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DEPT OF PLANNING  
AND PERMITTING  
CITY & COUNTY OF HONOLULU

Attorneys for Intervenors

KO OLINA COMMUNITY ASSOCIATION

and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION

OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

To delete Condition No. 14 of Special  
Use Permit No. 2008/SUP-2 (also  
referred to as Land Use Commission  
Docket No. SP09-403) which states as  
follows:

“14. Municipal solid waste shall be  
allowed at the WGSL up to July 31,  
2012, provided that only ash and residue  
from H-POWER shall be allowed at the  
WGSL after July 31, 2012.”

FILE NO. 2008/SUP-2

**INTERVENORS KO OLINA  
COMMUNITY ASSOCIATION AND  
MAILE SHIMABUKURO'S  
WRITTEN DIRECT TESTIMONY  
OF MAILE SHIMABUKURO**

**DECLARATION OF MAILE  
SHIMABUKURO**

**CERTIFICATE OF SERVICE**

Contested Case: December 7, 2011

**KOCA 9**

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND  
MAILE SHIMABUKURO'S WRITTEN DIRECT TESTIMONY OF  
MAILE SHIMABUKURO**

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Pursuant to the Stipulation to Amend Briefing Schedule as Provided in the Planning Commission of the City and County of Honolulu's Order Regarding Prehearing Conference dated November 29, 2011, Intervenors Ko Olina Community Association and Maile Shimabukuro submit written direct testimony through the attached declaration of Maile Shimabukuro.

DATED: Honolulu, Hawai'i, December 13, 2011.

CADES SCHUTTE  
A Limited Liability Law Partnership



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CHRISTOPHER T. GOODIN

Attorneys for Intervenors  
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**DECLARATION OF MAILE  
SHIMABUKURO**

**DECLARATION OF MAILE SHIMABUKURO**

I, Maile Shimabukuro, hereby declare as follows:

1. I make this declaration based on personal knowledge in opposition to the Honolulu Department of Environmental Services' (the "ENV") Application to Modify Special Use Permit No. 2008/SUP-2 by deleting Condition 14 in the Hawai'i Land Use Commission's Order Adopting the Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009.

2. I oppose the Application because the Waimanalo Gulch Sanitary Landfill (the "Landfill") is a hazard to public health and safety; because the Landfill works

grave social and environmental injustices on the Leeward coast; and because the City and County of Honolulu (the “City”) has promised to close the Landfill and government should be held accountable to the people.

### **BACKGROUND**

3. I have lived on the Wai‘anae coast since I was 3 years old. My mother also grew up in Wai‘anae, and she graduated from Wai‘anae High in 1963. I presently live near Poka‘i Bay. My son was born in 2008.

4. I earned my undergraduate degree from Colorado College and my law degree from the William S. Richardson School of Law.

5. I work for Legal Aid Society and have been an attorney there since 2002. I worked there as a paralegal from 1992 to 1997.

6. From 2003 to 2010, I served as Representative for House District 45. I organized and participated in several environmental community activities, such as the Kea‘au Beach Clean-Up, “People’s Path” clean ups in Maili and Wai‘anae, and Aloha Aina Earth Days.

7. Since December 2010, I have served as Senator for District 21. I organized and participated in several environmental community activities, such as the Flooding Update Town Hall Meeting in September 2011 and Paakea Road clean up on November 19, 2011. I also helped organized the Puuhulu Stream clean up on December 10, 2011.

## THE LANDFILL IS A DANGER TO PUBLIC HEALTH AND SAFETY

8. The Landfill is a serious hazard to public health and safety. I have received numerous complaints regarding the Landfill from constituents, including the following:

a. E-mail from Richard Medeiros to me dated February 1, 2011: "I read the hawaii newsnow story about the landfill and a committee being formed to recommend a new site. I am often ashamed that Waianae is always looked down upon by the rest of the island and state, and we have always been a dumping ground for everything people don't want. And I am ashamed that the community I grew up in has never taken a strong enough stance and say enough is enough. . . . Please represent us properly and make it know that we do not want to continue to be the dumping ground of the state." Exhibit K143 includes a true and correct copy of the E-mail.

b. E-mail from Jojan Barrett to me dated January 14, 2011: "As of today's [sic] investigation medical waste; hyperdermic [sic] needles, viles [sic], and syringes has [sic] been discovered. . . . My children and the keikis of our community are in the ocean everyday as that's our way of life as Kanaka Maolis in Nanakuli. . . . I not sure whose kuleana it is on Waimanalo Gulch and PVT Landfill but I pray these issues be resolved and solutions are found prior to future winter / rainstorms arrive. I plead with you to PLEASE find it in your hearts to do it for the people, do it for keiki of today, and do it for our unborn keiki of tomorrow." Exhibit K140 is a true and correct copy of the E-mail.

c. E-mail from Katherine Kamada to me dated January 19, 2011: “Tonight’s KHON 2 NEWS reported that runoff from the Waimanalo Gulch Landfill included medical waste strewn along the beaches fronting the landfill and along the coastline. . . . [Workers are] picking up visible medical waste strewn along the coastline. What about the unseen medical waste in the water frequented by beachgoers? Imagine walking along the beach and being stabbed by a needle imbedded in the sand? How’s that for an experience in paradise? . . . Please, if you really care about the *aina*, treat it with respect! No more landfills on the Leeward Coast!” Exhibit K141 is a true and correct copy of the E-mail.

9. The legislators representing our community feel the same way.

a. Representative Jo Jordan, who currently represents State House District 45, submitted comments in opposition to ENV’s Application to Modify. In his letter dated August 12, 2011, he explained: “I would like to express my deep concern that this administration continues to disregard commitments made to my community to close Waimanalo Gulch Sanitary Landfill and seriously consider other sites outside of the Leeward Coast since our community has tolerated the landfill and the waste from the entire island for over 20 years.” A true and correct copy of the Letter is marked as Exhibit K43.

b. Similarly, Colleen Hanabusa, former Senator for State District 21, explained in her August 31, 2011 letter: “There is no excuse for the release of waste into the ocean. Clearly it should not have happened IF the City and its operator, Waste Management (WMI) did what they promised and were ordered to do. . . . It is

very difficult for me to watch yet another Application be approved by DPP when you have got to be aware of the violations and blatant disregard for public health and welfare on the part of WMI, ENV and others in the City.” A true and correct copy of the Letter is marked as Exhibit K46.

10. Over the years, the City and County of Honolulu and the Landfill’s operator, Waste Management of Hawaii, Inc. (“**Waste Management**”), have been assessed close to \$3 million in fines for violating environmental regulations through the Landfill’s operations:

a. On January 31, 2006, the Hawai’i Department of Health issued an 18-count notice of violation finding that the City and Waste Management had violated environmental regulations by, among other things, overfilling Landfill cells; exceeding allowable leachate levels in the leachate collection systems; failing to maintain records of the location of asbestos disposal at the Landfill; failing to control the generation of dust from vehicular traffic; failing to minimize free litter generation in the Landfill; and failing to monitor explosive gases. The Landfill was assessed a fine of close to \$2.5 million. *See* Exhibit K59, a true and correct copy of a Letter from Laurence K. Lau of the Hawai’i Department of Health to Paul Burns of Waste Management and Eric Takamura of the ENV regarding Notice of Violation/Order dated January 31, 2006, with enclosures.

b. On April 5, 2006, the United States Environmental Protection Agency (the “**EPA**”) issued a notice of violation finding that the City and Waste Management had violated the Clean Air Act by, among other things, failing to

submit timely a design plan to the EPA; failing to install timely a gas collection and control system; and failing to install a gas collection and control system that complies with regulatory requirements. The notice of violation stated that the EPA could issue an administrative penalty order of up to \$32,500 per day of violation or bring a civil action for civil penalties of not more than \$32,500 per day for each violation. *See* Exhibit K60, a true and correct copy of a Letter from Deborah Jordan of the EPA to Paul Burns of Waste Management and Eric S. Takamura of the ENV dated April 5, 2006, with enclosure.

c. On May 13, 2010, the Hawai'i Department of Health issued a 3-count notice of violation finding that the City and Waste Management had violated Hawai'i law for improperly constructing a Landfill berm and failing to notify the Department of Health of these issues for about 2 and ½ years. The Department of Health assessed a penalty of \$424,000 for the violations. *See* Exhibit K66, a true and correct copy of a Letter from Laurence K. Lau of the Hawai'i Department of Health to Joe Whelan of Waste Management and Timothy Steinberger of the ENV regarding Notice and Finding of Violation/Order dated May 13, 2010, with enclosures.

d. On December 23, 2010, the Hawai'i Department of Health Clean Water Branch found that the Landfill was discharging storm water contaminated with leachate into State waters near Ko Olina. Exhibit K52, a true and correct copy of an Investigation Report by Matthew Kurano and Jamie Tanimoto of the Hawai'i Department of Health Clean Water Branch signed January 4, 2011.



e. On January 12 and 13, 2011, heavy rains dislodged unknown amounts of municipal solid waste from a cell within the Landfill into State waters near Ko Olina Resort. Municipal solid waste, including medical solid waste, washed up all along the Leeward Coast. It was found near where I live at Pokai Bay. See Exhibit K80, a true and correct copy of an Article, Medical Waste Clean-up Efforts Underway: More Medical Waste Wash Up On West Shores 5 Days After Landfill Spill, dated January 17, 2011 (“4 miles away at Pokai Bay, city lifeguards found four syringes on the shore.”).

f. On November 29, 2011, the EPA found that the City and Waste Management had violated the Clean Water Act based on the December 2010 and January 2011 events by failing to prevent run-off of surface water that had contacted waste; failing to control erosion to prevent loss of cover or washout of refuse slopes; failing to properly manage leachate; and failing to adequately retain and remove silt from surface water before it was discharged from the site. Exhibit K123 at 3, a true and correct copy of a Finding of Violation and Order by the EPA dated November 29, 2011.

11. These environmental violations vividly illustrate that the Landfill poses an unreasonable risk of harm to the health and safety of the residents of the Leeward coast. This risk cannot be justified.

12. The Landfill also poses an issue of social and environmental justice. My constituents on the Leeward Coast has been burdened with much more than their fair share of environmental injustices.

13. We have military bases; we have the Kahe Power Plant and H-POWER; we have the Honouliuli Waste Water Treatment Plant; we have military operations that have dumped chemical munitions in our waters and erected radio towers with unknown health effects; we have a Landfill that has released unknown amounts of municipal waste into our waters.

14. The assumption is that these facilities are here because this is worthless land, and that casts a shadow on the outlook of the people who live here.

15. That is not right. That is not what social and environmental justice require.

#### **THE CITY'S SCARE TACTICS ARE REPREHENSIBLE**

16. The ENV has argued that the Landfill should be extended to avoid bringing a new landfill closer to other people's homes. This scare tactic has created a huge rift in our community.

17. Many people from Nanakuli and Maili, including the Ironworker's Union, decided to support extending the Landfill because they didn't want a new landfill even closer to their backyards.

18. This caused the Nanakuli and Maili communities to break off from the Waianae Neighborhood Board. Many of my constituents feel as if they have been subjected to a "divide and conquer" attack.

19. It is not fair to play one community against another.

#### **THE CITY PROMISED TO CLOSE THE LANDFILL**

20. Both Mayor Harris and Mayor Hanneman told the community that the Landfill would close at the scheduled time in 2008. However, they both went back

on their words when the time came, and instead sought expansions over the last 10 plus years.

21. Government must be held accountable for its promises to the people.

**THE CITY HAS NOT EXERCISED REASONABLE DILIGENCE IN FINDING AN ALTERNATIVE TO THE LANDFILL**

22. The City has had long enough to find an alternative to the Landfill. The City's shipping alternative never materialized and H-POWER is still not adequately expanded. The City has discussed "demonstration" technologies such as plasma gasification for close to decade, but to my knowledge the City has yet to establish projects actually demonstrating these technologies.

23. Moreover, the City's efforts to find an alternate landfill site are lacking. In 2003, the City said it would find and develop a new landfill site within five years.

24. In 2007, instead of being close to complete in the development process, the City sought to extend the existing Landfill. The City was no closer to developing a new site in 2007 than it was in 2003.

25. In 2008, the ENV was directed by the Land Use Commission that the Landfill would close by 2009, and in 2009, following another extension request, the ENV was again directed that the Landfill would stop accepting municipal solid waste (except for ash and residue from H-POWER) by 2012.

26. Notwithstanding those directives and its past promises, the City has only recently in 2011 convened a landfill site selection committee to find a new site. The City has done too little too late. It does not deserve yet another extension for the Landfill.

27. After nearly ten years, the City is still no closer to finding a new site.

28. The City says it intends to find another site. But the City is here asking for an indefinite extension of this site. The City is talking out of both sides of its mouth.

29. This is not fair to my community.

**I WOULD NEVER VOTE TO PUT THE LANDFILL ACROSS FROM A  
TOURIST DESTINATION**

30. The Landfill is located across the street from Ko Olina Resort, an area that was always planned to be a resort. By the time Ko Olina was developed, the Landfill had been planned to be closed. The Ko Olina Resort is here now and, as a tourist destination, it plays a crucial role in the economy of the Leeward community, the City and County of Honolulu, and the State of Hawai'i.

31. Ko Olina Resort currently generates \$520 million in direct spending annually and provides 2,800 jobs locally. Future developments at Ko Olina will almost double those economic benefits.

32. In addition, construction period impacts for future proposed developments at Ko Olina will include over \$3.7 billion in direct spending, creating 26,700 jobs, with indirect and induced economic impacts of an addition \$2 billion and 16,900 jobs.

33. Existing development at Ko Olina generates \$20.3 million in tax revenues to the City and \$40.4 million to the State annually. At full build-out, Ko Olina will generate \$55.5 million in annual tax revenues to the City and \$71.5 million to the State. During the construction period, \$193 million in one-time tax revenues will be

provided to the City and State combined. See Exhibit K22, Fiscal & Economic Benefits Analysis Ko Olina Resort & Marina, Honolulu, HI by CBRE Strategic Consulting dated January 2011.

34. Why on earth would we put a landfill across the street from such a powerful economic engine? Why would we put a landfill next to a resort, where thousands of people live, work and visit every year?


### CONCLUSION

35. The Land Use Commission imposed the July 2012 deadline because its members recognized the plight of the Leeward community and the broken promises of closure. The Land Use Commission was trying to send a strong message to the City that it must look for alternatives to the Landfill as the City has been promising all along. The Land Use Commission wanted to hold the City accountable. The Land Use Commission wanted to save my community from further harm.

36. Condition 14 should stand. The Application to Modify should be denied.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED: Honolulu, Hawai'i, December 13, 2011.

  
\_\_\_\_\_  
MAILE SHIMABUKURO

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OF THE CITY AND COUNTY OF HONOLULU  
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FILE NO. 2008/SUP-2

**CERTIFICATE OF SERVICE**

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The undersigned certifies that on this day a copy of the foregoing document was  
duly served on the following persons:

ROBERT CARSON GODBEY, ESQ.  
Corporation Counsel  
DANA VIOLA, ESQ.  
ROBERT BRIAN BLACK, ESQ.  
Deputies Corporation Counsel  
City and County of Honolulu  
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(Hand Delivery)

Attorneys for DEPARTMENT OF ENVIRONMENTAL SERVICES,  
CITY AND COUNTY OF HONOLULU

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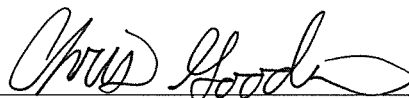
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DATED: Honolulu, Hawai'i, December 13, 2011.

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