

COUNCIL OF THE COUNTY OF MAUI
CLIMATE ACTION, RESILIENCE, AND
ENVIRONMENT COMMITTEE

October 7, 2022

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Climate Action, Resilience, and Environment Committee, having met on September 14, 2022, makes reference to Resolution 22-206 entitled "AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF APPROXIMATELY 257 ACRES AT MA'ALAEA MAUKA/POHAKEA WATERSHED, MAUI, HAWAII FOR PRESERVATION."

Resolution 22-206's purpose is to authorize eminent domain proceedings for the acquisition of real property comprised of 257 acres, more or less, and identified as tax map key (2) 3-6-001:018 in Ma'alaea, Maui, Hawai'i, for preservation.

Your Committee notes Sections 46-1.5(6), 46-61, and 46-62, Hawaii Revised Statutes ("HRS"), and Chapter 101, HRS, authorize counties to exercise the power of condemnation by eminent domain when it is in the public's interest.

Your Committee notes the public interest to acquire the property is for watershed projects, open space, reservoir development, and public parks.

Your Committee also notes the preservation of the Ma'alaea Mauka/Pohakea Watershed is critical for managed wildfire prevention, flood control, and erosion control to protect the water quality, corals, and marine health of Ma'alaea Bay.

Your Committee notes sediment transport to the ocean could be mitigated through restoration activities which also have the potential to

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slow, detain, filter, and permeate stormwater from the West Maui Mountains into the ground.

Your Committee notes Section 101-13, HRS, states: “Whenever any county deems it advisable or necessary to exercise the right of eminent domain in the furtherance of any governmental power, the proceedings may be instituted...after the...county council...of the county has authorized such suit by resolution duly passed...”

Your Committee further notes Section 4-2(7) of the Revised Charter of the County of Maui, 1983, as amended, states that: “resolutions authorizing proceedings in eminent domain shall be adopted as provided by law.”

Your Committee further notes that the Council approved funding for the acquisition of Ma‘alaea Mauka/Pohakea Watershed in the Fiscal Year 2021, 2022, and 2023 Budgets using the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund.

Your Committee also notes nonprofit organization Trust for Public Land received \$1,000,000 from the Department of Land and Natural Resources’ Legacy Land Conservation Program for the purchase.

Your Committee agreed that available land used for the development of more affordable housing in the County is a priority, but recent fire and flood events would make constructing housing in this area difficult and potentially dangerous.

Your Committee voted 6-0 to recommend passage of Resolution 22-206 on first reading. Committee Chair King, Vice-Chair Sinenci, and members Johnson, Lee, Molina, and Sugimura voted “aye.” Committee member Paltin was excused.

Your Climate Action, Resilience, and Environment Committee **RECOMMENDS** that Resolution 22-206, attached hereto, entitled

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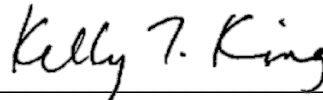
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“AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF APPROXIMATELY 257 ACRES AT MA‘ALAEA MAUKA/POHAKEA WATERSHED, MAUI, HAWAI‘I FOR PRESERVATION,” be PASSED ON FIRST READING and be ORDERED TO PRINT.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



KELLY TAKAYA KING, Chair

care:cr:22097aa:ljcm

Resolution

No. 22-206

AUTHORIZING PROCEEDINGS IN EMINENT
DOMAIN FOR THE ACQUISITION OF
APPROXIMATELY 257 ACRES AT MA'ALAEA
MAUKA/POHAKEA WATERSHED, MAUI,
HAWAII FOR PRESERVATION

WHEREAS, the property identified as TMK: (2) 3-6-001:018 in Ma'alaea, Maui, Hawai'i, is critical watershed land and comprised of 257 acres, more or less, as more particularly described in Exhibits "A" and "B," and known as Ma'alaea Mauka/Pohakea Watershed; and

WHEREAS, it is in the public interest that Ma'alaea Mauka/Pohakea Watershed be preserved as a critical watershed that is managed for wildfire prevention, flood control, and erosion control to protect the water quality, corals, and marine health of Ma'alaea Bay; and

WHEREAS, it is in the public interest that Ma'alaea Mauka/Pohakea Watershed be used for watershed projects, open space, reservoir development, and public parks; and

