IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

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THIRD CIRCUIT
3CCV-25-0000438
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REBECCA MELENDEZ,

Petitioner,

vs.

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

(Declaratory Judgment)

PETITIONER REBECCA MELENDEZ'S MEMORANDUM IN OPPOSITION TO RESPONDENTS TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP DBA KAMEHAMEHA SCHOOLS' AND MARISSA HARMAN'S MOTION FOR SUMMARY JUDGMENT FILED SEPTEMBER 4, 2026 [DKT. 150]; DECLARATION OF REBECCA MELENDEZ; REFERENCE INDEX OF EXHIBITS; EXHIBITS "A-14," "A-17," "A-20," "B-30," "C-2-1," "C-2-2" AND "R-10"; CERTIFICATE OF SERVICE

Hearing Date: November 9, 2026

Time: 9:00 a.m.

Judge: Hon. Kauanoe A.D. Jackson

Division Three

NO TRIAL DATE SET

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PETITIONER REBECCA MELENDEZ'S MEMORANDUM IN OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT [DKT. 150]

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INTRODUCTION

Petitioner Rebecca Melendez, pro se, opposes Respondents' Motion for Summary Judgment [Dkt. 150], which seeks to dismiss every claim in the First Amended Petition [Dkt. 16] ("FAP"). The Court should deny the motion as to her timely § 343-7(c) challenge to the Hawai'i County Planning Department's acceptance, noticed September 23, 2025, of the Keauhou Bay Management Plan ("KBMP") Final Environmental Impact Statement ("FEIS").

Respondents contend that the FEIS satisfies all applicable procedural and content requirements, that Petitioner's comments were reproduced verbatim and adequately addressed, and that the County's acceptance should be upheld under the rule of reason (Dkt. 150 Mem. at 11–14). However, reproducing comments and identifying FEIS sections does not, by itself, establish that the FEIS "actually address[ed] the substantive feedback it received," *Kaupiko v. Bd. of Land & Nat. Res.*, 154 Hawai'i 456, 555 P.3d 143 (2024), No. SCAP-22-0000557, slip op. at 31. As to her timely substantive comments, it did not.

Director Jeffrey W. Darrow's September 16, 2025 signed acceptance determination stated that the County had "uploaded an electronic copy of this letter and the Final EIS," yet the Volume I uploaded with that letter omitted six pages. Exs. A-20-1, A-20-5; FAP Exs. B-1-15–B-1-16 (FAP pp. 224–225). Respondents acknowledge the omission but maintain that the County reviewed those pages before acceptance. Dkt. 150 Mem. at 7 n.6 & Ex. 7.

Petitioner challenges the completeness and legal adequacy of the FEIS, including its disclosure of environmental impacts, its responses to public comments, and the County's decision to accept the FEIS despite the six omitted pages, under HRS chapter 343, not the policy choice to build the project. The FAP identifies specific deficiencies in the FEIS and states a claim for judicial review of the County's acceptance under HRS § 343-7(c).

Respondents' fifteen numbered grounds (Dkt. 150 at 1–3) are answered in the same order:

(1) FEIS Sufficiency Under HEPA. An FEIS must satisfy HEPA's content requirements, HAR § 11-200.1-28(b)(2), with the rule of reason applied "in conjunction with" them. *Kaupiko*, slip op. at 27–28. First, the published FEIS omitted §§ 2.6.2–2.8, including portions of the required Purpose and Need section. FAP Exs. B-1-15–B-1-16 (FAP pp. 224–225); HAR § 11-200.1-24(f).

Director Jeffrey W. Darrow's September 16, 2025 signed acceptance determination stated that the County had "uploaded an electronic copy of this letter and the Final EIS" and that the FEIS

satisfied applicable content requirements. Exs. A-20-1–A-20-2. The County's submission record identifies the uploaded Volume I as "KBMP-FEIS-Vol-11.pdf." Ex. A-20-5.

G70's July 2026 errata confirms the omission. Dkt. 150 Mem. at 7 n.6 & Ex. 7. Although Respondents assert that the County reviewed those pages, HAR § 11-200.1-28(a) requires evaluation of the FEIS "in its completed form." Respondents' argument depends on the County's post-acceptance errata statement, which lies outside the FEIS. HAR § 11-200.1-2 defines "acceptance" as a determination that the EIS fulfills § 11-200.1-28 and "complies with chapter 343, HRS, and this chapter." The same rule defines an "addendum" for correcting clerical errors and inadvertent omissions in draft environmental documents, but it defines no "errata" and does not authorize one to correct an already accepted FEIS. The published FEIS therefore lacked required content, raising a genuine issue of material fact whether acceptance satisfied HEPA's requirements. Respondents have not established that the July 2026 errata retroactively cured the September 2025 publication deficiency, regardless of whether the County separately reviewed the omitted pages.

Second, the FEIS acknowledges Keauhou Bay's impaired-water status while projecting 340,919 additional square feet of impervious surfaces and increased runoff. FEIS Vol. I, § 4.5, pp. 4-81, 4-86–4-88 PDF 231-238; FAP Exs. B-19-1–B-19-3 (FAP pp. 308–310); Ex. B-30. Despite Petitioner's comments identifying the EPA impairment listing and additional pollution risks, KS asserted that water quality was "not expected to worsen" and deferred detailed drainage analysis until "subsequent to the FEIS." FEIS Vol. II, App. C, PDF pp. 425–429; FEIS Vol. I, § 4.5, pp. 4-86–4-88 PDF pp. 236-238.

Petitioner's timely comments, reproduced in the FEIS, warned that development-related runoff would introduce additional pollutants into Keauhou Bay and harm coral, reef fish, and manta rays that feed on zooplankton in the area. FEIS Vol. II, App. C, pp. 126-129, 236–237 (PDF pp. 425-428, 535–536). The FEIS also reproduces Dr. Richard Bennett's scientific submission documenting existing sediment runoff, elevated nutrients, groundwater pollution pathways, and other water-quality concerns affecting Keauhou Bay, that Petitioner attached to her comment email. FEIS Vol. II, App. D, PDF pp. 1223–1226; FAP Exs. R-4-132–R-4-152. KS responded to Petitioner's pollution concerns that "It is not always the case that development inevitably leads to pollution of nearby ocean waters" and relied on proposed stormwater controls and best management practices. FEIS Vol. II, App. C, p. 119 (PDF p. 418).

Keauhou Bay has no completed TMDL or existing restoration plan identified in the cited EPA report. Ex. B-30. The FEIS acknowledges that the Project's clearing, grading, and construction will increase runoff and create risks of sediment transport toward the bay. FEIS Vol. I, § 4.5, pp. 4-86–4-88 (PDF pp. 236–238). Petitioner's FAP identifies existing runoff entering Keauhou Bay, supported by photographic evidence, and scientific documentation of sediment transport, nutrient contamination, and groundwater pollution pathways. FAP pp. 10, 77–78; Exs. B-5-8-1–B-5-8-6, R-4-132–R-4-152. NOAA evidence further identifies coastal development, impervious surfaces, and stormwater runoff as pollution pathways threatening coral reefs and marine food webs. FAP pp. 67–68; Exs. B-18-12–B-18-13. Petitioner's written comments also cited the Chesapeake Bay Foundation's findings concerning polluted runoff from developed areas and impervious surfaces, including streets and parking lots, and the transport of fertilizers, pesticides, oil, and other contaminants into waterways. FEIS Vol. II, App. C, pp. 148–150 (PDF pp. 447–449); App. D, PDF pp. 773–776, FAP R-3-1- R-3-7 pp. 365-371 PDF pp. 422-428.

The FAP also identifies marine resources potentially affected, including manta rays feeding near Keauhou Bay, a green sea turtle swimming within the bay, and a Hawaiian monk seal resting at Keauhou Bay shoreline. Although the FEIS states, "Although unlikely, either species could haul out along the shoreline close to the dock or by the beach landing," Exhibit B-17-1 provides photographic evidence of a Hawaiian monk seal actually hauled out on the shoreline at Keauhou Bay. FEIS Vol. I, § 4.6, p. 4-102 (PDF p. 252); FAP p. 67; Exs. B-17-1, B-17-2, B-18-1–B-18-11. Yet the FEIS does not quantify the Project's additional sediment and pollutant loading into the already impaired bay and defers detailed drainage analysis until after FEIS acceptance. General assurances that development does not inevitably cause pollution, together with proposed BMPs, do not establish that these specific impacts were adequately evaluated before acceptance. The absence of adequate analysis of additional pollutant loading and cumulative water-quality impacts raises a substantial question concerning compliance with HAR §§ 11-200.1-24(b), (i), (l) and 11-200.1-28(a)–(b), informed by the coastal ecosystem and water-quality protection policies of HRS § 205A-2(c)(4)(C)–(E).

(2) Petitioner's Comments Were Not Adequately Addressed. The FAP expressly alleges that the FEIS failed to fully and accurately represent and satisfactorily respond to Petitioner's substantive DEIS comments, including her submitted petitions, scientific reports, and concerns about environmental impacts. FAP pp. 20–23, 33–35. These allegations state a challenge to the

County's acceptance of the FEIS under HRS § 343-7(c), based on HRS § 343-2 and HAR §§ 11-200.1-26(d), 11-200.1-28(b)(3).

Respondents claim Petitioner's DEIS comments were "included verbatim" and satisfactorily answered. Dkt. 150 Mem. at 13. Petitioner timely submitted her August 6, 2024, 1:02 p.m. email to Keauhoubay@ksbe.edu, the email address designated by Kamehameha Schools for its Applicant Contact, Marissa Harman, as well as to County officials. FAP Exs. R-4-1–R-4-56 (FAP p. 380), R-2-2 (FAP p. 364). Although FEIS Volume II appears to reproduce portions of Petitioner's August 6, 2024 email, Petitioner has not located the email's opening statement identifying Keauhou Bay's EPA impaired-water status (Ex. R-4-1 FAP pp. 380 PDF p. 438, Ex. R-10), and the reproduction omits her trust-land passages (Ex. R-4-48 427 PDF pp. 485 to R-4-50 p. 429 PDF 487), beginning after them (FEIS Vol. II, App. D, PDF p. 1249). HAR § 11-200.1-27(b).

More importantly, reproduction does not establish adequate substantive responses. HAR §§ 11-200.1-26(d), 11-200.1-28(b)(3); *Kaupiko*, slip op. at 31. Although FEIS Volume II reproduces Petitioner's comments concerning North Kona's 2023 mandatory 25% water restriction and the Honokōhau Deepwell failure, FAP Exs. R-4-36, R-4-38 (FAP pp. 415, 417); FEIS Vol. II, App. D, PDF p. 1364, KS's response to Petitioner refers generally to Section 4.12 and asserts that the EIS contains "thorough analysis" of infrastructure capacity, without specifically addressing the restriction or explaining how the deepwell failure affects the Project's proposed water demand. FEIS Vol. II, App. C, pp. 88–89 (PDF pp. 387–388). While Volume I discusses allocated water credits, it also states that KS "will consult with the DWS to ensure the Keauhou ASYA has the capacity to honor and support the proposed improvements." FEIS Vol. I, § 4.5, p. 4-85. The preliminary engineering report further states that "DWS will need to determine whether the system in the Keauhou region has enough capacity to honor the credits or if alternative sources of water are required." FEIS Vol. III, App. N, p. 5-10 (PDF p. 385). The FEIS also states that detailed drainage analysis and design would undergo County review and approval "subsequent to the FEIS." FEIS Vol. I, § 4.5, p. 4-88; FAP Exs. B-15-2–B-15-3 (FAP pp. 285–286). HEPA's rules require this analysis in the EIS itself: the final EIS must "fully declare the environmental implications of the proposed action and . . . discuss all reasonably foreseeable consequences of the action," HAR § 11-200.1-27(a), with analysis "commensurate with the importance of the impact" and "consideration of all phases of the action." HAR § 11-200.1-24(b), (l). The deferral

of further water-capacity determinations and detailed drainage analysis raises a substantial question whether the FEIS satisfied these requirements before acceptance.

The FEIS's 2022 scoping summary reduced Petitioner's recorded statements and objections to brief bullet points, omitting much of what she said during the meeting, including her disagreement with Ms. Harman concerning the proposed resort. The summary identified Petitioner only as "Rebecca," without her surname. In one comment, the FEIS attributed to her the statement, "I don't understand the educational point," without providing the full context of her remarks. FEIS Vol. II, App. A, PDF p. 10; FAP Ex. R-6-1 (FAP p. 473).

In that comment, Petitioner actually stated, in response to Ms. Harman:

"I don't understand the educational point **because** all I saw really was like, 115, 150, I'm sorry, 150 new hotels. I'm going to have to disagree with you on the fact that you're saying it's different than the hotel that's already at the point. That's just my side of it, so." See recording at Ex. A-14 (Petitioner's recorded comments from approximately 47:49 to 53:18; quoted statement at approximately 51:37).

This is one example of how the FEIS's abbreviated bullet-point summary failed to fully convey Petitioner's recorded objections to the proposed resort development. Petitioner can play the relevant portion of the recording at the November 9, 2026 hearing if the Court wishes to review it. Melendez Decl. ¶¶ 2–3. These specific omissions and alleged deficiencies support Petitioner's claim that the FEIS failed to satisfy HEPA's requirements for reproducing and responding to substantive comments.

(3) Third Persons. Petitioner asserts no claim on behalf of any third person. Bennett's materials were attachments to Petitioner's own DEIS comment submissions, and FEIS Volume II identifies Petitioner as the commenter. FAP Exs. R-4-54–R-4-57 (FAP pp. 433–436), R-4-133–R-4-152 (FAP pp. 437–456) M-20 (FAP pp. 346); FEIS Vol. II, App. D, PDF pp. 1222–1227, 1249–1260. Jeffrey Caufield's comments, FAP Ex. R-5 (FAP pp. 457–472), are offered only as supporting evidence concerning traffic impacts, an issue Petitioner independently raised in her own comments. FAP Exs. R-4-1–R-4-3 (FAP pp. 380–382). Petitioner specifically stated, "This will bring a lot of traffic right through this beautiful historical place where many locals hold family funerals, baptisms, birthday parties..." and "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." FAP Ex. R-4-3 (FAP pp. 382).

Petitioner also submitted a Hawai'i News Now article reporting that Hawai'i Island traffic fatalities had increased by more than 100% compared with the previous year, citing a Hawai'i Police Department report documenting increased major crashes and traffic fatalities. FAP Ex. R-3-7 (FAP pp. 371). These submissions demonstrate that Petitioner independently raised concerns about existing traffic conditions and safety risks associated with additional resort traffic. KS answered Caufield's specific traffic estimate with a general conclusion that did not engage the figures, similar to its response to Petitioner's traffic concerns. FAP Exs. R-7-2–R-7-3 (FAP pp. 480–487). Petitioner relies on these materials as evidence of deficiencies in the FEIS's environmental analysis and responses to comments, not to assert any independent claim belonging to Bennett or Caufield.

(4) Articles XI and XII; Ka Pa'akai. Petitioner maintains her constitutional claims under article XI, including section 9, and article XII, section 7, of the Hawai'i Constitution, as asserted in the FAP. Maui Lani confirms that HRS chapter 343 claims may proceed under article XI, section 9, through HRS § 343-7. Maui Lani Neighbors, Inc. v. State, 156 Hawai'i 520, 575 P.3d 610, slip op. at 4 (2025). These constitutional protections also inform the FEIS's required evaluation of environmental and cultural impacts under HRS § 343-2. Petitioner does not waive her constitutional claims or requested relief. FAP Exs. R-4-2–R-4-3 (pp. 381–382, PDF pp. 439-440), B-22-1–B-22-2 (pp. 312–313 PDF pp. 358-359). The FAP asserts constitutional claims under articles XI and XII concerning public trust and Native Hawaiian rights. FAP pp. 4–6. Petitioner's comment warned that "a bungalow resort development will go against the Hawaiian cultural practices, as well as the communities cultural practices," including canoe paddling, fishing, baptisms, and funerals at the bay. FEIS Vol. II, App. C, pp. 36–38 (PDF pp. 335–337). Although KS stated that its planning "involved extensive consultation with stakeholders including cultural practitioners, lineal descendants," *id.* at 37 (PDF p. 336), its own consultation record reflects express opposition to resort-oriented development from some participants, qualified support for cultural and educational improvements from others, and concerns about commercial activities overshadowing cultural sites, water pollution, stormwater runoff, increased tourism, fishing access, canoe storage, and canoe launching. Consultation that identifies these concerns does not, by itself, establish that the FEIS adequately evaluated their potential impacts. FAP Exs. B-1-5–B-1-9 (FAP pp. 214–218), B-2-1–B-2-13 (FAP pp. 227–239).

The Cultural Impact Assessment (CIA) recognizes wa'a use as an ongoing traditional customary practice, recommends improved canoe-launching access and stormwater studies to protect marine-resource collection and saltwater cleansing and healing practices, and warns that failure to consider or implement its recommendations could adversely affect cultural resources and customary practices. FEIS Vol. III, App. H, pp. 119–120 (PDF pp. 137–138). Although the CIA concludes that "the proposed plans do not appear to adversely impact canoeing," it also records a CIA interviewee's understanding that the canoe hālau would be relocated, but that the conceptual plans **did not show** where canoes could be parked and launched. FEIS Vol. III, App. H, pp. 103, 119 (PDF pp. 121, 137); FAP Ex. B-2-6. Together with the FEIS's proposed reconfiguration of shoreline canoe uses and deferral of detailed drainage analysis, these findings raise a substantial question whether the FEIS adequately evaluated foreseeable impacts on shoreline access, canoe practices, and water-dependent cultural uses before acceptance. FEIS Vol. I, pp. 3-75, 3-76, 4-88 (PDF pp. 133-134, 238).

KS responded that "the KBMP does not include actions involving removal of canoe facilities or practices from the bay" and that "opportunities for traditional practices will be expanded." FEIS Vol. II, App. C, pp. 37–38 (PDF pp. 336–337). Yet the FEIS describes "a reconfiguration of the existing sprawling canoe uses and volleyball enthusiasts along the immediate bayfront area," including "the removal (and potential relocation)" of the volleyball court, which it lists as unresolved. FEIS Vol. I, pp. 3-75, 4-189, 5-47, 5-48 (PDF pp. 133, 339, 387, 388) .

The FAP further alleges that the CIA consultation record did not reflect expressed support for resort-style lodging and instead documented concerns about cultural preservation, marine resources, water quality, shoreline access, and customary practices. FAP pp. 85–87, § II.M; FAP Exs. B-2-1–B-2-13 (FAP pp. 227–239). In particular, the FAP identifies canoe practitioners' concerns about protecting canoe-launching areas and whether the proposed changes would accommodate existing paddling practices. FAP p. 87.

At a meeting where Ms. Harman represented KS, Petitioner recalls Ms. Harman indicating that the volleyball court would be removed, that the canoes stored along the shoreline would have to go, and that the canoe club would have to remove its one-person canoes. Although Petitioner does not recall her exact words, this is her best present recollection of the discussion. Melendez Decl. ¶ 13.

KS acknowledged Petitioner's comments but did not specifically address her concerns about how increased tourism and resort development would affect family gatherings, baptisms, and funeral services at Keauhou Bay. For generations, the bay has served as a place where local families and community members gather to practice their traditions, honor loved ones, and conduct meaningful cultural and spiritual ceremonies. The existence of cultural sections and stakeholder consultation, and the absence of restrictions to date, do not, by themselves, establish that the FEIS adequately evaluated whether increased commercial activity and tourism would interfere with the community's continued ability to access and use the bay for canoeing, fishing, family gatherings, baptisms, funerals, and other customary practices. FAP Exs. R-6-3–R-6-7 (FAP pp. 475–479), B-10-1–B-10-2 (FAP pp. 272–273).

