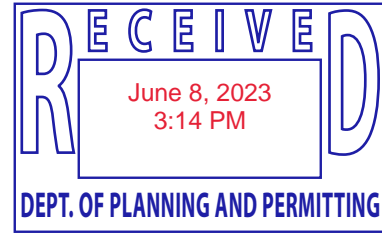


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Attorneys for Intervenors
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BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

In the Matter of the Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

Application to Modify SUP No.
2008/SUP-2 (SP09-403) by Modifying (1)
Condition No. 1 of the Planning
Commission's Findings of Fact,
Conclusions of Law, and Decision and
Order, dated June 10, 2019, and (2)
Condition No. 5 of the LUC's Findings of
Fact, Conclusions of Law, and Decision
and Order Approving with Modifications
the City and County of Honolulu
Planning Commission's
Recommendation to Approve Special Use
Permit, certified on November 1, 2019

FILE NO. 2008/SUP-2

**INTERVENORS KO OLINA
COMMUNITY ASSOCIATION AND
MAILE SHIMABUKURO'S
OBJECTION TO NOTICE OF
HEARING**

**DECLARATION OF
CHRISTOPHER T. GOODIN**

EXHIBITS 1-3

CERTIFICATE OF SERVICE

**INTERVENORS KO OLINA COMMUNITY ASSOCIATION AND MAILE
SHIMABUKURO'S OBJECTION TO NOTICE OF HEARING**

By letter dated December 22, 2022, the Honolulu Department of Environmental Services (“ENV”) filed in this proceeding docketed as No. 2008/SUP-2 (the “**Proceeding**”) an Application to Modify (the “**Application to Modify**”) (1) Condition No. 1 of the Honolulu Planning Commission’s (“**Planning Commission**”) Findings of Fact, Conclusions of Law, and Decision and Order, dated June 10, 2019 (“**PC Decision**”) and (2) Condition No. 5 of the State Land Use Commission’s (“**LUC**”) Findings of Fact, Conclusions of Law, and Decision and Order Approving with Modifications the City and County of Honolulu Planning Commission's Recommendation to Approve Special Use Permit, certified on November 1, 2019 (“**LUC Decision**”).

Intervenors Ko Olina Community Association and Senator Maile Shimabukuro’s (together, “**KOCA**”) Petition to Intervene was granted by the Planning Commission in this Proceeding on May 20, 2009. Ex. 2 (PC Decision) at 5; Ex. 3 (LUC Decision) at 6. Accordingly, KOCA is a party to the Proceeding, which is a contested case under Hawai‘i Revised Statutes (“**HRS**”) chapter 91.

KOCA objects to the public hearing notice (the “**Notice**”) setting a hearing date of June 28, 2023, in this Proceeding. Ex. 1 (Notice). Specifically, the Notice is defective because it fails to comply with HRS § 91-9, which governs the contents of hearing notices in a “contested case.”

A “contested case” is “a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for

agency hearing.” HRS § 91-1. The Planning Commission has recognized that this Proceeding (No. 2008/SUP-2) is a “contested case.” See Ex. 2 (2019 Planning Commission Decision) at 1 (“This matter is a consolidation of two contested case hearings before the Planning Commission, City and County of Honolulu”); Ex. 3 (2019 LUC Decision) at 8 (“Pursuant to Planning Commission Rules Subchapter 5, the matter was noted as a contested case.”); *id.* at 23 (“Pursuant to Planning Commission Rule § 2-56(c), the 2011 Application was processed as a contested case. 99.”). A “contested case” includes “all acts and events between the time of commencement and the entry of [the final decision].” *E & J Lounge Operating Co., Inc. v. Liquor Comm’n of City & Cty. of Honolulu*, 118 Hawai’i 320, 335 n.22 189 P.3d 432, 447 n.22 (2008). The Application to Modify seeks modifications of conditions in the final decision entered in this contested case.

Because this Proceeding is a contested case, the Notice must comply with HRS § 91-9, which states in part:

(a) Subject to section 91-8.5, in any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

(1) The date, time, place, and nature of hearing;

(2) **The legal authority under which the hearing is to be held;**

(3) The particular sections of the statutes and rules involved;

(4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; provided that if the agency is unable to state the issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished;

HRS § 91-9 (emphasis added).

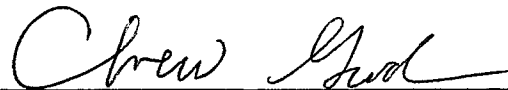
The Notice does not state the “legal authority under which the hearing is to be held,” because it fails to state that the hearing is being held under the contested case provisions of HRS chapter 91, including HRS § 91-9.

Furthermore, the Notice is unreasonable because it implies that the Proceeding is not a contested case. Specifically, the Notice states that petitions to intervene may be filed and that, “[a] contested case hearing may be held on the matter pursuant to action by the Planning Commission to grant the petition.” Ex. 1 (Notice) at 1. Since this Proceeding already is a contested case, the statement that a contested case hearing may be held renders the Notice confusing and unreasonable. See HRS § 91-9(a).

For these reasons, KOCA objects to the Notice. Any hearing on the Application to Modify should be properly noticed in accordance with Chapter 91.

DATED: Honolulu, Hawai‘i, June 8, 2023.

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

CERTIFICATE OF SERVICE

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CERTIFICATE OF SERVICE

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

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DATED: Honolulu, Hawai'i, June 8, 2023.

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