the bay, ride on the snorkel and fishing boats, and passing through to the Outrigger Keauhou Bay Hotel will irreversibly and negatively affect the peaceful nature of this gem of

an ocean masterpiece. I am firmly against the construction of the through road from Ali'i Drive to the Hotel.

Ana Chervenak2 years ago

My home is becoming over populated

CM Simon2 years ago

I care.

Tracy Gonsalves2 years ago

We are already overpopulated, our ecosystem is altered each time portions of this land is cleared to make way for another structure or roadway, this invites the outsiders of wealth to buy and continues to suppress locals and natives from living a basic or simple affordable life. This depletes and disrupts our beautiful historical hawai'i nei.

Frank Rom2 years ago

Seems population growth is out pacing infrastructure development by too big a margin.

Ann Eshabarr2 years ago

We need to build smart and affordable. We need to take great care with the important decisions being made. Infrastructure, roads, culturally significant land, and traffic are just a few of the things to consider. We need to move forward carefully. We must stop corruption. All money should go to where it's intended not someone's pocket. We need more auditing. Mahalo.

Peter Matlock2 years ago

If all existing homes that are supposed to be hooked up to our sewer system were connected overnight, we'd already be over the capacity of the Kealakehe sewage treatment plant. We know the danger of getting into local waters with an open cut--infections take impossibly long to heal. Coral reefs and marine wildlife are suffering. Why are we making this problem worse?

Protect 'Opihihale Ohana2 years ago

Ua mau ke ʻea o ka ʻāina i ka pono.

Heidi Lee2 years ago

We don't need more housing unless we have enough natural resources .. and we need affordable housing not more second homes for people

Ethan Olins2 years ago

As it is there's not nearly enough infrastructure or decent shoreline access in Kona and BI in general. Aole.

Duane Nakano2 years ago

We need more affordable housing for locals..I'm in the construction industry & all I see is lots being cleared to build for outsiders.

Carolyn Witcover2 years ago

There is too much housing here owned by people who only live here for a few months each year! Meanwhile the locals suffer.

Karen Foster2 years ago

We already need infrastructure improvements.

Hanna Casagrande2 years ago

I'm signing because lots of locals family's as well as local family business are being kicked out of there long time generation or just starting businesses, and family can't afford to live in there own home in which they were planing on staying in forever to raise there kid let there kids raise there kids etc.. almost everyone is moving out to ocean view because it's the only thing we can afford due to lots being underpaid as an employee, so when can we ever win honestly, it's like we get this but you gotta do this how is that fair? I get we're the biggest island but not every haole has to live here vacationing is enough to make our system run, so please keep in mind to those who want to build and kick all current residents out who have been there for YEARS keep in mind that they have a family to care for and sometimes there's only ONE person who is able to work and provide for the whole entire house… be thoughtful don't ruin our lives and make us all homeless

Mark Axelson2 years ago

Markaxelson

T Vazquez2 years ago

I would like Hawaii Island to NOT become like the island of OAHU!

9 comments were added to the list

Denise Smith2 years ago

The big island can not handle MORE VEHICLES MORE PEOPLE.. WITHOUT PROPER INFRASTRUCTURE!!!!!

Aleksie Keske2 years ago

Hawaii belongs to Hawaiians NOT real estate agents.

Catherine Watson2 years ago

To save the big island don't want more people moving here

bini easley2 years ago

I don't want Kona to become Honolulu

Kittrena Morgan2 years ago

Enough is enough. Kailua Kona sewage seeping into the ocean for decades. All homes sold to people flocking in and no own who lives or born here, one white or blue collar workers can buy a home. I bought a house with a mortgage well over a decade ago and the price for a termite home trashed by tenants was $250,000. Now can be be sold for $700,000. Bizarre.

Lisa J Sims2 years ago

Growth in Kona has skyrocketed. Keep Kona a small town or there won't be any natural land left

Jan Holton2 years ago

I agree with the issues stated in the petition.

Deni Alley2 years ago

Keep Hawai'i Island country!

Frederick Smith2 years ago

No new development until we update public infrastructure like roads and sewage. It's amazing how far out of control this has gotten already.

Kamehameha Schools are the trustees, and they are legally obligated NOT ONLY BY CULTURAL LAW but also, they are LEGALLY OBLIGATED to do what is BEST for the land and their BENEFICIEARIES. THE HAWAIIAN PEOPLE ARE THEIR BENEFICIEARIES and thousands of their BENEFICIEARIES are OPPOSING this Bungalow Resort Development and these people have a RIGHT TO BE HEARD AND ACKNOWLEDGED BY LAW!

Princess Bernice Pauahi Bishop's Will states, under 4th paragraph down from Thirteen, "I desire my trustees to provide **first and chiefly a good education** in the common English branches, and also instruction in morals and in such useful knowledge as may tend to make good and industrious men and women; and I desire instruction in the higher branches to be subsidiary to the foregoing objects.

For the purposes aforesaid I grant unto my said trustees full power to lease or sell any portion of my real estate...not to exceed however one-half of the fund which may come into their hands, in the purchase of suitable premises, the erection of school buildings... expend the annual income in the maintenance of said schools..." https://www.ksbe.edu/about-us/about-pauahi/will

Kamehameha Schools is to use the land specifically, "**For the purposes aforesaid**" and that would be education for the Hawaiian people and NOT a DEVELEOP a Bungalow Resort for

tourists and offer tourists an education in Hawaiian culture. This is stated clearly in Princess Bernice Pauahi Bishop's WILL.

Kamehameha Schools claims they need money and that is why they want to develop Keauhou Bay, but the truth is, they have lands that are ALREADY DEVELOPED that they hardly use, and these lands CAN BE USED TO MAKE MONEY. THEY DON'T NEED TO DEVELOP KEAUHOU BAY!

Please watch this
video https://www.youtube.com/watch?si=7B8BIBBQd4pxaWeK&v=1UtiIWeyLAs&feature=youtu.be

For example, Kahalu'u Beach Park they only use for their Private Events and this land could bring in money through parking fees, day pass use, wedding and birthday function fees, farmers market fees, concert fees to benefit the schools... there are endless amount of ways to make money from these already developed lands.

Kamehameha Schools also has Hale Laau that hasn't been used for years and it is fully developed with a parking lot and structures already on the land. They could use this land to school kids, house Hawaiian elders that need a home, hold weddings and events that they charge fees... but they have just let it sit there for years doing nothing.

Those are only two lands that I know of that are not being used and that are already developed. How many other properties do they have that are not being used and that are already developed?

Who has so much land that they can develop it and let it just sit there doing nothing?

Who has so much land that they can develop a beautiful park and ONLY use it for THEIR PERSONAL AND PRIVATE EVENTS?

Who has so much land that they don't want to offer their already developed lands to make money but rather want to develop a historical bay that is the birthplace of King Kamehameha III and their Bungalow Resort development will KILL the entire ecosystem that is there, by causing SCIENTIFICALLY PROVEN POLLUTION that WILL go into the bay because that is what has been reported happens when development is near water, who is happy to pollute a historical bay, rather than use their already developed lands that are just sitting there not being fully used to make money?

Kamehameha Schools! SHAMEFUL!!!

The Princess's Will States **"A good education" was to be the trustees (Kamehameha Schools) "first and chiefly" concern.** This site shows Hawai'i is 49th with a D+ Overall rating https://www.alecreportcard.org/state/ and Hawai'i has been on the low end of national ranking for years and is the ONLY state in the country that was given Endowed Land for the Hawaiian people to be **"first and chiefly" educated.**

In The Last Will and Testament of Bernice Pauahi Bishop, Mr. Bishop states, "The improvement of young Hawaiians was an object and desire constantly near to the heart of the

founder of the Schools (Princess Bernice Pauahi Bishop)... these schools were provided for, in which Hawaiians have the preference, and which she hoped they would value and take the advantage of as fully as possible..." *https://kaiwakiloumoku.ksbe.edu/article/heritage-center-the-last-will-and-testament-of-bernice-pauahi-bishop*

"The Princess's Will distinctly states that: "To devote a portion of each year's income to the support and education of orphans, and others in indigent circumstances, GIVING THE PREFERENCE TO PURE OR PART ABORIGINAL BLOOD" https://www.moolelo.com/ks-willbetter2.html

Princess Pauahi Bishop's Will states that the trustees are to use the Endowed land's money to educate Hawaiian people because they are the Princess's Beneficiaries. "**I desire my trustees** to **provide first and chiefly a good education**... **For the purposes aforesaid** I grant unto my said trustees full power to lease or sell..." **THIS STATES THE LAND IS TO BE USED TO EDUCATE THE HAWAIIAN PEOPLE, THE PRINCESS'S BENEFICIARIES.**

Supporting and educating these kids is why Princess Bernice Pauahi Bishop created Kamehameha Schools and it states this in her Will that is what was to be the trustees (managers) "First and Chiefly" concerns. It's why they received the Endowed land because the Hawaiian people are the beneficiaries of this land in the Will.

Marissa Harman with Kamehameha Schools told me they plan to give "Full Access" to ALL their Endowed Hawaiian lands to the high-end tourist guests who stay in their bungalow resort they want to develop in Keauhou Bay, to **educate** these tourists in Hawaiian culture because it's the **perk** they want to offer tourists for staying in their bungalow resort.

They want to educate tourists when **their Beneficiaries** are not receiving **a good education as per the Princess's Will.**

Kamehameha Schools Endowment was valued at 14.7 Billion in 2021 per this Google Financial and the reason they say they want to develop in Keauhou Bay is because they NEED money and if they NEED money, then they NEED to start looking at who is managing their money because they have more land than anyone in the world has and they have already developed land than can use starting today to make money!

Princess Bernice Pauahi Bishop wanted education for her people to be "First and Chiefly" the trustees (Kamehameha Schools) responsibility. This is stated very clearly in her Will because she named that the Hawaiian people's were her beneficiaries and they were to receive "a good education" **through the lands she ENDOWED to Kamehameha Schools to use the money to support and educate her beneficiaries, the Hawaiian people's, and NOT educate tourists in a bungalow resort that doesn't need to be developed because there are developed lands they currently have that they CAN use to make money.**

Please reject this EIS because Kamehameha Schools have lands, they can use to make money with starting today if they wanted, because these lands are already developed.

Please reject this EIS because petition **Save Keauhou Bay From Becoming a Big Crowded Resort** has thousands of Hawaiians and locals who are OPPOSING this development. These people DO NOT WANT THIS DEVELOPMENT AND THEIR VOICES MATTER AND MUST BE ACKNOWLEDGED!

Please reject this EIS because it is SCINETIFICALLY PROVEN DEVELOPMENTS POLLUTE NEARBY WATERS and Keauhou Bay WILL BE POLLUTED for years to come and the Hawaiian people won't be able to fish, spear fishing, swim, free dive, snorkel, dive... in Keauhou Bay because it WILL BE POLLUTED and in the Cultural Law it states that cultural practices MUST BE CONSIDERED! https://kohanaikiohana.org/legal-victories

Please reject this EIS because Kapuna Kumu Lily Kong states there are burial grounds there on the land Kamehameha Schools wants to clear, and other Hawaiian's have also stated there are bones in the caves there on this land.

Please reject this EIS for cultural reasons as it is stated in many of the comments from both petitions above.

Please reject this EIS because Kamehameha Schools has NOT ACKNOWLEDGED OR ASKED thousands of Hawaiians, or Hawaiian Descendants from Keauhou Bay how they feel about developing this land, Keauhou Bay. They have asked ONLY 4 families (who probably work for them) on an island that has thousands of Hawaiian people and I have presented video testimony from Kupuna Kumu Lily Kong who is a Keauhou Bay descendants and her and her family OPPOSE DEVELOPMENT! https://vimeo.com/994680462

Please reject this EIS because there are over 6,198 signatures on petition **Save Keauhou Bay From Becoming a Big Crowded Resort** and 444 signatures on petition **Help Prioritize Big Island Developments to Keep Island's Resources Safe for ALL** as of Aug. 5th and ALL OF THESE SIGNATURES COMPLETELY OPPOSE this development and many of these voices are the voices of Princess Bernice Pauahi Bishop's Beneficiaries who are the Hawaiian people and they are stating DO NOT DEVELOP KEAUHOU BAY!

https://www.change.org/p/save-keauhou-bay-from-becoming-a-big-crowded-resort?utm_source=share_petition&utm_medium=custom_url&recruited_by_id=92a53560-1e91-11e5-b4ef-b94e90cedbdd

https://www.change.org/p/help-prioritize-big-island-developments-to-keep-island-s-resources-safe-for-all

Please reject this EIS because under Princess Bernice Pauahi Bishop's Will it states Kamehameha Schools are her trustees and they have a **"fiduciary duty" to do what is best for THEIR BENEFICIARIES (the Hawaiian people's) and a Bungalow Resort is BEST FOR TOURISTS NOT THE HAWAIINA PEOPLE!**

Please reject this EIS because the Big Island DOES NOT HAVE THE RESOURCES TO PROVIDE FOR ANOTHER BIG RESORT ON ISLAND and there are many comments that agree with this fact because of the factual reported articles in the **Help Prioritize Big Island Developments to Keep Island's Resources Safe for ALL**

petition https://www.change.org/p/help-prioritize-big-island-developments-to-keep-island-s-resources-safe-for-all

Please reject Kamehameha Schools EIS under the Cultural Impact Statement Law which states, "Cultural assessment" means a written evaluation conducted by a qualified ethnographer as defined by the state historic preservation division to determine whether an action may have a significant effect on cultural practices, **particularly native Hawaiian traditional and customary practices expressly protected under article XII, section 7, of the state constitution.**

"Cultural impact assessment" means an ethnographic study prepared in accordance with the rules adopted pursuant to this chapter by a qualified ethnographer as defined by the state historic preservation division, which shall disclose any cultural effects of a proposed action, including **the cultural practices of the community and State,** proposed measures to minimize adverse effects, and alternatives to the action and its cultural effects." https://www.capitol.hawaii.gov/sessions/session2020/bills/SB3152_.HTM#:~:text=Requires%20cultural%20assessments%20to%20be%20available%20for%20public,may%20have%20a%20significant%20effect%20on%20the%20environment.

Please reject this EIS because it has NO reports on Hawaiian or community cultural practices in the bay that will be affected during this development and after it is finished.

Please reject this EIS because it has NO interviews with the Hawaiian people and community locals who use this bay, to learn how this bay is used daily by the Hawaiian people and locals in the bay, and under the Cultural Impact Statement Law this needs to be done to fully understand how this development will impact the Hawaiian people and community local's cultural practices.

Hawaiian cultural practices are canoe paddling and by creating this bungalow resort you will be taking away all the one man canoes that are at the bay to make room for tourists. This is not honoring Hawaiian canoe traditional practices and is going against the Cultural Impact Statement Law.

Hawaiian cultural practices are also fishing and if you allow this bungalow resort to be developed there will be hundreds of tourists in the bay preventing Hawaiian fishermen from safely fishing without accidentally hooking a tourist who is swimming by. This goes against the Cultural Impact Statement Law because there won't be any room for fishermen to enjoy fishing at the bay because the bay is so small that having more paddle boards, more kayaks, more people swimming...will take away from Hawaiian cultural practice of being able to fish safely in Keauhou Bay and this goes against the Cultural Impact Statement Law.

This EIS has not done any studies on "cultural practices of the community" and there are many baptisms and funeral services held in the bay and creating a bungalow resort in this area would create a tourists destination with hundreds of tourists all over this bay and baptisms and funeral services will become challenging to have for the community in this small historical bay because tourists will be there sunbathing everywhere and this will go against the Cultural Impact Statement Law for the community who have enjoyed this small historial bay to perform their cultural practices of baptisms and funeral services.

Please reject Kamehameha Schools EIS because a bungalow resort development will go against the Hawaiian cultural practices, as well as the communities cultural practices and this goes AGAINST the Cultural Impact Statement Law SB #3152.

I was sent these reports from Richard H. Bennett MS, PhD Applied Life Sciences LLC and Kamehameha Schools EIS needs to be rejected because of the researched information he has sent.

Richard H. Bennet MS Phd states in his report that has been attached to this email.

"The following comments pertain specifically to water quality issues affecting Keauhou Bay. The
draft EIS does not address these nor accounts for the fact that the State and the EPA list Keauhou Bay as an Impaired Water Body under section 303 D of the Clean Water Act (CWA).
That law requires that impacts to the Bay be mitigated and that further impairment does not occur. This requirement under the law has not been met."

Please reject Kamehameha Schools EIS because Keauhou Bay is listed as **Impaired under the Environmental Protection Act for Clean Water** and this development will add more pollution into the bay. "The Clean Water Act (CWA) is **the primary Federal statute regulating the protection of the nation's water**. The CWA aims to prevent, reduce, and eliminate pollution in the nation's water in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters", as described in CWA section 101(a). A stated goal of the CWA is to eliminate discharge of pollutants into navigable waters, as that term is defined in CWA § 502(7) and corresponding case law." https://www.epa.gov/enforcement/clean-water-act-cwa-and-federal-facilities

I have attached a screenshot of Keauhou Bay on the EPA Impaired water list and here is the link for **Keauhou Bay (Kona)**
Assessment Unit ID: HI713293 https://mywaterway.epa.gov/waterbody-report/21HI/HI713293/2020

The goal of the Clean Water Act (CWA) is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C §1251(a)" and Kamehameha Schools Bungalow Resort will devastate the entire ecosystem in Keauhou Bay.

Kamehameha Schools EIS needs to be rejected because Kamehameha Schools has not contacted hundreds of Hawaiian people, especially descendants from Keauhou Bay and spoken with them about how they would feel about their Endowed land that was given to Kamehameha Schools as trustees by Princess Bernice Pauahi Bishop for the Hawaiian people to benefit from and under Cultural Impact Law these people MUST BE CONTACTED.

Here is a video by Kupuna Kumy Lily Kong and she states that her and her mother are against development. She was born in Keauhou Bay and SHE has the right to be heard https://vimeo.com/994680462

Please reject Kamehameha Schools EIS under the Cultural Impact Statement Law as well as under the EPA Clean Water Act listing that Keauhou Bay is declared Impaired Water Body Under Section 303 D.

Please reject Kamehameha Schools EIS because they have NOT followed the cultural laws. By law they MUST do what is BEST for the Hawaiian people's cultural practices and it is proven developments WILL pollute nearby waters and if these waters get polluted, the Hawaiian people will be paddling canoe, swimming, fishing…in polluted water.

Kamehameha School's Bungalow Resort Development will clear land that has been protecting Keauhou Bay from golf course runoff pollution for years, and the development will kill an entire ecosystem.