(5) Removal from Employment; Individual Respondents. Petitioner requests removal, disqualification, or prohibition from further exercise of authority of Jeff Darrow, Marissa Harman, and Kawika McKeague, including that the Court "order or otherwise direct appropriate authorities to pursue the removal" of these individuals. FAP pp. 2, 16, 101–102, 105–106 (Prayer for Relief ¶¶ 11–12, 17). She maintains these requests, subject to the Court's determination of its authority to grant them. The County's FEIS acceptance letter expressly identifies the Applicant as "Kamehameha Schools (Marissa Harman)," and Jeff Darrow, identified as Director of the County of Hawai'i Planning Department, signed the County's FEIS acceptance determination. Exs. A-20-1–A-20-2.

Respondents' argument that no private cause of action exists outside HEPA does not resolve the claim before the Court. Petitioner challenges the County's FEIS acceptance under HRS § 343-7(c), which limits contestable issues to those raised in written comments but does not expressly address employment-related remedies. The issue of remedies for a HEPA violation "is one of equitable discretion." *Unite Here! Local 5 v. PACREP LLC*, No. SCAP-22-0000601, slip op. at 41 (Haw. Feb. 21, 2025). In *Chambrella v. Rutledge*, 69 Haw. 271, 740 P.2d 1008 (1987), the plaintiffs sought the removal of a non-profit corporation's president. The circuit court dismissed the suit. The Hawai'i Supreme Court held: "This, in our opinion, was error. … [W]e conclude the court erred in dismissing the case." The Court explained that the trial court "was obligated under the precepts of equity practice and HRCP 54(c) to consider whether there were remedies other than those specifically requested to which plaintiffs may have been entitled before dismissing the suit." *See also Paradise Hui Hanalike v. Hawaiian Paradise Park Corp.*, 66 Haw.

362, 662 P.2d 211, 212 (1983) ("[W]hen the specific relief sought from a court having equity powers cannot be granted, appropriate relief will be fashioned by the court.").

Under HRCP Rule 54(c), "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in [the] pleadings." *Chambrella*, 740 P.2d 1008 n.10. When "the evidence did not justify an award of the specific remedy requested," a court "could rely on the general prayer for relief for the purpose of granting the relief to which plaintiff actually was entitled." *Id.*; *see* FAP pp. 103, 105–106 (Prayer for Relief ¶¶ 3, 15, 17).

These authorities support consideration of any legally available equitable relief without treating the possible unavailability of a particular remedy as grounds for dismissal of the underlying FEIS-acceptance challenge. Any ruling on employment-related relief should therefore be made separately and should not affect Petitioner's timely HRS § 343-7(c) challenge against KS and the County.

(6) Timeliness. Respondents concede that Petitioner timely filed Dkt. 1 on October 22, 2025, within sixty days of the September 23, 2025 notice of the County's FEIS acceptance. Dkt. 150 Mem. at 7. Dkt. 1 challenged that acceptance under HRS Chapter 343, alleging that substantive comments were inadequately addressed and that the FEIS was incomplete, misleading, and failed to analyze significant environmental and cultural impacts, and it prayed that the acceptance be invalidated and withdrawn. Dkt. 1 ¶¶ 10, 15 & Prayer ¶¶ 1–2. Its attached comments, which are "a part thereof for all purposes," raised impaired water quality, runoff, groundwater, marine resources, and other impacts. HRCP Rule 10(c); Dkt. 1, PDF pp. 8–16, 60–92, 216–236.

Dkt. 16 was filed as of right. Petitioner filed it on April 8, 2026, before serving any respondent; no responsive pleading had been served. Under HRCP Rule 15(a)(1), Petitioner was entitled to amend once as a matter of course. In Ellis v. Crockett, the Hawai'i Supreme Court held that a plaintiff was "entitled to file an amended complaint as a matter of right" because "a motion to dismiss is not a 'responsive pleading'" and "the mere service of the motion for dismissal cannot terminate the right to amend." 51 Haw. 45, 451 P.2d 814, 824 (1969). Dkt. 10 merely corrected the spelling of Petitioner's name; it did not amend her allegations, claims, parties, or requested relief and therefore did not exhaust her right to amend. Dkt. 10; Melendez Decl. ¶ 1.

Respondents argue that new claims in Dkt. 16 are untimely, that Petitioner "cannot show" those claims relate back, and that HRS § 343-7(c) does not permit relation back. Dkt. 150 Mem. at 14–

15. Dkt. 16 elaborates upon the HEPA allegations already raised in Dkt. 1, concerning the same FEIS acceptance and the same identified deficiencies, including inadequate responses to comments, cultural impacts, water quality, runoff, groundwater, and marine resources. Dkt. 1 ¶¶ 10, 15; Dkt. 1, PDF pp. 8–16, 60–92, 216–236; FAP p. 1. These allegations therefore relate back under HRCP Rule 15(c)(2). *Mayle v. Felix*, 545 U.S. 644, 664 (2005) ("So long as the original and amended petitions state claims that are tied to a common core of operative facts, relation back will be in order."); *Tiller v. Atl. Coast Line R.R.*, 323 U.S. 574, 581 (1945) ("Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading."). HRS § 343-7(c) requires timely initiation of the proceeding and limits contestable issues to those identified and discussed in timely written comments, as documented in FEIS Vol. II, App. C, pp. 126–132, 148–150, 236–237 (PDF pp. 425–431, 447–448, 535–536); App. D, PDF pp. 1187-1451; it does not expressly prohibit relation back under HRCP Rule 15(c)(2) or require every supporting allegation to appear in the original petition. The HRCP govern "all suits of a civil nature" in circuit court. HRCP Rule 1(a). Respondents cite no authority holding that Rule 15(c)(2) is inapplicable to a § 343-7(c) challenge.

(7) Relief Within the HEPA Challenge. Respondents characterize Petitioner's claims as attempts to halt the educational and cultural center and proposed lodging and argue that no separate private cause of action exists outside the FEIS sufficiency claims in Dkt. 1. Dkt. 150 at 2 (Ground 7). Petitioner's HEPA challenge proceeds under § 343-7(c); Dkt. 16 elaborates upon the timely HEPA allegations in Dkt. 1, as addressed in § (6) above. Petitioner does not oppose lawful cultural or educational improvements. FAP p. 3. Her challenge concerns the legal adequacy of the FEIS for the lodging and commercial development central to the Project's financing. The FEIS states that "[w]ithout the development of the Kaimukī retail center and low impact lodging, the overall self-sustaining economic strategy would not be achieved resulting in no revenue generation to support future cultural and educational programs at the bay." FEIS Vol. I, p. 1-21 (PDF pp. 47). KS further states that "[a]n alternative that omits low-impact lodging does not meet the Purpose and Need" and that lodging "provides a critical revenue stream." FEIS Vol. II, App. C, p. 411 (PDF pp. 710). Petitioner seeks injunctive relief arising from the challenged FEIS acceptance under HRS § 343-7(c) and maintains her additional requests for

equitable and injunctive relief as pleaded in the FAP, to the extent permitted by law. FEIS acceptance is a condition precedent to approval and commencement of the proposed action. HRS § 343-5(e). The County's acceptance of the FEIS can be challenged under HRS § 343-7(c), even though Kamehameha Schools has not yet obtained development permits. Petitioner seeks vacatur of an alleged unlawful FEIS acceptance and prevention of further reliance upon it.

Princess Bernice Pauahi Bishop's Will directs her trustees (KS) to use income from her estate to support and educate orphans and others in indigent circumstances, giving preference to Hawaiians of pure or part aboriginal blood, and to "provide first and chiefly a good education," yet KS reports a $15.2 billion endowment. Petitioner contends that justifying resort development as necessary to fund a single cultural and educational center dependent on that development, while relying on an FEIS that allegedly violates HRS Chapter 343, is inconsistent with the Will's primary educational purpose. Exs. C-2-1–C-2-2 (Princess Pauahi's Will); Ex. B-3-1 (KS 2024 Annual Report, pp. 16); FEIS Vol. I, pp. 1-21 (PDF pp. 47), 3-89–3-90 (PDF pp. 147-148); Vol. II, App. D, (PDF pp. 1319).

(8) Beneficiaries, the Will, and Unanswered Financial Questions. Respondents argue that Petitioner lacks standing under HRS Chapter 554D and that the Will issues first appeared in Dkt. 16. Dkt. 150 at 2 (Ground 8); Mem. at 17–18. Petitioner raised KS's financial and educational priorities in her timely DEIS comments. FAP Exs. R-4-50–R-4-51 (FAP pp. 429–430 PDF pp. 487-489); Dkt. 1, PDF pp. 82–86. Other commenters independently questioned KS's reported $14.6 billion endowment, financial need, trust obligations, and less-intensive alternatives. FEIS Vol. II, App. C, pp. 6–7, 231, 326, 341–342, 412–413 (PDF pp. 305–307, 530, 625-627, 640–641, 711–712). Alice Ray proposed a less-intensive, education-focused alternative with projected financial returns, but KS rejected it because it lacked lodging. FEIS Vol. II, PDF pp. 711–712. Petitioner also reported the opposition of Keauhou descendant Kūpuna Kumu Lily Kong and her family. Olivia Pasciuta and Lillie Makaila independently opposed resort development and questioned KS's priorities, while Leiola and Tiara HewLen raised concerns regarding beneficiaries and education. FAP Ex. R-4-51 (FAP p. 430); FEIS Vol. II, PDF pp. 12, 175, 226, 1173–1174. These statements are cited as independent public concerns, not claims asserted on others' behalf.

KS responds that existing tenant income is insufficient to cover Keauhou Bay's maintenance and stewardship costs and that continued subsidies from its broader endowment are unacceptable.

