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Attorneys for Defendant
COUNTY OF HAWAI'I

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DAISY MITCHELL; REBECCA
MELENDEZ,

Petitioners,

vs.

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

Respondents.

Civil No. 3CCV-25-0000438

**DEFENDANT COUNTY OF HAWAI'I'S
ANSWER TO PLAINTIFFS' *FIRST*
*AMENDED PETITION FOR JUDICIAL
REVIEW OF ENVIRONMENTAL IMPACT
STATEMENT ACCEPTANCE, FILED APRIL
8, 2026 [DKT. 16]; CERTIFICATE OF
SERVICE***

**DEFENDANT COUNTY OF HAWAII'S ANSWER TO PLAINTIFFS'
FIRST AMENDED PETITION FOR JUDICIAL REVIEW OF
ENVIRONMENTAL IMPACT STATEMENT ACCEPTANCE,
FILED APRIL 8, 2026 [DKT. 16]**

Defendants COUNTY OF HAWAII (“County”) and JEFFREY W. DARROW, IN HIS OFFICIAL CAPACITY AS DIRECTOR (“Mr. Darrow”) (collectively “County Defendants”), by and through its undersigned counsel, hereby answers the *First Amended Petition for Judicial Review of Environmental Impact Statement Acceptance*, filed April 8, 2026 [Dkt. 16] (“Amended Petition”), as follows:

FIRST DEFENSE

1. The Amended Petition fails to state a claim against the County Defendants upon which relief can be granted.

SECOND DEFENSE

2. County Defendants admit that the County, of which the Planning Department (“Planning”) is a subsection, is a municipal corporation organized under the laws of the State of Hawaii.

3. County Defendants admit that Mr. Darrow serves as Planning’s Director.

4. County Defendants hereafter deny the remaining allegations contained in the Amended Petition. Specifically, County Defendants deny the allegations as follows:

a. In response to the allegations contained in the section of the Amended Petition titled “**Relief Requested,**” Amended Petition at 2–3, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them.

b. In response to the allegations contained in the section of the Amended Petition titled **“I. PARTIES AND STANDING”** Amended Petition at 3–8, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them.

c. In response to the allegations contained in the section of the Amended Petition titled **“Respondents: 1. HAWAI’I COUNTY PLANNING DEPARTMENT AND JEFF DARROW, PLANNING DIRECTOR,”** Amended Petition at 8–16, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs DAISY MITCHELL and REBECCA MELENDEZ (collectively “Plaintiffs”) to their proof.

d. In response to the allegations contained in the section of the Amended Petition titled **“3. RESPONDENTS KAMEHAMEHA SCHOOLS AND MARISSA HARMAN – TRUST PRUPOSE, FIDUCIARY DUTIES, AND AUTHORITY TO PROCEED,”** Amended Petition at 16–28, County Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

e. In response to the allegations contained in the section of the Amended Petition titled “**5. RESPONDENTS G70 AND KAWIKA MCKEAGUE – FEIS PREPARATION, COORDINATION, AND SUBMISSION,**” Amended Petition at 28–38, County Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

f. In response to the allegations contained in the section of the Amended Petition titled “**II. Summary of Unlawful Actions and Public Trust Violations, Including Implied Dedication and Community Rights,**” Amended Petition at 38–39, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

g. In response to the allegations contained in the section of the Amended Petition titled “**II.A. Violation of Public Trust Duties (Waiahole Ditch),**” Amended Petition at 39–41, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for

themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

h. In response to the allegations contained in the section of the Amended Petition titled “**II.B. Failure to Disclose Public Rights Arising from Longstanding Public Use, Public Thoroughfare Access, and Statutory Public Trail Classification (Gold Cost Neighborhood Ass’n v. State; HRS §264-1)**,” Amended Petition at 41–43, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

i. In response to the allegations contained in the section of the Amended Petition titled “**II.C. Violation of Article XII, Section 7 of the Hawai’i Constitution (Native Hawaiian Traditional and Customary Rights – PASH)**,” Amended Petition at 44–46, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

j. In response to the allegations contained in the section of the Amended Petition titled “**II.D. Failure to Perform Mandatory Ka Pa’akai Analysis (Procedural Violation of Article XII, Section 7 Duties)**,” Amended Petition at 46–48, County Defendants

deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

k. In response to the allegations contained in the section of the Amended Petition titled “**II.E. Application of Legal Violations to FEIS Defects at Keauhou Bay,**” Amended Petition at 48–52, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

l. In response to the allegations contained in the section of the Amended Petition titled “**II.F. Violation of the Will of Princess Bernice Pauahi Bishop and Breach of Fiduciary Duty,**” Amended Petition at 52–55, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

m. In response to the allegations contained in the section of the Amended Petition titled “**II.G. Unresolved Royal Patent and Title Concerns Regarding Keauhou II,**” Amended Petition at 55–59, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

n. In response to the allegations contained in the section of the Amended Petition titled “**II.G.(1) Individual Responsibility for Unlawful Reliance on Unverified Title and Failure of Duty,**” Amended Petition at 59–60, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

o. In response to the allegations contained in the section of the Amended Petition titled “**II.H. Interference With Community, Cultural, and Beneficiary Rights Through Retaliatory and Biased Conduct,**” Amended Petition at 60–64, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations

reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

p. In response to the allegations contained in the section of the Amended Petition titled “**II.I. Material Misrepresentation and Unlawful Expansion of Project Scope (101 Units vs. 150 Units)**,” Amended Petition at 64–66, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