- The "Natural Ground Cover has 10% runoff, where as development has 55% runoff..." This was taken from NOAA'S website and this researched article proves the natural land has been soaking up the above golf course pollutions before it runs into the bay for years.
- "Golf courses kill coral reefs and fisheries: harmful algae blooms and disease cause by nutrient runoff from golf course development..." This info was taken from Global Coral's website and it SCIENTIFICALLY PROVES that their development will pollute Keauhou Bay because of the golf course runoff that will happen.
- "Coastal development and runoff lead to sedimentation, which directly impacts coral recruitment, growth, mortality, and ecosystem services that coral reefs provide." This info is from Environmental Evidence Journal website and SCIENTIFICALLY PROVES that developments KILL CORAL AND MARINE LIFE.

Please watch this video https://www.youtube.com/watch?v=DoKUa9Pyk5c

Please watch this video https://www.youtube.com/watch?v=lT9sIe0eqA0

In their EIS they have NOT contacted as many Hawaiian people as they NEED to contact to prove that the Hawaiian people want this bungalow resort because in the ONLY public meeting, they held in 2022 (I was on this zoom call) there were many people on this zoom call and EVERY SINGLE PERSON ON THIS ZOOM CALL OPPOSED THEIR BUNGALOW RESORT DEVELOPMENT and their were plenty Hawaiians on the call.

Kamehameha Schools have NOT spoken with the Kong family who are descendants from Keauhou Bay and this video is of Kupuna Kumu Lily Kong who was born in Keauhou Bay and she states that she is against development. She also states that her mother was against development as well. Please listen to her words in her testimonial video about Keauhou Bay on this link and know that this proves that descendant directly from Keahou Bay OPPOSE THIS DEVELOPMENT https://vimeo.com/994680462 and it is CULTURAL LAW THEY MUST BE HEARD AND ACKNOWLEDGED!

These laws were created, "After these legal victories, the Kohanaiki 'Ohana worked to create a new law in the state of Hawaii to require Cultural Impact Statements along with Environmental Impact Statements for all future large-scale development. Act 50, the Cultural Impact Statement Law was adopted in 2000." https://kohanaikiohana.org/legal-victories

Kupuna Kumu Lily Kong also states that there are burial grounds on the land that Kamehameha Schools wants to clear and it is told that Kamehameha Schools has bulldozed sacred land in the past and Keauhou Bay's burial grounds MUST BE RESPECTED AND NOT DISTURBED!

I was also told by Hawaiians that there were bones in the small cave that is at the base of Keauhou Bay. These burials need to take priority over a Bungalow Resort Development.

Thank you,
Rebecca Melendez

3 attachments

Keauhou Bay is stated Impaired Water by the EPA Clean Water Act.jpg
250K View Scan and download

Comments DEIS Keauhou bay final copy.pdf
809K View as HTML Scan and download

Report_Kahaluu_Water_Quality_Research_Summary.pdf
853K View as HTML Scan and download

APPLIED LIFE SCIENCES LLC
RESIDENT OF CALIFORNIA
drrhbennett @gmail.com
808.640.2413

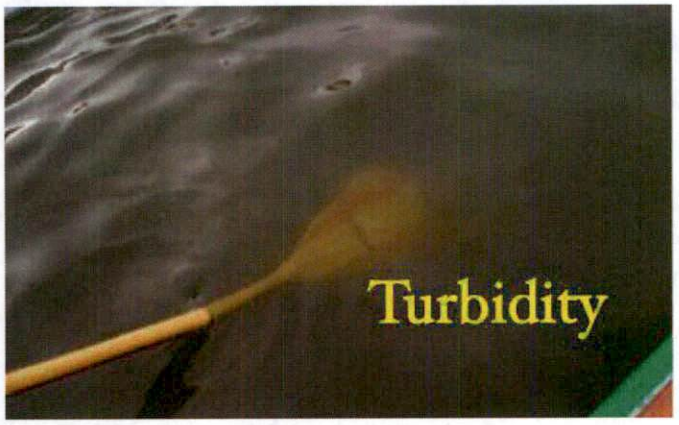
July 24, 2024, VIA EMAIL

COMMENTS REGARDING:

Draft Environmental Impact Statement (DEIS) for the
Kamehameha Schools Keauhou Bay Management Plan
Keauhou, Hawai'i Island, Hawai'i

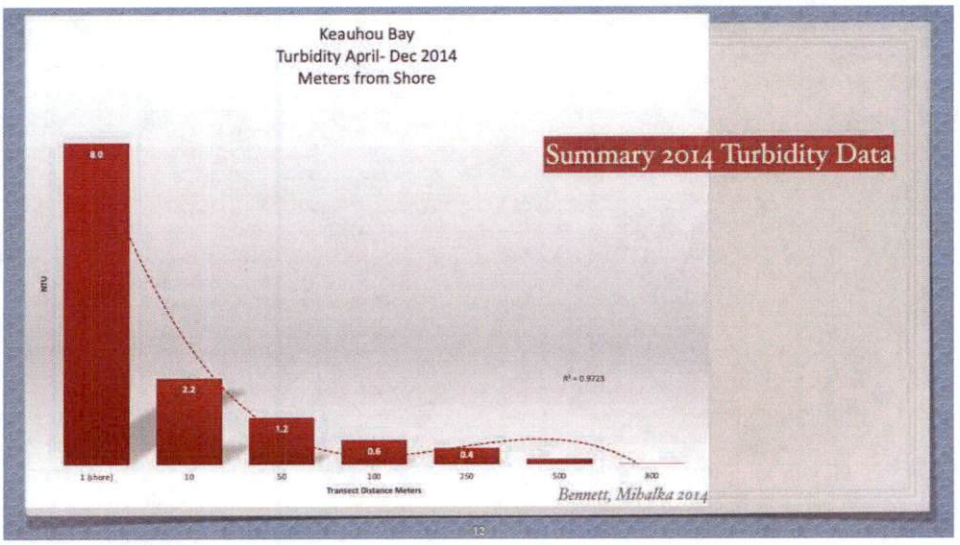
Richard H. Bennett MS, PhD
Applied Life Sciences LLC

The following comments pertain specifically to water quality issues affecting Keauhou Bay. The draft EIS does not address these nor accounts for the fact that the State and the EPA list Keauhou Bay as an Impaired Water Body under section 303 D of the Clean Water Act (CWA). That law requires that impacts to the Bay be mitigated and that further impairment does not occur. This requirement under the law has not been met. Any development in the watershed needs to be conducted by a careful evaluation of this fact. Under the law, remediation begins by conducting a Total, Maximum Daily Loading study known as a TMDL. The Bay is listed as impaired for exceeding the limits for turbidity. Turbidity has several causes in near-shore waters, such as runoff water with fine sediments and phytoplankton. Our research shows that turbidity is a problem in Keauhou Bay in the absence of surf events. The turbidity is also due to the overgrowth of marine phytoplankton. Our studies show that turbidity declines along a line moving offshore. The inner Bay has very poor circulation and is where most sediments and other factors causing turbidity arise. Phytoplankton grow in response to increased temperature and nutrient loading in the Bay. The lack of adequate circulation amplifies the problem.



The photo was taken in the summer of 2007 in response to concerns about the greening of Keauhou Bay. The brand name on the canoe paddle is not legible. (photo credit Bennett).

Figure 1. Nine-month summary of turbidity data for the Bay.



(Bennett 2002)

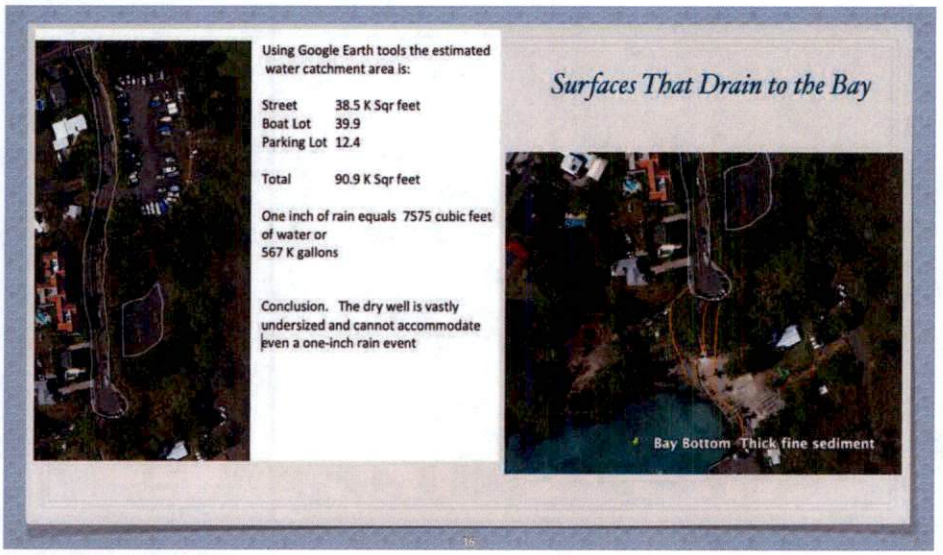
The nine-month summary chart above shows that turbidity is worse at the shoreline and decreases non-linearly in waters offshore. The slight rise in turbidity at 250 meters may be more of a phytoplankton effect than sediment.

The DEIS makes the following statement regarding groundwater.

Due to the low frequency of substantial rainfall and high permeability of the soils throughout the Project In this area, surface runoff generally does not occur in the typical rainfall occurrence. Runoff either percolates into the underlying groundwater or evaporates into the atmosphere. There are no drainage reports or calculations on file with the County of Hawai'i or DOT for the adjacent public roadways or surrounding developed properties. However, existing stormwater runoff peak flow estimates for the three (3) drainage basis within the Project Area are presented in Table 4-4.

The draft EIS fails to account for surface water runoff from Kamehameha III Road. At the Bayside terminus of the road is a dry well. It is typically loaded with sediment and unable to handle the storm flows that come down the length of the road. Thereafter, water overflows the curb and goes down the driveways and the slope into the Bay. As it does, it picks up considerable sediment and delivers it to the near-shore waters, increasing the turbidity problem (Fig 3).

Figure 2. Rain catchment area and water volume estimate.



(Bennett 2002)

As calculated above, a one-inch rain can produce over five hundred thousand gallons of water, with most of the flow eroding fine sediments as it enters the Bay (Figure 3). The County of Hawai'i was made aware of this dry well failure four years ago. Some of this water comes off of Kamehameha Schools land.

The DEIS statement that rainwater percolates to groundwater suggests groundwater is the terminus and the water does not flow to the sea. For at least 25 years, it was the position of the State that groundwater under the land does not communicate with the sea. Considerable research, such as Knee (2010), Dulai (2020), Peterson (2009), and others, shows that the State's policy is specious and not science-based. The State's anchialine system is a subterranean estuary (Bishop 2015). Consequently, the DEIS must reconsider the implication that the local groundwater is an inconsequential endpoint for fresh and waste water flows. A recent US Supreme Court decision held that wastewater disposal to the nearshore groundwater without the necessary permit was a violation of the CWA (see footnote page 7).

Figure 3. Stormwater and sediment Flow into the Bay.

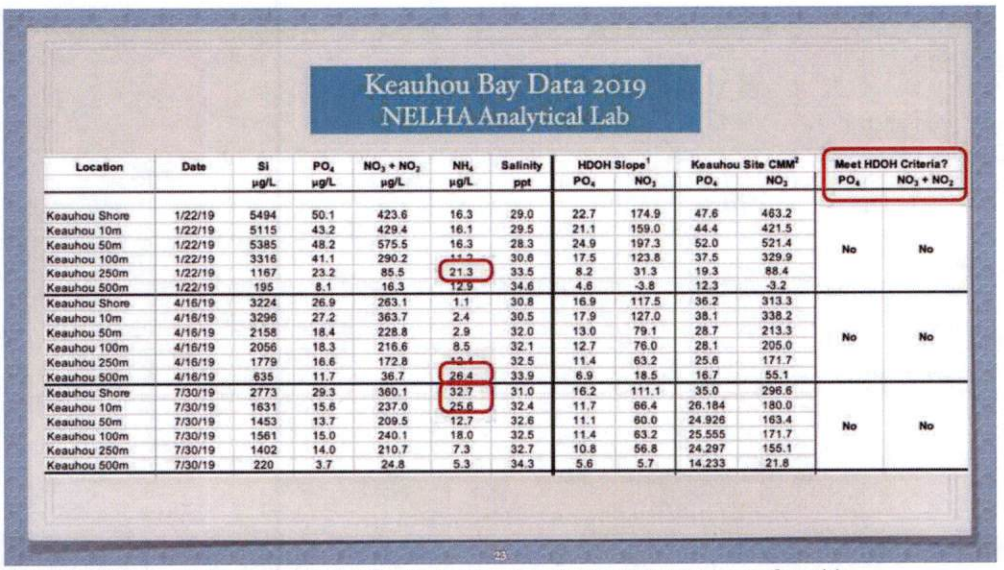


The photos suggest considerable sediment erosion into the Bay.

Nutrient Degradation and Impairment of the Bay.

The draft EIS does not account for the elevated levels of nutrients in the Bay. Again, our research shows that nitrogen and phosphorus exceed state standards. Unlike other locations, it is unfortunate that the Hawai'i Department of Health fails to measure these nutrients in the Bay. Thus, conducting a nutrient analysis of the Bay waters was necessary. That analysis is provided below.

Table 1. Nutrient analysis along transects over three quarters of 2019



Keauhou Bay Data 2019
NELHA Analytical Lab

Location	Date	Si	PO_4	$NO_3 + NO_2$	NH_4	Salinity	HDOH Slope[1]		Keauhou Site CMM[2]		Meet HDOH Criteria?	
		µg/L	µg/L	µg/L	µg/L	ppt	PO_4	NO_3	PO_4	NO_3	PO_4	$NO_3 + NO_2$
Keauhou Shore	1/22/19	5494	50.1	423.6	16.3	29.0	22.7	174.9	47.6	463.2		
Keauhou 10m	1/22/19	5115	43.2	429.4	16.1	29.5	21.1	159.0	44.4	421.5		
Keauhou 50m	1/22/19	5385	48.2	575.5	16.3	28.3	24.9	197.3	52.0	521.4	No	No
Keauhou 100m	1/22/19	3316	41.1	290.2	[illegible]	30.6	17.5	123.8	37.5	329.9		
Keauhou 250m	1/22/19	1167	23.2	85.5	21.3	33.5	8.2	31.3	19.3	88.4		
Keauhou 500m	1/22/19	195	8.1	16.3	12.9	34.6	4.6	-3.8	12.3	-3.2		
Keauhou Shore	4/16/19	3224	26.9	263.1	1.1	30.8	16.9	117.5	36.2	313.3		
Keauhou 10m	4/16/19	3296	27.2	363.7	2.4	30.5	17.9	127.0	38.1	338.2		
Keauhou 50m	4/16/19	2158	18.4	228.8	2.9	32.0	13.0	79.1	28.7	213.3	No	No
Keauhou 100m	4/16/19	2056	18.3	216.6	8.5	32.1	12.7	76.0	28.1	205.0		
Keauhou 250m	4/16/19	1779	16.6	172.8	[illegible]	32.5	11.4	63.2	25.6	171.7		
Keauhou 500m	4/16/19	635	11.7	36.7	26.4	33.9	6.9	18.5	16.7	55.1		
Keauhou Shore	7/30/19	2773	29.3	360.1	32.7	31.0	16.2	111.1	35.0	296.6		
Keauhou 10m	7/30/19	1631	15.6	237.0	25.6	32.4	11.7	66.4	26.184	180.0		
Keauhou 50m	7/30/19	1453	13.7	209.5	12.7	32.6	11.1	60.0	24.926	163.4	No	No
Keauhou 100m	7/30/19	1561	15.0	240.1	18.0	32.5	11.4	63.2	25.555	171.7		
Keauhou 250m	7/30/19	1402	14.0	210.7	7.3	32.7	10.8	56.8	24.297	155.1		
Keauhou 500m	7/30/19	220	3.7	24.8	5.3	34.3	5.6	5.7	14.233	21.8		

Note: The NELHA Lab has multiple certifications, including the State Department of Health

None of the nutrient values for water collected as shown above met state standards. The elevated nutrients in the Keauhou Bay watershed come from various sources. A common misconception is that fertilizers applied to private properties and the local golf course are the significant sources. However, research shows that nutrient leaching from the Mauna Kea and Keauhou golf courses is minor compared to the nearby homes on Puako Drive (Dialer 2011). The likely source is the myriad cesspools in the watershed. Some homes on the North peninsula of the Bay are connected to sewers, but most homes are not.

The elevated levels of ammonia suggest a water connection to fresh sources of animal and human waste. Ammonia in marine water is quickly converted to nitrate. Our data also shows the nitrogen and phosphorus levels exceed state standards for the Bay. Had the State collected this data, the EPA would declare water Impairment from these nutrients. These elevated nutrients can cause the seasonal "greening" of the marine waters (Smith 2020).

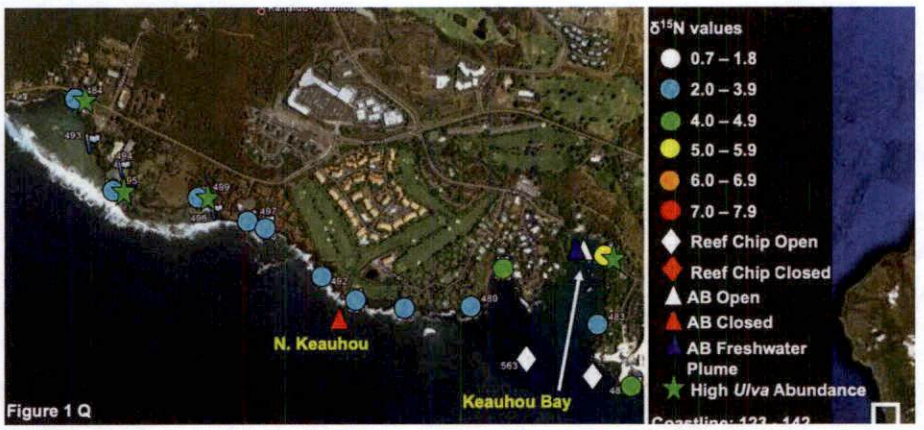
The draft EIS makes no mention of nutrient pollution issues and implies that all new developments will be connected to the sewer line that transmits raw sewage to the Heeia wastewater treatment plant. The treated wastewater containing most of the nutrients in human waste is conveyed to the golf course to irrigate the golf course. It is not known the extent to which those nutrients leech into the groundwater and the Bay. It is also not known how much more water the golf course will utilize in the future.

Several residences and perhaps some commercial facilities in the proposed development area use cesspools or septic systems for human waste management. The impact on the Bay is significant and needs to be described and mitigated. However, this problem is not mentioned in

the DEIS. It is more than advisable that the Project connect all waste systems to the regional sewer.