FEIS Vol. II, PDF p. 641. However, the cited response does not disclose the actual property income, operating expenses, or funding shortfall supporting that assertion, nor does it provide a quantified comparison explaining why less-intensive alternatives would be financially inadequate. Id.; Vol. II, PDF pp. 306–307, 711–712. The Economic Impact Report estimates employment, economic activity, and government revenue but does not itself establish KS's inability to fund cultural and educational improvements without the bungalow resort. FEIS Vol. III, PDF pp. 437–457. Although the cultural education heritage center is included in the broader Keauhou Bay Management Plan, the FEIS identifies it as a renovation of existing buildings after construction of a new commercial center and relocation of existing tenants—not construction of a new educational facility. The renovated center is also intended for "educating the malihini" and as "a place of learning and connection for locals, lineal descendants, and visitors alike." FEIS Vol. I, p. 3-77 (PDF p. 135); FAP Ex. B-1-4 (FAP p. 213). Commercial lease revenue is intended to fund subsequent phases, while educational programming remains "[s]ubject to internal funding and determining the right lessee/partner for educational programs." Meanwhile, the Project proposes substantial new commercial and bungalow resort development. FEIS Vol. I, pp. 3-77, 3-89–3-90 (PDF pp. 135, 147–148); FAP Ex. B-1-4 (FAP p. 213).

Princess Pauahi's Will directs the trustees to "provide first and chiefly a good education," gives preference to Hawaiians of pure or part aboriginal blood, and requires annual financial reporting. FAP Ex. C-1 (FAP p. 315) Exs. C-2-2 (Princess Pauahi's Will). Petitioner raises the Will's accounting requirement because KS relies on an asserted financial shortfall to justify substantial resort development, while the cited FEIS responses do not disclose the underlying financial figures needed to evaluate that assertion. The Hawai'i Supreme Court recognizes that HEPA establishes "a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations." *Kilakila 'O Haleakalā v. University of Hawai'i*, No. SCWC-13-0000182, slip op. at 7 (Haw. Oct. 6, 2016) (quoting HRS § 343-1). KS made its finances part of the FEIS itself: it relies on financial need in its Purpose and Need and to reject alternatives without lodging. FEIS Vol. I, p. 1-21 (PDF p. 47); Vol. II, App. C, p. 412 (PDF p. 711). Having relied on that justification, KS must support it in the FEIS. HAR § 11-200.1-24(f), (g)(3), (h).

A substantial question remains whether the FEIS adequately explains KS's asserted need for resort revenue and provides responses commensurate with substantive comments concerning

financial justification and reasonable alternatives, as required by HAR §§ 11-200.1-26(d), 11-200.1-27, and 11-200.1-28(b)(3). Petitioner seeks the accounting pleaded in the FAP to examine KS's asserted financial need. Whether she is independently entitled to that separate trust remedy does not determine the Circuit Court's jurisdiction over her timely FEIS sufficiency challenge under HRS § 343-7(c). FAP pp. 26–27, 52–54, 91–92, 103. As the Hawai'i Supreme Court explained, "Clearly, the circuit court has jurisdiction to hear challenges brought pursuant to HRS § 343-7 given the plain language of the statute and extensive history of our courts hearing such cases." *Maui Lani Neighbors, Inc. v. State*, 156 Hawai'i 520, 575 P.3d 610, slip op. at 55 (2025).

(9) Public Trails and Highways. Respondents argue that Petitioner cannot maintain a private action under HRS § 264-1 to halt the Project or invalidate the FEIS. Dkt. 150 at 2 (Ground 9); Mem. at 17–18. Petitioner maintains her claims and requests for relief concerning historic trails, public access, and land ownership as pleaded in the FAP, to the extent permitted by law, and challenges the FEIS's inadequate evaluation of those issues under HRS § 343-7(c).

DLNR Nā Ala Hele identified the Keauhou Trail (Site 15243), potentially affected by the commercial kīpuka, and the Kainaliu Trail (Site 24259), potentially affected by lodging, grading, and infrastructure. Citing the Highways Act of 1892 and HRS Chapter 264, it raised concerns about historic alignments and continued public access and asked KS to honor its 2003 MOA with DLNR and the Cultural Trails Plan. FEIS Vol. II, PDF pp. 32–34; see Gold Coast Neighborhood Ass'n v. State, No. SCWC-14-0000472, slip op. at 29 (Haw. Aug. 25, 2017) ("The common law has historically provided for the dedication of private property for public use."). The FEIS acknowledges both trails, reports no surviving surface remnants, and proposes walking paths and a public-access easement along Old Kona Road. FEIS Vol. I, § 4.1.2.3, pp. 4-60–4-62 (PDF pp. 210–212). KS's response describes surveys and walking paths but does not address the commercial kīpuka's effect on the Keauhou Trail, the reported "Kau Cemetery" in the same zone, the "substantial grading" for the resort on the Kainaliu alignment, or presentation to the Nā Ala Hele Advisory Council under the 2003 MOA. FEIS Vol. II, PDF pp. 32–35. A substantial question remains whether these measures adequately address Nā Ala Hele's specific concerns.

Petitioner contends that the FEIS inadequately evaluated the proposed removal of Keauhou Bay's community volleyball court, which Petitioner alleges has been in open and continuous public use for approximately 50 years. FAP pp. 49–52. Such longstanding use raises the question whether public access rights may have arisen through implied dedication. As *Gold Coast*

explains, common-law dedication may prevent a landowner from denying permanent public access where the owner has permitted public use over a long period. *Gold Coast Neighborhood Ass'n v. State*, No. SCWC-14-0000472, slip op. at 29–30 (Haw. Aug. 25, 2017). Petitioner contends that the FEIS should have evaluated the proposed loss of this longstanding recreational use and any potential public-access interests before acceptance under HRS Chapter 343. Petitioner's own comments raised public, shoreline, and cultural access concerns, including fishing, diving, canoe use, and customary practices. FAP Exs. R-4-51, R-4-53, R-4-55 (FAP pp. 430, 432, 434); FEIS Vol. II, App. D, PDF pp. 1187, 1319–1320. Petition supporters included with her submission also raised shoreline-access concerns. FAP Exs. R-4-10, R-4-46 (FAP pp. 389, 425); FEIS Vol. II, App. D, PDF p. 1190. Nā Ala Hele's comments provide specific trail-related evidence relevant to those concerns. Because acceptance of a legally sufficient FEIS is a prerequisite to approval, HRS § 343-5(e), Petitioner challenges the FEIS's treatment of historic trails and public access while maintaining the claims and relief requested in the FAP to the extent permitted by law.

(10) Title. Respondents argue that Petitioner lacks standing to raise title issues, that her comments did not address title, and that she has no private cause of action regarding title. Dkt. 150 at 2–3 (Ground 10); Mem. at 17. Petitioner's standing to challenge FEIS acceptance arises under HRS § 343-7(c) from her timely written comments, not from property ownership. The FAP alleges that the FEIS rests on an undisclosed and unverified assumption that KS holds clear title and authority over every parcel in the Project Area. Keauhou II derives from Royal Patent No. 7844 and Land Commission Award 7715, yet the FEIS contains no chain-of-title analysis, parcel-by-parcel authority disclosure, or reconciliation of mapped gaps in the award. FAP pp. 25, 55–59; Exs. B-4-1-1–B-4-7, B-5-1–B-5-2. Petitioner does not assert potential heirs' claims; she challenges the FEIS's failure to disclose and examine these issues. FAP p. 58.

The FEIS's own record identifies differing ownership interests. It describes the Project as "Kamehameha Schools owned lands," yet acknowledges that the Keauhou Trail alignment "continues to be owned by the State of Hawai'i" and that Kau Cemetery extends into the Project Area. FEIS Vol. I, pp. 3-1, 4-11 (PDF pp. 59, 161). Nā Ala Hele identifies a 1969 quitclaim conveyance of part of the Kainaliu Trail to KS, while the portion mauka of Ali'i Drive remains State-owned. FEIS Vol. II, PDF pp. 32–33. The FEIS itself acknowledges that the Kuleana Acquisition Program initiated by KS's predecessors "displaced Native Hawaiian 'ohana from

lands they owned at Keauhou Bay" and that trustees commissioned "a title search" involving "18 kuleana parcels, including four kuleana parcels in Keauhou Bay." FEIS Vol. I, pp. 2-6, 4-19 (PDF pp. 56, 169). Although the FEIS describes these historical acquisitions, it does not disclose the underlying title-search results or establish how those acquisitions correspond to the parcels affected by the proposed development.

HAR § 11-200.1-24(g)(4), (k) requires disclosure of State-land use and necessary approvals. Table 1-1 lists only DLNR historic-preservation review of historic sites, not any landowner authorization for use or alteration of the State-owned trail alignments. FEIS Vol. I, p. 1-24 (PDF p. 50). A substantial question remains whether the FEIS adequately addresses ownership and authority insofar as they affect the proposed development, public access, and required approvals. Petitioner's written comments opposed taking historically significant Hawaiian lands from local and cultural use, warning that resort development would "take this land away from the locals and visitors." FEIS Vol. II, PDF pp. 195–196. She also opposed reopening "the old road … [that] goes right through King Kamehameha III's birth site" and reported Kūpuna Kumu Lily Kong's concerns about burial grounds. Id., PDF pp. 198, 1227; FAP Exs. R-4-3, R-4-51 (FAP pp. 382, 430 PDF pp. 440, 488). Petitioner's timely comment letter included petition comments stating "NO MORE STOLEN LANDS" and "KEEP THE KINGDOM OF HAWAII IN THE HANDS OF THE KANAKA MAOLI." FEIS Vol. II, App. D, PDF pp. 1313, 1428; FAP Exs. R-4-19, R-4-43 (FAP pp. 398, 422). ; see also FAP p. 57, Exs. A-4-20–A-4-26 (Apology Resolution; Cleveland message). Loke Aloua's timely DEIS comments expressly questioned "Clear title to lands within the project area" and requested chains of title for multiple Royal Patents. Id., PDF pp. 657, 806–808. KS responded by describing historical land acquisitions, descendant consultation, and referring to FEIS Section 4.1.1, without providing the requested chains of title in its response. Id., PDF pp. 657–658. Thus, land ownership and authority were expressly questioned during environmental review, contrary to any suggestion that title concerns were absent from the comment record. Petitioner also commented that the endowed land "was given to Kamehameha Schools as trustees by Princess Bernice Pauahi Bishop for the Hawaiian people to benefit from"; KS's response addresses only lineal-descendant consultation, not the trustees or land authority. FEIS Vol. II, App. C, p. 1 (PDF p. 300); FAP Ex. R-4-54 (FAP p. 433). The FEIS's copy of her August 6, 2024 email omits its opening EPA impaired-water statement and her trust-land passages. Compare FAP Exs. R-4-1, R-4-48–R-4-50 (FAP pp. 380, 427–429) with

FEIS Vol. II, App. D, PDF p. 1249. HAR § 11-200.1-27(b). In Maui Land & Pineapple Co. v. Infiesto, the Hawai'i Supreme Court relied on the original Land Commission Awards, which "evince the physical delivery of the original title documents to [the owner's] predecessors in the chain of title," and on proof that "title was conveyed unbroken" through successive owners. No. 17126 (Haw. Aug. 23, 1994) (Part II.C, "Prima Facie Evidence of Title"). Petitioner maintains that KS should provide documented chains of title showing which parcels it legally owns and confirming its authority to develop those lands. Petitioner maintains her requests for a formal chain-of-title investigation and a stay of development until lawful ownership and authority are established. FAP pp. 58–59, 103–104, 106, Prayer ¶¶ 4, 6–7.

