



RESOLUTION

APPROVING COURT-MEDIATED SETTLEMENT IN THE CONDEMNATION CASE DESIGNATED AS CITY AND COUNTY OF HONOLULU V. ATTRACTIONS HAWAII, ET AL., CIVIL NO. 01-1-3622-12, BY AMENDING RESOLUTION NOS. 01-151 AND 02-161 TO AUTHORIZE THE ACQUISITION OF A CONSERVATION EASEMENT AND A PUBLIC ACCESS EASEMENT BY THE CITY IN LIEU OF A FEE-SIMPLE INTEREST IN THE CERTAIN REAL PROPERTY SITUATE AT PUPUKEA, WAIMEA, KOOLAULOA, OAHU, HAWAII

WHEREAS, the City Council authorized the acquisition of certain real property, situate at Pupukea, Waimea, Koolauloa, Oahu, Hawaii, in fee simple by Resolution No. 01-151, adopted on June 20, 2001, and as amended by Resolution No. 02-161, adopted on September 25, 2002, for a botanical, cultural, educational, historic, and recreational facility, and for the acquisition of certain personal property;

WHEREAS, pursuant thereto on December 21, 2001, the City and County of Honolulu ("City") filed a complaint in First Circuit Court, State of Hawaii, entitled City and County of Honolulu v. Attractions Hawaii, et al., Civil No. 01-1-3622-12, seeking to condemn in fee simple the real property described as Parcels 1 through 27 therein and in said Resolutions Nos. 01-151 and 02-161;

WHEREAS, said real property comprises an area of over 1,798 acres and is known as Waimea Valley Park;



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WHEREAS, on December 24, 2001, in accordance with court rules, the City deposited in the First Circuit Court in conjunction with said condemnation lawsuit, the sum of \$5.1 million as estimated just compensation for said real property;

WHEREAS, Attractions Hawaii ("AH") appears to be the record owner of said real property, subject to various claimants;

WHEREAS, by court order, AH was paid \$5 million from the sum previously deposited by the City in court, leaving the balance of the deposit to address claims in the said real property of any other claimant;

WHEREAS, in preparation of the trial of said lawsuit, extensive discovery was conducted, a number of expert witnesses and many other lay witnesses were named, and a substantial number of pretrial motions were filed in court;

WHEREAS, the City's position was that the value of said real property was \$2.6 million and AH's position was that the value of the property was \$18.2 million and it was entitled to damages;

WHEREAS, the trial was initially scheduled for the week of July 14, 2003, but was postponed due to the appeals of two claimants to the Hawaii Supreme Court ;



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WHEREAS, thereafter, the Circuit Court ordered mediation of the case in order to resolve it and appointed a mediator;

WHEREAS, by June 21, 2004, the Hawaii Supreme Court dismissed all appeals by the two claimants;

WHEREAS, trial was rescheduled for the week of February 13, 2006, due to AH's retention of new legal counsel;

WHEREAS, after extensive discussions and numerous meetings with the Court-appointed mediator, the City and AH reached a settlement in this case, which settlement resolves all claims of AH in the case;

WHEREAS, under the general terms of settlement, title to said real property will be transferred to the Office of Hawaiian Affairs ("OHA") and AH is to be paid the total sum of \$14 million from the City and other entities allocated as follows: \$2.9 million from OHA; \$3.5 million from the U.S. Army (through the Trust for Public Lands); \$1.6 million from the State of Hawaii Department of Land and Natural Resources; \$1 million from the National Audubon Society; and \$5 million from the City, which amount has already been paid;



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WHEREAS, under the terms of the settlement, the City will obtain a conservation easement and a public access easement over and across said real property in perpetuity to preserve the property from future development and to provide for appropriate public access thereto;

WHEREAS, the preliminary report of the City's real property valuation consultant establishes that the fair market value of a perpetual conservation and public access easement over and across said real property is in excess of \$5.1 million, the amount the City has previously deposited with the Circuit Court in said condemnation lawsuit;

WHEREAS, the City Council approval of the proposed settlement is requested since the interest to be acquired in said real property by the City is not the fee-simple interest previously authorized by the above-mentioned Resolutions; now, therefore,

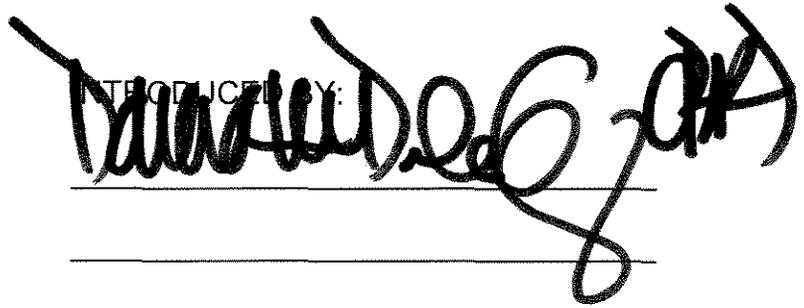
BE IT RESOLVED by the Council of the City and County of Honolulu that the Court-mediated settlement in City and County of Honolulu v. Attractions Hawaii, et al., Civil No. 01-1-3622-12, be approved and Resolution No. 01-151 and Resolution No. 02-161 be and are hereby amended to authorize, in lieu of acquiring the fee-simple interest, the acquisition of a conservation easement and a public access easement over



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and across said real property in perpetuity to preserve the property from future development and to provide for appropriate public access thereto; and

BE IT FINALLY RESOLVED by the Council that the Clerk be and is hereby directed to transmit copies of this resolution to the law firms of McCorrison, Miller, Mukai, MacKinnon, LLP, Five Waterfront Plaza, Fourth Floor, 500 Ala Moana Boulevard, Honolulu, Hawaii 96813; Matsubara, Lee & Kotake, 888 Mililani Street, Floor 8, Honolulu, Hawaii 96813; and the Department of the Corporation Counsel.

INTRODUCED BY:  


DATE OF INTRODUCTION:

**JAN 19 2006**

Honolulu, Hawaii

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Councilmembers