It is well established that sewer lines leak, which is a function of many factors such as piping class and age (Rutch 2006). In the project area, some sewer lines are quite old. One such line on the East shore of the Bay broke during a significant tidal event. The DEIS does not account for sewer line leakage or the risk from extreme tidal events. This problem needs to be evaluated, and where sewer lines are at risk and need to be replaced by resilient lines such as High-Density Polyethylene (HDPE).

Figure 4. Nitrogen (delta N 15) signatures along the Keauhou Region shoreline



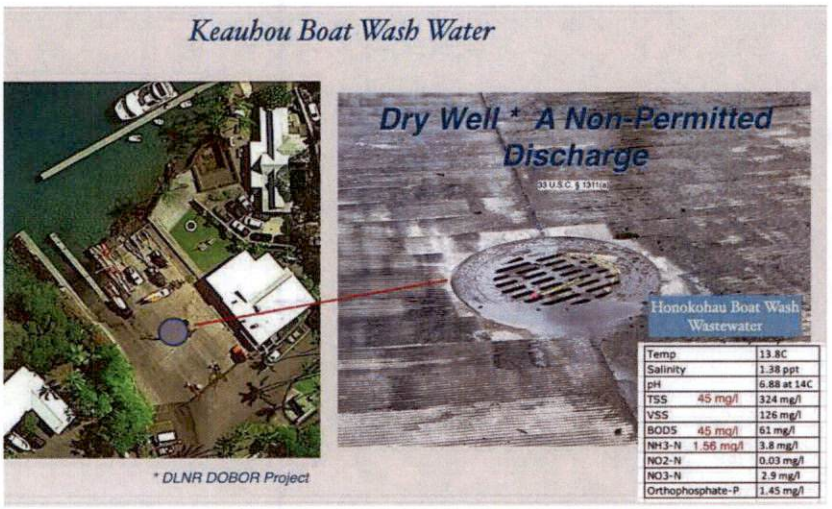
(Dailer 2011)

Nitrogen Signatures in the Keauhou Area

The magnitude of the delta N 15 value indicates the greater contribution of human (animal) waste nitrogen. Raw sewage water is currently conveyed from the hotel at the Bay to the Heeia Wastewater Treatment Plant (HWWTP). The Secondarily treated wastewater (WW) is provided to the local golf course for irrigation. How much water the golf course needs or could utilize is unknown. Casual observation of the course suggests that it is under-irrigated. Nutrients in the WW are not removed but beneficial to the grass. Delta N 15 data indicates that the golf course contributes negligible human (animal) nitrogen to the near-shore waters.

In contrast, the Delta N 15 values are higher in the Bay proper. The source is likely human waste from cesspools in the immediate region. Less than half of the homes are connected to sewer. It is imperative that the DEIS account for these sources and provide sewer design criteria for all new developments to be connected to the HWWTP.

Figure 5. Non-permitted wastewater discharge to the Bay



Some years ago, federal funds were provided to upgrade the Bay boat launch facilities. Before the upgrade, boat wash water flowed over the surface and into the Bay. A dry well was installed, and it drained to surface water only a few feet below the drain. Boat wash water is potable water. The wash water contains fish liquids, blood, and particulate fish waste. This wastewater may be a source of ammonia in the Bay. Washed bilge water often contains oil products. The data in Figure 5 is from the wash water surface drain at Honokohau Harbor.

Since it is obvious this wash water flows into the Bay in the groundwater, the State should have applied for an NPDES permit. Such a permit is required for any ocean discharge of wastewater, especially in waters known to be Impaired under the CWA. This requirement has been affirmed by the Supreme Court[1].

Conclusions

The surface water and groundwater flows from the proposed development and those in the upper watershed need to be considered to ensure that further degradation of this impaired water body does not occur. This is referred to herein as a TMDL. Given the environmental ethics of Kamehameha Schools and the legal history of the Public Trust Doctrine of the State Constitution[2], we suggest that these environmental impacts described above be studied for the project design and mitigated.

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[1] *County of Maui, Hawaii v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 590 U.S. 165, 206 L. Ed. 2d 640 (2020).
[2] *Kelly v. 1250 Oceanside Partners*, 140 P.3d 985, 111 Haw. 205 (2006).

Keauhou Bay is a small bay inlet on Hawai'i Island and, as such, is subject to much more degradation than the open shore area of West Hawai'i. As such, the Bay requires special protections.

Sincerely,

/s R.H. Bennett MS, PhD, President

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Summary of the Water Quality Research from Kahalu'u Bay, Hawai'i Island: Tidal Flows, Recreation Water Indicator Bacteria, and Nutrient Fluxes

R.H. Bennett Ph.D.[1], and K. M. Clark[2]

The Kahalu'u Bay Education Center (a program of The Kohala Center) actively strives to inform visitors and the community about the protection and conservation of the bay's marine ecosystem. A group of committed volunteers and staff provide daily, on-site educational programs. Similarly, they have collected scientific data about the bay for over a decade. This trove of data is priceless. It tells us much about the interaction of the ocean with the adjacent urban lands. Except for the marine waters of Kaloko Honokōhau National Historical Park, no other maritime site in Kona has been studied so thoroughly and for so long.

The data from Kahalu'u Bay gave rise to three technical research reports. They are:
I. Tidal Influence on Temperature and Salinity
II. Elevated Kahalu'u Bay Enterococci Associated with Large Tidal Flux
III. Kahalu'u Bay Nutrient Trends 2009 to 2019

The purpose of this summary is to provide an easy-to-understand synopsis of the three technical reports to enable the community to "see below sea level" so that we may be better informed of the best stewardship of our nearshore waters.

I. Tidal and Ground Water Influence on Bay Waters

The mountains above Kailua Kona are blessed with abundant rainfall. Some sites get over 70 inches of rain per year. Yet there are no rivers or streams. On the Hilo side of the island, there are over 200 streams. So, in Kona, where does all that water go? It percolates quickly through the fractured lava rock and forms a fresh groundwater lens that floats upon the seawater that permeates the island. From there, fresh groundwater flows toward the shore. It includes a nearshore subterranean estuary (STE). In the estuary, groundwater and seawater mix under the forces of tidal action. Four times a day, the tides rise and fall. During the Spring Tides, massive tidal fluxes of over two feet push and pull on the estuary with great force.

Groundwater eventually discharges along the coast as a cold mixture of fresh water and recirculated seawater. For those that swim in the ocean, encountering cold spots is inevitable. For snorkelers, these surface cold spots can have hazy visibility. This is a refraction caused by the incomplete mixing of seawater and groundwater. The fresher water is less dense and floats on the ocean surface in many locations.

[1] Applied Life Sciences LLC, and Waiwai Ola Ohana

[2] The Kahalu'u Bay Education Center, The Kohala Center

In the Kahalu'u Bay shore area, there are pronounced discrete locations where water flows can be seen, and the coolness is perceived. In other places, the brackish water is more diffuse. And yet, in some offshore sites, the cold brackish water emerges from the floor of the ocean. Most of all, water that does not evaporate flows into the sea one way or another. Water is almost a perfect solvent. A high number of things dissolve in it even though it may remain crystal clear. In the kitchen, we can dissolve a lot of salt or sugar in a glass of water without changing its appearance.

Figure 1. Kahalu'u Bay Shoreline Sample Sites

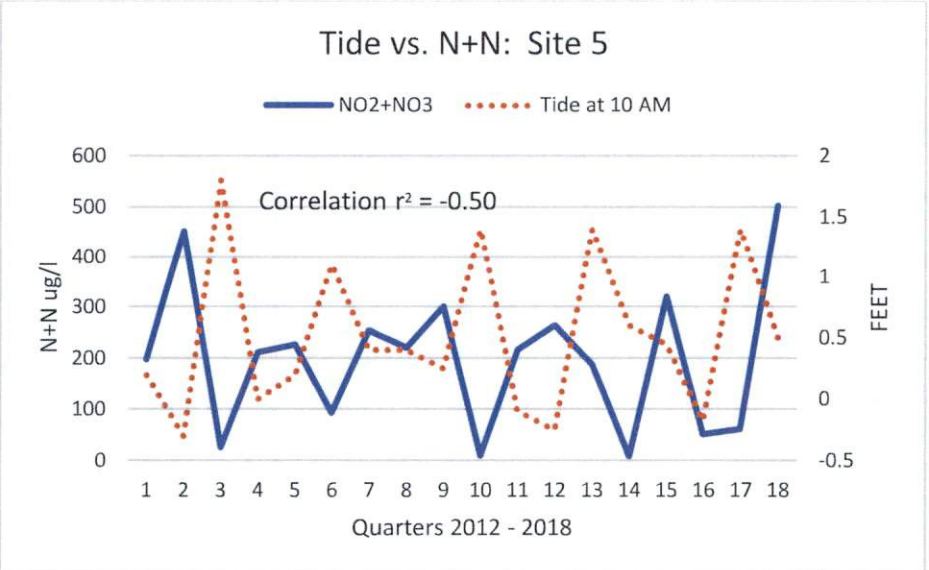


Statistical Distribution of Salinity 2017
Low tide, 29.36 Orange vs. High Tide 32.26 ppt Green

This site map of the bay shows where water samples are collected. Site one is where water flow at low tide can be seen. At low tide, the salinities at site 1 differed from the others. At high tide, the salinity of sites 1 - 4 was different from 5. This shows that water inflow can be very localized. We know that lava tubes and fractured rock can provide such a discrete conveyance.

Similarly, it should not be too hard to imagine how the flow of the tides can influence the temperature of the nearshore water. Ocean water is warmer and more saline. Thus, a good high tide will render the nearshore water warmer and saltier. At a very low tide, the converse is also true.

Figure 2. The Influence of Tides on Nitrogen Concentration.



At low tide, groundwater flows increase, and salinity and temperature decrease quite dramatically. This suggests the volume of water flowing into the bay is massive. As shown in Figure 2., over a 4.5-year period, there is an inverse relationship between the tide level and the concentration of Nitrogen (N) measured as Nitrate and Nitrite. The effect is simply seawater, that is lower in Nitrogen is diluting the higher N groundwater Nitrogen content. Thus, it is critical that tidal effects be accounted for in any monitoring of marine nitrogen. Accounting for groundwater Nitrogen concentrations flowing into near shore waters is a requirement of Hawai'i Administrative Rules when conducting water tests.[3]

UH researchers using some advanced chemistry with Radon isotopes, estimate for each mile of the Kona Coastline between one to three million gallons of groundwater flow into the sea per mile of coastline per day. On the Hilo side, the flow of water from the land can be seen in rivers and streams. On the Kona side, it is unseen but still vast in many submarine groundwater discharges.

One way we can see this flow is to use cameras that see temperature, called infra-red (IR). This IR photo was taken of a submarine groundwater discharge, just north of the Kona Airport. The cold, fresh water (shown by the cooler colors in the image) extends over 200 yards out to sea.

[3] Hawai'i Administrative Rules §11-54-6(B)

Figure 3. Thermal Image of a Prominent Submarine Groundwater Discharge. Adapted from Johnson (2008)

892 *Peterson et al.*

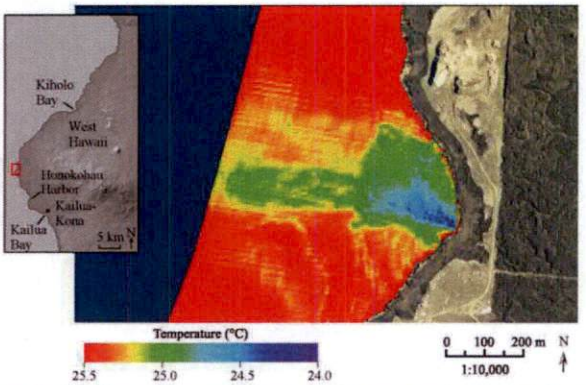
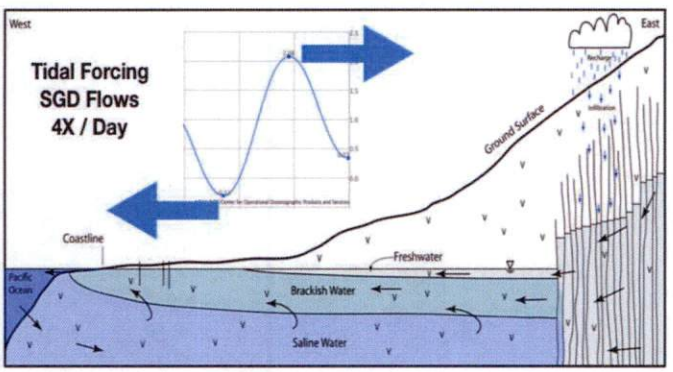


Fig. 2. Example of aerial TIR image of a buoyant SGD West Hawaii SGD plume, located north of Kailua-Kona in the vicinity of Kona International Airport, Makako Bay (19°44'09"N, 156°03'11"W). Note the marked cool surface water temperature of the plume relative to ambient ocean water. Image from Johnson (2008).

This collective and massive flow of groundwater into the sea is part of our island water cycle, and it has been flowing this way long before the Hawaiians came to inhabit the island. Now that the shore area is urbanized or otherwise altered in the last century; what is flowing in this water now is of great interest and concern.

The take-home story in this section is that groundwater flows dramatically alter the nearshore ocean and it's easily detected and measured with simple instruments like a thermometer or salinity meter. This will take on greater significance in Part III.

Figure 4. The Tidal Forces that Drive the Subterranean Estuary (STE) on the Kona Shore.



Adapted from Johanesson 2017

The greater Kona area is underlain by a complex network of fissures and crevasses filled with saline waters. Anchialine Ponds are a common feature of this geology, yet rather unique to Kona, Hawaii. The term, Subterranean Estuary (STE) more aptly describes these structures (Bishop 2015). Monitoring wells tracked by NELHA[4] as far as one mile inland provide evidence of seawater intrusion and water levels consistent with tidal action (Peterson 2009). This fact is largely unrecognized by the state as well as the community. The implications are profound. Marine waters of the Kona Coast communicate with ground water well inland and vice versa. Nonetheless, wastewater discharges to land in this region are likely to be impacting the waters of the coast and circumventing requirements for the regulation of such waste discharges to the waters of the United States.[5]

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[4] NELHA CEMP Report https://nelha.hawaii.gov/resources/library/nelha-lab-reports/

[5] *Cty. of Maui v. Haw. Wildlife Fund*, 140 S. Ct. 1462, 1476 (Apr. 23, 2020)

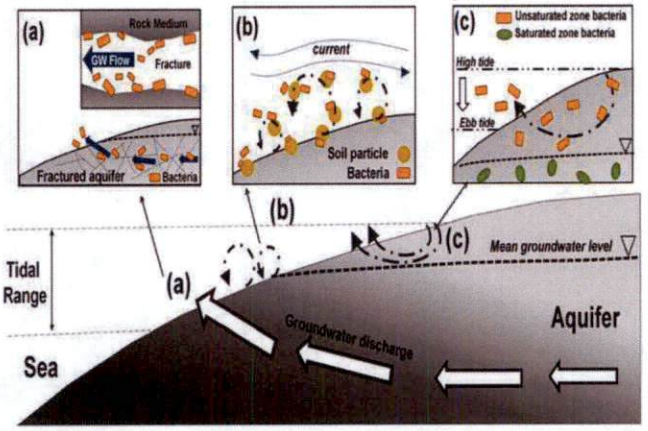
II. Influence of Tides on the Recreation Safety Bacterial Water Quality Indicator

When the local news recently (Jan 8, 2019) reported several beaches on Oahu were closed due to elevated Enterococci (ENT) indicator bacteria, and Kahalu'u Bay was "Posted" by the Health Department of Hawai'i, at about the same time. These events raised curiosity. There had been no significant rain events on the islands, and no sewer spills to cause health department warnings. Instead, the warnings arose for beaches widely separated geographically and simply because the levels of ENT were elevated above the regulatory threshold.

The State Department of Health monitors the indicator bacteria Enterococci (ENT). The official belief was that ENT was a useful marker for fecal contamination. A lot of science has shown that it is not a valid indicator, nonetheless, it is still the official test (Boehm 2009). This ENT monitoring data is part of the Kahalu'u Bay collection. When the Bay was posted as contaminated in January, it generated posed a question. We were having colossal Spring Tides at the time. Could the tides have something to do with the bacteria levels? The bottom line is indeed they do. But how?

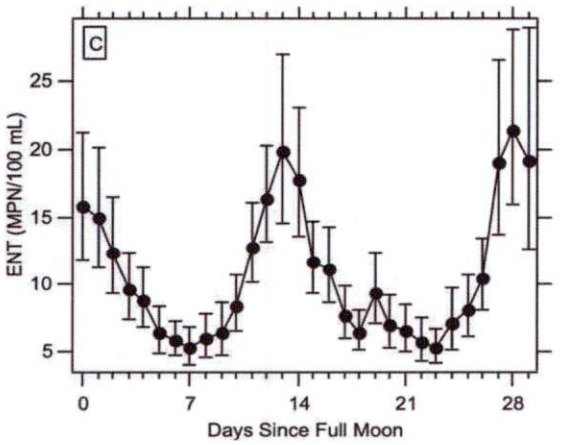
The ENT bacteria are common to land and water sources even where there is no fecal matter at all. They grow in wet places like culverts, compost piles, drainpipes, and wetlands. From there they flow into the sea, and they make a home there too. They can be found floating in the seawater, and that is where the state measures them. But more critically, they live and grow in wet beach sand above and below water level. Many times, more ENT can be found in the beach sand than in the water above.

Figure 5. How Tidal Circulation at the Shore Conveys Indicator Bacteria to the Water Column (Lee 2017)



A super high tide followed by a minus low tide and allows for a huge water outflow from the STE. The water flows above and through the sand dispersing ENT up into the water column where the ENT can be detected and counted. When the ENT count is high, beaches get warning signs and may be closed.

Figure 6. Lunar – Tidal Influence on Marine Water Enterococci (Boehm 2005)



This graph shows the ENT count and the moon cycle. Fourteen days after a full moon are the astronomical Spring Tides and associated rise in the ENT. This tidal force literally stirs things up.

There remains a distinct possibility that elevated ENT counts are often an artifact of the tide cycle at the time of sampling. This bias likely triggers official warnings where there is no apparent health risk events like sewage spills or flooding.

However, given that the region near Kahalu'u Bay is not served by sewer and most homes have utilized cesspits for decades, sewage components may be conveyed to the ocean by groundwater. Microbiologists have documented the presence of human virus in seawater when the ENT is low or absent. The need for a better risk indicator is great. Stable chemical indicators of sewage such as Sucralose (Bennett 2021) and an MRI diagnostic marker (Johannesson 2017) show promise in wastewater tracking research conducted in Hawaii Island.