(11) Community Events. Respondents argue that Petitioner has no private cause of action to invalidate the FEIS based on canceled community events. Dkt. 150 at 3 (Ground 11). Petitioner maintains her claims concerning canceled Hawaiian gatherings and fiduciary breaches under the FAP, including Prayer ¶ 19, which also support her challenge to the FEIS's cultural and community impact analysis. FAP pp. 60–64; FAP Exs. B-9, C-2 (Daisy Mitchell Decl.). Petitioner contends that these alleged viewpoint-based cancellations demonstrate an abuse of KS's authority as trustee of Hawaiian Endowed Lands, favoring its development interests over Hawaiian beneficiaries' cultural expression and community access, contrary to the FEIS's representations of expanded traditional practices and a bay "more welcoming for kama'āina." FEIS Vol. I, pp. 4-28, 4-31 (PDF pp. 178, 181). Petitioner's timely comments stated that when she presented the opposition petition to KS, Marissa Harman told her, "Those signatures are just tourists." FAP Ex. R-4-1 (pp. 380 PDF pp. 438). The FAP further documents Petitioner's meetings with Harman and Ka'eo Duarte, Vice President of 'Āina Pauahi, during which she presented environmental concerns and the opposition petition. FAP pp. 6–7.

These allegations raise concerns about KS's fiduciary duties under Princess Pauahi's Will and its treatment of Hawaiian beneficiaries. Although FEIS acceptance does not itself authorize development or the alleged cancellations, HRS § 343-5(e) requires an accepted FEIS before approval or commencement of the action. KS's alleged cancellation of Hawaiian community gatherings because they opposed its development raises serious questions about whether KS genuinely considered Hawaiian beneficiaries' and community concerns, including the 6,198 opposing petition signatures submitted during environmental review. FAP Exs. R-4-2, R-4-51 (FAP pp. 381, 430; PDF pp. 439, 488). The FAP reports that the petition "has garnered more

than 7,400 signatures." FAP p. 8 (PDF p. 8). In light of these alleged abuses of KS's management authority, a substantial question remains whether the FEIS adequately evaluated the Project's impacts on longstanding community and cultural uses and satisfactorily addressed substantive public comments, as required by HRS § 343-7(c) and HAR § 11-200.1-28(a)–(b). FAP Exs. R-4-2, R-4-3, R-4-51 (FAP pp. 381, 382, 430; PDF pp. 439, 440, 488).

(12) Counts. Respondents argue that Counts I–V at FAP pp. 98–102 PDF pp. 98-102 do not implicate HRS Chapter 343 and therefore fail to plead a HEPA claim. Dkt. 150 at 3 (Ground 12). Those Counts concern trust-related claims; Petitioner's independent HEPA challenge is pleaded throughout the FAP. The pleading expressly invokes HRS § 343-7(c) and HAR Chapter 11-200.1 (FAP p. 1). On page 6, the FAP states that the County violated HRS Chapter 343 by accepting the FEIS. Pages 6–8 explain why Petitioner has the right to challenge that decision. The FAP also identifies problems with the FEIS, including its analysis of water quality, marine species, endangered species habitat, cultural resources, public trails and access, land ownership, and responses to public comments. FAP pp. 24–25, 32, 41–43, 55–59, 97. The Prayer expressly requests a declaration that the FEIS violates HRS Chapter 343 and an order vacating its acceptance. Id. p. 102, Prayer ¶¶ 1–2.

Respondents themselves acknowledge Petitioner's "HEPA Claims," specifically identifying her challenges to the FEIS's responses to public comments, analysis of environmental and cultural impacts, Ka Pa'akai analysis, public access, and water availability. Dkt. 150 Mem. at 2. Respondents also acknowledge that Petitioner confirmed her challenge arises under HRS Chapter 343. Id. at 2 n.4.

"It is well established that Hawai'i is a notice-pleading jurisdiction," and legal theories need not be pleaded with precision. *Bank of America, N.A. v. Reyes-Toledo*, 143 Hawai'i 249, 428 P.3d 761, slip op. at 23 (2018) (citing *Leslie v. Estate of Tavares*, 93 Hawai'i 1, 4, 994 P.2d 1047, 1050 (2000)). HRCP Rule 8(f) requires pleadings to be construed to do substantial justice. *Id.*, slip op. at 23–24. Respondents had actual notice of the HEPA challenge and moved for summary judgment on its merits. **The absence of a separately numbered HEPA count does not warrant dismissal of Petitioner's clearly pleaded challenge to FEIS acceptance.** Nor does that omission establish Respondents' entitlement to summary judgment under HRCP Rule 56(c). The specific FEIS deficiencies and disputed record evidence, which present genuine issues of material fact, are addressed in Grounds (1)–(11) above.

(13) Public Trust, Water, and Article XII, Section 7. Respondents argue that Petitioner lacks standing or a separate cause of action for public trust, water, and Native Hawaiian cultural rights claims because they are "subsumed" within HRS § 343-7(c). Dkt. 150 at 3; Mem. at 17–20. Petitioner invokes HRS § 343-7(c) as an aggrieved person who submitted timely written comments and maintains her constitutional claims under articles XI and XII, as asserted in the FAP (pp. 4–6), both independently to the extent permitted by law and in support of her FEIS challenge. *Punohu* precludes separate declaratory actions where a specific statutory remedy exists, but "to the extent that [petitioners] seek to assert their HRS chapter 343 claims in circuit court pursuant to article XI, section 9, they may do so given the statutory grant of jurisdiction reflected in HRS § 343-7." *Maui Lani Neighbors, Inc. v. State*, 156 Hawai'i 520, 575 P.3d 610, slip op. at 4, 41, 54 (2025); *Punohu v. Sunn*, 66 Haw. 485, 487, 666 P.2d 1133, 1134 (1983).

"Subsumed" does not mean excluded.

HEPA requires disclosure of environmental and cultural impacts. HRS § 343-2. Yet the FEIS defers the Ka Pa'akai analysis to SMA permitting. FEIS Vol. I, p. 4-31 (PDF p. 181). The FEIS estimates 68,800 gallons per day for 172 lodging bedrooms alone (400 GPD per bedroom). Id., Table 4-15, p. 4-145 (PDF p. 295). DWS identifies 101 water units assigned to TMK 7-8-010:044, where lodging is proposed, with "[a]dditional water … subject to the Water Board's approval." FEIS Vol. II, PDF p. 38; (FAP pp. 268–269 PDF pp. 305-306); Vol. I, pp. 3-57, 5-45-5-47 (PDF pp. 115, 385-387). DWS states that a 5/8-inch meter "allows an average daily usage of 400 gallons"; at that rate, the 101 assigned units represent approximately 40,400 GPD, well below the lodging's 68,800 GPD. FEIS Vol. II, PDF p. 38; FAP Ex. B-6-1; Vol. I, Table 4-15, p. 4-145 (PDF p. 295). FAP Ex. B-6-1. Although KS claims 240 credits for the overall Project Area and states DWS confirmed their sufficiency, the FEIS does not clearly explain how those credits are allocated to meet the lodging demand or whether further allocation approval is necessary. FEIS Vol. I, p. 4-85 (PDF p. 235); Vol. II, PDF pp. 502–503. Respondents also assert that public trust considerations were addressed, but Petitioner disputes whether the FEIS adequately evaluates the Project's specific effects on public water resources. Dkt. 150 Mem. at 18; FEIS Vol. I, p. 5-46 (PDF p. 386).

The comments attached to Dkt. 1, including Petitioner's, raised water quality, groundwater, and runoff, and Petitioner's DEIS comments raised cultural practices. Dkt. 1, PDF pp. 8–16, 71–72; FAP Exs. R-4-36, R-4-51 (FAP pp. 415, 430 PDF pp. 473, 488). See also FAP Exs. M-13, M-17

(FAP pp. 338–340, 343 PDF pp. 387, 392) (reporting drought conditions and County water needs tied to the Keauhou Aquifer). **A substantial question remains whether the FEIS adequately evaluated water resources and traditional and customary Native Hawaiian practices before acceptance under HRS § 343-7(c).**

(14) Declaratory, Injunctive, and Chapter 91 Relief. Respondents argue that declaratory, injunctive, and Chapter 91 relief are unavailable under Punohu and Maui Lani. Dkt. 150 at 3 (Ground 14); Mem. at 18–20. Petitioner's challenge to FEIS acceptance proceeds under HRS § 343-7(c). Petitioner maintains all declaratory, injunctive, constitutional, and other relief requested in the FAP, to the extent authorized by law. Respondents acknowledge, and Maui Lani confirms, that the circuit court has original jurisdiction over HEPA challenges. Mem. at 18; Maui Lani Neighbors, Inc. v. State, 156 Hawai'i 520, 575 P.3d 610, slip op. at 54–55 (2025). Punohu does not bar relief arising from this statutory challenge. Maui Lani recognizes that inadequate environmental review may invalidate a resulting permit and that remedies for HEPA violations involve "equitable discretion." Maui Lani, slip op. at 56–57. Petitioner seeks a declaration that the FEIS is unlawful and invalid, vacatur of the County's FEIS acceptance, and appropriate injunctive relief to prevent the proposed development from proceeding in reliance on the FEIS whose acceptance Petitioner challenges as unlawful. FAP pp. 102–103, Prayer ¶¶ 1–4. Under HRCP Rule 54(c) and Chambrella, the Court must consider other legally available remedies before dismissing solely because a particular remedy is unavailable. See Ground (5); FAP p. 103, Prayer ¶ 3.

