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NO. CAAP-24-0000678

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

SARA STEINER, Plaintiff-Appellant,
v.
COUNTY OF HAWAIʻI PLANNING DEPARTMENT;
DIRECTOR ZENDO KERN *official capacity*;
PUNA GEOTHERMAL VENTURE *a for profit corporation*,
Defendants-Appellees,
and
ANY OTHER DOES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CASE NO. 3CCV-24-0000128)

SUMMARY DISPOSITION ORDER
(By: Nakasone, Chief Judge, Leonard and Guidry, JJ.)

Self-represented Plaintiff-Appellant Sara Steiner (**Steiner**) appeals from the Circuit Court of the Third Circuit's[1] (**environmental court**) October 30, 2024 "Final Judgment Against [Steiner]" (**Judgment**).[2]

[1] The Honorable Henry T. Nakamoto presided.

[2] Steiner prematurely filed her notice of appeal on October 16, 2024, purporting to appeal from an October 14, 2024 "Minute Order Granting Defendant[-Appellee] Puna Geothermal Venture's [(**PGV**)] Motion for Summary

(continued . . .)

Steiner raises two points of error on appeal, contending that: (1) "[Defendant-Appellee Puna Geothermal Venture's (**PGV**)] final [environmental impact statement (**FEIS**)] does not comply with Hawaii Revised Statutes [(**HRS**)] or Hawaii Administrative Rules [(**HAR**)] and was compiled in bad faith"; and (2) "the [environmental court] failed to take a hard look at [Steiner's] proof" such that "[Steiner's] claims were disposed of without any finding of fact on [Steiner's] proof." (Formatting altered.)

Upon careful review of the record, briefs, and relevant legal authorities, and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Steiner's contentions of error as follows[3]:

(1) Steiner contends that the FEIS was insufficient because it did not comply with HRS chapter 343 and HAR chapter 11-200.1 (eff. 2019), and that the FEIS was compiled in bad faith.

"Under [the Hawaiʻi Environmental Policy Act (**HEPA**)], whether or not an agency has followed proper procedures or

[2](. . .continued)
Judgment [(**MSJ**)] (Dkt. #28) and Defendant[s-Appellees] County of Hawaii Planning Department [(**County**)] and Director Zendo Kern's [(**Kern**)] [MSJ] (Dkt. 64)." Subsequent to her filing, the environmental court entered its October 30, 2024 "Findings of Fact, Conclusions of Law and Order Granting: (1) [PGV's] [MSJ], Filed June 7, 2024 [Dkt. 28], and (2) [County] and [Kern's] [MSJ], Filed June 25, 2024 [Dkt. 64]", and Judgment.

[3] We reorder and reorganize Steiner's contentions of error herein.

considered the appropriate factors in making its determination is a question of law, and will be reviewed de novo." Kaupiko v. Bd. of Land & Nat. Res., 154 Hawaiʻi 456, 467, 555 P.3d 143, 154 (2024) (cleaned up). "The sufficiency of an [environmental impact statement (**EIS**)] is a question of law, which is properly addressed through the summary judgment procedure." Id. (cleaned up).

We apply the "rule of reason" standard when reviewing an agency's determination of whether an EIS adequately satisfies legal requirements, pursuant to which,

> an EIS need not be exhaustive to the point of discussing all possible details bearing on the proposed action but **will be upheld as adequate if it has been compiled in good faith** and **sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasoned decision** after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives.

Unite Here! Local 5 v. PACREP LLC, 157 Hawaiʻi 442, 457, 580 P.3d 622, 637 (2025) (emphasis added) (citation omitted).

Steiner challenges the format of the FEIS as insufficient because it incorporated and responded to her comments in the appendices, not in the body of the FEIS, and because it utilized an "illegible" 5.88-point font to reproduce and respond to public comments that was intended "to hide substantive comments" in "bad faith."