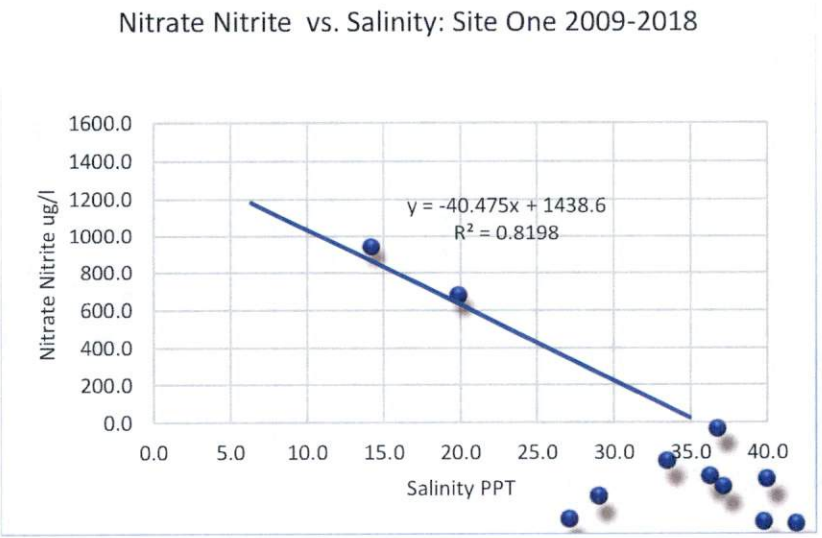
The real good news about the safety of recreation water in Hawaii is the sun. The intense midday UV sunlight penetrates clear water and kills microbes in a matter of hours. We shall see, however, in the next section, clear ocean water is less common these days.

III. The Nutrients Nitrogen and Phosphorus in Nearshore Groundwater[6]

It is well established that brackish groundwater flowing in discrete and diffuse STE is abundant in the nutrient's nitrogen and phosphorus. According to University of Hawai'i researchers, wherever there is cold STE water flows, elevated nutrients are present (Johnson 2008). These flows result in thousands of pounds of the nutrients being conveyed daily to the nearshore waters. Tropical water ecosystems are naturally low in nutrients (De Goeij 2013), and yet corals have adaptations to these conditions. Unfortunately, decades of human derived nutrients in the ocean nourish algal biomass expansion to the detriment of the corals.

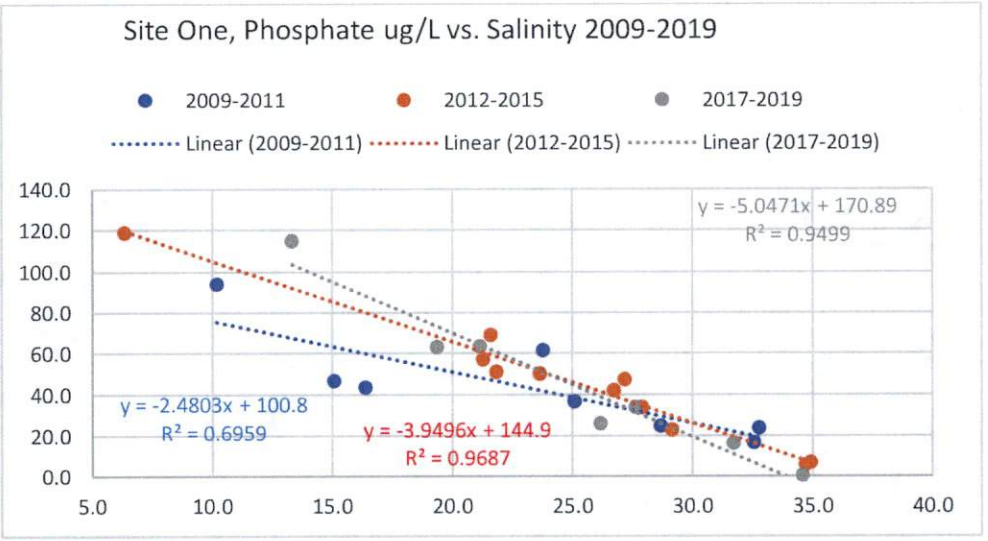
[6] All nutrient analysis performed by the certified laboratory at NELHA

Figure 7. Nitrate-Nitrite Relationship to Salinity



This graph looks complicated, but it's not. Let's interpret. The line says, when sea water is saltier there is less N in it. Conversely, the fresher the water the higher N is there. Taken over 10 years in many locations in the bay and from other Kona Coast sites, this pattern is very consistent. Simply, it means the elevated N source is from the land and groundwater and not from the sea.

Figure 8. Phosphate Relationship to Salinity



This chart looks even more complicated, but it is just three sets of years P plotted against salinity. It shows a very similar relationship as the N chart. Yet here we are looking at a ten-year period in three phases. It answers the question, are things changing over time? For both N and P there is no evidence of a time trend. The nutrient concentrations in groundwater are staying about the same.

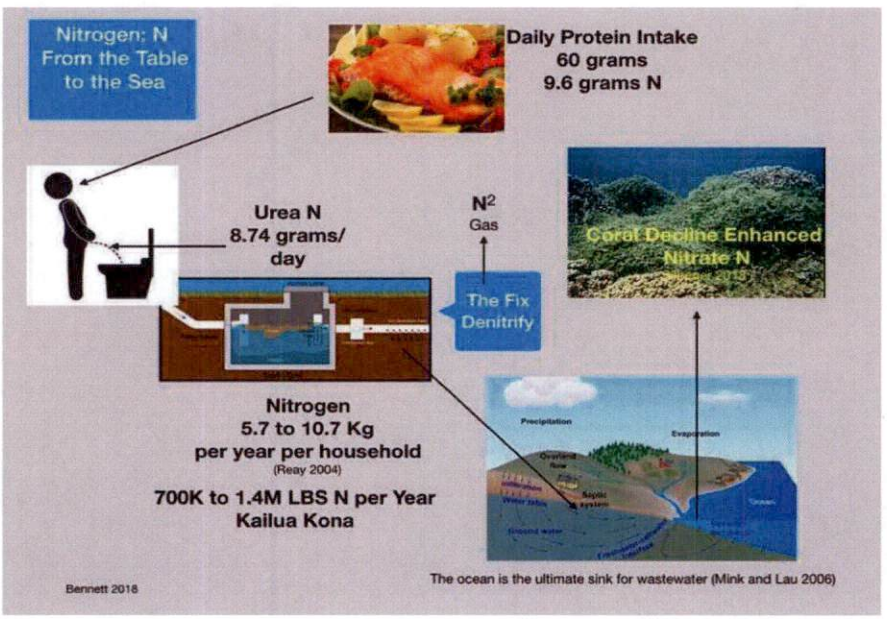
Just as for salinity and temperature in the first report, tidal action dilutes the groundwater and hence the N concentration (Fig. 2). Thus, if one was trying to say there is no problem or a lessor problem, the sample would be collected at the highest tide to get the lowest N level.
In all future work, we must account for the tidal effect on nutrient concentration in nearshore waters.

A very large mass of the nutrients, N, and P, flow into the ocean for almost the entire Kona Coastline. Some have conveniently wanted to say the N and the P are natural, meaning this system was here before humans. While it is true, the mass of nutrients was far, far less as there was little importation of nutrients other than through fish consumption.

Given that, what is the reason for the large mass of nutrients? We are! A lot of research on this island and others shows very clearly that the N and P are from human activity. We say the elevated nutrients are anthropogenic, or human-associated. This includes the fertilizers imported and dispersed in landscape and agriculture. Yet the largest single source is the human diet and the nutrients we excrete daily.

For example, protein-rich foods contain much more N than starchy foods and vegetables. The proteins get absorbed and ultimately broken down and the nitrogen is excreted in the urine as urea. Leave urine in the bowl for a day and the bacteria break it down and form ammonia with its distinctive odor. In the environment, bacteria convert ammonia to nitrate. It is the same nitrate found in a bag of lawn fertilizer.

Figure 9. A Simple Mass Balance for Human Dietary Nitrogen Marine Impact



Each household, on average, contributes about 21 pounds of N per home per year. Add up all the homes in Kailua Kona and a year, and we can produce around a million pounds of N that flow into cesspits, septic systems, and treatment plants. No matter which one is used, most of the N ends up in the groundwater and the sea.

This fertilizer in the sea has the same effect as it does on your lawn. Instead of grass growing, the microscopic green plant microbes called phytoplankton grow and in high numbers make the

water shades of cloudy green. This growth absorbs sunlight making the natural UV disinfection of seawater less effective. Ecosystem research from Kaneohe Bay demonstrates that wastewater N in the bay has an additive effect with increased temperature to cause greater coral bleaching (Tanaka 2013).

Figure 10. Nitrogen Mass Dependent on Ground Water Flow Volume



Lastly, it is not sufficient just to know the concentration of the nutrient flowing into the bay as it tells us nothing of the mass or pounds in the flow. Thus, we must know or estimate the volume of the flow so that we can calculate the mass of nutrients delivered to the sea from the STE.

The blue arrows represent the same nutrient yet at very different flow volumes. The total mass of N, reaching the bay and impacting the ecosystem is very different. Where currents move and mix these nutrients to the open ocean, adverse impacts are less likely. However, in protected embayments like Kahalu'u, the transport and mixing is much less and the impact on the local ecosystem is more significant.

Think of it this way. A little soy sauce on food gives it just the right salt taste, but add a quarter cup of soy sauce on food and it becomes horribly salty. The salt in the soy is at the same concentration; there was simply more salt.

In the bay, we cannot alter the volume of water flowing in, just like we cannot stop a river. So, we need to employ the tools that reduce the concentration of N and P discharged to groundwater.

The people of Long Island NY, Cape Cod MA, and coastal Florida have severely polluted their estuaries from Septic Systems. The environmental and economic consequences are monumental. The residents put their collective shoulders to the wheel and financed solutions research. That research demonstrated a simple technique that removes the nutrients in human wastewater by over 90%. The states are implementing the "Layer Cake-Nitrogen Reducing Biosystem leach field. Kona can do this too. The consequences of "kicking the can down the road" will be dire. Sustainable Hawai'i must be our goal.

For over 35 years, Dr. Bennett has worked in the environmental science field where the land meets the water. From Tomales Bay CA. to New South Wales Australia to the Big Island wherever there are people and oceans there are huge challenges. A resident of Kona since 1999, he serves as Na Mako O Ke Kai (eyes of the sea) for the Kona Coast Waterkeeper Waiwai Ola Ohana.

Acknowledgments
Special appreciation goes out to Cindi Punihaole Kennedy, the founding director of The Kohala Center's Kahalu'u Bay Education Center, and Marine Stewardship and Education Specialist Kathleen Clark. Together with many volunteers, they have collected high-quality data since 2009. The data is the basis of the three reports and this summary. Also extending appreciation to the former UH researcher James. M. Bishop for his assistance in understanding the hydrology of Hawai'i Island and the review of the manuscripts.

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List of Abbreviations

ENT	Enterococci (a genus of bacteria)
IR	Infra-red
MPN	Most Probable Number (method for estimating bacteria concentration)
N	The element Nitrogen
N+N	Nitrate plus Nitrite
NELHA	Natural Energy Laboratory Hawaii Authority
NO2	Nitrite
NO3	Nitrate
P	The element Phosphorus
STE	Subterranean Estuary
UV	Ultra-violet
µg/l	Microgram per Liter

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EXHIBITS R
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBITS R

Petitioners hereby submit **Exhibits R-5-1 through R-5-16**, this exhibit contains a written comment submission dated July 15–16, 2024, from Jeff Caufield, Esq., to the Hawai'i County Planning Department and project-related recipients during the Draft Environmental Impact Statement (DEIS) comment period.

The submission provides detailed expert analysis identifying significant deficiencies in the DEIS, including the absence of baseline studies, lack of quantified existing conditions, and failure to support conclusions with substantial evidence regarding traffic, runoff, water quality, coastal impacts, and cumulative effects.

This exhibit is submitted to demonstrate that qualified expert comments were timely provided during the DEIS process, placing Respondents and the project applicant on notice of specific, substantive deficiencies requiring meaningful evaluation and response within the environmental review process.

EXHIBIT R
Mitchell et al. v. Kamehameha Schools et al.

From: Jeff Caufield <jeff@caufieldjames.com>
Sent: Tuesday, July 16, 2024 9:01 AM
To: Alex.Roy@hawaiicounty.gov <Alex.Roy@hawaiicounty.gov>; KeauhouBay@g70.design <KeauhouBay@g70.design>
Cc: Rebecca Melendez <bigislandtalk@gmail.com>; David Smith <lodeslaw@yahoo.com>
Subject: Keauhou Bay Management Plan Draft EIS - Comments

Caufield & James LLP

555 Paseo Rosal

Chula Vista, CA

July 15, 2024

County of Hawai'i, Planning Department

Attn: Alex Roy

Via Email Only To: Alex.Roy@hawaiicounty.gov

Aupuni Center,

101 Pauahi St., Suite 3

Hilo, HI 96720

Re: Kamehameha Schools, Keauhou Bay Management Plan Draft Environmental Impact Statement

Dear County of Hawaii, Planning Department,

I am submitting these comments to the Kamehameha School, Keauhou Bay Management Plan Draft Environmental Impact Statement. As an initial matter, I have over 30 years experience in the preparation of environmental impact reports and statements and after my initial review of the subject report it appears to be the most incomplete and deficient report that I have ever reviewed. However, before getting in to substantive comments I'll introduce myself.

A. Background Expertise

I graduated from UC Santa Barbara with a degree in environmental studies and from law school from the University of the Pacific, McGeorge School of Law. During undergraduate studies I worked at the Institute of Crustal Studies Vadose Monitoring Laboratory conducting cutting edge research in the movement of pollutants within the vadose zone (defined as the zone of soil between the surface of the earth and groundwater.) Prior to becoming an environmental attorney, I worked for several years as an environmental consultant. I also previously clerked for the United States Department of Interior, Regional Solicitors' Office and the California Department of Fish and Game, Legal Advisors' office. For the past 31 years my legal practice has been in environmental law where I have litigated dozens of cases on behalf of and against public entities related to Environmental Impact Reports and Environmental Impact Statements. I also have assisted in the preparation of many environmental impact assessments, including providing substantive comments and review on behalf of multiple public entities and a number of cities. Part of my expertise includes analyzing traffic impacts, runoff issues, noise impacts, air impacts and toxic/nutrient loading impacts from projects. I have spent literally thousands of hours over the last 30 plus years analyzing such impacts. To date, I have never lost of single case involving litigation over the sufficiency of an Environmental Impact Report or Statement. I have been considered by several courts to be an expert in environmental impact reports and litigation. In one of the last cases I handled involving the failure to prepare an appropriate EIR, the Court awarded over $400,000 in attorneys' fees and costs to my client as the prevailing party. That amount could have been avoided had Los Angeles County simply listened to the comments that we provided. Accordingly, we urge you to similarly listen to our comments as the failure to do so may result in a large and expensive piece of litigation. The environmental impact report and statement litigations have involved a number of subjects including impacts to the local coastal zone and waters. Additionally, I have litigated dozens of cases involving toxic substances, including damages caused to

water bodies from excess nutrients and toxic substances. I am on the editorial board of the Environmental Forensics Journal. I am routinely invited to lecture both nationally and internationally on issues involving the detection and impact of toxic substances and nutrients on the environment, including coastal waters. For example, I was asked to speak at the International Environmental Forensics Conference in China where I spoke on the admissibility of expert opinions in environmental forensic cases related to toxic pollutants. I also have been published in a number of books, publications and have been interviewed numerous times as an environmental expert by local and national media. I also have been a frequent user of Keauhou Bay for over 20 years such that a number of my comments are based on my personal observations over the course of several thousand hours over the last 20+ years. For the past two years I have spent over 200 hours observing usage of the bay, including public usage, the boat ramp and commercial/tourist usage of the bay particularly related to some of the initial scoping documents to see if there was any veracity in the claims presented by the Project proponent.

B. Substantive Comments

As discussed supra, the subject EIS is facially deficient and must be rejected in its entirety. Under existing law, the EIS conclusions and analysis must be supported by substantial evidence to support the analysis and conclusions. It is the burden of the party preparing the EIS to provide support for the document. The failure to provide the required supporting evidence for the statements and conclusions requires that the document be rejected by the reviewing public agencies. For the most part, the EIS appears to be a series of unsupported statements and conclusions and written to appear more as an advertising document for the project intended to "sell" the project to both the public and regulatory agencies rather than providing any substantive research and/or analysis. The comments listed below are not necessarily all inclusive but highlight the many deficiencies. It is our understanding that a number of other experts will also be submitting comments highlighting the deficiencies in the EIS and those comments are referenced, adopted and should be considered to be included herein.

1. The Project Provides No Support Of How It Will Alleviate "Congestion" Use Conflicts

First, the EIS creates a straw man argument that Keauhou Bay suffers from "congestion" and conflicts with incompatible uses. There is no supporting study analyzing the existing number of users on a daily, weekly, monthly and/or annual basis nor the type and timing of the usage. Without such an analysis, the statement that there is a problem with "congestion" and/or "incompatible uses" is simply unsupported by any evidence. There are one or two photographs depicting people standing around the publicly owned dock area, which as people are congregating in publicly owned spaces the report fails to explain how the Project will prevent the public from congregating on publicly owned land. There is also Figure 3-13 which depicts a picture of the bay with ZERO people present, which directly contradicts any claim of congestion. Other than reducing access to publicly owned space, the project provides **no analysis** of how it will reduce the existing number of users nor the purported "incompatible" uses. Without underlying research, study and analysis the statements that the project would reduce "congestion" and/or use conflicts is unsupported and the EIS must be rejected on this basis alone. In fact, it would be reasonable to conclude that the project would substantially increase congestion and use conflicts at Keauhou Bay. For example, with the construction of 43 housing structures containing 150 housing units, which will each likely have 2 cars, with a minimum average of 4 car trips per vehicle per day, the housing units alone will likely add OVER 600 vehicles trips per day. (Based on my observations, the housing units alone will more than likely, on their own, double or triple the amount of traffic in the area.) Plus, you are adding hundreds of new visitors staying in the new housing on the bay, which presumably those new visitors will visit and use the bay. With the proposed cultural center, commercial center, commercial kiosks and employees/workers at the new proposed resort, there obviously will be a substantial increase in the number of additional vehicle trips per day. I'd note that the nearby Pu'uhonua o Hōnaunau National Historical Park ("City of Refuge") reports over 300,000 visitors per year to the site and cultural center. (Volcanoes National Park attracts over a million visitors per year.) Will the new proposed cultural center (located substantially closer to the City of Kailua-Kona so it will be much easier for visitors to access) attract a comparable number of visitors per year to the City of Refuge? The EIS provides no projections based on increased numbers from the cultural center. Even assuming the new cultural center only attracts 100,000 visitors per year (which is less than 33% the number that visit the City of Refuge), that equates to nearly 30,000 additional vehicles trips alone per year. (Note: the City of Refuge Parking lot has 75 parking spots plus there are usually 20 plus cars parked outside the gate, meaning that with staff there are 100 plus parking spots associated with the City of Refuge that are frequently full. The Project proponent has ZERO parking spots in the EIS for the "cultural center" beyond the existing parking.) The kiosks at Alii Marketplace have approximately 40 parking spots that are

largely full most of the time. Accordingly, one would anticipate the "kiosks" at the Project will require comparable parking (if not more because kayak and SUP rentals are likely going to stay longer than visitors to Alii Marketplace.) Accordingly, it may be reasonable to conclude that the Project will add a demand for upwards of 140 parking spots to the existing parking demands. There is no study of the existing parking requirements not assessment of the future parking requirements should the project be implemented. Plus, the EIS identifies the launch ramp area as the area of purported greatest congestion and yet the project proposes to ADD substantial numbers of visitors and vehicles to the area of alleged greatest congestion. The launch ramp cue (i.e. Vehicles/trailers waiting to launch and/or pull-out boats) is noted as an area of greatest congestion. The cultural center is proposed to be built in the area of greatest congestion. The Project fails to explain how adding thousands (if not tens of thousands) of more people and vehicles to the area identified as having the greatest congestion will be reduced by the Project. Particularly, the EIS fails to contain projections as to the increase in number of visitors and vehicles to the area and the extent to which the Project will impact those levels. (Note: With 43 houses and 150 units being built on the bay likely housing 250+ tourists each day plus commercial kiosks with kayak and SUP rentals, the bay daily usage will also likely substantially increase and yet there is no estimate of that impact.) There is NO analysis of the impact on local flora and fauna from the likely increase usage of the bay arising from the project. Moreover, with the addition of SUP and kayak rentals on the bay, the Project is likely to increase conflicts with the existing boating usage of the bay for ingress and egress to the loading ramp and dock area. There is no analysis of the future impacts on existing uses of the bay with the addition of rental kayaks and SUP to the bay. For the foregoing reasons, the EIS must be rejected for failing to provide supporting evidence and documentation.

