

REPORT OF THE COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS

Voting Members:

Andria Tupola, Chair; Carol Fukunaga, Vice-Chair;
Radiant Cordero, Brandon J.C. Elefante, Esther Kia'āina,
Calvin Say, Heidi Tsuneyoshi, Augie Tulba, Tommy Waters

Committee Meeting Held
February 8, 2022

Honorable Tommy Waters
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Executive Matters and Legal Affairs, which considered Resolution 22-11 entitled:

"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 (SIC), INCLUDING, IF NECESSARY, TAKING STEPS TO ACQUIRE THE PROPERTY BY EMINENT DOMAIN,"

introduced on January 20, 2022, reports as follows:

The purpose of Resolution 22-11 is to urge the City Administration to acquire approximately 13 acres of unsubdivided land along the mauka side of Kamehameha Highway located at 54-406 Kamehameha Highway in Hau'ula, in order to: protect public health and safety; prevent environmental degradation due to pollution caused by ongoing illegal use of the property and numerous outstanding violations thereon; and the owner's refusal to comply with city, State and federal regulations, and if necessary, take steps to acquire the property by eminent domain.

Your Committee received public comment from Pate Taufa on the Resolution. Written testimony in opposition to the Resolution was received from one individual.

Dawn Apuna, Deputy Director, Department of Planning and Permitting, and Duane Pang, Deputy Corporation Counsel, testified on behalf of the City Administration.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON

FEB 23 2022

COMMITTEE REPORT NO. **16**

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Your Committee amended the Resolution to a CD1 version that makes the following amendments:

- A. Amends the title of the resolution to replace references to "eminent domain" with "judicial foreclosure" and makes conforming technical corrections, such that the amended title reads as follows:

URGING THE CITY ADMINISTRATION TO PROCEED WITH JUDICIAL FORECLOSURE OF THE CITY'S LIENS ON 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.

- B. Add two new WHEREAS clauses following the sixth WHEREAS clause setting forth the City's authority to impose liens on property for the property owner's failure to pay civil fines and noting that a number of such liens have been placed on the Hau'ula property by the City.
- C. Amends the eleventh (now thirteenth) WHEREAS clause to replace reference to "acquisition of" with "judicial foreclosure of a lien or liens on" the subject property.
- D. Amends the twelfth (now fourteenth) WHEREAS clause to remove reference to eminent domain proceedings and read as follows:

"WHEREAS, unlike proceedings in eminent domain, the City Administration is not required to obtain the Council's authorization to proceed with the judicial foreclosure of the City's liens on the property; now, therefore,"

CITY COUNCIL
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- E. Amends the BE IT RESOLVED clause to urge the City Administration to proceed with judicial foreclosure on the City's liens on the property.
- F. Deletes the three BE IT FURTHER RESOLVED clauses discussing eminent domain and related proceedings.
- G. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee on Executive Matters and Legal Affairs is in accord with the intent and purpose of Resolution 22-11, as amended herein, and recommends its adoption in the form attached hereto as Resolution 22-11, CD1. (Ayes: Cordero, Elefante, Fukunaga, Say, Tsuneyoshi, Tulba, Tupola, Waters – 8; Noes: None; Excused: Kia'āina – 1.)

Respectfully submitted,



Committee Chair

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON FEB 23 2022

COMMITTEE REPORT NO. 16



RESOLUTION

URGING THE CITY ADMINISTRATION TO PROCEED WITH THE JUDICIAL FORECLOSURE OF THE CITY'S LIENS ON 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.

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, under Section 46-1.5(24), Hawaii Revised Statutes, upon recordation of a notice of unpaid civil fines in the bureau of conveyances, the amount of the civil fines, including any increase in the amount of the fine which the county may assess, shall constitute a lien upon all real property or rights to real property belonging to any person liable for the unpaid civil fines; and

WHEREAS, a number of liens have been placed on the property by the City; and



RESOLUTION

WHEREAS, the DPP has also initiated communications with the Department of the Corporation Counsel, the Department of the Prosecuting Attorney, 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 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

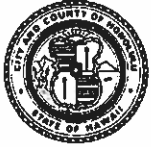
WHEREAS, in March of 2021, torrential rains and severe flooding caused severe damage to dozens of homes near the property, which appears to have been exacerbated by stockpiles of asphalt and other construction materials that elevated and otherwise changed the contours of the property, causing storm water 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, judicial foreclosure of a lien or liens on the subject property may be 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, unlike proceedings in eminent domain, the City Administration is not required to obtain the Council's authorization to proceed with judicial foreclosure of such lien or liens on the property; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the City Administration is urged to proceed with the judicial foreclosure of the City's liens on 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



RESOLUTION

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 Hawaii Attorney General, and the State of Hawaii Director of the Department of Commerce and Consumer Affairs.

INTRODUCED BY:

Heidi Tsuneyoshi

DATE OF INTRODUCTION:

January 20, 2022
Honolulu, Hawaii

Councilmembers