



RESOLUTION

URGING THE CITY ADMINISTRATION TO ACQUIRE THE PROPERTY AT 54-406 KAMEHAMEHA HIGHWAY IN HAU'ULA (TAX MAP KEY 5-4-004:021) IN ORDER TO PROTECT THE PUBLIC HEALTH AND SAFETY FROM ENVIRONMENTAL DEGRADATION, INCLUDING, IF NECESSARY, TAKING STEPS TO ACQUIRE THE PROPERTY BY EMINENT DOMAIN.

WHEREAS, 54-406 Kamehameha Highway in Hau'ula (Tax Map Key 5-4-004:021)("the property"), is almost 13 acres of unsubdivided land along the mauka side of Kamehameha Highway ("the highway") that is currently being used as a construction base yard; and

WHEREAS, construction base yard operations are ongoing despite the property: 1) being zoned by the City and County of Honolulu ("City") as an AG-2 General Agricultural District ("AG-2 District"), a zoning district in which base yard operations are not permitted, and 2) being located in a protected wetland; and

WHEREAS, residents living across the highway from the property have complained for years about alleged illegal dumping and grading on the property; and

WHEREAS, since 2017, the City Department of Planning and Permitting ("DPP") has issued ten Notices of Violation ("NOVs") for multiple violations on the property, including: 1) grubbing and grading without a permit, 2) constructing a structure, fence, and utility pole without a permit, 3) storing metal containers without a permit, and 4) operating a base yard for construction vehicles and equipment in an AG-2 District; and

WHEREAS, these NOVs have resulted in the assessment of two double fee penalties and four triple fee penalties on the property owner by the DPP; and

WHEREAS, it appears that the significant and accruing penalties are being treated by the property owner as negligible costs of doing business, and are not true deterrents; and

WHEREAS, the DPP has also initiated communications with the Department of the Corporation Counsel, the Department of the Prosecuting Attorney, the State of Hawai'i Department of the Attorney General, and the State of Hawai'i Department of Commerce and Consumer Affairs, seeking legal action to stop the ongoing violations; and

WHEREAS, in 2020, the State Department of Health investigated and fined the property owner \$17,000 for dumping roughly 100 cubic yards of construction materials



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into a protected wetland without a special permit from the U.S. Army Corps of Engineers, which regulates wetlands under Section 404 of the Federal Clean Water Act; and

WHEREAS, in March of 2021, torrential rains and severe flooding caused severe damage to dozens of homes near the property, which appears to have been exacerbated by stockpiles of asphalt and other construction materials that elevated and otherwise changed the contours of the property, causing storm water to flow over the highway and onto neighboring properties; and

WHEREAS, the City Council finds that, because the previous steps taken by the City to encourage the property owner to bring the property into compliance with the law have failed, and ongoing construction base yard operations at the property pose a continuing risk to the health and safety of the community and to the environment, the City Administration must take accelerated and decisive steps to resolve this matter; and

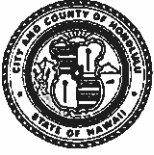
WHEREAS, the City Council further finds that, all other options having failed, acquisition of the subject property is the City's final recourse in resolving this important matter in order to effect the public purpose of environmental protection by protecting the wetland, stream, and ocean waters from the on-going pollution resulting from the extensive and long-standing illegal activity on the site; and

WHEREAS, if the City Administration is unable to acquire the subject property by other means, it should take all steps necessary in preparation of requesting the Council's authorization to initiate eminent domain proceedings; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Administration is urged to acquire the property at 54-406 Kamehameha Highway in Hau'ula (Tax Map Key 5-4-004:021) in order to protect the public health and safety from environmental degradation due to pollution to the adjacent stream, the ocean, and the wetland caused by ongoing illegal use of the property, the numerous outstanding violations thereon, and the owner's refusal to comply with city, State and federal regulations; and

BE IT FURTHER RESOLVED by the City Council of the City and County of Honolulu that the City Administration is requested to complete the following actions, as may be required, to prepare for the City's acquisition of the property at 54-406 Kamehameha Highway in Hau'ula (Tax Map Key 5-4-004:021) by eminent domain, if necessary:

1. Prepare a land survey and land survey map of this property;



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2. Prepare a metes and bounds description of this property;
3. Conduct a title search for this property;
4. Prepare an appraisal of the market value of this property;
5. Ensure appropriate Public Infrastructure Map designations are in place;
6. Ensure consistency with development plans and the preparation of an environmental assessment as necessary; and
7. Ensure the appropriation of funds necessary to acquire the property as per the appraisal; and

BE IT FURTHER RESOLVED that within 45 days of the adoption of this resolution, the City Administration is requested to submit to the Council a schedule with estimated completion dates for each action set forth above; and

BE IT FURTHER RESOLVED that upon completion of the preparatory actions set forth above, the City Administration is requested to negotiate a purchase of the property at a fair value, and, if it is unable to negotiate such a purchase, to submit to the Council for its approval a resolution authorizing the Corporation Counsel to initiate proceedings in eminent domain to acquire the property for the public purpose of protecting the wetland, stream, and ocean waters from pollution resulting from illegal activity on the site; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 22-11

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BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor, the Managing Director, the Director of Land Management, the Director of Planning and Permitting, the Corporation Counsel, the Prosecuting Attorney, the State of Hawai'i Attorney General, and the State of Hawai'i Director of the Department of Commerce and Consumer Affairs.

INTRODUCED BY:

Hidi Tsunagoshi

DATE OF INTRODUCTION:

JAN 20 2022

Honolulu, Hawai'i

Councilmembers