2. The Report Fails To Analyze Traffic Impacts

As discussed supra, the Project proposes to build a resort with 43 housing structures with 150 housing units (Note: the term "bungalow" seems to be an attempt to mislead the public in to believing that what is being proposed are not in fact large multi-bedroom homes), commercial kiosks, cultural center and commercial/retail center. It also proposes to build a new road connecting the north and south ends of the bay. As discussed supra, the Project will likely result in a minimum of hundreds, if not thousands, of additional vehicle trips per day. There is no study of the what the current number of vehicle trips per day are on the surrounding public roads, the level of impact of the existing stop lights nor

the number of vehicles that travel from the south-north and/or north-south on the existing roadways that would conceivably use the new road. Accordingly, there is no evidence of what, if any, the amount of reduction on the existing roadways would be by the construction of a new road. Moreover, there is no analysis of the additional vehicle trips that would be created by the Project and what those impacts would be on existing traffic conditions nor existing parking. (Note: the impact of toxics on the bay from the Project will be discussed separately.) Moreover, the EIS fails to address how the Project proposes to mitigate the increased traffic impacts. Finally, the EIS asserts that the Project will reduce traffic impacts, without the citation to any evidence and/or study supporting that conclusion. The project also proposes to relocate the existing commercial snorkel boat vendors to the other side of the launch ramp, which means the snorkelers will have to walk across the purportedly congested boat ramp to get to the dock area and load on the snorkel boats. (Note: With the current buildings next to the dock, the snorkel visitors don't have to walk across the busy double-lane boat launch ramp. (One can just imagine how many people will get run over by people either trying to launch and/or pull boats from the water during the day and at night.) On this basis alone, the EIS must be rejected and further studies conducted.

3. The EIS Fails To Address Noise Impacts From The Project

The Project purports to build a large resort, commercial center, cultural center and commercial kiosks. The majority of the project will tear out historically forested areas for which the only noise being generated is by natural flora and fauna and replace it with a resort and new road. There is NO study of the existing noise levels in the area. There is NO analysis of what increased noise impacts to the area will be from the Project other than conclusory statements that are without supporting evidence and/or study. Obviously, the Project will materially change existing conditions related to noise through a substantial increase in activity around the bay. (Potentially adding thousands of new visitors and vehicle noise to the bay area on a daily basis.) An noise study must be conducted to analyze existing noise levels and potential future noise levels.

4. The EIS Fails To Address Air Impacts From The Project

The Project proposes to build a large resort, commercial center, cultural center and commercial kiosks. In building the project roughly 20+ acres of existing native forest will be destroyed to build the resort. As discussed supra, potentially thousands of additional vehicle trips will be added to the area without any analysis as to what the existing air quality conditions are nor the impact of the additional vehicular and project features are to the local air quality. For example, even if the cultural center only has a fraction of the visitation as the 300,000 plus visitors that visit the City of Refuge, that could generate tens of thousands of additional vehicle trips to the bay area on a yearly basis and have potential consequences to the local air quality. (Note: The area is generally not served by any public transportation, which necessitates vehicular travel.) A study needs to be conducted as to existing air quality and future projected air quality impacts from the project, including destruction of forest.

5. The Report Fails To Address Historical Runoff Issues

Currently, Kamehameha III Drive experiences flooding after even an average rainstorm. (Personal observations over the last 20 years.) Portions of the flooding appears to originate from Project lands and nothing in the EIS addresses how the Project will address existing flooding on Kamehameha III Drive caused by Project lands. The EIS also fails to address the fact that historically there were two sand volleyball courts. The 2nd court was situated in the publicly owned land between the seawall and the existing volleyball court. When the project proponent cleared lands (it appears illegally and without and EIS and/or other permit) to construct the existing parking lot and boat storage area the drainage was substantially effected and the rather than have vegetation slow the water flow, the surface flow rate dramatically increased and the 2nd sand volleyball court was washed out along with portions of the remaining volleyball court. (Personal observation.) Note: The EIS fails to address the permit status of the existing boat storage and parking lots on the northern side of Keauhou Bay and I could not find any permit with the County for the construction nor corresponding environmental documentation. Accordingly, it appears that the boat parking lot and other parking lot may be unpermitted. The Project proponent failed to make repairs to the 2nd sand volleyball court located on public lands and existing sand volleyball court that its apparently illegal development destroyed. The EIS fails to address the apparent illegal development of the current northern parking lot and boat storage lot nor the environmental impacts therefrom. Notably, the EIS fails to also address that to the North of the sand volleyball court is a historical catchment area that helped

capture runoff from the northern area where the new parking lots and boat storage were added. (Personal observation and interview of locals.) The Project proponent has failed to maintain the catchment, which has contributed to excess runoff from the area that has damaged publicly owned property. In interview of locals, in the past there have been attempts by the locals to keep the catchment clear so as to reduce flooding from the upper areas. The EIS must address the permit status (or lack thereof) of the apparently illegally constructed parking and boat parking lots including the lack of environmental review thereof, the historical runoff issues from the Project proponent lands that have caused damage to publicly owned property and how the project will mitigate existing issues. For this basis alone, the EIS must be rejected and further studies and assessments conducted.

6. The Project Fails To Address Additional Runoff Impacts From Increased Hardscape

The project proposes to take existing native vegetation areas and tear them out in favor of building the resort, commercial kiosks and commercial/retail. Based on the review of project maps, it appears that roughly 15-20 acres of native vegetation will be removed and replaced with mostly hardscape. There is NO analysis of the existing runoff from the "as is" condition of the properties and project area. There is also no study/analysis and/or projection of the increase flow and rate of runoff from the increased hardscape. The potential increased flow has the potential to alter the fresh/saltwater balance within the eastern end of the bay, which could impact fish and coral. This is a requirement of the EIS. The failure to include such an analysis mandates that the EIS be rejected and further studies of historical, existing and potential future conditions analyzed with appropriate mitigation measures.

7. The Project Fails To Study, Analyze And/Or Provide Projection As To Increased Toxicity And Eutrophication Impacts To Keauhou Bay

As discussed supra, the Project proposes to add potentially thousands of new vehicle trips to the area surrounding Keauhou Bay every day. Also, the Project proposes to add a new road closer to the Bay that would carry the additional traffic along with re-routing existing traffic that is currently roughly more than a ½ mile away and that currently drains to an

existing golf course and forest area. Roadways are well known for the ability to accumulate and dispense toxic pollutants during rainfall events. Thus, by positioning the roadway closer to the bay there is the potential for an increase in toxic pollutants entering the bay and impacting existing flora and fauna. There is NO study and/or analysis of the existing toxicity of runoff to the bay from nearby roadways. Additionally, there is NO analysis or projection of the concentration and ecological impact of the project and additional roadway on future runoff to the bay arising from the Project. Not only do roadways accumulate toxicants that runoff the roadways during rainfall events, but projects such as resorts with houses, pools, lawns etc... also have increased runoff of nitrates and phosphates. Nitrates and phosphates, among similar chemicals, are well known to cause eutrophication to water bodies. Golf courses also have the potential to release substantial amounts of nitrates and phosphates through runoff. Currently, the golf course to the east of the bay drains into the forest area, which the Project proposes to remove. The forest area likely acts as buffer that absorbs nitrates and phosphates that are captured by the existing forest area. At times, after heavy rainfall, the end of the bay closest to Project proponent's property can appear slightly green and with surface scum, which suggests that under current conditions there may be nutrient issues with the current runoff. Not only does the EIS fail to analyze existing conditions but also the impact of the removal of the forest, construction of the road and construction of the resort on the future release of eutrophic chemicals to the bay. On this basis alone, the EIS must be rejected and further study conducted.

8. The EIS Fails To Take In To Consideration The Historical Failure Of Proponent To Maintain Existing Facilities

The EIS fails to analyze the long history of the failure of the Project proponent to provide maintenance to the existing properties. The EIS vaguely references the long-term maintenance issues related to Project proponent's properties and then suggests that the maintenance failure is due to the lack of income from the properties and that in the future the maintenance will improve. Such a suggestion by Project proponent is misleading at best and verges on being an outright fraudulent misrepresentation. Project proponent is a $14.6 billion dollar entity according to its website. (See https://investments.ksbe.edu/endowment#:~:text=As%20of%20June%2030%2C%202023,Real%20Estate%20of%20%244.7%20billion.) Thus, the suggestion that the lack of maintenance was due to the lack of funds is outright untrue as the Project

proponent for all intents and purposes has an unlimited amount of funding available in which to conduct maintenance. Moreover, Project proponent has historically received funding from the Keauhou properties through the boat yard rental, parking, canoe club and building rentals such that the failure to conduct maintenance is inexcusable. For example, the existing seawall owned by Project proponent has been in serious disrepair for over a decade, with the wall having large pieces falling off into the ocean and no repairs have been made. Similarly, after Project proponent's construction of the apparently unpermitted northern parking lots occurred and the sand volleyball court built on public lands was washed away, Project proponent failed to attempt to any repair. Project proponent failed to maintain existing drainage structures to the north of the existing volleyball court. Moreover, the cultural heritage corridor (which they supposedly they care about) has been allowed to fail into disrepair, with broken benches for sitting, peeling paint, overgrown plants and trash that have largely gone unrepaired and neglected for the last decade or more. (Personal observation.) Thus, there is ZERO evidence to support that if the Project is approved that the Project proponent will suddenly and magically start to actually do maintenance on its' properties. As a result, the EIS MUST consider that the Project proponent will act EXACTLY as it has in the past and continue to fail to maintain its' properties and what the implications will be on the future for the Project based on the last many decades of neglect by the Project proponent. Moreover, the EIS fails to disclose and discuss the long history of scandal and abuse associated with Project proponents organization and what transparency will exist to ensure that the Project will do what it is supposed to do. (See e.g. https://www.kamoi.net/media/2020/03/12/an-investigative-report-into-the-past-trustees-of-kamehameha-schools/) The EIS mentions nothing of other "projects" such as the cultural center and botanical gardens along Alii Drive that Project proponent has abandoned and failed to maintain in the past and currently. There is NOTHING in the EIS that provides any checks and balances to ensure that the Project will actually be maintained and based on history on the Project properties and nearby failed projects by the Project proponent, it is unlikely that the Project will meet its' promises. Moreover, the EIS, based on the poor maintenance history by the Project proponent on these and other nearby properties needs to consider the impacts of the Project proponent continuing to conduct basic maintenance on the Project properties as it has done for decades. In other words, the EIS needs to address not only the lack of historical maintenance, other failed nearby projects, and the impact of the failure to maintain the Project in the future. (Typically, a Project such as this will have a detailed maintenance and upkeep schedule of the Project and mitigation measures that then can be adopted as conditions of the Project approval and be enforceable by regulatory agencies.)

9. The Project Blocks Public Access Across Publicly Owned Property

Based on the maps attached to the EIS, there is publicly owned property extending from the end of Kamehameha III Drive to the boat dock area. Currently, there is a path that extends from the end of Kamehameha III Drive to the boat dock area that allows access to the boat dock area. (personal observation and use.) However, the project proposal maps appear to block to existing publicly owned path from the end of Kamehameha III Drive to the dock area. Project proponent misleading fails to identify the existing path and access across publicly owned property. Nevertheless, the Project proponent proposes to block access to the public across publicly owned property, which is illegal. As a result, the EIS must be rejected and the current public access preserved in future versions should be Project wish to move forward.

10. Destruction Of The Sand Volleyball Courts Violates Proponents Charter As Well As Access To Publicly Owned Property

Historically, there were two sand volleyball courts located on the east end of Keauhou Bay. One of the sand volleyball courts was located at the western edge of Project proponents' property, which is the existing volleyball court. According to locals, the existing volleyball court has been in continuous use by the public, including locals and in particular local kids for at least 35+ years. Dozens of comments have been submitted stressing the importance of the sand volleyball courts to the local community. With the limited number of sand volleyball courts available locally, this is the primary sand volleyball court used by local kids who want to learn how to play sand volleyball. As women's sand volleyball is now a collegiate sport and men's sand volleyball is also poised to become a men's collegiate sport, the existing volleyball court is a critical resource for local kids hoping to not only learn how to play volleyball, but also pursue potential college scholarship opportunities. Notably, sand volleyball is one of the sports that most represented by local Hawaiians in the Olympics. Up until Project proponent cleared land to create the northern parking lot and boat parking, there was second sand volleyball court that was similarly used by locals. Project proponent proposes to eliminate BOTH volleyball courts and instead grass in the area as "open space." There is no analysis as to the impact of eliminating the existing volleyball court nor the impact on the local community and uses. Currently, there is roughly 10-20+ adults and kids that utilize the existing volleyball

court on a daily basis. Accordingly, Project proponent should be required to analyze the impact of eliminating the existing volleyball court. There is nothing in the Project that would replace the 2nd court that was damaged by the excess runoff caused by land prior land clearing activities. At a minimum, the Project should be required to replace the 2nd volleyball court that was damaged by Project proponent's activities and to ensure that future runoff is controlled so it does not impact the sand volleyball court. Notably, historical photographs (See attached historical photograph from 1890) show that the East end of Keauhou Bay was a sandy beach ALL of the way up to the base of the hill to the East of the existing volleyball court. The seawall appears to be a late addition built within the existing high tide area. (See historical nautical chart dated 1949, which does not note the presence of any seawall.) Based on the 1949 chart, the seawall itself appears to have been constructed below the mean high tide line, which appears to be publicly owned land. Thus, a large grassy area constructed on Project proponents' property and on the publicly owned lands is incompatible with both historical and current uses. There is no analysis of the impact of the removal on historic cultural uses and current uses. To be consistent with historical uses on both the public lands and lands within the historical mean high tide, Project proponent should be required replace the sand that has been lost and to ensure that it cannot be washed away by excess runoff. Due to the failure to analyze the impacts of the sand volleyball court removal, proposed construction on publicly owned lands and within the mean high tide and the failure to consider future impacts, the EIS should be rejected. (Not to mention the failure to address seawall that is falling down.) Moreover, if Project proponent should consider moving forward in the future, the sand volleyball courts should both be replaced, the drainage fixed and maintained by Project proponent. All of the above should be supported by adequate usage and projection studies.

11. The EIS Fails To Address Congestion Caused Elsewhere By The Removal Of The Sand Volleyball Courts

It is my understanding that literally dozens of comments have been received outlining the usage of the volleyball court and negative impact from its removal. The remaining court is utilized on a daily basis by the public and local kids. It is a long-standing tradition that family's barbeque locally and play on the volleyball courts every weekend. With the removal of the remaining court, the usage will be transferred to already congested sand courts at Magic Sands Beach and Coconut Grove creating both congestion and usage conflicts elsewhere. The EIS fails to analyze existing usage nor where the existing usage

would be relocated. It fails to address potential congestion caused at the other locations by the court removal. A study needs to be conducted of existing usage and the impact of shifting that usage to the 2 remaining sand volleyball courts in the area.

12. Existing And Future Impacts On The Coral In The Bay Are Ignored

The USEPA considers sedimentation, pollutants and nutrients to be some of the primary threats to coral communities. (https://www.epa.gov/coral-reefs/threats-coral-reefs#:~:text=Metals%2C%20such%20as%20mercury%20and,%2C%20feeding%2C%20and%20defensive%20responses.) A healthy coral community is key to maintain a healthy aquatic environment. The status of the health of the coral reefs within Keauhou Bay and the impact of existing sedimentation, toxics and nutrients has not been assessed. Current impacts from Project proponent's properties to the health of the coral reefs has not been studied nor assessed. The EIS fails to quantify the potential amount of sediment, pollutants and nutrients that may be generated from its construction activities nor from the Project. The EIS analyzes no potential mitigation measures that may be adopted to address past and current impacts to the bay from Project proponent's properties nor future impacts to the bay from the Project. As a result, the EIS is facially deficient and rejected so that the appropriate studies of the baseline conditions of the bay are studied and future project impacts are assessed and appropriate mitigation measures adopted to ensure the health of Keauhou Bay.

13. The EIS Fails To Consider Tsunami Impacts On The Cultural Center

Presumably, the proposed "Cultural Center" would contain hawaiian artifacts etc... However, the buildings that Project proponent proposes to utilize as a "Cultural Center" were badly damaged during the last tsunami (which was a relatively small tsunami.) If the Culture Center had been in operation during the last tsunami, precious artifacts would have been lost and/or destroyed. Instead, as the buildings housed snorkel tour businesses, all that was damaged was the buildings and their easy to replace contents. It is inconceivable that any entity that purports to be charged with a duty to protect cultural heritage would place a Culture Center at one of the highest at risk locations on the islands. (Due to Keauhou Bay's triangular shape and rapidly rising depths, a tsunami wave

from a westerly direction is channeled, funneled and magnified by the shape of the bay.) This makes Keauhou Bay one of the locations on the western side of the island most likely to experience the largest tsunami impacts. The report fails to mention that entire buildings adjacent to the proposed Culture Center were destroyed by the last tsunami nor are any mitigation measures proposed. Without any information in the EIS it is unclear what if any protection would exist for the Cultural Center and any artifacts inside.



