

FOR ACTION

I. REQUEST

Consider Authorizing the Executive Director to Reinitiate the Contested Case Proceedings for *In the Matter of the Notice of Order Regarding Violation Number N00 01-2019 of Kakaako Land Company, LLC*, HCDA-2019-01 Regarding All or Portions of Cummins, Kawaiahao, Clayton, Queen, and Ilaniwai Streets Located Within the Hawaii Community Development Authority’s Mauka Area of the Kaka’ako Community Development District.

II. BACKGROUND

In 2018, KLC asserted ownership of all or portions of the following five streets located within the Kakaako Community Development District: Cummins, Kawaiahao, Clayton, Queen, and Ilaniwai streets (“Subject Streets”).

KLC was charging a fee for the use of all or a portion of the Subject Streets.

The Subject Streets do not conform to and are not maintained to meet the construction and maintenance standards established for county highways, pursuant to Hawaii Revised Statutes (HRS), Section 46-1.5(19)(A) and Section 265A- I by the county in which the development district is located. Source: Notice of Violation, NOV 02-2018.

There are two related proceedings regarding the Subject Streets and KLC:

- *Butch Burke, et al. vs. Kakaako Land Company, LLC, et al., Civil No. 14-1-1912* (involving the issue of ownership of the Subject Streets).
Status: On February 9, 2021, a Findings of Fact, Conclusions of Law, and Decision and Order was filed by the First Circuit Court, finding that KLC does not own the Subject Streets. We understand that KLC has filed an appeal to the Intermediate Court of Appeals and that appeal is still pending.
- *In the Matter of the Notice of Order Regarding Violation Number N00 01-2019 of Kakaako Land Company, LLC*, HCDA-2019-001 (petition for a contested case hearing brought by KLC requesting a dismissal of an HCDA-issued Notice of Violation, NOV 02-2018, issued by HCDA against KLC on December 13, 2018 (“HCDA-2019-001 Matter”).
Status: The hearing on this matter was continued by agreement between the parties’ counsel pending resolution of the *Butch Burke* case above.

III. DISCUSSION

The following is the pertinent history and procedural history of the HCDA-2019-001 Matter:

- A Notice of Violation, NOV 02-2018, was issued on December 13, 2018 by the Hawaii Community Development Authority (“HCDA”) to KLC alleging a violation of State law and rules, and Act 009 (SLH 2018). See, Notice of Violation, NOV 02-2018, attached hereto as “**Exhibit A**”.
- A Notice of Order, NOO 01-2019, was issued on April 18, 2019 by HCDA to KLC noting that, as of April 18, 2019, the violations in NOV 02-2018 were not corrected and that fines were being levied under Chapter 206E-22, *Hawaii Revised Statutes*. See, Notice of Order, NOO 01-2019, attached hereto as “**Exhibit B**”.
- Attorneys for Kakaako Land Company, LLC filed a Petition for a Contested Case Hearing (referred to as the HCDA-2019-001 Matter).
- Counsel for KLC and HCDA (the Department of Attorney General) agreed to continue the contested case hearing in March 2021 pending resolution of the *Butch Burke* case referenced above in Section II.

HCDA’s statutory basis for issuing the NOV 02-2018 was Act 09 (SLH 2018) codified as HRS Section 206E-36, (repealed as of June 30, 2023) as follows:

§206E-36 Roads; county standards. (a) Any owner or owners who charge a fee for the use of all or any portion of a private street, highway, or thoroughfare that is located within the Kakaako community development district and used continuously by the general public for a period of not less than six months, shall be responsible for the costs of conforming and maintaining that private street, highway, or thoroughfare to meet the construction and maintenance standards established for county highways, pursuant to section 46-1.5(19)(A) and section 265A-1 by the county in which the development district is located. (b) Private streets, highways, or thoroughfares used solely by the owner or employees of the owner shall be exempt from this section.

The daily fine is calculated based on \$500.00/day for five (5) violations (the five named streets) calculated from the date of NOV 02-2018 up to and including the date of the date Judge Crabtree’s decision was issued in the *Butch Burke* case, which date is February 9, 2021 (the accrual period of the fines from 2018 to February 9, 2021 is hereby referred to as the “Fines Accrual Period”).

The estimated amount of the accrued fines for the Fines Accrual Period is around \$2,800,000.

Since the parties agreed in 2021, through their respective counsel, to continue (suspend further action) the HCDA-2019-001 Matter until the appeal in the *Butch Burke* matter has

been concluded, counsel for Kakaako Land Co. must agree to proceed in the HCDA-2019-001 Matter despite the prior agreement to continue proceedings. Failing agreement by Kakaako Land Co., HCDA must file a motion with the hearings officer to proceed despite the prior stipulation. It is within the discretion of the hearings officer whether to grant HCDA's motion.

If the fines are ordered to be paid by KLC through the HCDA-2019-001 Matter, the fines could be used for road improvements, including improvements to Ilaniwai Street. However, even if ordered, collectability of the fines from KLC is uncertain.

IV. RECOMMENDATION

Authorize the Executive Director to Reinitiate the Contested Case Proceedings for *In the Matter of the Notice of Order Regarding Violation Number NOO 01-2019 of Kakaako Land Company, LLC*, HCDA-2019-01 ("Contested Case Matter") Regarding All or Portions of Cummins, Kawaihahao, Clayton, Queen, and Ilaniwai Streets Located Within the Hawaii Community Development Authority's Mauka Area of the Kakaako Community Development District, and and undertake all tasks necessary to effectuate the purpose(s) of this For Action.

Attachments: EXHIBIT A: Notice of Violation, NOV 02-2018
EXHIBIT B: Notice of Order, NOO 01-2019

Prepared By: Craig K. Nakamoto, Executive Director Craig Nakamoto



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



David Y. Ige
Governor

John Whalen
Chairperson

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Executive Director

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NOTICE OF VIOLATION

VIOLATION NUMBER: NOV 02-2018

DATE OF ORIGINAL NOTICE: December 13, 2018

VIA: CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OWNER: Calvert Chun
Cedric Chun
Kakaako Land Company, LLC
1054-A Alewa Drive
Honolulu, Hawaii 96817

The Owners purport to own all or portions of Cummins, Kawaiahao, Clayton, Queen, and Ilaniwai streets within the Kakaako Community Development District (KCDD). Portions of these streets are being used for parking and the owners are charging a parking fee, see Exhibit-A attached.

Legislative Act 009 of the 2018 Session Laws of Hawaii requires that *“any owner or owners who charge a fee for the use of all or any portion of a private street, highway, or thoroughfare that is located within the Kakaako community development district and used continuously by the general public for a period of not less than six months, shall be responsible for the costs of conforming and maintaining that private street, highway, or thoroughfare to meet the construction and maintenance standards established for county highways, pursuant to section 46-1.5(19)(A) and section 265A-1 by the county in which the development district is located.”*

Cummins, Kawaiahao, Clayton, Queen, and Ilaniwai Street owned by the Kakaako Land Company LLC, do not conform to and are not maintained to meet the construction and maintenance standards established for county highways, pursuant to Hawaii Revised Statutes (HRS), Section 46-1.5(19)(A) and Section 265A-1 by the county in which the development district is located, see Exhibit-B attached.

These streets are used continuously by the public for a period of no less than six months. Therefore, pursuant to Legislative Act 009 of the 2018 Session Laws of Hawaii, charging a fee for use of a portion of these streets for parking is a violation and charging for parking on each individual street constitutes a separate instance of violation.



NOTICE OF ORDER

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VIOLATION NUMBER: NOO 01-2019

DATE OF NOTICE: April 18, 2019

TO: **HAND DELIVERED**
Calvert Chun
Cedric Chun
Kakaako Land Company, LLC
1054-A Alewa Drive
Honolulu, Hawaii 96817

Who is the: Owner

The Owners purport to own all or portions of Cummins, Kawaihahao, Clayton, Queen, and Ilaniwai streets within the Kakaako Community Development District (KCDD). Portions of these streets are being used for parking and the owners are charging a parking fee, and the streets do not meet county construction and maintenance standards in violation of Act 009 of the 2018 Session Laws of Hawaii.

As a result, a Notice of Violation (NOV) NOV 02-2018 was issued on December 13, 2018 (copy attached). As of this date, the violation described in the NOV has not been corrected. Pursuant to the authority granted by the Hawaii Revised Statutes Chapter 206E-22, you are hereby ordered to:

1. Pay a fine of **\$250,000.00** by May 15, 2019. (Fine total is calculated at \$500 per day for five (5) violations multiplied by 100 days elapsed since the fines started accruing on January 16, 2019.)
2. Correct the violation. If corrective action is not taken by April 18, 2019, a daily fine of \$500 per day per violation until the correction is complete. You are responsible for contacting Garett Kamemoto at (808) 594-0300 to verify the corrective action.

Checks (with the Notice of Order number noted on it) are payable to the Hawaii Community Development Authority and should be mailed or delivered to the Hawaii Community Development Authority 547 Queen Street, Honolulu, Hawaii, 96813.

If the fine is not paid and/or the violation is not corrected by the due date, this matter may be referred to the Attorney General's office for civil remedy and/or for criminal prosecution.

APR 18 2019