q. In response to the allegations contained in the section of the Amended Petition titled “**II.I (1). Failure to Identify, Disclose and Analyze Endangered and Threatened Species and Critical Habitat**,” Amended Petition at 66–70, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

r. In response to the allegations contained in the section of the Amended Petition titled “**II.J. Failure to Analyze Existing Infrastructure and Resource Capacity Constraints Affecting Hawai’i Island**,” Amended Petition at 70–76, County Defendants deny

the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

s. In response to the allegations contained in the section of the Amended Petition titled “**II.K. Failure to Accurately Acknowledge, Summarize, and Respond to Multiple Written Public Comments, Including Those of Petitioners and Expert Submissions,**” Amended Petition at 76–82, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

t. In response to the allegations contained in the section of the Amended Petition titled “**II.L. Failure to Complete Required Cultural Analysis for Keauhou Bay as the Birthplace of Kamehameha III (Ka Pa’akai Violation),**” Amended Petition at 82–85, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves,

and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

u. In response to the allegations contained in the section of the Amended Petition titled “**II.M. Misrepresentation of Cultural Consultation Testimony and Absence of Support for Resort Development (Consultation Testimony – Lack of Support for Resort Development),**” Amended Petition at 85–87, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

v. In response to the allegations contained in the section of the Amended Petition titled “**II.N. Misrepresentation of Educational and Cultural Justification; Absence of an Educational or Cultural Center in the Proposed Action,**” Amended Petition at 87–93, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

w. In response to the allegations contained in the section of the Amended Petition titled “**II.P. Project-Specific Failure of Stewardship and Environmental Mismanagement at Keauhou Bay,**” Amended Petition at 93–98, County Defendants deny the

allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

x. In response to the allegations contained in the section of the Amended Petition titled “**III. Claims for Relief,**” Amended Petition at 98–102, County Defendants deny the allegations to the extent they assert legal conclusions to which no response is required. County Defendants further lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore deny them. To the extent the allegations reference any documents, statutes, or laws, such materials speak for themselves, and County Defendants deny any allegations which do not accurately state the contents of the referenced documents, statutes or laws and leaves Plaintiffs to their proof.

y. In response to the allegations contained in the section of the Amended Petition titled “**PRAYER FOR RELIEF,**” Amended Petition at 102–106, County Defendants deny each and every allegation. County Defendants further deny that Plaintiffs are entitled to any of the relief requested, or to any relief whatsoever.

5. County Defendants deny all remaining allegations and legal conclusions in the Amended Petition, including those contained in Plaintiffs’ prayer for relief, not expressly admitted in paragraphs 1 through 4, inclusive of this Answer. Should any allegation in the Amended Petition be deemed to have not been addressed in paragraphs 1 through 4, inclusive, of this Answer, County Defendants hereby deny the same.

THIRD DEFENSE

6. Plaintiffs lack standing in whole or in part or exceed the scope of contestable issues authorized under Haw. Rev. Stat. § 343-7 (2022).

FOURTH DEFENSE

7. Petitioners' claims are barred in whole or in part by lack of subject matter jurisdiction.

FIFTH DEFENSE

8. Petitioners' claims are barred in whole or in part by lack of justiciability.

SIXTH DEFENSE

9. Plaintiffs have failed to join indispensable parties.

SEVENTH DEFENSE

10. To the extent the subject Final Environmental Impact Statement ("FEIS") was accepted for the particular action, that acceptance satisfies Haw. Rev. Stat. ch. 343 and no other statement for the proposed action is required.

EIGHTH DEFENSE

11. Plaintiff's Amended Petition fails to assert a cause of action for injunctive relief.

NINTH DEFENSE

12. County Defendants did not violate any state statute, state right, county ordinance, administrative rule, or common law duty.

TENTH DEFENSE

13. The subject FEIS complies with the mandates of HRS Chapter 343, as well as the applicable administrative rules of HAR Title 11 Chapter 200 Environmental Impact Statement Rules.

ELEVENTH DEFENSE

14. County Defendants expressly reserve all rights to assert any and all affirmative defenses, as well as any other matters constituting an avoidance under Rule 8(c) of the Hawai'i Rules of Civil Procedure. County Defendants further reserve the right to seek leave to amend this Answer to assert additional defenses, claims, or counterclaims as may be warranted.

WHEREFORE, County Defendants respectfully request that this Court enter judgment as follows:

1. Dismissal of the Amended Petition with prejudice;
2. Entering judgment in favor of County Defendants and against Plaintiffs on all claims and issues;
3. Awarding County Defendants their costs of suit, including reasonable attorneys' fees incurred in defending this action; and,
4. Granting such other and further relief as the Court deems just and equitable under the circumstances.

Dated: Hilo, Hawai'i, May 4, 2026.

COUNTY OF HAWAI'I, Defendant

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

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

DAISY MITCHELL; REBECCA
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KAMEHAMEHA SCHOOLS (BISHOP
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HARMAN, IN HER PROFESSIONAL &
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DOE CORPORATIONS 1-20;
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GOVERNMENTAL UNITS 1-20;

Respondents.

Civil No. 3CCV-25-0000438

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served on the parties listed below at their respective addresses USPS, postage prepaid on May 4, 2026.

Daisy Mitchell
PO Box 2627
Kailua Kona, HI 96745
Petitioner, Pro Se

Rebecca Melendez
PO Box 2332
Kailua Kona, HI 96745
Petitioner, Pro Se

Dated: Hilo, Hawai'i, May 4, 2026.

COUNTY OF HAWAI'I, Defendant

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