Threats to Coral Reefs | US EPA

Coral reefs are among the most biologically diverse and valuable ecosystems on Earth. This web site describes the importance of coral reefs, threats to them, and ongoing efforts to protect them.

www.epa.gov

14. The EIS Report Fails To Address Adequate Project Alternatives

The EIS and the Project proponent infer that there is a "need" for greater economic development and use of the property. However, the EIS fails to disclosure the current income levels from the current uses of the properties. Moreover, the EIS fails to address any "smaller" project alternatives. As everyone is aware, Project proponent has spent over a decade in construction of the Kahalu'u Ma Kai Project located on 22 acres nearby. (The hotel closed in 2012.) As that project historically operated a resort and was fully developed, logic would dictate that if Project proponent was concerned about income that property would an ideal location for a

resort. Currently, there is apparently no economic use being made of the Kahalu'u Ma Ka property and very little use for educational purposes. According to the locals, the primary use appears to be for private barbeques and events for select locals connected to Project proponent. (Notably, there seems to be very little to anything "cultural" about 22 acres of non-native mowed bermuda grass, which is a post-european contact non-native species.) Accordingly, if the income from the Keauhou properties is such a great concern, where they are currently making money, and Kahalu'u Ma Kai is making zero income, shouldn't the project be built on Kahalu'u Ma Kai and a more limited project build at

Keauhou? The EIS does NOT explore that alternative. Moreover, across the street from Kahalu'u Ma Kai is, from my understanding, a former "cultural center" and botanical garden that was closed by Project proponent and appears to generate zero income. The EIS fails to analyze a situation where the resort would be constructed on that property and a smaller project constructed on the Keauhou properties. Again, the EIS should consider reasonable alternatives where Project proponents use underutilized properties near the Keauhou properties, and a smaller project be built on the Keauhou properties.

Conclusion

It would be hard to find a more defective and deficient EIS. In the last 30+ years I've yet to see a more facially defective and deficient EIS. The EIS reads like an advertising brochure with a bunch of unsupported claims and conclusory statements. The EIS appears to be written with the goal of misleading the public and regulatory agencies rather than informing them of potential impacts and setting out appropriate mitigation measures. There were virtually no studies conducted of the existing environmental conditions at, near and/or inside Keauhou Bay. Most of the summary conclusory statements have zero evidentiary support. In fact, most statements related to project impacts appear by use of simply common sense to be likely untrue, misleading and false. The Project proponent has the burden to conduct adequate studies of existing conditions and provide an assessment of future conditions, which is has failed to even remotely attempt to do so. The EIS should also assess mitigation measures to reduce the project impacts, which can then be adopted as conditions to the Project approval. Thus, if the mitigation measures and maintenance requirements be adopted as conditions of approval, they become enforceable by the County. The County of Hawaii legally cannot "weigh" expert opinion in deciding whether to approve an EIS. As there are no studies to support the conclusions in the report and multiple expert opinions pointing out the deficiencies in the lack of appropriate studies, projections and mitigation measures the County cannot legally approve of the EIS as drafted.

Very truly yours,

Jeffery L. Caufield



An Investigative Report into The Past Trustees of Kamehameha Schools

In the period of 1992-2001, the trustees of Kamehameha Schools committed acts of abuse of power that would entail months of investigations and news reports. The

www.kamoi.net

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COVER LETTER FOR EXHIBITS R

Petitioners hereby submit **Exhibits R-6-1 through R-6-7,** this exhibit contains excerpts from FEIS Volume II documenting Kamehameha Schools' responses to public and Petitioner submissions during the environmental review process. The materials reflect community concerns, petitions, and written comments submitted by Petitioner Rebecca Melendez and others.

This exhibit is submitted to demonstrate that substantive public and Petitioner input was before Respondents and to support Petitioners' position that such input was not fully or accurately addressed in the FEIS.

Commenters Name	Comment	Response
Rebecca	• Land used and enjoyed by locals • Traffic issue throughout the bay • There is a hotel in Keauhou already. The bay doesn't need another one a block away. • Concern about traffic, crowding, and noise that will take away from the beauty of the bay • KS should focus on offering affordable housing to residents • I don't understand the educational point	Old Kona Road designed to help alleviate congestion. The plan is focused on bringing students and kupa'āina to the bay.
Kimmy Gay	• We play volleyball in a league down there. • Are you removing the volleyball court? • What are the kids going to do? There is no other place to play. There are only 3 volleyball courts in West Hawaii. Kids will go back to the streets instead of having a healthy outlet	The volleyball court is not in KS's present vision.
Ulu Ching	• Mahalo for providing access • How much emphasis is being made on business that is not orientated towards tourism.	KS has not leased any spaces yet. Targeted towards local market. There will be two commercial tenants who currently operate tours in the bay. Open to general retail / commercial businesses including a restaurant. Leases will be negotiated with KS.
Lew Brentano	• What are you anticipating for ADA compliance? Is accessibility built into this plan? • What is the status on Old Kona Road? Old Kona road is a good conduit as long as it's a safe ADA route.	The plan intents to increase connectivity and access throughout the bay. Specific details will be evaluated as part of the DEIS.
Shakti Stream	• Grew up playing volleyball on that court- still go and play volleyball, so does son; VP of the volleyball association • Last untouched place of Kona • Not opposed to change, but as a cultural center, there should be something for the community, not just retail space-- volleyball court is a significant space for the community; could be more beneficial than a retail area Court could move. It could be placed near commercial area like at Coconut Grove in Kona. The court could benefit the area more than a retail space. Court could benefit project.	KS will commit to working with the association and elected officials to find another location. We realize the importance of recreation and healthy lifestyles at the bay.
Peter M	• Applauding educational mission and efforts to provide respect for cultural significance of area. The birth site faces the dumpster and bathrooms. Needs to be cleaned up to pay respect to ali'i.	KS's objective is to steward the land in perpetuity. There are no existing revenue generating uses at Bay to fund the needed stewardship. We don't want to drain on other endowment funds set

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Comments	**Commenter**	**Responses**
		achieve the goal of developing resilient communities by stewarding the ʻāina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP process. The income generated from activities at Keauhou Bay – including the resort – will be used to support KS' mission as well as the educational and cultural components of the Keauhou Bay Management Plan. Thank you for your participation in the environmental review process.
Rebecca Melendez	I was the first to speak at your zoom meeting. Thank you for hearing the community. I wrote a letter to West Hawaii Today sharing my and others' views from the zoom meeting on keeping Keauhou Bay from becoming a crowded resort. I am also the one who put up the petition titled Save Keauhou Bay from Becoming a Crowded Resort. I'm sure you have received my petitions emails that, as of 3:25 pm, has 1,681 signatures on this petition. This petition has only been up for 8 days. I'm sure there will be more signatures added to it going forward. I know you are just doing your job to help improve The Big Island. Please, you must be aware that this bay is so very small and the locals use it all the time	Thank you for your letter dated April 19, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge your comments related to the KBMP. As the steward of approximately 54 acres at Keauhou Bay, Kamehameha Schools (KS) has specific kuleana to

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	for family gatherings, funeral services, baptisms, volleyball, paddling canoe, bbq's with the family, and... it is an extremely historical and special, not crowded Bay for everyone. Can you please be aware that if you build those 150 bungalows it will take this land away from the locals and visitors and bring in a huge crowd to this extremely small, historical, and sacred area can not handle because it is so very small? It will never be the special place that it is today. It will honestly take away from the quiet, loving, mother nature feel of this special bay. Building a cultural center for the Hawaiian people and everyone to enjoy would be very special. Updating the commercial buildings that are already there would be good and creating a walkway so the disabled can get from one side to the other side of the way would be extremely welcomed as well. All of this supports the feel of staying small and local and giving Aloha to the land and the people. Please, your company listened to us when your company wanted to build a new resort at Kahalu'u and you decided to build a park for everyone to enjoy instead. You heard us then, please, hear us now. Please, understand how special this possibly last historical place on the Big Island is to all the locals who live here, and especially the Hawaiian people. I know your company does the right thing because you did the right thing at Kahalu'u beach back in 2016. The Hawaiian people have had so much taken away from them, please let them keep this last sacred bay, the birthplace of their King Kamehameha III, and please keep it special for the rest of us who moved here as well. This bay needs to be preserved for generations to be able to enjoy it without a resort crowd that's like Hapuna beach. This bay is not even a quarter the size of Hapuna, it is so very small, it just can't handle a big resort crowd. It would be very uncomfortable for all of everyone, including the new crowd that would come because everyone laying out their towels to sunbathe, there's just not enough space and I honestly don't think Kind Kamehameha III would really have wanted his birthplace to be a crowded tourist area. I would think he would want to keep it for his people and the people who love the island.	maintain and support the management of the bay and its resources. The significant demand and utilization of the bay can and often does create congestion which leads to user conflicts along the bayfront. KS lands at the bay are also significantly impacted by unauthorized uses, trespassing, vandalism, and other unsanctioned activities. Through consultation with lineal descendants and community members it was determined that doing nothing is not a viable option. Guided by KS' mission and vision, the Project aligns with the current KS Strategic Map 2025 which is a strategic planning document aimed to achieve the goal of developing resilient communities by stewarding the ʻāina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP process. The Project Area has been heavily infiltrated by non-native and

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	My petition's name is change.org/savetheland, in 8 days, this short amount of time has over 1,681 (and climbing) people agree to please keep this bay as it's been for decades, with just a few changes that would benefit everyone, the land included. So the locals and visitors can fully enjoy it without a resort crowd for generations more. I know your job must be very challenging. You have to see both sides and make a good decision about what is good for the island and the people who live here. You are Kamehameha Schools, that name represents the King who was born in Keauhou Bay. It represents the preservation of the land and the Hawaiian people's history and that is what Keauhou Bay represents. If you take this land away and give it to a crowd of tourists that will come with the 150 bungalows, it is not preserving the land for the next generations of the Hawaiian people that are to come, and the people who love this island, like me, it will take away one of the last historical areas that is fully enjoyed and loved as is by everyone. Plus, if you take out all those trees that help keep the temperature down by providing shade, and help keep erosion down by holding on to the land, the bay could become even more muddy after storms and throughout every day, because those trees provide safety for the bay to not have as much mud. The trees help the bay is many different ways. Adding more commercial builds to this small bay, especially when there are many For Lease signs in Keauhou Shopping Center, is not being sustainable and using what we already have. People don't really shop in this area and I understand wanting to add commercial boutiques for the tourists to shop who would stay in the bungalows but can't you see how this would turn this precious bay into a shopping craze and be like the island of Oahu? It would take away from the beautiful feel of The Big Island. Isn't this nature feel of The Big Island worth saving? I understand making a profit is important and there are many ways to make a profit besides building bungalows in one of the last historical places on the island. There must be a way to turn a profit without taking away from the land, taking away from the Hawaiian people, and everyone who loves and uses this bay daily without a crowd.	invasive species. The KBMP has been designed to ensure that the physical attributes of new development are compatible with the existing landscape. The landscape design integrates native plants and landscaping elements that are representative of the natural and cultural landscape. The landscape design also incorporates xeriscape techniques that complements the dry climate, pays tribute to the region's agricultural past, and incorporates planting of native vegetation. Potential land erosion due to the implementation of the KBMP has been addressed in the Draft Environmental Impact Statement (DEIS). DEIS Section 4.5, describes stormwater runoff peak flow estimates for both existing conditions and with project implementation. At present, portions of the KS properties at Keauhou Bay are unmanaged and susceptible to runoff and erosion. The Project is expected to result in long-term benefits as permanent sediment control measures and stormwater infrastructure would minimize runoff and erosion. Those strategies may include but are not

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	I appreciate you taking the time to hear us and consider our side.	limited to detaining, retaining and infiltrating runoff into the ground. Thank you for your participation in the environmental review process.
Rebecca Melendez (Petition)	Donating $ after you sign ONLY goes to promoting this petition. We will have a non-profit business to help this cause more soon. Keauhou Bay is historical sacred land. It's also a small commercial and quiet residential area, with a local canoe club that uses the bay daily, local volleyball groups that play there daily, families BBQ every weekend, hold funeral services, baptisms local kids enjoy swimming, and visitors enjoy paddle boarding and kayaking all the time without a crowd. Read their information on this link https://www.ksbe.edu/keauhou_bay/ It's possibly the last untouched historical area that has not been seriously developed and it has been a comfortable and quiet bay for locals and visitors alike for many years without a big resort crowd. The beach is just over the size of one volleyball court that is there, with an even smaller park on the other side. It doesn't have a crowded feel and it's not big enough to become a resort area. It is also the historical site of the birthplace of the Hawaiian people's King Kamehameha III. The area holds much history and is a very sacred area to everyone, especially the Hawaiian people. Developers are considering building this area up and putting 150 Resort-style bungalows in this very historical, quiet, charming, and small commercial and residential area that many people have enjoyed as it is for many decades. Not only is the area not big enough for a new resort, but there is also already a nice hotel at the point of this bay and Time Share homes right next to that. Both of those work very well with this area and offer tourists a lot of fun places to stay without taking away from the land, its history, quietness, all the local activities, and the small commercial buildings that have been there for many years.	Thank you for your letter dated April 22, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge your comments related to the KBMP. As the steward of approximately 54 acres at Keauhou Bay, Kamehameha Schools (KS) has specific kuleana to maintain and support the management of the bay and its resources. The significant demand and utilization of the bay can and often does create congestion which leads to user conflicts along the bayfront. KS lands at the bay are also significantly impacted by unauthorized uses, trespassing, vandalism, and other unsanctioned activities. Through consultation with lineal descendants and community members it was determined that doing nothing is not a viable option. Guided by KS' mission and vision, the Project aligns with the current KS Strategic Map 2025 which is a

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	Updating the commercial builds that are already there would be great, and adding a nice cultural center there would be nice for everyone as well, not just tourists having bungalows. To have a cultural center where people can learn more about the land, and the Hawaiian people can have a place of their own at King Kamehameha III's birthplace would be great. Creating a walkway so the disabled can get from the Northside to the Southside would be another great add, but NOT building 150 new bungalows for a lot of people who don't even live here, who will then crowd the bay because the bay will be the focus for them staying there. Now, besides putting another resort in this area, they want to open up the old road that has been beautifully overgrown with native plants and is located just above the canoe club and goes right through King Kamehameha III's birth site. This will bring a lot of traffic right through this beautiful historical place where many locals hold family funerals, baptisms, birthday parties... It will overcrowd this very small special area that locals and visitors have been using for many decades, in many different loving ways. Putting a road in could also increase the temperature there because of the pavement, and the traffic that will then pass through this beautiful, historical, sacred, and quiet area will be huge. Trees shade this area right now very well and also help keep the erosion down by helping stop a lot of mud and debries from going into the ocean after big tropical storms that the island has sometimes. Without trees the bay could be extra muddy. Plus, they want to add more commercial shops to Keauhou Bay, and Keauhou Shopping Center has a lot of empty For Lease stores available. To create more shops when there are shops empty and For Lease in Keauhou Shopping Center just above the bay, is not being sustainable and using what we already have. Please HELP SAVE Keauhou Bay from becoming a big Resort area. It is one of the last historically untouched areas on the island that has not been	strategic planning document aimed to achieve the goal of developing resilient communities by stewarding the ʻāina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP process. The Project Area has been heavily infiltrated by non-native and invasive species. The KBMP has been designed to ensure that the physical attributes of new development are compatible with the existing landscape. The landscape design integrates native plants and landscaping elements that are representative of the natural and cultural landscape. The landscape design also incorporates xeriscape techniques that complements the dry climate, pays tribute to the region's agricultural past, and incorporates planting of native vegetation. Potential land erosion due to the implementation of the KBMP has

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	overdeveloped and has been fully enjoyed completely by locals and visitors for many decades.	been addressed in the Draft Environmental Impact Statement (DEIS). DEIS Section 4.5, describes stormwater runoff peak flow estimates for both existing conditions and with project implementation. At present, portions of the KS properties at Keauhou Bay are unmanaged and susceptible to runoff and erosion. The Project is expected to result in long-term benefits as permanent sediment control measures and stormwater infrastructure would minimize runoff and erosion. Those strategies may include but are not limited to detaining, retaining and infiltrating runoff into the ground. Thank you for your participation in the environmental review process.
rfpcpa perron	Please stop the insane idea of building a resort on sacred ground.	Thank you for your letter dated April 22, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge your concerns realted to the boutique resort. As the steward of approximately 54 acres at Keauhou Bay, Kamehameha Schools (KS) has specific kuleana to maintain and

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COVER LETTER FOR EXHIBITS R

Petitioners hereby submit **Exhibits R-7-1 through R-7-8,** this exhibit contains excerpts from FEIS Volume II documenting Kamehameha Schools' responses to expert written scoping comments submitted by Jeff Caufield, Esq., an environmental attorney with extensive experience in environmental impact analysis. The materials reflect early, detailed concerns regarding traffic, land use, environmental impacts, cultural resources, and project justification.

This exhibit is submitted to demonstrate that expert-level concerns identifying substantive deficiencies in the project and environmental review were presented at the earliest stage of the process, placing Respondents on notice of issues requiring meaningful analysis and response.

