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2017 OCT 23 AM 11:55  
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

For a New Special Use Permit to  
Supersede Existing Special Use Permit  
to Allow A 92.5-Acre Expansion and  
Time Extension for Waimānalo Gulch  
Sanitary Landfill, Waimānalo Gulch,  
O'ahu, Hawai'i, Tax Map Key: 9-2-03: 72  
And 73

FILE NO. 2008/SUP-2

INTERVENORS KO OLINA  
COMMUNITY ASSOCIATION AND  
MAILE SHIMABUKURO'S  
OBJECTIONS TO ADOPTION OF  
PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION AND ORDER

DECLARATION OF CHRISTOPHER  
T. GOODIN

EXHIBIT A

In the Matter of the Application of  
DEPARTMENT OF ENVIRONMENTAL  
SERVICES, CITY AND COUNTY OF  
HONOLULU

To delete Condition No. 14 of Special

CERTIFICATE OF SERVICE

R3

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.”

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE  
SHIMABUKURO’S OBJECTIONS TO ADOPTION OF PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER**

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Intervenors Ko Olina Community Association (the “**Association**”) and Maile Shimabukuro (together, “**KOCA**”) object to the “Adoption of Proposed Findings of Fact, Conclusions of Law, and Decision and Order,” as stated on the Honolulu Planning Commission’s Agenda for October 25, 2017 (the “**Agenda**”), on the grounds that notice of the October 25 contested case hearing was given less than fifteen days before the hearing, the notice does not identify all the action to be taken at the hearing and KOCA’s counsel is unavailable for the hearing.

The Planning Commission’s rules and the Hawai’i Administrative Procedure Act require that an agency give at least fifteen days’ notice of a contested case hearing. Specifically, Honolulu Planning Commission Rules § 2-63 provides that “notice of contested case hearing shall be served on all parties . . . by the commission at their last recorded addresses **at least fifteen (15) calendar days** prior to the date of the hearing by certified mail with return receipt requested.” (Emphasis added.) Like-

wise, Hawai'i Revised Statutes § 91-9.5 directs that “[u]nless otherwise provided by law, all parties shall be given written notice of hearing by registered or certified mail with return receipt requested **at least fifteen days before the hearing.**” (Emphasis added.)

Here, the only notice the Planning Commission provided of the October 25 contested case hearing was sent by email on October 19, 2017—six days before the hearing. Thus, proceeding with the hearing on October 25 would violate both Honolulu Planning Commission Rules § 2-63 and Hawai'i Revised Statutes § 91-9.5.

Furthermore, the description of the hearing in the notice is defective. The notice reports that Planning Commission will adopt a “proposed” decision. Based on further communications from commission staff, the purpose of the hearing is actually to present a proposed decision to the parties, schedule deadlines for the parties to submit written decisions to the proposed decision and set a hearing date for oral argument on the proposed decision.

Planning Commission Rules § 2-63(b) requires notices of hearing identify the “subject matter” and include “[a]n explicit statement in plain language of the issues involved.” *See also* Hawai'i Revised Statutes § 91-9(b)(4) (requiring notice of hearing include “[a]n explicit statement in plain language of the issues involved”). The notice issued on October 19 does not state, in plain language, the actions to be taken by the Commission.

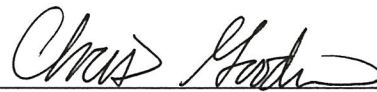
Finally, proceeding with the hearing would be prejudicial to KOCA because neither of its counsel is available on October 25. Before receiving the notice on October

19, KOCA's lead counsel was already scheduled to be on the mainland for a mediation and KOCA's co-counsel already had unchangeable and irreconcilable work-related conflicts on October 25 at 1:30 p.m. Goodin Dec. ¶ 3. Those conflicts prevent counsel from attending the hearing. *Id.* If, as Commission staff explains, one of the reasons for hearing to determine scheduling, including hearing for oral argument, it is essential that KOCA be given an opportunity to participate in the discussion.

For those reasons, KOCA objects to the hearing on October 25, 2017 and any action taken during the hearing, including the adoption of a proposed decision. Any action would be reversible on appeal pursuant to Hawai'i Revised Statutes § 91-14(g), which invalidates agency decisions "[i]n violation of constitutional or statutory provisions," "[m]ade upon unlawful procedure" and "[a]ffected by other error of law."

DATED: Honolulu, Hawai'i, October 23, 2017.

CADES SCHUTTE  
A Limited Liability Law Partnership



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CALVERT G. CHIPCHASE  
CHRISTOPHER T. GOODIN

Attorneys for Intervenors  
KO OLINA COMMUNITY ASSOCIATION  
and MAILE SHIMABUKURO

BEFORE THE PLANNING COMMISSION  
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O‘ahu, Hawai‘i, Tax Map Key: 9-2-03: 72  
And 73

FILE NO. 2008/SUP-2

**DECLARATION OF CHRISTOPHER  
T. GOODIN**

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL  
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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.”

DECLARATION OF CHRISTOPHER T. GOODIN

I, Christopher T. Goodin, hereby declare as follows:

1. I am one of the attorneys for Ko Olina Community Association and Senator Maile Shimabukuro (together, "KOCA") in this action and make this declaration based on personal knowledge. My office has been representing KOCA in this proceeding for over six years.