Petitioner's other allegations remain relevant to FEIS completeness and HEPA compliance. Petitioner does not concede dismissal of any requested relief. HRCP Rules 8(a) and 18(a) permit alternative relief and joinder of legal and equitable claims, subject to applicable legal requirements. Petitioner opposes dismissal of her claims. If the Court determines that certain claims must proceed separately, Petitioner requests severance under HRCP Rule 21 rather than dismissal; alternatively, if dismissal is ordered, Petitioner requests dismissal without prejudice, while preserving her HRS § 343-7(c) challenge.

(15) Marissa Harman Is a Proper Party. Respondents contend that Dkt. 106 requires Harman's dismissal. Dkt. 150 at 3 (Ground 15); Mem. at 20. It does not. Dkt. 106 denied KS and Harman's joinder without prejudice because "the grounds which the Motion was granted is party specific and the joinder assertions lacks specificity." Dkt. 106 at 2.

Harman was the Applicant's contact. Ex. R-2-2 (FAP p. 364). G70's April 12, 2022 scoping meeting report lists "KS: Marissa Harman" among those present. Ex. A-17. Director Darrow's acceptance letter expressly identifies "Applicant: Kamehameha Schools (Marissa Harman)." Ex. A-20-1. Respondents argue that Harman "in her individual capacity" is not the Applicant, but the FAP names her in her professional and official capacity, not individually, and the County's own acceptance letter identifies her by name under "Applicant." Mem. at 20; Ex. A-20-1. Dkt. 106 at 1. Her subsequent departure from KS does not erase her documented role in the challenged FEIS process. Harman Decl. ¶ 3. If the Court dismisses Harman, Petitioner requests that the dismissal be without prejudice and not limit consideration of her conduct as evidence concerning the FEIS.

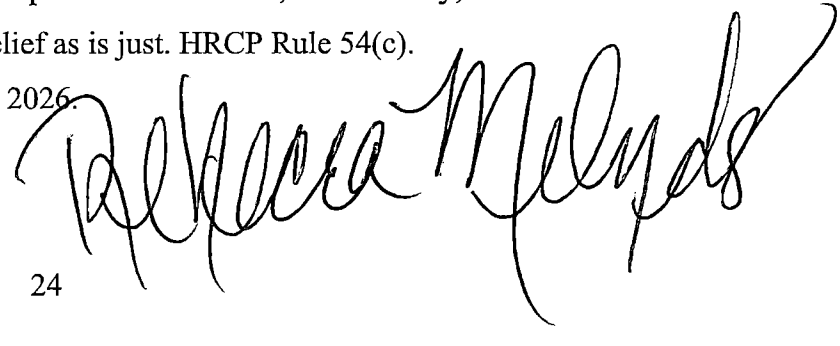
CONCLUSION

Additionally, HAR § 11-200.1-26(b) permits responses grouped by topic only if every substantive written comment clearly receives a response. HAR § 11-200.1-24(p) requires, where possible, identification of the timing of each proposed mitigation step and provisions proposed to ensure that mitigation measures "will in fact be taken." HAR § 11-200.1-24(q) requires a separate section summarizing unresolved issues and explaining how they "will be resolved prior to commencement of the action," or the overriding reasons for proceeding without resolving them. These requirements further support Petitioner's challenge to the FEIS's inadequate responses to her substantive comments and the adequacy of its treatment of water-capacity determinations and drainage analysis deferred until after acceptance.

Petitioner respectfully requests that the Court: (1) deny summary judgment on her timely HRS § 343-7(c) challenge to the County's acceptance of the FEIS; (2) recognize Dkt. 16 as properly filed under HRCP Rule 15(a)(1) or, alternatively, as relating back under Rule 15(c)(2); (3) deny summary judgment on all other requests for relief in the FAP, including constitutional, public trust, fiduciary, accounting, title, community-access, employment, declaratory, and injunctive relief; alternatively, if the Court determines that any request cannot proceed in this action, Petitioner requests severance under HRCP Rule 21 rather than dismissal, or dismissal without prejudice only if the Court determines dismissal is necessary, without affecting Petitioner's HRS § 343-7(c) challenge; (4) deny dismissal of Respondent Harman or, alternatively, dismiss her without prejudice; and (5) grant such other relief as is just. HRCP Rule 54(c).

DATED: Kailua-Kona, Hawai'i, October 27, 2026.

REBECCA MELENDEZ Petitioner, Pro Se



Civil No. 3CCV-25-0000438

DECLARATION OF REBECCA MELENDEZ

I, Rebecca Melendez, declare as follows. I am the Petitioner in this action, over eighteen years of age, and competent to testify. I make this declaration on personal knowledge in support of my Memorandum in Opposition to Respondents' Motion for Summary Judgment [Dkt. 150].

1. I filed my First Amended Petition [Dkt. 16] on April 8, 2026, before I had served any respondent. Before that date, no respondent had served a responsive pleading. The "Notice of Correction" filed as Dkt. 10 only corrected the spelling of my name. It did not change my allegations, claims, parties, or requested relief.
2. I attended the April 12, 2022 virtual public scoping meeting for the Keauhou Bay Management Plan and spoke during it. Exhibit A-14 is a true and correct copy of the State Environmental Review Program's listing of links to the Draft EIS and to the audio and video recordings of that scoping meeting. My comments appear at approximately 47:49 to 53:18 of the video recording.
3. I listened to the recording and transcribed my statement at approximately 51:37. To the best of my ability, my transcription is accurate: "I don't understand the educational point because all I saw really was like, 115, 150, I'm sorry, 150 new hotels. I'm going to have to disagree with you on the fact that you're saying it's different than the hotel that's already at the point. That's just my side of it, so." I made that statement in response to Ms. Marissa Harman's presentation.
4. Exhibit A-17 is a true and correct copy of G70's Conference Report to Kamehameha Schools for the April 12, 2022 EISPN Scoping Meeting, as it appears in FEIS Volume II, Appendix A.
5. Exhibits A-20-1 and A-20-2 are a true and correct copy of the County of Hawai'i Planning Department's September 16, 2025 letter, signed by Director Jeffrey W. Darrow, accepting the Final EIS.
6. Exhibits A-20-3 through A-20-5 are a true and correct copy of the Environmental Review Program's September 16, 2025 online submission record for the FEIS acceptance.
7. Exhibit B-30 is a true and correct screenshot of the U.S. Environmental Protection Agency's "How's My Waterway?" 2026 Waterbody Report for Keauhou Bay (Kona),

Assessment Unit ID HI713293, which I took from mywaterway.epa.gov on October 21, 2026..

8. Exhibits C-2-1 and C-2-2 are true and correct screenshots of Article Thirteen of the Will of Bernice Pauahi Bishop, which I took from the Kamehameha Schools website at ksbe.edu/about-us/about-pauahi/will on October 23 and 24, 2026. The arrows on those pages were added by me.
9. On August 6, 2024, at approximately 1:02 p.m., I emailed my Draft EIS comments to Keauhoubay@ksbe.edu and to County officials, before the comment period closed on August 7, 2024.
10. My Draft EIS comment submission included the public petition opposing the proposed bungalow resort, which had 6,198 signatures at the time of submission.
11. When I presented the opposition petition to Kamehameha Schools, Ms. Harman told me, "Those signatures are just tourists."
12. I met with Ms. Harman and with Ka'eo Duarte, Vice President of 'Āina Pauahi, and presented my environmental concerns and the opposition petition to them.
13. At a meeting where Ms. Harman represented Kamehameha Schools, Ms. Harman indicated that the volleyball court would be removed, that the canoes stored along the shoreline would have to go, and that the canoe club would have to remove its one-person canoes. I do not recall her exact words; this is my best present recollection of the discussion.

I declare under penalty of perjury under the laws of the State of Hawai'i that the foregoing is true and correct.

DATED: Kailua-Kona, Hawai'i, October 27, 2026.

REBECCA MELENDEZ
Petitioner, Pro Se

EXHIBIT A-14

Third Circuit Court of the State of Hawai'i
Civil No. 3CCV-25-0000438

COVER LETTER FOR EXHIBIT A-14

Petitioner hereby submits Exhibit A-14, consisting of the State Environmental Review Program's listing of links to the Keauhou Bay Management Plan Draft Environmental Impact Statement and to the audio and video recordings of the April 12, 2022 public scoping meeting. Petitioner's recorded comments appear at approximately 47:49 to 53:18 of the video recording, and the quoted statement appears at approximately 51:37.

Submitted with Petitioner's Memorandum in Opposition to Respondents' Motion for Summary Judgment [Dkt. 150].

The Draft Environmental Impact Statement (EIS) for the Kamehameha Schools – Keauhou Bay Management Plan is divided into two separate files, available at the following URLs:

1. https://files.hawaii.gov/dbedt/erp/Doc_Library/2024-06-23-HA-DEIS-KS-Keauhou-Bay-Management-Plan-Vol-I.pdf

2. https://files.hawaii.gov/dbedt/erp/Doc_Library/2024-06-23-HA-DEIS-KS-Keauhou-Bay-Management-Plan-Vol-II.pdf

Further, the audio and video recordings of the public scoping meeting are available here:

- https://files.hawaii.gov/dbedt/erp/Doc_Library/2024-06-23-HA-DEIS-KS-Keauhou-Bay-Management-Plan-scoping-meeting-audio.m4a

- https://files.hawaii.gov/dbedt/erp/Doc_Library/2024-06-23-HA-DEIS-KS-Keauhou-Bay-Management-Plan-scoping-meeting-video.mp4

EXHIBIT A-17

Third Circuit Court of the State of Hawai'i
Civil No. 3CCV-25-0000438

COVER LETTER FOR EXHIBIT A-17

Petitioner hereby submits Exhibit A-17, consisting of G70's Conference Report to Kamehameha Schools for the April 12, 2022 EISPN Scoping Meeting, as it appears in FEIS Volume II, Appendix A. The report lists "KS: Marissa Harman" among those present and records that she presented the purpose and need for the plan and the scope of the EIS.