WHEREAS, there are four major streams associated with the Pohakea Watershed; moving north to south, these include Pohakea, Kanaio, Ma'alaea, and Malalowaiaole; additional unnamed gulches also exist; and ditching associated with historical agricultural practices is also present on the landscape; and

WHEREAS, there are three watersheds surrounding the Pohakea Watershed; these include Ukumehame to the north and west, Papalaua to the west, and Waikapu to the east; and Ukumehame and Papalaua are within the Lahaina District, while Pohakea and Waikapu are within the Wailuku District; and

WHEREAS, the coastal waters offshore from the Pohakea Watershed are protected by various federal and state agencies; and

WHEREAS, the Hawaiian Humpback Whale Sanctuary extends along the Maui coastline north from Lipoa Point to its southern boundary offshore from Cape Hanamanioa and just beyond 'Ahihi-Kinau Natural Area Reserve; and

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WHEREAS, coral reef exists directly offshore extending west from McGregor Point beyond the coastal boundary of the watershed; and

WHEREAS, coral reef begins east of Haycraft Park and extends to Kealia Pond and beyond; and

WHEREAS, benthic habitat is comprised of “pavement” or exposed rock horizontal with the sea floor with many crevices or joints, aggregate reef, aggregate patch reef, rock, rubble, sand, and scattered coral and rock composites; and

WHEREAS, this land has significant potential to mitigate sediment transport to the ocean through a number of restoration activities; and

WHEREAS, there has been public support for Maui County to acquire this land in an effort to curb additional development and to provide opportunities to address fire and stormwater issues within the watershed; and

WHEREAS, during high-flow events, millions of gallons of stormwater pour down out of the West Maui Mountains and onto this plain; and

WHEREAS, restoration measures would have the collective goal to slow, detain, filter, and permeate into the ground as much of this stormwater as possible; and

WHEREAS, Sections 46-1.5(6), 46-61, and 46-62, Hawai‘i Revised Statutes (“HRS”), and Chapter 101, HRS, authorize counties to exercise the power of condemnation by eminent domain when it is in the public interest to do so; and

WHEREAS, under Section 101-13, HRS, “Whenever any county deems it advisable or necessary to exercise the right of eminent domain in the furtherance of any governmental power, the proceedings may be instituted . . . after the . . . county council . . . of the county has authorized such suit by resolution duly passed . . .”; and

WHEREAS, Section 101-13, HRS, also provides that the resolution “be published in a newspaper with the ayes and noes, at least one day (Sundays and legal holidays excepted) before final action upon it”; and

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WHEREAS, Section 4-2(7), Revised Charter of the County of Maui (1983), as amended, states: "Resolutions authorizing proceedings in eminent domain shall be adopted as provided by law"; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That, in accordance with Sections 46-1.5(6), 46-61, and 46-62, HRS, and Chapter 101, HRS, it finds that the acquisition of real property, in fee simple, identified as TMK: (2) 3-6-001:018 in Ma'alaea, Maui, Hawai'i, comprised of 257 acres, more or less, as more particularly described in Exhibits "A" and "B" by exercise of the power of condemnation, is in the public interest and necessary for the public purposes of watershed project development, maintaining open space, reservoir development, and public park development, among other public purposes;
2. That proceedings in eminent domain as provided by law be instituted for the acquisition of the property in fee simple on TMK: (2) 3-6-001:018 in Ma'alaea, Maui, Hawai'i, comprised of 257 acres, more or less, as more particularly described in Exhibits "A" and "B" along with a temporary right to enter the Subject Property to allow for the completion of a proper survey and appraisal;
3. That the Corporation Counsel of the County of Maui is authorized to proceed in eminent domain for the acquisition of the property;
4. That the Corporation Counsel is further authorized to deposit with the Clerk of the Circuit Court of the Second Circuit, State of Hawai'i, the estimated just compensation to obtain possession of the property;
5. That the Corporation Counsel is authorized and empowered to negotiate terms of settlement, subject to the approval of the Council and the Circuit Court of the Second Circuit, State of Hawai'i, in which the proceedings are held; and

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6. That certified copies of this Resolution be transmitted to the Mayor, Director of Finance, Director of Public Works, and Corporation Counsel.