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		the Project aligns with the current KS Strategic Map 2025 which is a strategic planning document aimed to achieve the goal of developing resilient communities by stewarding the ʻāina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP process. Thank you for your participation in the environmental review process.
Jeff Caufield	Thank you for the opportunity to provide comments. My name is Jeff Caufield and I am the owner of the house located at 78-7106 Kamehameha III Drive and as such we are the closest house to the proposed activities. Unfortunately, as I was coaching volleyball during the zoom meeting, I am submitting written comments. I'd first like to go into my background. I have an undergraduate degree in environmental studies from the University of California, Santa Barbara. During college I worked for the Santa Barbara redevelopment agency wherein I assisted in the redevelopment design and planning of the lower State Street in Santa Barbara. Also during undergrad and law school I worked for an environmental consulting firm. I graduated from law school in 1993. During law school I interned in the legal counsel's office at the U.S. Department of Interior. For the past 29 years my practice has specialized in environmental law, which includes an emphasis of environmental impact statements and reports. Prior Court rulings have acknowledged my expertise	Thank you for your letter dated April 12, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge your comments related to the KBMP. As the steward of approximately 54 acres at Keauhou Bay, Kamehameha Schools (KS) has specific kuleana to maintain and support the management of the bay and its resources. The significant demand

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	in this area and that over the last 22 years I have never lost of case related to an environmental impact statement or report. I also lecture both nationally and internationally on various environmental topics, including lectures related to environmental impact reports and statements. You can access my law firm website at www.caufieldjames.com. In sum, I both have the education, experience and Court recognized expertise in the subjects I am addressing herein. I. THE PROJECT WILL CAUSE SIGNIFICANT NEGATIVE TRAFFIC IMPACTS With the addition of 150 resort bungalows, that average 1,800 square feet in size, and assuming, at a minimum, one to two cars per bungalow that translates to an additional 150-300 cars per day on lower Kamehameha III Drive. (Note: referring to a 1,800 square foot structure as a "bungalow" is misleading as they are significantly larger than most local 3 bedroom homes, in reality the proposal is to build 150 homes attached to a resort.) As with most vacationers, the number of car trips to/from the bungalow will typically average a minimum of 2 trips (4 going/coming) per car per day. Thus, the resort bungalows will result in a negative impact of between 600/1,200 additional cars per day on lower Kamehameha III road. Assuming that the car trips will be concentrated during primarily daylight hours (assuming 16 hour primary concentration period) the increase in vehicular traffic on Kamehameha III Drive will average between 37.5 – 75 cars per hour. In sum, the project proposes to add, at a minimum one additional car per minute everyday for 16 hours a day on lower Kamehameha III Drive. Additionally, the project proposes a further significant increase in traffic by paving and extending Old Kona Road and opening it to major vehicular traffic. Currently, boats seeking to launch and/or visitors at the Outrigger Hotel have to completely drive around the Keauhou Bay to access the intersection of Alii Drive and Kamehameha III road. The project proposes to create a "short cut" that will channel existing vehicular traffic from the south side of the bay to lower Kamehameha III Drive that will likely increase vehicular traffic substantially. With the addition of new commercial and dining in the area, the traffic will only be worse. In sum, while the project proposes to address	and utilization of the bay can and often does create congestion which leads to user conflicts along the bayfront. KS lands at the bay are also significantly impacted by unauthorized uses, trespassing, vandalism, and other unsanctioned activities. Through consultation with lineal descendants and community members it was determined that doing nothing is not a viable option. Guided by KS' mission and vision, the Project aligns with the current KS Strategic Map 2025 which is a strategic planning document aimed to achieve the goal of developing resilient communities by stewarding the ʻāina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP process. We understand that parking and circulation has been challenging in residential neighborhoods surrounding Keauhou Bay. Street capacity and traffic circulation was

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Table 7.2 DEA Summary of Comments and Responses		
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	fictional "congestion" the project does the exact opposite by likely increasing vehicular traffic on lower Kamehameha III Drive by likely an order of magnitude, if not more. As for vehicle "congestion" purportedly around boat launch area, there is very little "congestion" aside from early mornings when boats are lined up to launch. That is typically of any launch and the project cannot and does not propose to address this issue. Thus, the "scope" and notice of preparation is extremely misleading to public in what it purports to accomplish. **II. THE PROJECT WILL CREATE SIGNIFICANT CONGESTION OF PEOPLE IN AND AROUND KEAUHOU BAY** Having lived in the house closest to the project for the past 5 years and visited Keauhou Bay fairly regularly for the past 18 years the representation that there exists "congestion" at the Keauhou Bay from people is simply untrue and misleading. Currently, the canoe club generally has practices in the mornings at which time there may be 10-20 people that generally meet, launch canoes and paddle out within 15-20 minutes of arrival. When the paddlers return, they typically are gone within 20 minutes. On average during a typical summer day, there may be 2-4 people swimming/paddling in Keauhou Bay and maybe one or two people on the shore. It is not unusual to not see anyone on the bay or shore for several hours each day. A time when the number of visitors to the bay may increase is typically during the loading/unloading of the Fairwinds. However, the guests typically arrive roughly 30 minutes before launch, line up about 5 minutes before launch and then are gone for hours. When they return, the are typically gone within 10-15 minutes. The guests do not potentially impact cultural resources nor do they cause "congestion" of uses at the bay. Off the water there is usually adults/kids playing volleyball on the single sand court in the afternoon, people fishing from the dock area and paddling practice in the afternoons. After observing the current usage on a daily, weekly and monthly basis there is no "congestion" around the bay. Occasionally, primarily on weekends, local families due host BBQs at the south side park and that may increase the number of people using the bay. However, this should not be considered to be "congestion" but simply typical local usage and enjoyment of	taken into consideration during the development of alternatives. The Project involves multiple design elements to improve overall circulation and alleviate congestion. The Project proposes to improve the Old Kona Road to support multi-model transportation options while also providing a linkage across the two sides of the Bay. The roadway is intended to be pedestrian orientated to serve as a key walking route for residents and resort guests to access the dining, commercial, and recreational activities throughout the area. The Draft Environmental Impact Statement (DEIS) provides an analysis of potential traffic impacts in Section 4.11. A Mobility Analysis Report (MAR) was prepared by Fehr & Peers to identify and assess existing and future mobility option as well as potential traffic impacts generated by the Project *(Appendix E)*.The MAR found that the implementation of the Project would not result in significant traffic impacts. The mauka / makai corridor is proposed to improve public access and to enhance the areas for educational and cultural activities.

EXHIBIT R
Mitchell et al. v. Kamehameha Schools et al.

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	the bay. The project proposes to add 150 bungalows, a restaurant and commercial vendors at the bay. Assuming that each bungalow has only 4 people (which is probably low based on the square footage) you'll likely have a minimum of another 600 people per day potentially in and around the bay. This will, at a minimum, at least double or quadruple the daily usage around the bay (not counting the additional crowds using the restaurant and commercial venues.) Thus, the project as proposed can only create congestion comparable to what you can see every weekend at Magic Sands but on a daily basis. III. THE MAUKA/MAKAI OPEN SPACE The Keauhou Canoe Club was built by the local volleyball players that enjoyed paddling around 40 years ago. Both the Keauhou Canoe Club and the volleyball players have paid out of pocket for 40 plus years to maintain the park area where the canoe club is located and for maintenance of the sand volleyball courts. To this day the volleyball players are always willing to help the club move canoes and many of the paddlers, and in particular the kids, will stay and play on the volleyball courts after practice. Some of the best local paddlers such as Kua Nolan grew up paddling on the bay and then playing volleyball on the sand courts right after practice. It would appear that the plan is to "reorient" the canoe club but provides no specificity upon which comment can be made. For the past 40 plus years there has been two sand volleyball courts on the east end of the bay below the canoe club. Due to both the tsunami and an episodic rainfall the western sand volleyball court was damaged and is in need of repair. Currently, the remaining sand volleyball court is used on a daily basis by locals. In particular, there are volleyball classes for the local kids on almost a daily basis. Any plan that would not include restoring both volleyball courts would be devastating to the local community and in particular the kids that are learning how to play volleyball on the court. In Kona, there is a sand volleyball court at Coconut Grove that extremely heavily used by the locals, a sand volleyball court that is primarily used by tourists at Magic Sands and the sand courts at Keauhou. Thus, it is absolutely vital for the sand volleyball courts to be restored or else the local community, and in particular the kids, would lose	DEIS Section 3.2.3 describes the Project's aim to visually and spatially consolidate the mauka and makai recreation areas to create an expanded shoreline park through landscape improvements. Improvements aim to expand public access to the shoreline through KS-managed lands by establishing a mauka to makai recreation corridor adjacent to the existing canoe hālau; this will require a reconfiguration of the existing sprawling canoe uses and volleyball enthusiasts along the immediate bayfront area. Improvements include the removal (and potential relocation) of the unsanctioned sand volleyball court to provide a walkway with native landscaping accenting and open recreational space. The repurposed sandy volleyball area mauka of the main seawall will be regraded and planted with an irrigated grass lawn to limit erosion and create a more sustainable open-lawn environment. At present, KS does not have an agreement with any entity for use of the volleyball court. Further complicating the matter, a portion of the land underneath the court is within the County right-of-way and

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	one of the few places they can learn and play. In areas like California, sand volleyball is a boys and girls high school sport. If the courts were to be repaired and restored, the local high schools could host matches on the Courts. This is particularly critical in that girls beach volleyball is now a collegiate sport such that girls wanting to play beach volleyball in college need a place to play and train. Currently, there is no place for the high school kids to play and train on a regular basis other than the Keauhou Courts. Hawaiian volleyball players have enjoyed success on the national and international level, including gold medals at the Olympics and it is deeply ingrained in the modern hawaiian culture. The volleyball players are always very welcoming to other locals and visitors that want to join in and play. However, in the past when there were two courts it enabled different levels of players to play at the same time with the people that wanted to play in groups on one court and the players that wanted to play more competitive doubles and/or four verses four playing on the other court. On most weekends, local families host barbeques on the east side grass park and both use the bay and the sand volleyball court. Currently, with only one court there can be a couple of players waiting to play at times. The scoping document asserts, without evidence, the following: "Although there is legal public access to the shoreline, canoe and volleyball activities dominate the shoreline area and create a perception of exclusivity. This, coupled with the hustle and bustle of ocean commercial operations catering mainly to visitors cause many local families, with some long-standing generational ties to the bay, to no longer feel welcomed - ultimately disconnecting them from the wahi pana." (pg. 2-6.) The proposal to at least quadruple the number of visitors accessing Keauhou Bay through the 150 bungalows, new commercial venues and restaurant would take the usage, which currently is largely locals, and shift it to commercial visitor access will worsen the perceived problem, not improve it. Currently, every weekend there are local barbeques and local parties at the grassy park on the north side of the bay. In the past when the 2nd sand court was present, and there was nice sand behind the wall, there was always people setting up picnics on the weekends along the wall. However, with the	therefore outside of KS ownership. KS is committed to the continued consultation with elected officials and representatives of the Kona area to discuss how outdoor recreational activities such as volleyball can be planned in more appropriate areas. We acknowledge your concern that additional parking is needed for commercial users and residents. One objective of the Project is to improve existing parking areas to enhance their capacity, safety, and security. DEIS Section 3.2.5 discusses the Project's proposed parking improvements. After full build out of the Project, the supply of parking for both the general public and for boat trailers is expected to increase (88 new parking stalls and 23 new boat trailer parking stalls). Potential land erosion due to the implementation of the KBMP has been addressed in the Draft Environmental Impact Statement (DEIS). DEIS Section 4.5, describes stormwater runoff peak flow estimates for both existing conditions and with project implementation. At present, portions of the KS properties at

Table 7.2 DEA Summary of Comments and Responses		
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	sand largely gone and sharp gravel on top of the hard packed ground, the locals no longer use the area behind the wall as frequently for picnics (although there typically is at least 1 family that may use the sand/gravel area behind the east end by the volleyball court on the weekends.) If sand is brought back in and the 2nd court placed nearer to the existing court, there will be a nice 40' x 100' area behind the wall on the east end for local families to enjoy. In sum, the plan needs to re-fill in the sand area behind the south break water wall, rebuild both volleyball courts and create a nice sand/picnic area behind the wall. **IV. PARKING CONGESTION IS ONLY GOING TO GET WORSE** Currently, parking on the south side of the bay can be congested due in large part to the lack of parking for vehicles with boat trailers. Development of a vehicle/trailer parking lot on the south side is long overdue. The number of tourists parking on the south side is comparatively limited. On the north side of the bay there is generally street parking off Kamehameha III Drive and there is designated parking for the Fairwinds tours in an unimproved lot on the south side of the bay. The parking on the north side became more limited when someone made the decision to restripe the cul-de-sac and have only parking for 5 cars when the cul-de-sac used to regularly park 10+ vehicles. Nevertheless, even on the weekends when there are large barbeques at the park the parking on Kamehameha III Drive rarely requires parking more than a block to the water. However, with the addition of a least 300 cars through the bungalows and new commercial venues parking is going to get a lot worse. As has been experienced with the other hotels that charge $20 or more per day for parking, guests at the hotels simply look for on-street parking to save money. Thus, while the average number of cars parked everyday on Kamehameha III drive is probably less than 10, the plan will likely place another 50-100 cars per day parking on Kamehameha III Drive with bungalow guests looking to save money on parking. As a result, the plan, as currently proposed can only lead to significantly worse parking issues on the north side of the bay. **V. INCREASED POLLUTION KEAUHOU BAY**	Keauhou Bay are unmanaged and susceptible to runoff and erosion. The Project is expected to result in long-term benefits as permanent sediment control measures and stormwater infrastructure would minimize runoff and erosion. Those strategies may include but are not limited to detaining, retaining and infiltrating runoff into the ground. DEIS Chapter 3 provides a detailed description of the Project inclusive of restoration activities of Ho'okūkū Pond. As part of the improvements in the heritage corridor, the Project will expand the remnant anchialine pond and restore ecological systems within Ho'okūkū Pond to enhance conditions for native species to thrive. DEIS Section 4.5 describes potential impacts and mitigation measures to protect surface water at the Project Area. Thank you for your participation in the environmental review process.

Table 7.2 DEA Summary of Comments and Responses		
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	The project proposes to add significant numbers of both people and vehicles in and around Keauhou Bay. This includes large paved parking lots for both the bungalows and other parking. Currently, other than the few cars that park on the street, the cars that park to use the Fairwinds park in unimproved lots. When it rains, the unimproved lots can be a non-point source of pollutants that likely should have some runoff controls. However, the majority of time it rains there is no runoff from the existing unimproved parking as the water simply soaks into the ground. The addition of acres of paved parking lots, which are well documented sources of non-point source pollutants such as heavy metals and hydrocarbons that will be channeled into the bay is not even mentioned in the scoping document and should not be ignored. **VI. THE PROJECT PROPOSES TO POTENTIAL DESTROY IMPORTANT FRESHWATER CULTURAL RESOURCES** Historically, Keauhou Bay was used by the original Hawaiians, in part, due to the presence of freshwater resources from springs in the area. Springs are naturally recharged by rainwater soaking into the ground. Very little of the project area is currently paved such that the freshwater springs continue to be recharged by rainfall. However, with the addition of many acres of impervious surfaces through the resort and acres of parking lots, the potential recharge sources may be eliminated and the springs negatively impacted. The scoping document does not propose to address the negative impacts to the local springs from the project. **VII. TRAFFIC IS BEING CHANNELED INTO CULTURALLY SENSITIVE AREAS** The Old Kona Road paving and extension will funnel traffic directly into the areas of the project that are deemed to be culturally sensitive. Nothing in the proposed scoping document purports to address the fact that vehicular traffic is being funneled into culturally sensitive areas. **VIII. CONCLUSION** The scoping document appears to be very misleading in stating purported "issues" as if they were facts and then purporting to "solve" the problem when in fact the project, as proposed, will only create problems where none	

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	exist. The foregoing comments are just the "tip of the iceberg" with respect to the problems with the scoping document and the many misrepresentation and misleading statements.	
Jenn Murphioka	Please do not build at Keauhou Bay. There is already a resort and many timeshares down in Keauhou. Keauhou Bay is important to my family. We spend so much of our time here. It is the perfect place to cruise with my family - the beach access is perfect for children. On Sundays, we take out the paddleboard and OC-1. It is our home away from home. I paddle for Keauhou Canoe Club. Our hālau is here. I spend at least 3 days here each week. I love seeing my students and their families enjoying the beach and water at Keauhou Bay. I do not want to see beach "bungalows" where our hālau currently stands. We do not need anymore oceanfront beach bungalows - visitors have plenty of other beachfront options, if that is what they are looking for. Do not build another resort. There is one right around the corner. Stand up for the people that live here. Let our voices be heard.	Thank you for your letter dated April 22, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. We acknowledge your concerns related to the boutique resort. As the steward of approximately 54 acres at Keauhou Bay, Kamehameha Schools (KS) has specific kuleana to maintain and support the management of the bay and its resources. Guided by KS' mission and vision, the Project aligns with the current KS Strategic Map 2025 which is a strategic planning document aimed to achieve the goal of developing resilient communities by stewarding the 'āina to support resilient economies, cultural landscapes, diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational

EXHIBIT A-4-19
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT A-4-19

Petitioners hereby submit Exhibit A-4-19, consisting of an excerpt from *Public Access Shoreline Hawai'i (PASH) v. Hawai'i County Planning Commission*, addressing the obligations of agencies under Article XII, Section 7 of the Hawai'i Constitution and HRS § 1-1.

This exhibit demonstrates that agencies are required to protect customary and traditional Native Hawaiian rights, including access and cultural practices, and that such rights are entitled to affirmative protection within land use decision-making processes. The excerpt further confirms that these protections apply within the context of coastal zone management and Special Management Area (SMA) permitting, and must be considered in relation to the impacts of proposed development.

Exhibit A-4-19 supports Petitioners' claims that Respondents were required to identify, evaluate, and protect traditional and customary practices at Keauhou Bay prior to acceptance of the FEIS, and that failure to do so constitutes a violation of constitutional and statutory obligations.

This exhibit is cited and relied upon in support of Petitioners' claims regarding cultural rights, public trust obligations, and the legal requirements governing agency decision-making under Hawai'i law.

The following factors, inter alia, may constitute significant adverse effects: (a) "an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes"; (b) effects upon "the economic or social welfare and activities of the community, County or State"; and (c) actions "contrary to the objectives and policies of [the CZMA] and the [SMA] Guidelines[.]" HPC Rule 9-10(H)(1), (4) & (10) (emphases added). See also HPC Rule 9-6(A)(2); HRS § 205A-2(b)(2) (one of the CZMA's objectives and policies is to protect and preserve "those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian ... history and culture ") (emphasis added). The interests asserted by PASH fall within these broad categories; therefore, they are entitled to protection under the CZMA. 20 See HRS § 205A-21 (finding that "special controls on development are necessary to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure ... adequate access"); HPC Rule 9-11(C) (authorizing the the HPC to attach "reasonable terms and conditions" to SMA permits); cf. Hammond v. North Slope Borough, 645 P.2d 750, 761-62 (Alaska 1982) (holding that Alaska's version of the CZMA requires its agencies to "assure opportunities for subsistence usage of coastal areas and resources" and to issue development permits only where consistent with Alaska's environmental and cultural interests).

In order for any conditions placed on a SMA permit issued by the HPC on remand to be deemed "reasonable," they must bear an essential nexus to legitimate State interests and must be "roughly proportional" to the impact of the proposed development. See infra section V.B. (discussing the respective requirements from Nollan v. California Coastal Comm'n, 483 U.S. 825, 836, 107 S.Ct. 3141, 3148, 97 L.Ed.2d 677 (1987), and Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994)). Here, the relevant State interests are reflected in article XII, section 7 of the Hawai'i Constitution (1978) and HRS § 1-1. See infra section IV.B. In other words, the HPC may require dedications appropriately tailored to the special [*1258] [**437] and quantifiable burdens associated with granting discretionary benefits to Nansay, through a SMA permit, which facilitate development of the company's land. Conditions that ensure continued access to the subject property for the legitimate and reasonable practice of customary and traditional rights would presumably comply with constitutional prohibitions against the uncompensated taking of private property. See infra section V.B.