Submitted with Petitioner's Memorandum in Opposition to Respondents' Motion for Summary Judgment [Dkt. 150].

G70 CONFERENCE REPORT

111 S. King Street
Suite 170
Honolulu, HI 96813
808.523.5866
www.g70.design

TO:	Kamehameha Schools		
FROM:	G70		
DATE:	April 12, 2022	**LOCATION:**	Virtual Meeting via Zoom
PROJECT:	Keauhou Bay Management Plan	**PROJECT NO:**	221053-01
SUBJECT:	EISPN Scoping Meeting	**NO. OF PAGES:**	12
THOSE PRESENT:	KS: Marissa Harman, Emily Davids, Crystal Kua, Jason Jeremiah, Kaimana Barcarse, Kau'i Burgess	G70: Kawika McKeague, Steven Doo, Cody Winchester, Janice Jensen	

COMMUNITY MEMBERS PRESENT:

Alex Roy	Jackson Bauer	Loke Davis	Sherry Bracken
Alice Ray	Jessie	Manu Powers	Tyler Swain
BC	Jim Plant	Mike Perkins	Ulu Ching
Ben Rice	Jjfetter	Moto g7 play (Sarah)	Wendy
Blhod	Jolene	Olu Campbell	
Carolyn Hui	Ka'ea Lyons	Pamela Rice	
Christina	Kalani	Pete S	
Cindi Punihaole	Kalani's iPad	Peter M	
David E Smith	Kathleen Wilson	Rebecca	
Deb S	Kathy McMillen	Rebecca Villegos	
Dr. Holeka Goro Inaba	Ka'ui Burgess	Renee Schofield	
E Janes	Kekoa Kaluhiwa	Renee Schofield	
Geoff Hand	Kimmy Gay	Ryan	
Heather and Joe Mueller	L Mikahala Roy	Ryan Roberts	
Hilarie Alomar	Leiola	S Rankin	
Hodges	Lew Brentano	Samsung (unknown)	
iPad 2 (unknown)	Lisa	Shakti Stream	
iPad 3 (unknown)	Lisa and Brent Sterritt	Shandon	

SUMMARY:

Notification that an Environmental Impact Statement (EIS) was to be prepared, known as an Environmental Impact Statement Preparatory Notice (EISPN), was published in the Environmental Review Program's The Environmental Notice on March 23, 2022 to solicit input on the scope and topics of interest of the Keauhou Bay Management Plan. Kamehameha Schools (KS) and G70 hosted a public scoping meeting to fulfill the consultation requirements as promulgated in Hawai'i Revised Statutes §11-200.1-23(d). Due to the ongoing COVID-19 pandemic, the meeting was held virtually on April 12, 2022, from 6:00-8:30pm via Zoom.

Kaimana Barcarse (KS) opened the meeting with a pule. Marissa Harmon (KS), Emily Davids (KS), and Kawika McKeague (G70) presented a slide deck describing the purpose and need for the plan, entitlements process, the scope of the EIS, the plans management goals and strategies, and preliminary design elements. After the presentation, participants were provided with an opportunity to ask questions and provide comments regarding the scope of the project. A summary of the comments provided is provided in the following section.

EXHIBIT A-20
(A-20-1 through A-20-5)

Third Circuit Court of the State of Hawai'i
Civil No. 3CCV-25-0000438

COVER LETTER FOR EXHIBIT A-20

Petitioner hereby submits Exhibit A-20, consisting of:

- **A-20-1 – A-20-2:** the County of Hawai'i Planning Department's September 16, 2025 letter, signed by Director Jeffrey W. Darrow, accepting the Final EIS and identifying the Applicant as "Kamehameha Schools (Marissa Harman)"; and
- **A-20-3 – A-20-5:** the Environmental Review Program's September 16, 2025 online submission record for the FEIS acceptance, listing the documents uploaded with the acceptance letter, including "KBMP-FEIS-Vol-11.pdf."

Submitted with Petitioner's Memorandum in Opposition to Respondents' Motion for Summary Judgment [Dkt. 150].

C. Kimo Alameda, Ph.D.
Mayor

William V. Brilhante, Jr.
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

Jeffrey W. Darrow
Director

Michelle S. Ahn
Deputy Director

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

September 16, 2025

Director Mary Alice Evans
Environmental Review Program
Office of Planning and Sustainable Development
235 S. Beretania St., Rm. 702
Honolulu, HI 96813

Dear Mary Alice Evans:

SUBJECT:	**Hawai'i Revised Statutes (HRS), Chapter 343 Final Environmental Impact Statement (FEIS) (PL-ENV-2024-000019)**
Project:	**Kamehameha Schools – Keauhou Bay Management Plan**
Applicant:	**Kamehameha Schools (Marissa Harman)**
Agent:	**G70 (Kawika McKeague)**
TMK:	**(3) 7-8-012:098, 101, 103, 048, 027, 004, 013, 014, 054, 061, 065, 007 & (3) 7-8-010:044, and 049, North Kona District, Hawai'i**

The County of Hawai'i Planning Department hereby accepts the Final EIS for Keauhou Bay Management Plan, dated September 2025, which is located in the North Kona District, on the island of Hawai'i. The Final EIS is deemed acceptable based on the requirements of HRS Chapter 343, and Hawai'i Administrative Rules Section 11-200.1-28. Please publish this determination in the next edition of The Environmental Notice. We have uploaded an electronic copy of this letter and the Final EIS to your online submittal site.

The Final EIS adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments. The procedures for assessment, consultation, review, and the preparation and submission of the Final EIS have all been completed satisfactorily as specified in the environmental impact statement regulations. The content requirements of those regulations have been satisfied.

If you have any questions, please contact Alex J. Roy at 808-961-8140 or via email at alex.roy@hawaiicounty.gov

Sincerely,

Jeffrey W. Darrow
Jeffrey W. Darrow (Sep 16, 2025 07:29:52 HST)

JEFFREY W. DARROW
Planning Director

AJR:rms
P:\wpwin60\ch343\2025\pl-env-2024-000019_feis_erp_letter.docx

cc via email: Cody Winchester, G70

From: dbedt.opsd.erp@hawaii.gov
To: DBEDT OPSD Environmental Review Program
Subject: New online submission for The Environmental Notice
Date: Tuesday, September 16, 2025 2:37:24 PM

Action Name
Kamehameha Schools – Keauhou Bay Management Plan
Type of Document/Determination
Final environmental impact statement (FEIS) acceptance or non-acceptance
HRS §343-5(a) Trigger(s)
• (3) Propose any use within a shoreline area • (4) Propose any use within any historic site as designated in the National Register or Hawai'i Register
Judicial district
North Kona, Hawai'i
Tax Map Key(s) (TMK(s))
(3) 7-8-012:098; (3) 7-8-012:101; (3) 7-8-012:048; (3) 7-8-010:044; (3) 7-8-012:027; (3) 7-8-012:004; (3) 7-8-012:013; (3) 7-8-012:014; (3) 7-8-012:054; (3) 7-8-012:061; (3) 7-8-012:065; (3) 7-8-012:007; (3) 7-8-010:049; (3) 7-8-012:103
Action type
Applicant
Other required permits and approvals
Various Site, Grading, Building and Infrastructure Approvals
Discretionary consent required
Special Management Area Use Permit (Major); Shoreline Setback Variance
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)
planning@hawaiicounty.gov
Email address for receiving comments
planning@hawaiicounty.gov
Agency contact phone
(808) 961-8140

Agency address
COUNTY OF HAWAI'I PLANNING DEPARTMENT 101 PAUAHI STREET, SUITE 3 Hilo, HI 96720 United States Map It
Accepting authority
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
567 S King Street 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
Consultant address
111 S. King Street Ste. 170 Honolulu, HI 96813 United States Map It
Action summary
Kamehameha Schools proposes to implement the Keauhou Bay Management Plan (KBMP) on approximately 29

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

Attached documents (signed agency letter & EA/EIS)

- 2025-09-15-Letter-to-Director-Mary-Alice-Evans-OPSD-PL-ENV-2024-000019-FEIS_ERP_05.pdf
- KBMP-FEIS-Vol-31.pdf
- KBMP-FEIS-Vol-21.pdf
- KBMP-FEIS-Vol-11.pdf

ADA Compliance certification (HRS §368-1.5):

The authorized individual listed below acknowledges that they retain the responsibility for ADA compliance and are knowingly submitting documents that are unlocked, searchable, and may not be in an ADA compliant format for publication. Audio files do not include transcripts, captions, or alternative descriptions. The project files will be published without further ADA compliance changes from ERP, with the following statement included below the project summary in The Environmental Notice: "If you are experiencing any ADA compliance issues with the above project, please contact (authorized individual submitting the project at email)."

Action location map

- KeauhouBay_ProjectLocation1.zip

Authorized individual

Alex J. Roy

Authorized individual email

alex.roy@hawaiicounty.gov

Authorized individual phone

(808) 961-8140

Authorization

- The above named authorized individual hereby certifies that he/she has the authority to make this submission.

EXHIBIT B-30

Third Circuit Court of the State of Hawai'i
Civil No. 3CCV-25-0000438

COVER LETTER FOR EXHIBIT B-30

Petitioner hereby submits Exhibit B-30, consisting of a screenshot of the U.S. Environmental Protection Agency's "How's My Waterway?" 2026 Waterbody Report for Keauhou Bay (Kona), Assessment Unit ID HI713293, taken from mywaterway.epa.gov on October 21, 2026. The report identifies Keauhou Bay as "Impaired," 303(d) listed, with "Existing Plans for Restoration: No."

Submitted with Petitioner's Memorandum in Opposition to Respondents' Motion for Summary Judgment [Dkt. 150].

mywaterway.epa.gov/waterbody-report/21HI/HI713293/2026

How's My Waterway?