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INTRODUCED BY:

Kelly T. King

KELLY TAKAYA KING

EXHIBIT "A"

All of that certain parcel of land (being all of the land(s) described in and covered by Land Patent Grant S-13975 to Wailuku Sugar Company; Land Patent Grant 11067 to Wailuku Sugar Company; Land Patent Grant 10962 to Wailuku Sugar Company; Land Patent Grant 10745 to Wailuku Sugar Company; Land Patent Grant 10497 to Wailuku Sugar Company; Land Patent Grant 10294 to Wailuku Sugar Company; and Land Patent Grant 9794 to Wailuku Sugar Company; and portion(s) of the land (s) described in and covered by Land Patent Grant Number 3152 to H. Cornwell) situate, lying and being at Ukumehame, District of Lahaina, Island and County of Maui, State of Hawaii, containing an area of 256.903 acres, more or less, and being more particularly described in Exhibit "B" attached hereto and made a part hereof.

Being the premises acquired by Limited Warranty Deed from Lodi Development, Inc., a California corporation, as Grantor, to the Grantor herein, as Grantee, dated July 31, 2006, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. Document No. 2006-161641.

SUBJECT, HOWEVER, to the following:

1. Roadway, as shown on Land Patent Grant No. 9794.
2. Notice of Imposition of Conditions By the Land Use Commission dated December 9, 1992, recorded as Document No. 92-200449.
3. The terms and provisions contained in the Declaration dated January 25, 1993, recorded in the said Bureau of Conveyances as Document No. 93-014788.
4. Grant to Maui Electric Company, Limited, a Hawaii corporation, dated November 1, 1995, recorded in the said Bureau of Conveyances as Document No. 95-161279, granting a perpetual right and easement for utility purposes as shown on the map attached thereto.

Said Grant was amended by instrument dated July 1, 1998, recorded as Document No. 98-101152 and more particularly described as follows:

EASEMENT B

**For Overhead Electrical Transmission Purposes
In Favor of Maui Electric Company
Affecting Portions of Grant 3152 to Henry Cornwell and
Grant 9794 to Wailuku Sugar Co.
Situated at Waikapu, Ukumehame, Wailuku, Maui, Hawaii**

Beginning at the Northeast corner of this easement, on the West side of Honoapiilani Highway (F.A.P. No. 13-G), being also the southeast corner of Lot 2 of "Waikapu Hema Large Lot Subdivision", the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAINA" being 29,405.90 feet South and 54,921.88 feet East, and thence running by azimuths measured clockwise from True South:

1. Along the West side of Honoapiilani Highway (F.A.P. No. 13-G), on a curve to the right, with a radius of 34,342.50 feet, the chord azimuth and distance being:

- | | | | | |
|----|------|-----|--------|---|
| | 5° | 56' | 34.98" | 126.15 feet; |
| 2. | 157° | 51' | | 71.11 feet; |
| 3. | 98° | 26' | 30" | 149.08 feet; |
| 4. | 258° | 36' | 53" | 191.10 feet along Lot 2 of the
"Waikapu Hema Large Lot
Subdivision" to the point of
beginning and containing an
area of 6949 square feet. |

5. The terms and provisions contained in Agreement for Allocation of Future Subdivision Potential dated January 3, 2002, recorded in the said Bureau of Conveyances as Document No. 2003-059347, by and between Wailuku Agribusiness Company, Inc. ("Subdivider") and County of Maui, through its Department of Public Works and Waste Management, a political subdivision of the State of Hawaii ("County").

6. The terms and provisions contained in Limited Warranty Deed dated August 10, 2004, recorded in the said Bureau of Conveyances as Document No. 2004-165726.

7. The terms and provisions contained in the Declaration of Covenants, Conditions, Easements, Reservations and Restrictions dated effective as of August 10, 2004, recorded in the said Bureau of Conveyances as Document No. 2004-165727.

The foregoing includes, but is not limited to, matters relating to water reservation, farming reservation; easements.

Assignment of In Gross Reservations effective October 1, 2005, recorded as Document No. 2005-229077, by and between Wailuku Agribusiness Co., Inc., a Hawaii corporation, "Assignor", and Wailuku Water Company, LLC, a Hawaii limited liability company, doing business as Wailuku Water Company, "Assignee".

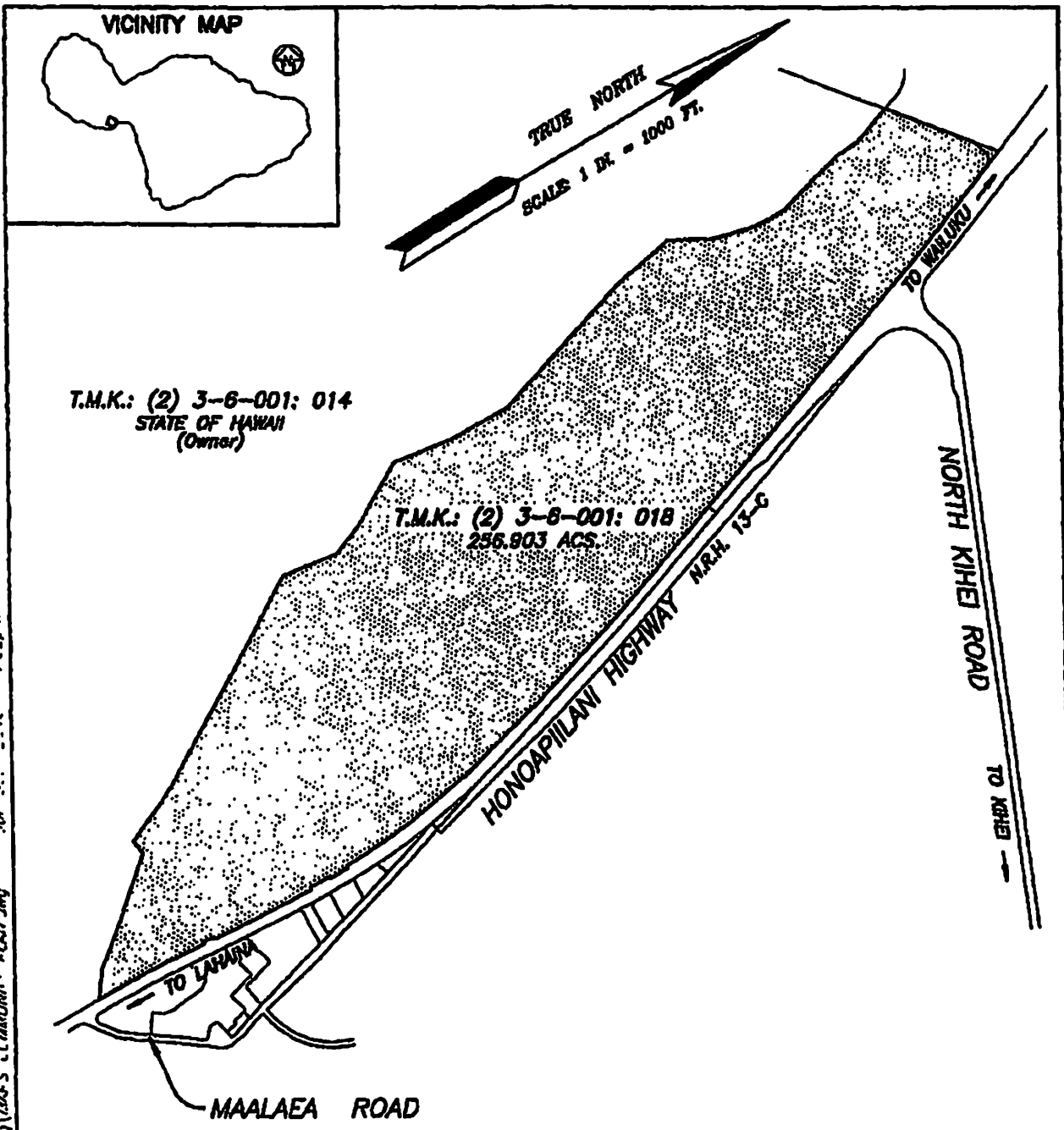
8. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

9. Any unrecorded leases and matters arising from or affecting the same.

10. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

END OF EXHIBIT "A"

Tax Key: (2) 3-6-001-018



T.M.K.: (2) 3-6-001: 014
STATE OF HAWAII
(Owner)

T.M.K.: (2) 3-6-001: 018
256.903 ACS.

HONOAPIILANI HIGHWAY N.R.H. 13-C

NORTH KIHU ROAD

TO KIHU

MAALAEA ROAD

TAX MAP KEY:
T.M.K.: (2) 3-6-001: 018

AREA:
256.903 ACRES

COMMUNITY PLAN MAP NO. CP-432
COMMUNITY PLAN AMENDMENT - UKUMEHAME, WAIKAPU, WAILUKU, MAUI, HAWAII,
FROM PROJECT DISTRICT 12 TO AGRICULTURE

EXHIBIT "B"