B. Obligations Under Article XII, Section 7

of the Hawai'i Constitution and HRS § 1-1

In addition to the requirements of the CZMA, the HPC is obligated to protect customary and traditional rights to the extent feasible under the Hawai'i Constitution and relevant statutes. Article XII, section 7 of the Hawai'i Constitution (1978) provides:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

(Emphases added.) HRS § 1-1 (Supp.1992) provides:

The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of [Hawai'i] in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State.

(Emphasis added.) 21

The aforementioned provisions were discussed by this court, in the context of an individual's asserted gathering rights, in Kalipi v. Hawaiian Trust Co., 66 Haw. 1, 656 P.2d 745 (1982). Ten years later, in Pele Defense Fund v. Paty, supra, we recognized **[*1259] [**438]** that ancient Hawaiian gathering rights may have extended beyond the boundaries of individual ahupua'a in certain cases. 73 Haw. at 620, 837 P.2d at 1272. Nevertheless, neither Kalipi nor Pele precluded further inquiry concerning the extent that traditional practices have endured under the laws of this State. "In Kalipi, we foresaw that '[t]he precise nature and scope of the rights retained by § 1-1 would, of course, depend upon the particular circumstances of each case.' " Pele, 73 Haw. at 619, 837 P.2d at 1271 (quoting Kalipi, 66 Haw. at 12, 656 P.2d at 752).

In order to determine whether the HPC must protect traditional and customary rights of the nature asserted in this case, we shall first review our analysis of gathering rights in Kalipi and Pele. Then we shall clarify the status of customary rights in general, as a result of relevant judicial and legislative developments in Hawaiian history. Finally, we will provide the HPC with some specific, although not necessarily exhaustive, guidelines to aid its future deliberations in the event that Nansay elects to pursue its challenges to the legitimacy of PASH's claims.

1. Kalipi v. Hawaiian Trust Co.: judicial recognition of

traditional Hawaiian gathering rights based upon

residency in a particular ahupua'a

EXHIBIT A-4
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES A-4

Petitioners hereby submit Exhibit Series A-4, consisting of **Exhibits A-4-34 through A-4-39**, including additional authorities and case law supporting Petitioners' claims regarding public trust duties, customary and traditional rights, and legal principles governing land title, ownership, and access rights in Hawai'i.

This exhibit series includes, but is not limited to, excerpts from Hawai'i v. Office of Hawaiian Affairs, Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission (PASH), and Makapono Partners, LLC v. Simeona, which collectively demonstrate that lands derived from Royal Patents and Land Commission Awards may require judicial examination of competing claims of title, heirship, and ownership, and do not establish ownership in perpetuity absent proof through a valid chain of title.

These authorities further establish the State's obligations under Article XII, Section 7 of the Hawai'i Constitution, HRS §1-1, and related legal doctrines protecting customary and traditional rights, public access, and the proper administration and use of lands with cultural, historical, and legal significance.

NO. 24096

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

MAKAPONO PARTNERS, LLC, a Hawai'i limited liability company, Plaintiff-Appellee, v. HEIRS AND/OR DEVISEES OF M. SOL SIMEONA, also known as M. S. Simeona, also known as Solomona Simeona, also known as Simeona Opio, Deceased, et al., Defendants-Appellees; and JULY SIMEONA, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIV. NO. 99-237K)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe and Foley, JJ.)

Defendant-Appellant July Simeona (July) appeals from the Final Judgment entered by Judge Ronald Ibarra on February 12, 2001, in favor of Plaintiff-Appellee Makapono Partners, LLC[1] (Makapono). We affirm.

BACKGROUND

On December 30, 1999, Makapono filed a "Complaint for Quiet Title, Partition and Damages" (Complaint), seeking to establish itself as the owner of the parcel of land (the Land) described as

[1] A "LLC" is a limited liability company organized under Hawai'i Revised Statutes Chapter 428 (Supp. 2002).

> [a]ll of that certain parcel of land (being all of the land described in Land Commission Award No. 7354, Royal Patent Nos. 8032 and 8033 to KALUA[)], situate[d] at Puapuaa 1, District of North Kona, Island and County of Hawaii, State of Hawaii, containing an area of 2.20 acres, more or less, and commonly designated by Tax Map Key [(TMK)] 7-5-016:010.

Makapono sought to "be declared and adjudged to be the owner of the subject property by reason of deed and/or adverse possession."

In his typewritten letter to the attorney for Makapono, which was filed with the circuit court on April 6, 2000, July stated that Makapono's Complaint was "unlawful and should be dismissed." Judge Ibarra characterized July's letter as a motion to dismiss under Hawai i Rules of Civil Procedure (HRCP) Rule 12. On April 24, 2000, Makapono filed "Plaintiff's Memorandum in Opposition to Defendant July Simeona's Motion to Dismiss." By letter dated April 25, 2000, July sought to change the venue of this case "to Honolulu."[2] On May 31, 2000, Judge Ibarra entered an "Order Denying Defendant July Simeona's Motion to Dismiss and Motion for Change of Venue."

In a "Pre-Trial Statement" filed on November 27, 2000, July stated, in relevant part, as follows:

> STATEMENT OF FACTS
>
> The record clearly provides that said real estate consisting of 2.20 acres . . . was the property of D. W. Kalua, [July's] great, great grandfather having TMK: 7-5-016-010 . . . .

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[2] Hawaii Revised Statutes § 603-36(2) (1993) states, in relevant part, that "[a]ctions . . . to quiet title to . . . real property shall be brought in the circuit in which the real property in question is situated[.]"

table of authorities, HRAP Rule 28(b)(1); (2) a "concise statement of the case, setting forth . . . the course and disposition of proceedings in the court . . . appealed from, and the facts material to consideration of the questions and points presented" on appeal, HRAP Rule 28(b)(3); (3) a "concise statement of the points of error set forth in separately numbered paragraphs," HRAP Rule 28(b)(4); (4) a "brief, separate section, entitled 'Standard of Review,'" HRAP Rule 28(b)(5); and (5) an "argument, containing the contentions of the appellant on the points presented and the reasons therefor," HRAP Rule 28(b)(7). Notwithstanding such violations, the Hawai i Supreme Court favors a policy of affording *pro se* litigants "'the opportunity to have their cases heard on the merits, where possible[.]'" Housing Fin. and Dev. Corp. v. Ferguson, 91 Hawai i 81, 85-86, 979 P.2d 1107, 1111-12 (1999) (citation omitted). Accordingly, pursuant to Ferguson, we address the merits of the issues raised by July as we discern them to be.

Record Title

Record title to the Land started in the 1800s by "Land Commission Award 7354, Royal Patent Nos. 8032 and 8033 to Kalua." The record indicates that William Kalua (Kalua) had a son named T. N. Simeona, whose wife was named Kamakani Simeona (Kamakani). It further appears that T. N. Simeona and Kamakani

had two sons, M. Sol. Simeona and Ikeole, and that Ikeole is July's father.

The record contains (1) an 1892 conveyance from Kalua to his grandson, M. Sol Simeona, also known as S. M. Simeona, M. S. Simeona, Jr., Solomon Simeona, and Simeona Opio, and (2) a 1909 conveyance from "Kamakani Simeona, wife of T. N. Simeona, deceased and, mother and heir of S. M. Simeona, deceased[,]" to Emmaline H. Liftee. Thereafter, the chain of title leads to Makapono's acquisition of the Land by deed dated October 8, 1999, from Patrick J. Duarte.

July introduced no evidence to counter Makapono's asserted claims, except for a single quitclaim deed of various parcels of land, including the Land, from Ikeole Simeona to his wife, Anna Scott Simeona, on January 20, 1956, recorded in the Bureau of Conveyances, Territory of Hawaii, in Liber 3162, page 487. This deed states, in relevant part, as follows:

> Being the same premises that were sold and conveyed by William Kalua (widow), 1/3 undivided interest to Mele Keawe (w), by certain Deed recorded in the Bureau of Deeds in Liber 167, on Page 51, together with that certain Deed executed by Kamakani (w) my beloved mother who sold and conveyed an unknown undivided interest to the said Emmaline Liftee (w) within the said land granted to Kalua (k) of recorded in Liber 328, on Page 7 and 8.

Other than this deed, there was no evidence that July's father, Ikeole, had any interest in the Land.

Makapono need not prove that it has superior title against any and all other parties, but merely that it has "substantial interest in the property and that [its] title is

> absolute title to lands of the Great Mahele, exists only in the persons mane [sic] and his heirs. The HRS. 172-11 titled "Land Patents on Land Commission Awards: to whom, for whose benefits [sic][" states,] in pertinent part;
>
> > "Every land patent issued upon an award by the Board of Commissioners to Quiet Land Titles, shall be in the name of the persons to whom the original award was made, even though these persons are deceased, or the title to the real estate thereby granted has been alienated; and all land patents so issued shall inure to the benefit of the heirs and assigns of the holders of the original award."

(Emphases in original.)

In other words, July's argument is that: (1) the Land is a part of the "crown lands" and (2) absolute title to the Land was vested in Kalua and his heirs, in perpetuity, and Kalua and his heirs did not have the legal power to convey the Land. In support of his argument, July cites HRS § 172-11 (1993), which provides as follows:

> Every land patent issued upon an award of the board of commissioners to quiet land titles, shall be in the name of the person to whom the original award was made, even though the person is deceased, or the title to the real estate thereby granted has been alienated; and all land patents so issued shall inure to the benefit of the heirs and assigns of the holder of the original award.

July's argument is without merit. This issue was considered in Brunz v. Smith, 3 Haw. 783 (Hawaii King. 1877). In Brunz, the court considered The Act of 1872, entitled, "An Act to Regulate the Issuing of Royal Patents" (Section 1 of which is identical to HRS § 172-11), and decided that patents based upon award do not confer or confirm title of later holders because the latter's names do not appear in the original grant of land. Id. at 787. Rather, an award of land through royal patent operates as a quitclaim of interest by the government and other claimants

must prove their interest in the land through deed or other means. Id. at 787-88; Mist v. Kawelo, 11 Haw. 587, 589 (Hawai'i Rep. 1898). Hence, titles awarded by Royal Patent may not be vested for "perpetuity," as July seems to suggest, but rather, all subsequent claimants of land must derive their title from the person to whom the original award was made. Brunz at 787.

July also misapprehends the Land as being a part of the "crown lands" and as being classified as "public lands" under the Great Mahele of 1848. Through the Great Mahele of 1848, King Kamehameha III divided land in Hawai'i into four principal categories: (1) lands held by the King as his private lands, known as "crown lands," and (2) of the remaining lands, one-third would be granted to the government, one-third to the chiefs, and the remaining one-third to the tenants. State by Kobayashi v. Zimring, 58 Haw. 106, 112-13, 566 P.2d 725, 730 (1977). See also Application of Robinson, 49 Haw. 429, 437-38, 421 P.2d 570, 576 (1966); The Fundamental Law of Hawaii, 3. Any land which was overlooked or not covered in the above categories remained part of the public domain. Thurston v. Bishop, 7 Haw. 421, 428-30 (Hawai'i King. 1888). Portions of the public domain were later sold to purchasers under Grants or Royal Patent Grants. Zimring, 58 Haw. at 114, 566 P.2d at 731. Any applicant claiming title to land or to be the recipient of land under the above categories, excluding the "crown lands," could petition the Board of

Commissioners to Quiet Land Titles (Land Commission) for a Grant or Royal Patent to quiet title to the land. Robinson, 49 Haw. at 432, 421 P.2d at 573; The Fundamental Law of Hawaii, 138. The award of a Land Commission patent conferred legal title over the land to the successful applicant. Robinson, 49 Haw. at 438-39, 421 P.2d at 576; The Fundamental Law of Hawaii, 137-39.

The Land was originally awarded to Kalua under Land Commission Award 7354, Royal Patent Nos. 8032 and 8033. The Land was not a part of the "crown lands" because it was not a portion of the lands which the King held for his private use. Zimring, 58 Haw. at 112-13, 566 P.2d at 730. Rather, the Land was awarded under a valid Land Commission Award, and is more properly characterized as being from one of the other categories established under the Great Mahele of 1848. Id. Since Kalua held legal title to the Land under a valid Land Commission award, he could freely devise or alienate it at his discretion. Id. at 114, 566 P.2d at 731 ("[t]o establish legally cognizable private title to land in the great majority of cases, one must show that he or a predecessor-in-interest acquired a Land Commission Award, a Royal Patent, a Kamehameha Deed, a Grant, a Royal Patent Grant, or other government grant for the land in question").

Jurisdiction

In contradiction of his request for the venue of the case to be transferred to Honolulu, July questions the

EXHIBIT B-6
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT SERIES B-6 (SUPPLEMENTAL INDEX)

Petitioners hereby submit **Exhibit Series B-6**, consisting of **Exhibits B-6-1 through B-6-2,** included within the Supplemental Exhibit Index, comprising correspondence from the County of Hawai'i Department of Water Supply and related materials addressing water allocations associated with the Keauhou Bay Management Plan.

This exhibit series includes the following excerpts and corresponding exhibit page numbers:

- Exhibit B-6-1 County of Hawai'i Department of Water Supply Correspondence – Water Allocation
- Exhibit B-6-2 County of Hawai'i Department of Water Supply Correspondence – Water Allocation (continued)

These materials demonstrate that Kamehameha Schools was assigned a finite water allocation corresponding to approximately 101 units under an executed Water Agreement dated April 4, 2012, and that any additional water demand requires further review, approval, or allocation.

These exhibits are directly related to and should be read in conjunction with **Exhibit Series B-7 and B-8**, which further address projected water demand and proposed development scale; however, Exhibit Series B-6 is separately included in the Supplemental Exhibit Index due to its filing position.

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAI'I
345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAI'I 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

April 20, 2022

Mr. Mark Kawika McKeague, AICP
Group 70 International, Inc., dba G70
111 South King Street, Suite 170
Honolulu, HI 96813

Dear Mr. McKeague:

Subject: Environmental Impact Statement Preparation Notice
Applicant – Kamehameha Schools
Project: Keauhou Bay Management Plan
Tax Map Key 7-8-010:044 and 049, 7-8-012:013, 014, 040, 061, 065, 070, and 098

We have reviewed the subject Environmental Impact Statement Preparation Notice and have the following comments.

Please be informed that there is an existing 12-inch waterline along Kaleiopapa Street. There are four (4) existing services for some of the subject parcels (Account Nos. 850-11310, 850-11350, 850-11360, and 850-11390). Each service has a 5/8-inch meter, which allows an average daily usage of 400 gallons. The Department will note that the average daily water usage for each service, over the past two (2) years, is more than the allowed amount and exceeds the capacity of the existing meter. Any usage beyond the allowed use will need to be accounted as additional water needed for the project.

Please be informed that the applicant has assigned 101 units of water to TMK 7-8-010:044 through an executed Water Agreement with the Water Board, dated April 4, 2012. Additional water could be made available subject to the Water Board's approval.

The Department requests that the applicant submit more detailed estimated average daily water demand calculations. The calculations must be prepared by a professional engineer licensed in the State of Hawai'i and should include the number of fixture units (and corresponding gallons per minute demand) for the proposed facilities, as recommended by the adopted Uniform Plumbing Code. The calculations should also include the total estimated average daily water demand (GPD) for the proposed facilities by each service.

Based on the calculations provided, the Department will determine the appropriate service connection size(s), facilities charges due, and other requirements for water service.

We will also require that plans be submitted, prepared by a professional engineer licensed in the State of Hawai'i, showing the appropriate service lateral installation(s). A reduced pressure type backflow prevention assembly must be installed within five (5) feet of the meter(s) on private property and the installation shall be inspected and approved before water service can be activated.

Please note that the Department of Water Supply acknowledges that potable water is Hawai'i Island's most precious resource and encourages our communities to promote water conservation and reserve the highest quality of water for the most valuable end use, which is the sustenance of life.

The Department recommends that the applicant consider appropriate landscape so that additional potable water is not required. Water for landscape irrigation should be provided by alternate methods (i.e. rainwater catchment, reclaimed or reuse water). The County of Hawai'i, Department of Public Works, and/or State of Hawai'i, Department of Health has guidelines, recommendations, or regulations regarding these types of systems.

Should there be any questions, please contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at (808) 961-8070, extension 256.

Sincerely yours,

Keith K. Okamoto, P.E.
Manager-Chief Engineer

RQ:dfg

EXHIBIT B-2-14
Mitchell et al. v. Kamehameha Schools et al.
Third Circuit Court of the State of Hawai'i

COVER LETTER FOR EXHIBIT B-2-14

Petitioners hereby submit Exhibit B-2-14, consisting of an excerpt from the Final Environmental Impact Statement (FEIS), Volume II, Consultation Comment Record (PDF p. 68), documenting a community comment submitted during the environmental review process for the Keauhou Bay Management Plan.

This exhibit reflects a comment submitted by Barbara Nobriga and represents the final documented comment attributed to her within the FEIS comment record.

Exhibit B-2-14 is included in the Supplemental Exhibit Index and is submitted to demonstrate that, contrary to representations in the FEIS consultation narrative, Barbara Nobriga did participate in the environmental review process and expressed opposition to the proposed bungalow resort development.

This exhibit further supports Petitioners' claims that the FEIS record contains inconsistencies between reported consultation efforts and the actual documented participation and substance of community and cultural input.

EXHIBIT B
Mitchell et al. v. Kamehameha Schools et al.

Table 7.2 DEA Summary of Comments and Responses		
Comments	**Commenter**	**Responses**
	If you want to do all this development, go behind the boat trailers parking, Plenty room tourist can walk from the hotel tour around your fancy boutique. The place is a fire waiting to happen. I could go on and on, I hope I conveyed the message and manao.	diverse learning, and career pathways. The Project aims to achieve this goal by reorienting uses and directing new development in appropriate areas around Keauhou Bay based upon community and organizational values that were identified during the KBMP process. Thank you for your participation in the environmental review process.
Barry Willis	Keauhou Bay must not be changed from its purely Hawaiian purposes which it serves now. Those include swimming, canoe paddling, volleyball, local activities. Please do not allow development of this precious part of Hawaii's heritage.	Thank you for your letter dated April 21, 2022, concerning the Environmental Impact Statement Preparation Notice for the Keauhou Bay Management Plan (KBMP) prepared pursuant to Hawai'i Revised Statues Chapter 343. As the steward of approximately 54 acres at Keauhou Bay, Kamehameha Schools (KS) has specific kuleana to maintain and support the management of the bay and its resources. The significant demand and utilization of the bay can and often does create congestion which leads to user conflicts along the bayfront. KS lands at the bay are also significantly impacted by unauthorized uses, trespassing, vandalism, and other unsanctioned activities. Through consultation with