Explore, Discover and Learn about your water.

Waterbody Report

Keauhou Bay (Kona)
Assessment Unit ID: HI713293

Waterbody Condition: Impaired (Issues Identified)

Existing Plans for Restoration: No

303(d) Listed: Yes

Year Reported: 2026

303(d) List Status: Submitted to EPA for Review

Other Years Reported: 2016, 2018, 2020, 2022, 2024 (opens new browser tab)

Organization Name (ID): Hawaii (21HI)

What type of water is this?
Bay (0.03 Square Miles)

Where is this water located?
Hawaii

Advanced Filtering (opens new browser tab)

Download Waterbody Data (2026)



Assessment Information from 2026

State or Tribal Nation specific designated uses:

Information on Water Quality Standards — Expand All

Aquatic Life	Impaired
Recreation	Good

Probable sources contributing to impairment from 2026:

No probable sources of impairment identified for this waterbody.

Assessment Documents

No documents are available

Plans to Restore Water Quality

What plans are in place to protect or restore water quality?

No plans specified for this waterbody.

EXHIBIT C-2
(C-2-1 through C-2-2)
Melendez v. Kamehameha Schools/Bishop Estate, et al.
Third Circuit Court of the State of Hawai'i
Civil No. 3CCV-25-0000438

COVER LETTER FOR EXHIBIT C-2

Petitioner hereby submits Exhibit C-2, consisting of screenshots of Article Thirteen of the Will of Bernice Pauahi Bishop, taken from the Kamehameha Schools website (ksbe.edu/about-us/about-pauahi/will) on October 23 and 24, 2026. The arrows were added by Petitioner.

- **C-2-1:** "I desire my trustees to provide first and chiefly a good education…"
- **C-2-2:** "I also direct that my said trustees shall annually make a full and complete report of all receipts and expenditures…"

This exhibit is **not FAP Ex. C-2** (Declaration of Daisy Mitchell, FAP pp. 316–317).

Submitted with Petitioner's Memorandum in Opposition to Respondents' Motion for Summary Judgment [Dkt. 150].

Thirteenth. 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.

I direct my trustees to expend such amount as they may deem best, 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, and in furnishing the same with the necessary and appropriate fixtures furniture and apparatus.

I direct my trustees to invest the remainder of my estate in such manner as they may think best, and to expend the annual income in the maintenance of said schools; meaning thereby the salaries of teachers, the repairing buildings and other incidental expenses; and 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; the proportion in which said annual income is to be divided among the various objects above mentioned to be determined solely by my said trustees they to have full discretion.

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, 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.

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.

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; I also direct my said trustees to keep said school buildings insured in good Companies, and in case of loss to expend the amounts recovered in replacing or repairing said buildings.

Pauahi's Will take from KS website C-2

Schools.

I direct my trustees to expend such amount as they may deem best, 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, and in furnishing the same with the necessary and appropriate fixtures furniture and apparatus.

I direct my trustees to invest the remainder of my estate in such manner as they may think best, and to expend the annual income in the maintenance of said schools; meaning thereby the salaries of teachers, the repairing buildings and other incidental expenses; and 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; the proportion in which said annual income is to be divided among the various objects above mentioned to be determined solely by my said trustees they to have full discretion.

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, 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.

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.

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; I also direct my said trustees to keep said school buildings insured in good Companies, and in case of loss to expend the amounts recovered in replacing or repairing said buildings.

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.

Fourteenth. I appoint my husband Charles R. Bishop, Samuel M. Damon, Charles M. Hyde, Charles M.

Pauahi's Will taken from KS website
C-2-2

Exhibit C
Third Circuit Court, Hawai'i #3CCV-25-0000438

EXHIBIT R-10

Third Circuit Court of the State of Hawai'i
Civil No. 3CCV-25-0000438

COVER LETTER FOR EXHIBIT R-10

Petitioner hereby submits Exhibit R-10, a screenshot of her original August 6, 2024, 1:02 p.m. email sent during the Draft EIS comment period. The screenshot displays the email's opening statements identifying Keauhou Bay's EPA impaired-water status, describing concerns regarding Kamehameha Schools' treatment of the opposing petition, and requesting acknowledgment of the petition's 6,198 signatures and comments. Petitioner offers this screenshot for comparison with the reproduction of her email in FEIS Volume II, Appendix D, PDF page 1249, which she contends omitted these opening statements.

Submitted with Petitioner's Memorandum in Opposition to Respondents' Motion for Summary Judgment [Dkt. 150].

Third Circuit Court, Hawai'i #3CCV-25-0000438

August 6, 2024, 1:02 PM Email — Original Opening Not Reproduced in FEIS R-10

Gmail ZENDO Upgrade

Compose

Inbox 1,143
Starred
Snoozed
Sent
Drafts 192
Purchases 66
More

Labels
About Meetings
Comment Letters
Emails from Site
Environment Reviews
General Plan Info
Island Emails
Keauhou Bay
Lamaku
Personal

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, 1:02 PM
to keauhoubay, planning, Alex, rebecca.villegas, heather.kimball, Jennifer, sue.leeloy, ashley.kierkiewicz, matt.kanealii-kleinfelder, Michelle, Holeka, cindy.evans

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.

Reply Reply all Forward

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAI'I
CIVIL NO. 3CCV-25-0000438
REFERENCE INDEX OF EXHIBITS

Petitioner Rebecca Melendez's Memorandum in Opposition to Respondents' Motion for Summary Judgment [Dkt. 150].

New exhibits submitted with the opposition are identified below. "FAP Ex." refers to exhibits already included with the First Amended Petition [Dkt. 16]. FEIS citations refer to the Final Environmental Impact Statement in the court record.

Opposition exhibit	**Description**	**Memo page(s)**
A-14	State Environmental Review Program listing of links to April 12, 2022 EISPN scoping-meeting video and audio recordings; Petitioner's remarks at approximately 47:49–53:18.	9
A-17	G70 Conference Report to Kamehameha Schools, EISPN Scoping Meeting, April 12, 2022.	24
A-20-1–A-20-5	County Planning Department FEIS acceptance letter signed September 16, 2025 (A-20-1–A-20-2) and Environmental Review Program submission record (A-20-3–A-20-5).	5, 6, 12, 24
B-30	U.S. EPA "How's My Waterway?" 2026 Waterbody Report for Keauhou Bay (Kona), Assessment Unit HI713293; screenshot taken October 21, 2026.	6, 7
C-2-1–C-2-2	Screenshots of Princess Bernice Pauahi Bishop's Will, Article Thirteen, from Kamehameha Schools' website; taken October 23–24, 2026 (arrows added by Petitioner).	15, 16
R-10	Screenshot of Petitioner's August 6, 2024, 1:02 p.m. email, showing its opening statements about Keauhou Bay's EPA impaired-water status, the opposing petition, and 6,198 signatures; offered for comparison with FEIS Vol. II, App. D, PDF p. 1249.	8

Important exhibit distinction: FAP Ex. C-2 is Daisy Mitchell's declaration about the canceled gathering (Ground 11, memo p. 20). It is not the same as Opposition Exs. C-2-1–C-2-2, which are pages of Princess Pauahi's Will.

DATED: Kailua-Kona, Hawai'i, October 27, 2026.

REBECCA MELENDEZ
Petitioner, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2026 a true and correct copy of the following documents:

1. Petitioner Rebecca Melendez's Memorandum in Opposition to Respondents Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools' and Marissa Harman's Motion for Summary Judgment Filed September 4, 2026 [Dkt. 150];
2. Declaration of Rebecca Melendez;
3. Exhibits "A-14," "A-17," "A-20," "B-30," "C-2-1," and "C-2-2";
4. Reference Index of Exhibits; and
5. Certificate of Service

was duly served upon the following parties by U.S. Mail.

JOHN P. MANAUT, ESQ.

PUANANIONAONA P. THOENE, ESQ.

KATHERINE A. GARSON, ESQ.

CARLSMITH BALL LLP

1001 Bishop Street, Suite 2100

Honolulu, Hawai'i 96813

Attorneys for Respondents CRYSTAL KAUILANI ROSE, JENNIFER NOELANI GOODYEAR-KA'ŌPUA, MICHELLE M. KA'UHANE, ERIC K. YEAMAN and ELLIOT KAWAIHO'OLANA MILLS, as TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP DBA KAMEHAMEHA SCHOOLS, and MARISSA HARMAN, in her professional and official capacity

RENEE N.C. SCHOEN, ESQ.

Corporation Counsel

SHERILYN K. TAVARES, ESQ.

DEMETRI G. LAMETTI, ESQ.

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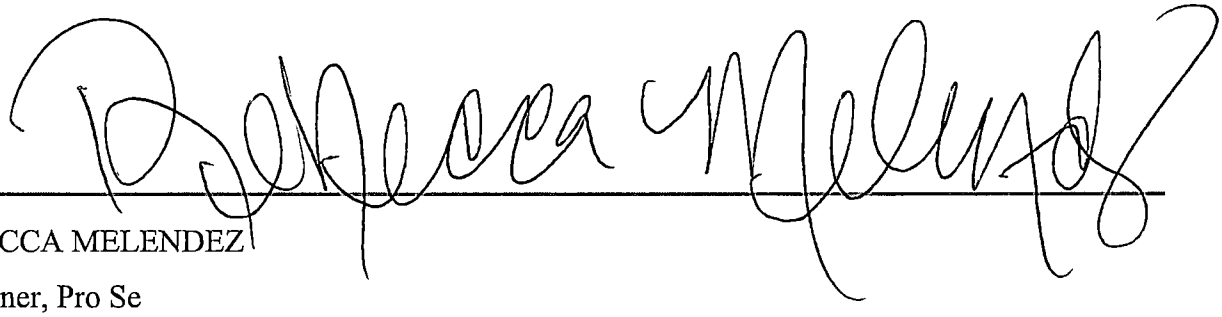
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I declare under penalty of perjury under the laws of the State of Hawai'i that the foregoing is true and correct.

DATED: Kailua-Kona, Hawai'i, October 27, 2026.



REBECCA MELENDEZ
Petitioner, Pro Se