

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 P3:38

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 KEN WILLIAMS

DECLARATION OF KEN
WILLIAMS

CERTIFICATE OF SERVICE

Contested Case: December 7, 2011

KOCA 8

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

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 Ken Williams.

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

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 KEN
WILLIAMS**

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 KEN WILLIAMS

I, Ken Williams, hereby declare as follows:

1. I am the Executive Vice President of Ko Olina Community Association (“**KOCA**”) and make this declaration based on personal knowledge in opposition to the Honolulu Department of Environmental Services’ (“**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 Waimanalo Gulch Sanitary Landfill (the “**Landfill**”) is a danger to public health and safety, as evidenced by its long track record of citations punctuated by the recent spill in January 2011; because the ENV has promised to close the Landfill and the ENV should be held to its word; and because the Landfill poses a grave risk of harm to public welfare, as it jeopardizes all of the economic benefits that Ko Olina provides to the surrounding community, the City and County of Honolulu (the “**City**”), and the State of Hawai‘i (the “**State**”).

BACKGROUND

3. KOCA is the master association for the Ko Olina Resort and Marina (the “**Ko Olina**” or “**Resort**”), which is a 642-acre resort master planned community with a combination of resort, residential, commercial, and recreational uses.

4. KOCA is tasked with ensuring that the livability, vibrance, and values of the Resort are maintained at the highest levels.

5. Ko Olina Resort is located across the street from the Landfill.

6. As KOCA’s Executive Vice President, this testimony is submitted on behalf of all owners at the Resort, including hotel, timeshare, golf course, marina, and residential owners, and other members of KOCA.

KO OLINA WAS ALWAYS INTENDED TO BE A RESORT AREA, AND THE LANDFILL WAS SUPPOSED TO BE CLOSED YEARS AGO

7. In the early 1980s, when the City started the siting of the Landfill, the Ko Olina Resort area was called West Beach and was underdeveloped. However, even

at that time, the West Beach area was planned to be developed as a resort. See Exhibit K132, true and correct copies of excerpts of the Ewa Development Plan from 1981 and 1983, at 3 (1981: “[West Beach] shall be developed as a resort destination area providing scenic, recreational and open space elements with an integration of residential and commercial uses into the overall design of the resort.”), 7 (1983: “[West beach] shall be a water-oriented residential and resort community Development shall be designed in accordance with the following principles and standards: A secondary resort destination area containing up to 4,000 visitor units shall be established” (underscoring omitted)); Exhibit K100, a true and correct copy of the Leeward District Sanitary Landfill Revised Environmental Impact Statement at Waimanalo Gulch Site and Ohikilolo Site dated May 7, 1984, at 3, 12–13 (¶ D.2) (noting that the “Site is highly visible to the public . . . from the proposed West Beach development.”).

8. Indeed, the Land Use Commission’s 1987 decision approving the first special use permit for the Landfill acknowledges that the Landfill is located “mauka of the proposed Ko Olina Resort (formerly known as the West Beach Resort).” Exhibit K69, a true and correct copy of the Land Use Commission’s Findings of Fact, Conclusions of Law and Decision and Order dated April 20, 1987, at 2 (¶ 4).

9. By around the time Ko Olina Resort was developed, the Landfill was planned to have reached capacity. Exhibit K69, a true and correct copy of the Land

Use Commission's Findings of Fact, Conclusions of Law and Decision and Order dated April 20, 1987, at 7 (¶ 28).

10. In accord with the long-range planning, Jeffrey Stone and The Resort Group revitalized Ko Olina as a resort destination by attracting and creating building opportunities for Walt Disney Resorts, JW Marriott, Marriot Vacation Club, Brookfield Homes, Centex Homes, Armstrong Builders and others to build at Ko Olina. Exhibit K22, a true and correct copy of the Fiscal & Economic Benefits Analysis Ko Olina Resort & Marina, Honolulu, HI by CBRE Strategic Consulting dated January 2011, at 10.

11. Also in accord with the long-range plan for the area, the Landfill has repeatedly been scheduled to close. When the Landfill was first permitted in 1987, it consisted of 60.5 acres and had a "projected full-life of approximately 8 years." Ex. K69, a true and correct copy of the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order dated April 20, 1987, at 2 (¶ 5), 7 (¶ 28).