Steiner's contentions lack merit. "HAR § [11-200.1-27's[4]] mandate that a[n] [FEIS] must 'incorporate substantive comments' does not require that the substantive comments must be incorporated into the body (as opposed to an appendix) of the [F]EIS." Kaupiko, 154 Hawaiʻi at 472, 555 P.3d at 159. The record reflects that timely submitted public comments, including Steiner's, as well as the County's responses to those comments, were incorporated into FEIS Appendix D.[5] Steiner does not cite to any legal authority supporting the proposition that responses to draft EIS comments must meet specific formatting requirements, and neither HEPA nor HAR chapter 11-200.1 specifies a requisite EIS font size.

Steiner next contends that the FEIS was insufficient because it improperly relied on a 2020 U.S. Geological Survey Report (**2020 USGS Report**) and a 2021 Environmental Protection Agency Response to Comments (**2021 EPA Response**), rather than on the "peer-reviewed" reports that Steiner herself submitted.

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[4] Kaupiko references HAR § 11-200-18, which was repealed in 2019.

[5] We note that Steiner lacks standing to assert challenges to the sufficiency of the FEIS on behalf of non-party third persons, to the extent that she contends the environmental court failed to rule on the proof contained in (1) Robert Petricci's declaration; (2) Professor Falk Amelung's letter; and (3) Professor Michael Edelstein's executive summary. "[The appellate court's] review of the EIS is limited to those concerns that [plaintiff] listed in his comments to the draft EIS." Price v. Obayashi Haw. Corp., 81 Hawaiʻi 171, 183, 914 P.2d 1364, 1376 (1996); see also HRS § 343-7(c) (2022) ("Affected agencies and persons who provided written comment to an accepted statement during the designated review period shall be adjudged aggrieved parties for the purpose of bringing judicial action under this subsection[.]").

This contention also lacks merit. Section 3.1.1 and Appendix D of the FEIS clearly reflect that the County considered the 2020 USGS Report, 2021 EPA Response, and Steiner's challenges to these documents in reviewing the FEIS.[6] It describes the impacts of existing PGV operations and concludes that these PGV operations have not resulted in increased seismic and volcanic activity.

Finally, Steiner contends that the FEIS was insufficient because it failed to adequately describe the negative impacts of PGV operations and provide for an adequate emergency response plan (**ERP**) or hydrogen sulfide monitoring.

These contentions also lack merit. The environmental court was not wrong in determining that the FEIS was sufficient as to the underground and geologic impacts of PGV operations. Section 3.1.1 (Geology: Existing Environment) of the FEIS analyzed the existing geologic environment, including the impacts of PGV operations on seismicity, subsurface permeability, subsurface pressure buildup, volcanic activity, new fracture formation, reservoir rock pressure changes, and subsidence rates. The FEIS supported its analysis of these

[6] The 2020 USGS Report and 2021 EPA Response were not reproduced in the FEIS appendices, but a citation and link to both documents were included in section 7.0 (References). The HAR requires that an EIS indicate what underlying studies, reports, and other information it considered; it does not require an EIS to reproduce the relied-upon studies, reports, or other information. See HAR § 11-200.1-24(b).

geologic impacts with citations to at least five reports, studies, and/or documents detailing the impact of human activity and PGV operations on the geologic environment.

The FEIS' description of PGV's ERP was also legally sufficient. PGV's ERP was addressed in sections 2.1.8 (Existing Operations: Emergency Response Plan), 2.2.9 (Proposed Operations: Emergency Response Plan), 3.10 (Hazardous Materials and Solid Waste), and 3.11 (Public Health and Safety). Section 2.1.8 referenced and included a link to the current PGV ERP which "provides a plan of action to deal with facility emergency situations that may threaten the health, safety, and welfare of the employees and other persons in the vicinity of the facility site." The FEIS references the ERP's protocols with regard to hazardous materials and natural hazards, including PGV's responsibility for notifying the County of Hawaiʻi Civil Defense Agency and other appropriate government agencies.

The FEIS' discussion of PGV's hydrogen sulfide abatement system was also legally sufficient. Section 2.1.6 (Existing Operations: Pentane Recovery, Pollution Abatement, and Hazard Control) discussed PGV's hydrogen sulfide abatement systems, including a monitoring system for fugitive hydrogen sulfide emissions. Section 3.10 (Hazardous Materials and Solid Waste) described PGV's on-site hydrogen sulfide monitoring system and its procedures for detected increases in hydrogen

sulfide ambient levels. Section 3.11 (Public Health and Safety) described when hydrogen sulfide is emitted, the hazardous characteristics of hydrogen sulfide, the effects of hydrogen sulfide on human health, the locations of PGV's hydrogen sulfide monitoring stations, analyses of the hydrogen sulfide measurements collected, and health impacts on nearby residents.

We conclude that the environmental court was not wrong in determining that the FEIS was legally sufficient and not compiled in bad faith.

(2) Steiner contends that the environmental court "failed to take a hard look at [her] proof" and disposed of her claims "without [making] any finding[s] of fact on [her] proof." (Formatting altered.)

A reviewing court "must ensure that the agency has taken a 'hard look' at environmental factors." Price v. Obayashi Haw. Corp., 81 Hawaiʻi 171, 182 n.12, 914 P.2d 1364, 1375 n.12 (1996) (citation omitted). In conducting its review,

> the reviewing court should first look to HAR § 11-200-17 (now 11-200.1-24) and ensure that, **under the rule of reason, the EIS contains enough information to enable the decision-maker to make a reasoned decision concerning the environmental factors** described in the rule. Second, the reviewing court should look to HAR § 11-200-18 (now 11-200.1-27) to **ensure that the finalized version of the EIS addressed the initial reasons for rejection (if any) and that the EIS was revised to respond to substantive feedback received during the process**. In evaluating the EIS's compliance with the HAR, the reviewing court should use the rule of reason and ask whether the alleged HEPA violations frustrate the goals of informed decision-making and informed public comment.

Kaupiko, 154 Hawaiʻi at 472, 555 P.3d at 159 (emphasis added).

It is therefore the reviewing agency that must take a "hard look," and "courts are reluctant to second guess the decision-making body regarding the sufficiency of an EIS." Id. at 471, 555 P.3d at 158 (citation omitted). A reviewing court "should not be used as a quasi-legislative or quasi-executive forum by those who are dissatisfied with policy decisions made by governing bodies." Price, 81 Hawaiʻi at 182 n.12, 914 P.2d at 1375 n.12 (citation omitted).

Here, the County was the designated approving agency for environmental review of PGV's project and, in that capacity, was responsible for resolving diverging policy and scientific viewpoints implicated by the proposed action. See Kaupiko, 154 Hawaiʻi at 463, 555 P.3d at 150 ("An EIS is reviewed by a government agency . . . which may or may not accept the EIS." (citation omitted)). Where the EIS has set forth sufficient information to enable the County to make a reasoned decision, as is the case here, the courts do not second guess the County's policy decision. See id. at 471, 555 P.3d at 158. The environmental court did not err in limiting its review to determining whether the FEIS met the statutory procedural requirements, i.e., whether the FEIS contained sufficient information such that the County could make a reasoned decision

concerning the relevant environmental factors. See Price, 81 Hawaiʻi at 182 n.12, 914 P.2d at 1375 n.12.

For the foregoing reasons, we affirm the Judgment.

DATED: Honolulu, Hawaiʻi, November 23, 2026.

On the briefs:

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Plaintiff-Appellant.

Sherilyn K. Tavares,
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County of Hawaiʻi Planning
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Zendo Kern.

John P. Manaut,
for Defendant-Appellee
Puna Geothermal Venture.

/s/ Karen T. Nakasone
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge