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DEPT OF PLANNING
AND PERMITTING
CITY & COUNTY OF HONOLU.

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAI'I

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 WGS� up to July 31,
2012, provided that only ash and residue
from H-POWER shall be allowed at the
WGS� after July 31, 2012.”

FILE NO. 2008/SUP-2

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

DECLARATION OF DUKE
HOSPODAR

CERTIFICATE OF SERVICE

Contested Case: December 7, 2011

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

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 Duke Hospodar.

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

CADES SCHUTTE
A Limited Liability Law Partnership



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CHRISTOPHER T. GOODIN

Attorneys for Intervenors
KO OLINA COMMUNITY ASSOCIATION
and MAILE SHIMABUKURO

OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAI'I

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**DECLARATION OF DUKE
HOSPODAR**

DECLARATION OF DUKE HOSPODAR

I, Duke Hospodar, 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.

2. I oppose the Application because the Waimanalo Gulch Sanitary Landfill (the “**Landfill**”) is dangerous to public and environmental health and safety; because, if the Landfill had been closed as scheduled, the spill in January 2011

would have never happened; and because the Landfill does not belong next to a premiere resort destination such as Ko Olina.

BACKGROUND

3. My employment at Ko Olina Resort (the "**Resort**") began on 1 September 1998. As resort Security Director/Operations Manager, I am primarily responsible for the day-to-day operations in respect to the safety and security of the Resort's common areas. I've managed and directed up to 52 resort associates known as The Aloha Team, and report directly to the General Manager of the Ko Olina Community Association and its executive Board of Directors. I am currently the Director for Resort Operations/Aloha Team Security Group. I'm also an elected Director on the Ko Olina Kai Estates, AOA board.

PRIOR PARTICIPATION IN PROCEEDINGS RELATED TO THE LANDFILL

4. On 28 February 2008, I gave oral testimony before the Hawai'i Land Use Commission in regards to relative complaints and concerns of Resort employees, guest and residents, as well as witnessed conditions and circumstances associated to hazards and environmental breaches at the Waimanalo Gulch Sanitary Landfill (the "**Landfill**"), such as odor, flying trash, and unsightliness.

5. On 13 August 2011, I submitted written comments in regards to my opposition to yet another landfill expansion request. This letter was faxed to the City and County of Honolulu (the "**City**"), Director of the Department of Planning & Permitting, Mr. David K. Tanoue. My opposition was based on recorded hazardous conditions and life threatening breaches that were directly associated to the

Landfill's operation and its total disregard for the long-term impact to this community. Exhibit K68, a true and correct copy of a Letter from me to David K. Tanoue dated August 10, 2011, and faxed August 13, 2011.

6. The Landfill is supposed to stop accepting municipal solid waste on July 31, 2012, at which point it may only accept ash and residue from H-POWER. This condition should stand.

THE LANDFILL IS A NUSIANCE AND UNSAFE

7. Any landfill, in and of itself, poses a litany of health and safety issues. Starting with that proposition, the Waimanalo Gulch Sanitary Landfill raises a host of additional concerns given its proximity to shoreline, residential units, and ocean migration passages, its severe modification to landscape topography and infrastructure, and a surrounding economic backdrop reliant heavily on tourism. The Landfill is inconsistent with the surrounding area and does not belong next to Ko Olina Resort. True and correct photographs of the Landfill from Ko Olina are marked as Exhibits K112.

8. My Aloha Team has not only experienced the odors, noise, flying trash, and dust that emanate from the ongoing operations of the Landfill, but we have also been a central conduit of community complaints in regards to those issues. The following complaints were received from Ko Olina residents:

a. Exhibit K136, a true and correct copy of a March 20, 2007 Letter from Edward R. Appleby to Todd Apo: "[O]ur residents have long dealt with tolerating the obnoxious smell, the strewn as well as airborne residual litter, and the unsightly features of the landfill. . . . Many of the citizen-residents of the

community purchased their properties based on a well-founded and good-faith belief in the forecasted and promised closure of this landfill by the City and County of Honolulu (see The Honolulu Advertiser "State Approves Expansion for the Waimanalo Landfill" May 17, 2003)."

b. Exhibit K137, a true and correct copy of a June 14, 2010 Letter from Ken Williams to Joe Whelan: "I have been contacted by several residents and businesses voicing their concern with the recent increase in activity on the face of the mountain. These Ko Olina residents, guests and employees have complained about foul odor, blowing dust, excessive noise and the overall unsightliness of the landfill."

c. Exhibit K135, a true and correct copy of an April 13, 2011 E-mail from Beverly Munson: "One of the ongoing problems associated with Waimanalo Gulch is the debris flying from trucks going to and from the dump. This morning (Sunday, April 13, 2008) serves as a good example: [¶] At 9:55 a.m. my husband & I entered Farrington Highway at the Ko Olina onramp. City and County of Honolulu truck number C006, License Plate 316TSF was in front of us. From Ko Olina to the Kapolei exit (where we got off Farrington Hwy.) this vehicle had garbage flying out of its bed, including what appeared to be medium to large-sized broken down cardboard boxes. The highway was littered with its debris. This situation also created a safety hazard as the debris flew toward vehicles creating potential for swerving or a piece landing on a windshield and obscuring driver visibility. The driver of the vehicle was completely clueless as to the condition of his load. [¶] When we returned to Ko Olina as we began slowing down from 55 mph to the upcoming 45

mph zone, this same truck sped past us at a high rate of speed at 10:27 a.m. The driver was clearly exceeding the speed limit at more than just a little, as we were going 55 mph and he blitzed right past us. As we crossed the Ko Olina exit bridge, we observed this truck entering Waimanalo Gulch.”

9. Debris from the Landfill are and will always be an everyday occurrence at Ko Olina. Modifications to the Landfill’s “catch fence” have reduced some of the volume of flying trash that is airborne during windy days. What is now the on-going plight is the trucks, both private & commercial, entering and leaving the Landfill. Liquid and debris leaking and flying from the trucks are continuously being observed and reported. Our Ko Olina maintenance crew and Aloha Team police daily the Mauka/Makai perimeter collecting debris. See Exhibit K111, a set of true and correct copies of photographs of trash from the Landfill at Ko Olina Resort.

10. Trash such as kitchen appliances, electronics, and cars parts, is at times found dumped along the corridor leading to and away from the Landfill. While the Landfill does make an effort to collect large stray trash along its immediate area, we have also had to collect these items.

11. Noise is a daily occurrence with the movement of large trucks back and forth from the Landfill. The downshifting of gears can be heard from as far off as Ko Olina Resort’s main corridor.

12. The Landfill also produces odor, particularly on days when trash is dropped on the east, west and south slopes. In addition, most of the trucks going to and from the Landfill are not covered on exit, and the passing trades carry the stench over to the community. Our gate captain once said about the smell, “I raise

pigs; after awhile you just grow accustomed to the smell.” The employees, residents and visitors at Ko Olina should not just have to get used to the smell.

13. But as Resort supervisor, Eddie Belluomini, told me, “Complaining about the dump is like complaining about taxes, it’s a daily gripe, no one does anything about it, so you just go about your life.” That is sad but true.

14. It is distressing that we are actually again considering and discussing the topic of a Landfill extension after the egregious recent events and impact from the waste breach in January 2011, only tell us, that short of a methane gas explosion or a catastrophic land slide, the City will refuse to move on to alternative landfill sites or waste disposal technologies.

15. To date, the Landfill’s has been cited with numerous violations, including, most recently on 29 November 2011, by the United States Environmental Protection Agency for violations of the Clean Water Act. The violations occurred in connection with discharges of leachate and municipal solid waste from the Landfill that occurred in December 2010 and January 2011. Exhibit K123 at 3, a true and correct copy of a Finding of Violation and Order by the EPA dated November 29, 2011.

16. For a community whose cherished resource is the ocean, I would compare the January 12/13, 2011 spill to that of the 1989 catastrophic Alaskan Exxon Valdez incident. Oil and sewage will eventually dissipate over time; however a vile of blood or other bodily fluids, packaged with durability and long-term storage in mind, raises a fundamental concern regarding its prolonged existence on our beaches and in our waters.

17. In my view, given the Landfill's track record of serious violations and spills, it is not a question of **if** there will be another event, but **when**.

18. If the Landfill had been closed when it was scheduled to do so in 1997, 2003, 2008, or 2009, the catastrophic breach that occurred in January 2011 would not have happened. The Planning Commission cannot allow this to happen again.

19. The events of 13 January 2011 were horrible. For over a month, I was required to put my Aloha Team on the frontlines of disgust as we attempted to mitigate the danger and impact to our public beachgoers, residents, and hotel guests. The debris from the municipal solid waste covered the beaches and in the waters. Exhibit K105 is a set of true and correct copies of debris found on the Ko Olina Resort's shores. Exhibit K109 is a set of true and correct copies of photographs of municipal solid waste seen in the waters off Ko Olina Resort.

20. Vials and bags of blood, syringes, and medical waste that had breached the Landfill were so numerous along our shoreline that it took four 20-foot bins to contain the waste. *See* Exhibit K108, a set of true and correct copies of photographs of medical waste found at Ko Olina Resort following the January spill.

21. Exhibit K138 is a true and correct copy of a report dated January 13 and 23, 2011, prepared by the Aloha Team discussing our discovery of and efforts to remedy the January spill. The report provides the following sequence of events:

a. On 1-13-11/0630-0700 hours, the Aloha Team discovered medical waste supplies and debris scattered throughout the state shoreline area at lagoon #4 (Honolulu side).

b. On 1-13-11/0730 hours, the Aloha Team observed uncapped syringe needles, empty and partially filled syringes (capped and uncapped), blood filled vials, and catheters, along with additional medical waste contaminants.

c. On 1-13-11/0810 hours, I arrived and assessed the scene at which time I ordered all lagoons closed based on the potentially hazardous medical waste washing up along the shoreline. Aloha Team personnel were placed at each respective lagoon to keep bystanders from entering onto the beach or into the lagoon waters.

d. On 1-13-11/0820 hours, Aloha Team associates donned personal protective equipment and began to further assess all four lagoon state and beach shoreline areas for additional medical waste contaminants. Aloha Team associates then raked shoreline debris into piles so they could be easily picked up and disposed of into container bins.

e. On 1-13-11 between 0825-0830 hours, I instructed the Aloha Team personnel Kimo Kendrick to use the sand cleaner and Bobcat to take 6 inches of sand of the top of lagoon #4 from the shoreline up to the high water mark. Kendrick was also assigned to perform the same task on lagoon's 1,2, and 3 on succeeding days. Kendrick was then instructed to dispose of the sand and debris into the container bins located at the Honolulu side of lagoon #4. Kendrick continued to use the sand cleaner on each lagoon daily until 1-23-11 when the lagoons were finally reopened.

f. On 1-13-11 between 0845-1045 hours, the Aloha Team made additional checks to the state shoreline and beach areas from lagoon #4 all the way

down to lagoon #1. the Aloha Team found further evidence of medical waste contaminants located along the each respective shoreline and beach areas.

g. The heaviest concentration of medical waste contaminants were located at lagoon # 4, followed by lagoon's #3, #2, and #1.

h. On 1-13-11 at about 1100 hours, the Aloha Team went to check the Waimanalo run-off drain located on the shoreline area fronting Kai Lani estates. The Aloha Team discovered an enormous amount of medical waste contaminants located atop the rocks on the west side of the drainage canal. The Aloha Team observed needles (capped and uncapped), empty and partially filled syringes, blood filled vials, empty antibiotic bags, catheters, urine collection cups, and other medical waste contaminants.

i. Upon locating what appeared to be the source of all the medical waste contaminants, the Aloha Team used an iPhone to video record and document the scene and the initial findings. The video was 3 minutes and 16 seconds long. Exhibit K110 includes a true and correct copy of the iPhone video.

j. On 1-13-11 between 1100-1145 hours, the Aloha Team observed and collected two bags of medical waste contaminants (including syringes, needles, catheters, urine collection cups, blood filled vials, antibiotic bags, etc) from the rocks and west side of the canal shoreline areas.

k. On 1-13-11 at about 1200 hours, the Aloha Team was met by Matt Kurano (State of Hawaii Dep't of Health/ Clean Water Branch) and Dr. Wendy Wiltse (EPA) at the Waimanalo run-off drain area. Kurano and Wiltse informed the

Aloha Team that they were conducting an ongoing investigation regarding contamination run-off from the Landfill.

l. On 1-13-11 at about 1245 hours, the Aloha Team released two bags of medical waste contaminants to Kurano and Wiltse.

m. For the remainder of the day (1-13-11), Aloha Team personnel continued to sift through debris washed ashore and clean all four lagoons.

n. On 1-14-11 to 1-23-11 at about 0630 hours daily, the Aloha Team performed a check of the entire shoreline at Ko Olina Resort looking for additional medical waste contaminants. Additional debris containing medical waste contaminants was discovered throughout each lagoon shoreline area daily, but lessened in total amount each day.

o. On 1-14-11 between 1000-1400 hours, day laborers working for Waste Management hired through Altres staffing were observed by the Aloha Team cleaning and bagging medical waste contaminants. This was observed at the Waimanalo run-off drain area located on the shoreline fronting Kai Lani estates.

p. From 1-13-11 to 1-23-11 between 0700-1730 hours, Aloha Team personnel continued to clean all four lagoon shoreline areas while sifting through all debris prior to collection and disposal into contained bins. The sand cleaner was also used at each lagoon (#1-4) every day and the process of collection and disposal was maintained from 1-13-11 until the lagoons reopened on 1-23-11.

q. On 1-23-11 at about 1410 hours, the Aloha Team spoke with Curtis Strague from the ENV at lagoon # 1A. Strague began to take down the no swimming signs at all four lagoons. Strague received word from his Deputy

Director, Ross Tanimoto, to take down and remove all the signs. Exhibit K113, a true and correct copy of a photograph of a warning sign in place during the clean-up activities following the January spill.

22. As days passed, it was evident that there was no Landfill emergency action plan in place for this disaster. To my knowledge, the only communication regarding the breach transmitted to Resort senior management was via the news.

23. One station reported that the Landfill would have clean-up crews responding to the breach. I was relieved and thought that would be great. I expected booms, bleach, buckets and environmental engineers directing our clean-up and containment efforts. To my dismay, that was not what happened. There was just a handful of hired Altres workers policing the immediate area fronting the coastal breach point.

24. It fell to us to monitor and clean the beaches, and to remedy the disaster that the Landfill had created. See Exhibit K103, a set of true and correct copies of photographs of Ko Olina Resort's clean-up efforts following the January spill; Exhibit K104, a set of true and correct copies of before and after photographs of the clean-up efforts following the January spill; Exhibit K110 a set of true and correct copies of videos of Ko Olina Resort's clean-up efforts following the January spill; Exhibit K1; Exhibit K133 is a set of true and correct copies of local news videos covering the January spill, including Ko Olina's clean-up efforts.

THE LANDFILL'S IMPACT ON THE COMMUNITY

25. With residents and long-time lagoon patrons stating that they would not dare go back to Ko Olina beaches and other affected areas, I can only imagine how

tourists will view the January event. The event was international news, and several thousand lagoon patrons, which included hotel guests, were turned away by the 10-day, Department of Health closure.

26. To date, I have not been notified, assured or educated on how blood, urine and other fluids inside a sealed vile or bag, is decontaminated. It is still unknown, and we have still not been apprised of the nature of the medical waste in regards to if any of the released medical waste was HIV, hepatitis, or STD infected. It's certainly a long-term fear and apprehension wondering what happens if a child steps onto a blood vile and it cracks into his or foot, or if the waste is ingested into sea-life that is later caught, cooked, and eaten. Exhibit K73 is a true and correct copy of an article entitled 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.").

27. I am also concerned for the spill's marketing implications and economic impact on the future Makaiwa Hills development, as well as the re-sale values in the Ko Olina communities.

28. The long-term economic impact has yet to be seen. It simply makes no sense to have a landfill next to the economic engine that is Ko Olina Resort. According to a January 2011 Fiscal & Economic Benefits Analysis prepared by CBRE Consulting, currently, Ko Olina Resort generates a \$520 million economic

impact in the form of direct spending, and provides 2,800 jobs locally. At full build-out, it is estimated that Ko Olina Resort will generate \$1.4 billion in annual economic activity, supporting 8,100 jobs, and paying \$138 million in taxes to the City and the State of Hawai'i. Construction period spending will generate an additional \$193.5 million in taxes to the County and State. Exhibit K22, a true and correct copy of Fiscal & Economic Benefits Analysis Ko Olina Resort & Marina, Honolulu, HI dated January 2011.

29. In the risk management world, Foresight, Hindsight & Oversight are critical characteristics in most post cataclysmic occurrences. The "I-knew-it-all-along phenomenon" would have certainly been propagated as just hindsight bias to explain the January spill. But the credible evidence shows that the spill should have never happened.

30. Slope and stability have always been noted concerns to us, as well as, gases, fires and the flow of sediment into coastal waters. My team documented these concerns to Ko Olina Community Association, and the Association put the Landfill's operator on notice. I've heard the operator say that the cell that released the waste wouldn't have flooded if a drainage system had been completed. If that's true, then the operator shouldn't have started using the cell until after the drainage system was complete.

31. The Land Use Commission imposed the deadline to accept municipal solid waste because it believed that the City had ample time to make reasonable and diligent efforts to find an alternative to the Landfill. The City has received enough expansions and extensions. It should not receive another.

CONCLUSION

32. Initially permitting a landfill so close to our coastal waters is, in and of itself, a questionable decision. Extending the landfill knowing its record of violations and releases is irrational and poses a real and threat to the public and the environment. If the Landfill had been closed as scheduled in 1997, 2003, 2008, or 2009, the January 2011 breach would have never happened.

33. The Application to Modify should be denied.

34. The deadline exists as our last protection from the harm caused by the Landfill. Please don't take that protection away from us.

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 12, 2011.



DUKE HOSPODAR

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STATE OF HAWAI'I

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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:

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