

CADES SCHUTTE LLP

CALVERT G. CHIPCHASE 7757-0
CHRISTOPHER T. GOODIN 8562-0
1000 Bishop Street, Suite 1200
Honolulu, Hawai'i 96813-4212
Telephone: (808) 521-9200
Facsimile: (808) 521-9210
E-mail: cchipchase@cades.com
cgoodin@cades.com

RECEIVED

'11 DEC 13 P4:01

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 MAEDA TIMSON**

**DECLARATION OF MAEDA
TIMSON**

CERTIFICATE OF SERVICE

Contested Case: December 7, 2011

KOCA 11

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

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, Intervenor Ko Olina Community Association and Maile Shimabukuro submit written direct testimony through the attached declaration of Maeda Timson.

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

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenor
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

FILE NO. 2008/SUP-2

DECLARATION OF MAEDA
TIMSON

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.”

DECLARATION OF MAEDA TIMSON

I, Maeda Timson, 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 (the "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.

BACKGROUND

2. I am a resident of Kapolei, Hawai'i, and my home address is 92-684 Nohona Street.

3. I have been involved in the community and its concerns for more than 40 years working with developers, government and other community members to create a new, healthy and vibrant City of Kapolei; a place of the future for generations to come after us.

4. I served for 15 years on Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 (the "Neighborhood Board"). I was the Chair of the Neighborhood Board for 14 years. My tenure on the Neighborhood Board ended in June 2011. I have also served on numerous community committees and the Hawaii Community Development Authority (HCDA) representing the people of Kapolei.

THE NEIGHBORHOOD BOARD

5. The Waimanalo Gulch Sanitary Landfill (the "Landfill") is located within the jurisdiction of the Neighborhood Board. During my time on the Neighborhood Board, we consistently opposed the continued operation of the Landfill. By letter dated September 23, 2009, the Neighborhood Board stated that it "continues to strongly oppose the expansion and existence of the Waimanalo Sanitary Landfill in Kapolei." Exhibit K95 is a true and correct copy of the September 23, 2009 letter from me to the Land Use Commission. I understand that by letter dated August 17, 2011, the Neighborhood Board stated that it voted in opposition to the current Ap-

plication to Modify. Exhibit K47 is a true and correct copy of the August 17, 2011 Letter from the Neighborhood Board.

6. The Neighborhood Board regularly received complaints from the community concerning trash, flies, and odors coming from the Landfill. These complaints were generally made by people living in Honokai Hale and Ko Olina. In fact, I have a two-inch thick correspondence file of letters from Ko Olina Community Association to Waste Management about complaints about the Landfill. When visiting Ko Olina, I have smelled the odors coming from the Landfill for myself.

7. When the Neighborhood Board received complaints regarding the Landfill, we would ask the management company operating the Landfill, Waste Management of Hawaii ("Waste Management"), to attend Neighborhood Board meetings to discuss the complaints. Waste Management refused to attend Neighborhood Board meetings. No one ever came to hear our concerns.

THE GOVERNMENT'S REPRESENTATIONS

8. When the Landfill was initially established in the 1980s, then-Mayor Frank Fasi promised the community that the Landfill would close after 15 years of operation. This promise was not kept.

9. In 2004, while running for Mayor, Mufi Hanneman attended a Neighborhood Board meeting and represented that he would close the Landfill if elected. He did not keep his promise.

10. After taking office, Mayor Hanneman created a "benefits package" for the Leeward community near the Landfill in an effort "to offset the landfill nuisance."

Exhibit K126, a true and correct copy of an excerpt of the 2006 State of the City Address by Mufi Hanneman at 7 (emphasis added). This hush money shows that the City knew all along about the risks and dangers posed by the Landfill. Simply paying the community to keep quiet does not keep the community safe.

THE LANDFILL IS NOT SAFE

11. On the weekends, for years I would go with my husband down to the beach with our children to fish and swim at Ko Olina and Kahe Point. Now with our grandchildren we continue this tradition. Our grandchildren are delighted when they catch a fish, clean it and help cook it. It is our family memory. But we can't do that when there's medical waste on the beach and in the water.