12. The Landfill began its operations in 1989. Exhibit K2, a true and correct copy of the Land Use Commission's Decision and Order Approving Amendment to Special Use Permit dated June 5, 2003, at 5 (point xxii). That year, the Landfill was expanded by 26 acres. Exhibit K70, a true and correct copy of the Land Use Commission's Findings of Fact, Conclusions of Law and Decision and Order dated October 31, 1989, at 5 (¶ 18), 9.

13. By 2003, the Ko Olina Resort had been established. Exhibit K1, a true and correct copy of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, at 2 (¶ 5) ("Across Farrington Highway from the site is the Ko Olina Resort, which contains resort and residential units, a golf course and marina.").

14. At the same time, the Landfill was "quickly approaching its maximum capacity." Exhibit K1, a true and correct copy of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, at 4-5 (¶ 3); *see also* Exhibit K2, a true and correct copy of the Land Use Commission's Decision and order Approving Amendment to Special Use Permit dated June 5, 2003, at 5-6 (points xxiii and xxvi).

15. Rather than close the Landfill, as had been long planned, the ENV instead "propose[d] a 21-acre, 5-year capacity expansion to the existing 86.5-acre landfill." Exhibit K1, a true and correct copy of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, at 1.

16. According to Frank Doyle, then Acting Director of Environmental Services: "[W]e had originally thought that we could have this landfill operate for another 15 years. And then as part of our discussions with the community and in trying to take a look at their concerns it was reduced to a five-year operation." Exhibit K85, a true and correct copy of the Land Use Commission's Hearing Transcript dated March 27, 2003, at 96:18-22.

17. At the 2003 hearing before the Land Use Commission, the ENV repeatedly expressed its “commitment” to close the Landfill within five years. Exhibit K85, a true and correct copy of the Land Use Commission’s Hearing Transcript dated March 27, 2003.

18. For example, Commissioner Coppa stated, “I’m trying to see what it’s going to look like, whether it’s two years from now or five years from now. [¶] Do you honestly think that we will have a site, another site picked for a landfill? And if so do you think that you could commit that without a doubt that this landfill will close?” *Id.* at 125:4–10.

19. Director Doyle answered, “We have made the commitment, yes.” Director Doyle again acknowledged “our commitment to be out of that area within five years.” *Id.* at 125:11; *see also id.* at 128:31 (Director Doyle: acknowledging the “our commitment to be out of that area within five years”).

20. Similarly, Chairperson Ing asked, “This proposed Blue Ribbon committee, could they come out with a recommendation that this Waimanalo Gulch landfill be expanded?” *Id.* at 177:22–24.

21. Director Doyle responded, “No.” *Id.* at 177:25. Chairperson Ing asked, “Thank you. You answered ‘no.’” *Id.* at 178:1. Director Doyle again responded, “No’.” *Id.* at 178:2.

22. Similarly, Eric Crispin, Director of the Department of Planning and Permitting, stated, “The Administration’s will and resolve is to achieve this within

the timeframe that's been already reduced from 15 years to five years. And the schedule reflects the finding of that alternate solution, alternate site within that five-year period and having it up and running so we can close down Waimanalo Gulch." *Id.* at 168:19–24.

23. Based on the City's proposal and representations, the Planning Commission and the Land Use Commission approved the 21-acre expansion on the condition that the Landfill close by May 1, 2008. Exhibit K1, a true and correct copy of the Planning Commission's Findings of Fact, Conclusions, and Decision dated March 13, 2003, at 5 (§ 10); Exhibit K2, a true and correct copy of the Land Use Commission's Decision and Order Approving Amendment to Special Use Permit dated June 5, 2003, at 9 (§ 12).

24. Contrary to its proposal and representations in 2003, the ENV asked to extend the closure date to May 1, 2010, and expand the Landfill. The Planning Commission granted the request, but the Land Use Commission only gave the City until November 1, 2009, to close the Landfill. Exhibit K155, a true and correct copy of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order Adopting with Modifications, the City and County of Honolulu Planning Commission's Recommendation to Approve Amendment to Special Use Permit dated March 14, 2008, at 18 (§ 1).

25. Again contrary to its proposal and representations in 2003, on December 3, 2008, the ENV filed an application for a new special use permit to

utilize an additional 93 acres, for a total of 200 acres. The Planning Commission approved the application for “a new SUP for the existing and proposed expansion of WGS� . . . until capacity as allowed by the State Department of Health is reached.” Exhibit K12, a true and correct copy of the Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order dated August 4, 2009, at 24.

26. However, the Land Use Commission approved the permit on the condition that “[m]unicipal 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.” Exhibit K15, a true and correct copy of the Land Use Commission’s Order Adopting the City and County of Honolulu Planning Commission’s Findings of Fact, Conclusions of Law, and Decision and Order with Modifications dated October 22, 2009, at 8 (¶ 14).

27. Thus, the Landfill was supposed to close

- a. in 1997, eight years after it began operations;
- b. in 2003, when it reached capacity;
- c. in 2008, when it was promised to be closed and had been directed to be closed; and
- d. in 2009, when it was directed to be closed.

28. The ENV has been kicking the can down the road for over a decade, and the community surrounding the Landfill has suffered for it.

THE LANDFILL IS HARMFUL AND UNSAFE

29. The Landfill causes substantial adverse impacts to the Resort and the surrounding area, including noise, odors, windblown litter, heavy truck traffic, blasting tremors, and blighted views from a premier resort area. Members of KOCA have submitted the following written comments on these issues in opposition to the Application to Modify:

a. Letter from Mario Beekes, a Ko Olina resident, to David K. Tanoue dated August 11, 2011: "We have a home directly behind the major drainage area on the 12th fairway of Ko Olina Golf Course and have been visiting since our purchase date of 2003. We have seen a notable increase in the amount of water during rain periods and at the end of last year the flood waters came within 2 feet of breaching the embankment protecting the Coconut Plantation development we live in. I have absolutely no doubt that the scarification of the Dump's hillsides have resulted in this increased water flow. The water flows last winter had a distinct 'dump' odor. Mr. Joe Whalen [sic] of Waste Management informed me that it was perhaps the sludge that was being dumped that day which we smelled! I don't think so. . . . You must reverse the path that your government officials have taken in the path related to promises made to close the dump, continuous infractions involving Waste Management and a general 'kick the can down the road' and then at the last minute conclude that you have no options but to continue to expand the dump." Exhibit K37 is a true and correct copy of the Letter.

b. Letter from Alan Nakamura of Ko Olina Golf Course to David Tanoue dated August 11, 2011: "For years I have observed rubbish trucks pass the resort with an abundant amount of trash and debris flying from their trucks that litter Farrington Hwy and the resort. We are continuously picking up the debris on a daily basis and found that it is a never ending task to control." Exhibit K42 is a true and correct copy of the Letter.

c. Letter from William Barnes and Sara Barnes, Ko Olina residents, to David K. Tanoue dated July 20, 2011: "We have already seen the previous deadline deleted even after we and many of our neighbors urged that it not be. Since then, we have watched the landfill get bigger and bigger. The communities on the Leeward side have experienced more and more environmental degradation (smells, dust, dirt, blowing trash bags), recent environmental hazards (contamination from medical waste resulting in beach closings) and economic loss (devaluation of real estate directly related to the landfill's presence). [¶] We have watched as the City and County have done little and then asked for extension after extension." Exhibit K117 is a true and correct copy of the Letter.

d. Letter from James Handsel, resident of Ko Olina, to David K. Tanoue dated August 12, 2011: "When the Landfill was scheduled to close seven years ago, we were told there was no time to find an alternative because it takes seven years to develop a site. The extension was allowed but no action was taken to start the process of developing an alternative. [¶] Here we are again. Same lack of

options, same shortness of time, same old story. While in the mean time, we have been subjected to the stifling foul odors & hazardous medical waste run off.” Exhibit K119 is a true and correct copy of the Letter.

e. Letter from S.B. Teramoto of the Association of Apartment Owners of The Coconut Plantation in Ko Olina Resort to David K. Tanoue dated July 25, 2011: “The most recent incident was the discharge of medical waste into the ocean; consequently, our lagoons were closed for use until the Health Department declared they were safe to use. Our daily lives are impacted by its close proximity. . . . Our residents have experienced tremors from blasts to expand the landfill, noise of the trucks, loose trash littering Farrington Highway and HI that fly out of the garbage trucks, and dust from the landfill.” Exhibit K36 is a true and correct copy of the Letter.

f. Letter from Ralph F. Harris of Ko Olina Fairways – Association of Apartment Owners to David K. Tanoue dated August 10, 2011: “It appears that the City, again without a plan or alternative site, has decided to seek yet another angle to extend the life of the dump. [¶] The City continues to pursue this site for over eleven (11) years, without a plan, without alternative sites, without alternative methods, and without alternative technologies to integrate into a comprehensive waste management plan for the Island of Oahu. The Waimanalo facility has already contaminated the shoreline including the delivery of medical waste on beach goers from Ko Olina to Waianae. The location and condition of the facility is a disaster

looming for more taxpayers' dollars to clean up future overflows." Exhibit K41 is a true and correct copy of the Letter.

g. E-mail from Greg Nichols of Ko Olina Golf Club to David K. Tanoue dated August 12, 2011: "The adverse effects of the landfill to our community and to the well-being of our residents and guests have been well documented. These adverse effects continue to get worse, not better. The dump is a visual blight growing steadily larger on the mountainside above our otherwise pristine resort community. Worse yet, the dump poses real and potential health threats to humans, animals and sea life that are completely unacceptable. [¶] This winter's terribly sad and disruptive overflow of medical waste had been forewarned as a threat and was completely avoidable, if the appropriate closure of the dump had taken place when it was originally scheduled." Exhibit K120 is a true and correct copy of the E-mail.

h. Letter from Chuck Krause of Ko Olina Marina to David K. Tanoue dated August 12, 2011: "I have seen first hand the 'bad' side of the landfill. Every day I see the plastic bags blowing from the garbage trucks going to the landfill, which because of our trade winds on this side of the island[,] inevitably end up in our once pristine waters off Ko Olina. I have seen first hand the results of last year's floods and the carnage thrown into our ocean because of poor management." Exhibit K121 is a true and correct copy of the Letter.

i. Letter from Masaki Nagamine of Watabe Wedding Corporation at Ko Olina to David K. Tanoue dated August 13, 2011: "We have continued to

contribute to enhance the tourism market by serving thousands of Japanese wedding couples, celebrating their once in a life time memories here at the Ko Olina Resort. Ambiance is very essential and to see debris, such as disposed medical needles, garbage bags coming in from the landfill and the whiff of the sour smell of the landfill across the street is just not one of the impressions we would like to deliver to our clients. They especially chose this location as their wedding site to experience bright sun reflecting to the blueness of the ocean and smell free environment. [¶] With the removal of the deadline, future wedding couples will continue to suffer from the adverse impacts of landfill operations, including heavy truck traffic, noise, odors, windblown litter and scarred views from the ocean.” Exhibit K45 is a true and correct copy of the Letter. Exhibit K114 is a true and correct copy of a photograph taken by the Ko Olina Aloha Team on January 16, 2011, at Ko Olina Resort of a wedding party near the beach following the spill.

j. Letter from Joseph Yamaoka of Resort Management Company at Ko Olina to David K. Tanoue dated August 12, 2011: “We are very concerned that the application once again ignores our outcries against repeated extensions of landfill operations over the last 15 years. Our property was built relying on the promised pending closure of the landfill. With the removal of the deadline, we will have to continue to suffer from the adverse impacts of that operation, including heavy truck traffic, noise, odors, windblown litter and scarred views from the resort. The Department of Environmental Services’ application ignores the State Land Use

Commission's efforts to close the landfill and force the City to find an alternate site to serve the City's long term needs. . . . Enduring the adverse impacts of the landfill as well as health concerns any longer is not acceptable to us. We implore you to deny the application." Exhibit K44 is a true and correct copy of the Letter.

k. Letter from Pieter and Claire van Wingerden dated August 11, 2004: "The Waimanalo Gulch Landfill poses a hazard to the health and well-being of the residents of the Waianae Coast and of Ko Olina and jeopardizes the significant economic contributions of the Ko Olina Resort. . . . The Waimanalo Gulch Landfill is a threat to the significant economic contribution that the Ko Olina Resort makes to the City and County of Honolulu and to the state of Hawaii [discussing financial figures from the CB Richard Ellis study, Exhibit K22] A single disastrous spill or series of spills could significantly change these figures, bringing to a halt future construction and driving tourists and homeowners from Ko Olina at alarming rates. [¶] On a personal note, we would like to say that we experienced the January 2011 spill. It was not a pretty sight. Quantities of medical waste and other landfill debris were seen in the water and on the beaches of Ko Olina and along the Waianae Coast. The water and beaches were closed to the public. The beaches of the hotels and time shares were empty, and business slowed at the Ko Olina marina, restaurants, hotels and timeshare. We wondered at the lost revenue, not only for the hotel and restaurant owners, but also in terms of the trickle-down effect on resort workers and community businesses. [¶] Finally, we want to note that the

time for action by the City and County is long overdue. We are aware that it takes several years to locate and construct a new landfill. However, we also realize that the city and County have been aware of this timeframe for some time and have failed to make substantial progress to identify a new landfill or to find other ways of dealing with the waste. The increased incineration of medical waste and increased recycling are steps in the right direction, and we urge the construction of a third burner at HPOWER and expanded recycling. We also urge the city to consider new technologies used in other cities and countries. We happen to have spent considerable time in both Japan and the Netherlands and are aware of the countries' use of innovative technologies which minimize landfill usage. There is no reason that Hawaii cannot be equally forward-looking in its waste management." Exhibit K122 is a true and correct copy of the Letter.

30. As these letters from Ko Olina Community Association members demonstrate, the Leeward community's health, safety, and welfare are seriously jeopardized by the Landfill's continued operation. Other businesses that operate in the area have taken the same view. Exhibit K40, a true and correct copy a Letter from Mona Abidar of Honu Group Communications, LLC to David K. Tanoue dated August 10, 2011 ("As evidenced by the wastewater catastrophe in January of this year, continued use of WGS� presents calamitous environmental, social, economic, health and safety risks to all of West Oahu. . . . If the landfill is allowed to remain open, the surrounding environment, ocean, beaches and marine life, and the

community's health and welfare are not safe and vulnerable to severe harm. . . . The City and State cannot afford to have another landfill disaster on its hands."); Exhibit K118, a true and correct copy of a Letter from Harriet Bloom of Commercial Contracting Hawaii to David K. Tanoue dated August 1, 2011 ("It's absurd to hear the city say they need an additional 15 years while alternative technologies are developed. Why does the west side of the island have to continue to endure the burden of the entire islands [sic] trash? . . . At the very least, we need an alternative location, if not several to eliminate some of the truck traffic, blowing rubbish, and sometimes foul smells, that are all too often noticeable everywhere around the Waimanalo Gulch Landfill.").

31. Over the years, I have made numerous complaints to the operator of the Landfill, Waste Management of Hawaii ("**Waste Management**"). True and correct copies of a selection of KOCA's complaint letters to Waste Management are submitted as Exhibits K134.

32. The Landfill is technically referred to as a "canyon fill." Waimanalo Gulch is a natural drainage-way where a stream would ephemerally run, draining an entire watershed above it. Canyon fills rely on multiple berms to hold the man-made mountain of opala in place. When there is a failure in construction or operation, this type of "fill" is inherently much more dangerous than a typical landfill where the opala is placed in a hole in the ground. Failure of the berms or of

the drainage systems can be catastrophic—as evidenced by what occurred in December 2010 and January 2011.

33. The operations at the Landfill have a long history of violating environmental regulations and resulting fines. There have been more than 20 violations cited by Environmental Protection Agency (“EPA”) and the Hawai‘i Department of Health, and close to \$3 million in fines assessed since 2005. Exhibit K59, a true and correct copy of a Letter from Laurence K. Lau of the Department of Health to Paul Burns of Waste Management and Eric Takamura of the ENV dated January 31, 2006, with enclosures; 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 enclosures; Exhibit K166, a true and correct copy of a Letter from Laurence K. Lau of the Department of Health to Joe Whelan of Waste Management and Timothy Steinberger dated May 13, 2010, with enclosures.

34. These violations have included extremely dangerous failures to properly construct or operate the cells, liners, leachate system, and gas collection system. The long history of negligent conduct exponentially increases the risks and dangers associated with a “canyon fill.”

35. In 2010, after the Department of Health issued more violations for improper construction of landfill berms, Waste Management constructed a new cell

(Cell E6) and entered it into operation. Operation and filling of Cell E6 occurred **before** the necessary drainage infrastructure was complete.

THE DISASTERS IN DECEMBER AND JANUARY

36. On December 23, 2010, the Department of Health Clean Water Branch documented the unauthorized pumping of leachate from Cell E6 into State waters in its Investigation Report. See Exhibit K52, a true and correct copy of an Investigation Report by Matthew Kurano and Jamie Tanimoto of the Department of Health Clean Water Branch signed January 4, 2011.

37. This activity was completely inconsistent with and in contravention of, among other things, the Planning Commission's and Land Use Commission's findings regarding the Landfill's storm water diversion system:

74. Drainage for the Property is intended to capture storm water and divert it around the landfill if it originates off site (surface run-on) or into the exiting sedimentation basin if it originates onsite (surface run-off). . . . The water is eventually discharged to the ocean subject to the State Department of Health ("DOH") permitting requirements under the national pollution discharge elimination system ("NPDES"). . . .

75. Leachate does not come into contact with storm water. The storm water or surface water system is separate from the leachate collection system.

Exhibit K12, a true and correct copy of the Findings of Fact, Conclusions of Law, and Decision and Order by the Planning Commission dated August 4, 2009, at 15 (transcript citations omitted); Exhibit K15, a true and correct copy of the Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order with Modifications by the Land Use

Commission dated October 22, 2009, at 5. The ENV was required to comply with these findings, but failed to do so. *See Exhibit 77*, a true and correct copy of the Transcript of Proceedings before the Land Use Commission dated February 2, 2011, at 152:25–153:5, 179:13–17 (Land Use Commission Chairman Devens, affirming that the ENV is required to comply with the Commissions’ Findings of Fact and questioning whether there was a violation of Finding of Fact 74).

38. As a result of the December 2010 discharge, the City was ordered to issue a press release regarding the possible release of contaminated stormwater and leachate into state waters, but the City refused to issue the press release, claiming that the storm water was not leachate. Exhibit K55, a true and correct copy of an E-mail with attachment from Timothy Steinberger to Gary Gill, Steven Chang, and Joanna Seto of the Hawai‘i Department of Health dated January 12, 2011.

39. On January 12, 2011, the Department of Health contacted the ENV and “demanded the posting of signs warning of contaminated water discharges from WGS�, given the predicted rainfall.” *Id.*

40. In an e-mail sent January 12, 2011, the ENV’s Director, Timothy Steinberger, steadfastly refused to post signs, making a technical argument that signs were not required because the Landfill does not qualify as a “wastewater treatment, use or disposal system” as defined by a Hawai‘i regulation. *Id.*

41. The e-mail was sent at 9:45 p.m. *Id.*

42. At that very moment, the rain was pouring at the Landfill. Between 9:00 p.m. and 10:00 p.m., the Landfill received close to three inches of rain. Exhibit K56 at 1, a true and correct copy of Station Summaries from Palehua Hawaii on January 12 and 13, 2011.

43. The heavy rains dislodged unknown quantities of municipal solid waste, sewage sludge, leachate, and medical solid waste from the Landfill into coastal waters. Medical solid waste includes sharps, chemotherapy wastes, and pathological wastes.

44. By the morning of January 13, 2011, significant quantities of medical waste and other Landfill debris were washing up in the Ko Olina Lagoons. Quickly this waste spread to beaches up the Leeward Coast and east as far as Nimitz Beach. 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 (“Robert and Barbara Billand showed off what they found after combing White Plains and Nimitz Beaches. [¶] Two plastic bags of used syringes, scissors and used vials that appeared to have blood inside.”).

a. Exhibit K105 is a set of true and correct copies of photographs at Ko Olina Resort of municipal solid waste and debris from the Landfill following the January spill.

b. Exhibit K108 is a set of true and correct copies of photographs at Ko Olina Resort of medical solid waste from the Landfill following the January spill.

Exhibit K154 is a set of true and correct copies of photographs of medical waste found at or around Ko Olina following the January spill taken by the Department of Health Clean Water Branch.

c. Exhibit K109 is a set of true and correct copies of photographs of the muddy waters filled with debris off the shores of Ko Olina Resort following the January spill.

45. Upon learning of the spill, Ko Olina Resort immediately closed the Lagoons. Exhibit K106 is a set of pictures at Ko Olina of the empty Lagoons during the beach closure. Exhibit K113 is a true and correct copy of a "Keep Out" sign posted at one of the Ko Olina Lagoon following the January spill.

46. Based on the December and January spills, the EPA found that the City and Waste Management had violated the Clean Water Act by failing to prevent runoff 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 Landfill. Exhibit K123, a true and correct copy of a Finding of Violation and Order by the EPA dated November 29, 2011.

47. The ENV and Waste Management were slow to clean up the municipal solid waste. Consequently, Ko Olina's workers had to assist in the cleanup, as explained by the testimony of Duke Hospodar. Exhibit K103 is a set of true and correct copies of photographs of the Ko Olina Aloha Team's efforts to clean up the

waste at the Resort from the Landfill. Exhibit K104 is a set of true and correct photographs of before and after photographs of the clean-up efforts following the January spill. Exhibit K110 is a set of true and correct copies of videos of the Ko Olina Aloha Team's efforts to clean up the waste at the Resort from the Landfill.

48. Ko Olina Resort spent substantial time, effort, and money to clean up the municipal solid waste and medical waste that washed up on Ko Olina's beaches. The clean-up costs were not less than \$19,629.18. *See* Exhibit K139, a true and correct copy of an invoice for the clean-up work associated with the January 2011 spill.

49. In addition, Ko Olina's reputation as a premiere resort destination was tarnished and undermined by the news reports that the Ko Olina Lagoons were covered with medical waste from the Landfill. *See* Exhibit K99, a set of true and correct copies of news articles covering the January spill and its effects on Ko Olina; Exhibit K133 is a set of true and correct copies of local news videos covering the January spill and its effects on Ko Olina.

50. It is amazing how far-reaching the bad news of the January spill has spread. Ko Olina Resort and Marina had a booth at a boat show in Seattle after the spill. The Ko Olina representative in the booth, Charles Leonard, General Manager of Ko Olina Marina, was asked repeatedly whether the Ko Olina beaches were contaminated with medical waste. *See* Exhibit K77, a true and correct copy of a

Transcript of Proceedings Before the Land Use Commission dated February 2, 2011, at 252:10–18 (testimony of Charles Leonard).

51. The spill would not have happened if the Landfill had been closed as scheduled in 1997, in 2003, in 2008, or again in 2009.

**THE LANDFILL THREATENS ALL OF ONGOING AND FUTURE
ECONOMIC BENEFITS PROVIDED TO THE COMMUNITY BY
KO OLINA RESORT**

52. Ko Olina provides substantial economic benefits to the surrounding community, the City, and the State.

53. An independent economic analysis was conducted by CB Richard Ellis in January 2011 entitled Fiscal & Economic Benefits Analysis, Ko Olina Resort & Marina, Honolulu, HI. A true and correct copy of the report is marked as Exhibit K22.

54. Current operations of Ko Olina Resort generate \$520 million in direct spending annually and provide 2,800 jobs locally. Additionally, this generates indirect and induced benefits of \$280 million and 1,500 additional jobs locally and statewide.

55. Future developments at Ko Olina will almost double the benefits generated by the existing Ko Olina Resort, providing \$1.4 billion in total annual economic activity (\$925 million directly and \$501 million indirect and induced) and supporting 8,000 jobs (5,200 directly and 2,800 indirect and induced).

56. Construction period impacts for future proposed developments at Ko Olina will include over \$3.7 billion in direct spending, creating 26,700 jobs. Indirect and

induced economic impacts of this same spending will include an additional \$2 billion and 16,900 jobs. At a total of \$5.7 billion and 43,000 jobs, the economic impact of Ko Olina is approximately equal to Honolulu's rail project.

57. Existing development at Ko Olina generates \$20.3 million in tax revenue to the City and \$40.4 million to the State of Hawai'i, annually.

58. 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. This revenue does not include the construction period tax revenues which will generate an additional \$193 million in one-time revenues to the City and State combined.

59. The Landfill threatens all of these ongoing and future economic benefits. A landfill would not be approved to be built today across the street from substantial residential and tourist destination that which provides such substantial benefits to the community, the City, and the State. One of the "General Policies" in the proposed Ewa Development Plan states: "Do not develop the Makaiwa Gulch area identified by the Mayor's Advisory Committee in December 2003 as a landfill. It is in an area planned for residential use and is adjacent to the Ko Olina Resort, which plays an important role in job creation for Ewa." Exhibit K24, a true and correct copy of an excerpt of the Proposed Ewa Development Plan. If the Landfill would not be approved to be built at this point in time, it should not be approved for extension.

**THE ENV HAS NOT MADE REASONABLY DILIGENT EFFORTS TO FIND
ALTERNATIVES TO THE LANDFILL**

60. The only reason the Landfill has not closed is that the ENV has failed to make reasonably diligent efforts to find alternatives to the Landfill. In 2003, the ENV promised that it would find an alternate site and have it operational within five years. In fact, after saying it would find a new site and being directed to do so by the Land Use Commission, the City decided to choose the existing Landfill as a “new” landfill site in 2004.

61. In 2008, when the ENV was supposed to have identified and developed a new landfill site, the ENV was instead in the process of requesting an extension of the Landfill. A new site had not been selected or developed. Thus, after saying it would find and develop a new site in five years and after having obtained a five-year extension to do so based on that representation to the Land Use Commission, the ENV was no closer to selecting and developing a new site in 2008 than it was in 2003.

62. In 2009, the ENV was given a two-year extension to accept municipal solid waste. The Planning Commission and the Land Use Commission directed the ENV to exercise reasonable diligence in locating and developing a new site. The Land Use Commission issued its order in October 2009. The ENV planned to wait for a full year to begin landfill site selection committee meetings in October 2010. See Exhibit K21, a true and correct copy of the ENV’s Status Report on Reducing and/or Continuing the Use of Waimanalo Gulch Sanitary Landfill (WGSL) Public

Hearing dated October 19, 2010, at 9. But even that plan apparently fell through, as the start date was moved to November 2010, *see id.*, and then to January 2011.

63. The committee was set to provide its recommendation to the Mayor by August 2011, but that date was pushed back to October 2011. Exhibit K91, a true and correct copy the ENV's First Annual Report, Status of Actions Taken to Satisfy the State Land Use Commission's Order dated October 2, 2009, and Status of Operations, Waimanalo Gulch Sanitary Landfill dated July 2010, at 2; Exhibit K92, a true and correct copy of the ENV's Second Annual Report, Status of Actions Taken to Comply with the State Land Use Commission's Order dated October 2, 2009, and Status of Operations, Waimanalo Gulch Sanitary Landfill dated June 1, 2011, at 2.

64. It is now December, and the committee has still not made its recommendation. That fact is unfortunately not surprising based the flaws in the committee's methodology, as identified by Dwight Miller in his testimony.

65. When the ENV obtained the extension in 2003, it claimed to be working towards utilizing alternative technologies that would address the components of the waste stream that could not be taken to H-POWER through "demonstration" technologies. Eight years later, the ENV has not been successful in "demonstrating" any of these technologies. The ENV is no closer to utilizing these types of new technologies today than it was in 2003.

66. Instead of exercising reasonable diligence in developing new landfill sites and new technologies, for the last eight years the ENV has continued to kick the

proverbial can down the road. While the City has done next to nothing to alleviate the problem, it has earned tens of millions of dollars in tipping fees for inaction and neglect.

67. It is hard to believe that the City is really trying to find a new site. The site selection committee is supposedly looking for one. Meanwhile, the ENV is asking for an indefinite extension of the life of the Landfill. Something does not fit.

CONCLUSION

68. The adverse effects of the Landfill continue to get worse, not better. The Landfill is growing steadily larger on the mountainside above our otherwise pristine community. The Landfill poses health and safety risks to the Leeward community in general and the Ko Olina Resort in particular.

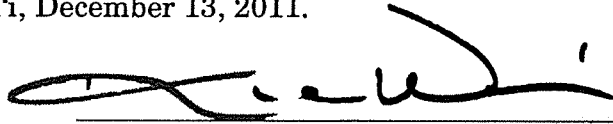
69. The Ko Olina Resort's operations generate millions of dollars for the economy, thousands of jobs for local workers, and millions of dollars in tax revenues. All of those benefits to the surrounding community, the City, and the State are cast in doubt by the Landfill's shadow.

70. This Landfill is no longer viable. It is time for the Landfill to stop accepting municipal solid waste and for the ENV to find a new site and new technologies. The ENV must be held accountable for its promises and obligations to the community.

71. 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.

A handwritten signature in black ink, appearing to read 'Ken Williams', is written over a horizontal line.

KEN WILLIAMS

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
City and County of Honolulu
1000 Uluohia Street, Suite 308
Kapolei, Hawai'i 96707

(Certified Mail)

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

(Hand Delivery)

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

(Hand Delivery)

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