2. The only notice of the October 25, 2017 contested case hearing was provided by the Planning Commission by email on October 19, 2017. A true and correct copy of the email with an attached agenda is attached hereto as Exhibit A. The Commission sent this notice just six days before the hearing without asking KOCA's counsel of their availability.

3. Before receiving the notice on October 19, KOCA's lead counsel, Calvert Chipchase, was already scheduled to be on the mainland for a mediation and I already had unchangeable and irreconcilable work-related conflicts on October 25 at 1:30 p.m. Those conflicts prevent counsel from attending the hearing.

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

DATED: Honolulu, Hawai'i, October 23, 2017.

  
\_\_\_\_\_  
CHRISTOPHER T. GOODIN

## Christopher Goodin

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**From:** Takara, Gloria C <gtakara@honolulu.gov>  
**Sent:** Thursday, October 19, 2017 2:41 PM  
**To:** Arsima Muller Esq. (amuller@carlsmith.com); Cal Chipchase; Christopher Goodin; Viola, Dana M O; Ian Sandison, Esq. ; Chan, Kamilla C K; Richard N. Wurdeman, Esq.  
**Subject:** Planning Commission's Oct. 25, 2017 agenda - Halawa TOD & WGSL contested case hearing  
**Attachments:** PC's October 25, 2017 PC agenda - Halawa TOD and WGSL contested case hearing.pdf

To All,

Attached is Planning Commission's Oct. 25, 2017 agenda.

Thank you,

Gloria Takara  
Planning Commission –  
768-8007

CITY AND COUNTY OF HONOLULU  
PLANNING COMMISSION

Meeting of the Planning Commission

DATE: Wednesday, October 25, 2017  
TIME: 1:30 p.m.  
PLACE: Mission Memorial Conference Room, Mission Memorial Building,  
550 South King Street, Honolulu, Hawaii

AGENDA

APPROVAL OF MINUTES: The minutes of the August 30, 2017 and September 27, 2017 meetings, as previously circulated, to be approved by the Commission.

PUBLIC HEARING:

Public hearing notice published in the Honolulu Star-Advertiser on October 13, 2017.

HALAWA AREA TRANSIT-ORIENTED DEVELOPMENT (TOD) PLAN (FK)

Request: Recommendation to adopt a community-based plan that focuses on the area surrounding the future Aloha Stadium rail transit station in Halawa.

CONTINUED - CONTESTED CASE HEARING:

EWA-STATE SPECIAL USE PERMIT AMENDMENT APPLICATION – 2008/SUP-2 (RY)  
WAIMANALO GULCH SANITARY LANDFILL (WGSL)

Applicant: Department of Environmental Services, City and County of Honolulu  
Landowner: City and County of Honolulu  
Location: 92-460 Farrington Highway, Honouliuli, Ewa, Oahu  
Tax Map Key: 9-2-3: 72 & 73  
Existing Use: Landfill and open space  
State Land Use: Agricultural District  
Existing Zoning: AG-2 General Agricultural District  
Land Area: 200.622 Acres  
REQUEST:

- 1) For a New Special Use Permit to Supersede Existing Special Use Permit to Allow a 92.5-Acre Expansion and Time Extension for Waimanalo Gulch Sanitary Landfill, Waimanalo Gulch, O'ahu, Hawai'i, Tax Map Key No. (1) 9-2-03: 72 and 73
- 2) 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."



## FOR ACTION

1. Adoption of Proposed Findings of Fact, Conclusions of Law, and Decision and Order

### EXECUTIVE SESSION

To consult with the Commission's attorney on the authority, duties, privileges and immunities pertaining to Section 205-6 of the Hawaii Revised Statutes, as amended, and Chapter 2, Subchapters 4 and 5 of the Rules of the Planning Commission, in accordance with HRS 92-5(a)(4).

## ADJOURNMENT

If you require special assistance, auxiliary aid and/or service to participate in this event (i.e., sign language interpreter, interpreter for language other than English, or wheelchair accessibility), please call 768-8000, or email your request to [info@honoluluodpp.org](mailto:info@honoluluodpp.org) at least three business days prior to the event.

BEFORE THE PLANNING COMMISSION  
OF THE CITY AND COUNTY OF HONOLULU  
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In the Matter of the Application of the  
DEPARTMENT OF ENVIRONMENTAL  
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FILE NO. 2008/SUP-2

**CERTIFICATE OF SERVICE**

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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.”

**CERTIFICATE OF SERVICE**

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

DONNA Y. L. LEONG, ESQ.  
Corporation Counsel  
KAMILLA C. K. CHAN, ESQ.  
Deputy Corporation Counsel  
City and County of Honolulu  
530 South King Street, Room 110  
Honolulu, HI 96813

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

IAN L. SANDISON, ESQ.  
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Attorneys for Petitioner  
SCHNITZER STEEL HAWAII CORP.

RICHARD N. WURDEMAN, ESQ.  
1003 Bishop Street, Suite 720  
Honolulu, HI 96813

Attorney for Intervenor  
COLLEEN HANABUSA

DATED: Honolulu, Hawai'i, October 23, 2017.

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