12. On January 12, 2011, heavy rains dislodged substantial amounts of municipal solid waste, including medical waste, from the Landfill and into coastal waters. The waste washed up on both ends of the Leeward Coast, down to Kalailoa and up the Waianae Coast. The kinds of waste in the Landfill include municipal solid waste, pathological waste, chemotherapy waste, sewer sludge, and asbestos.

13. I've been told that medical waste is treated or disinfected before it is taken to the Landfill. But how do you know that treated waste is really "treated"? After the January spill, I was on a TV show *Insights* with former State of Hawai'i Health Director Bruce Anderson and asked him, "How many times when you were the Health Director did you send your folks out, your folks, to these facilities that are autoclaving [medical waste] and such?" I knew he had not and answered for him,

“Never”; he was silent. Exhibit K131 is a true and correct copy of the Insights video recorded March 17, 2011.

14. You can't know if the waste has been treated. *See* Exhibit K73, a true and correct copy of an Article, No Paperwork to Back Up Safety of Medical Waste dated January 27, 2011 (“Civil Beat asked for the paperwork proving that the needles and vials of blood had been sanitized. But Waste Management deferred repeated requests for those documents back to the Health Department. Multiple city officials referred the same requests back to the state. Now, the state Department of Health says they don't have them anymore.”).

15. I also spoke with Joseph Whelan, General Manager of Waste Management, about how medical waste is handled at the Landfill. He said that Waste Management puts the medical waste into a hole in the ground and Waste Management covers it. If medical waste is thrown in a hole and covered, I do not see why the medical waste was broken out of the containers in which the waste was supposedly autoclaved.

16. We as a community want to be safe. We want to know that our environment is safe, our people are safe, our community is safe and the future is safe. We do not want to learn years later that the fish we have been eating or the water we swim in created a long lasting health hazard or birth defect. The Landfill is not safe.

17. The Landfill is built on the side of a mountain, a natural drainage way for the watershed above it. Gravity pushes the trash and water down the mountain. The Landfill relies on multiple berms to hold the rubbish in place. When the operation fails, this type of landfill is substantially more dangerous than a typical landfill where

the trash is placed in a hole in the ground. If the Landfill fails to hold the waste and water back, gravity naturally forces it down into the ocean, as it did in January. It is horrible to get up in the morning and find all of that trash in your back yard, trash that was trucked over from other communities around the island.

18. My husband and I and our grandchildren spend a lot of time, like thousands of others along the coastline, at the beach on weekends. We're on the beach, we're fishing, our kids are swimming, and their friends are surfing and we are all eating the fish. When events like the January spill happen, our community is deprived of the simple basics of life, and we are exposed to a serious health hazard.

19. Following the January spill, I saw firsthand the waste that had washed up at the Ko Olina Lagoons. It was shocking. The ENV took too long to clean up the waste, so Ko Olina's workers had to assist in the cleanup. Exhibit K108 is a set of true and correct copies of photographs of the medical waste that was found at Ko Olina Resort following the January spill.

20. The January mishap was not the first one. There was another release from the Landfill on December 23, 2010. Based on the December 2010 and January 2011 releases, the Environmental Protection Agency has found that Waste Management and the City violated the Clean Water Act. In addition to those violations, the Landfill operations have been cited with more than twenty other violations by the Environmental Protection Agency and Department of Health with close to \$3 million in fines imposed. Waste Management has not been doing its job, and our community suffers

the consequences while the fines imposed are for the benefit of all and not to the communities affected.

IT MAKES NO SENSE TO HAVE THE LANDFILL NEXT TO KO OLINA

21. It is unbelievable that there is a landfill across the street from one of the biggest economic engines in the State of Hawai'i. Let me give you some facts: Today, Ko Olina Resort's annual operation generates \$520 million, provides 2,800 jobs, and pays \$20.3 million in taxes to the City and \$40.4 million to the State. At the full build-out of the Resort, it's going to generate \$1.4 billion in annual operations, support 8,100 jobs, and pay \$138 million in taxes to the City and the State.

22. People point out that Ko Olina Resort was not built when the Landfill was constructed in the 1980s. But the fact is that the Ko Olina area was always to be a resort.

23. The Ko Olina Resort didn't just come into being. We all plan for the future. The Resort was part of the future plan for the area. Yes, it did stay dormant, but we knew that a resort would be built out there. When you're going to plan, you don't plan for five or ten years. You plan for the long term. And it's the responsibility of government to take a look at what the community is doing for not just the next five or ten years, but for the long term.

24. In 1998, the property was acquired by Ko Olina. Ko Olina put the vitality and creativity into the area and employs many people on the West side. The Landfill was estimated to be closed by around that time. But that didn't happen. Instead, in 2003 the City asked for an expansion of the Landfill (21 acres) and then in 2008 the

City asked for a huge expansion (93 acres), basically doubling the Landfill's size. The Landfill has gotten out of hand, well beyond what the community expected, and far beyond what was originally intended and promised.

THE CITY ISN'T SERIOUS ABOUT FINDING ALTERNATIVES

25. The City has not made a serious effort to find and develop alternative sites or technologies to replace the Landfill. The ENV has had years to find alternatives. If the ENV were serious about finding alternate sites or methods of disposal, it would have found one by now.

26. Unfortunately, this is not surprising because of the revenue issue: Landfill tipping fees are a large revenue factor. The Landfill charges around \$96 for each ton of garbage. The City is making big bucks on the Landfill and refuses to put what it sees as a cash cow out to pasture. But the Landfill's time has come. The City needs to move on.

THE LANDFILL SITE SELECTION COMMITTEE

27. The City has created a Landfill Site Selection Committee. There is no one from Kapolei on the committee and only two members from Waianae. It is hard to believe that the City could not find any other qualified individuals from the most affected communities. The Kapolei community has the power plant (H-POWER), Honouliuli Wastewater Treatment Plant, and the Landfill. But we have no one from our community on the committee.

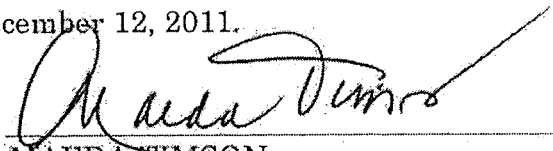
28. The community was promised that the Landfill would be closed, but those promises have not been kept. The broken promises have had real effects on the

community. If the Landfill had been closed as promised, the January spill would have never happened. The City needs to close the site, but it is not serious about finding an alternative site or method of disposal because of its financial motive to keep the Landfill open for business.

29. By requiring the Landfill to stop accepting municipal solid waste by July 31, 2012, Condition 14 serves to make the Landfill less dangerous, to make good on at least part of the past promises of closure, and to motivate the City to make diligent efforts to find alternative sites and disposal methods. Condition 14 should remain in place. The Application to Modify should be denied.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, December 12, 2011.


MAEDA TIMSON

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

ROBERT CARSON GODBEY, ESQ.

(Hand Delivery)

Corporation Counsel

DANA VIOLA, ESQ.

ROBERT BRIAN BLACK, ESQ.

Deputies Corporation Counsel

City and County of Honolulu

530 South King Street, Room 110

Honolulu, Hawai'i 96813

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

DEPARTMENT OF ENVIRONMENTAL SERVICES (Certified Mail)
City and County of Honolulu
1000 Uluohia Street, Suite 308
Kapolei, Hawai'i 96707

DEPARTMENT OF PLANNING AND PERMITTING (Hand Delivery)
City and County of Honolulu
650 South King Street, 7th Floor
Honolulu, Hawai'i 96813

IAN L. SANDISON, ESQ. (Hand Delivery)
DEAN H. ROBB, ESQ.
TIM LUI-KWAN, ESQ.
Carlsmith Ball LLP
American Savings Bank Tower
1001 Bishop Street, Suite 2200
Honolulu, Hawai'i 96813

Attorneys for Intervenor
SCHNITZER STELL HAWAII CORP.

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

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO