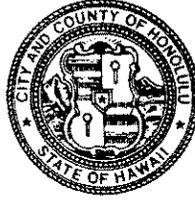


DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR

CARRIE K.S. OKINAGA
CORPORATION COUNSEL

DONNA M. WOO
FIRST DEPUTY CORPORATION COUNSEL

March 9, 2006

The Honorable Donovan Dela Cruz, Chair
and Members of the City Council
City & County of Honolulu
Honolulu, Hawaii 96813

RECEIVED

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CITY CLERK
HONOLULU, HAWAII

Dear Chair Dela Cruz and Members of the City Council,

Attached please find a draft FD-1 to Resolution 06-017, relating to the approval of the settlement in the condemnation matter in City and County of Honolulu v. Attractions Hawaii, et al., Civil No. 01-1-3622-12. As you are aware, this resolution was laid on the table at the Council meeting on January 25, 2006.

The changes that we are proposing in the FD-1 to Resolution 06-017 are to clarify the process by which the City will acquire a conservation easement for Waimea Valley, while title to the valley will be conveyed to the Office of Hawaiian Affairs (OHA). The FD-1 explains the process laid out in the mediated settlement. The change to the BE IT RESOLVED clause reflects that the contributing parties shall deposit their respective contributions into escrow. Thereafter, the court shall issue an order of condemnation of the fee simple title to the property in favor of the City whereupon the City shall by Deed convey the property to OHA, who in turn shall execute and deliver a Deed of Conservation Easement and a Right of Entry and Grant of Public Access Easement in favor of the City. This change in the FD-1 will eliminate the necessity of a separate resolution authorizing the City to convey Waimea Valley to OHA. The FD-1 also makes some technical changes to several of the WHEREAS clauses.

With regards to the final settlement documents and the appraisal report for the conservation easement, these documents will be transmitted to Council under separate cover. At this time, the documents have not yet been finalized.

Dept. Com. No. 0250

COUNCIL

The Honorable Donovan Dela Cruz, Chair
and Members of the City Council
March 9, 2006
Page 2

We urge the Council give favorable consideration to this FD-1 to Resolution 06-017 at its regular meeting on March 15, 2006.

Sincerely,



Donna M. Woo
First Deputy Corporation Counsel

Approved:


Wayne Hashiro
Acting Managing Director

Attachments



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; and

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; and

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

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; and

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

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; and

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; and



RESOLUTION

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; and

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; and

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

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

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

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; and

WHEREAS, under the general terms of settlement, fee-simple title to said real property will be condemned by the City and then 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 (collectively referred to as "contributing parties"); and \$5 million from the City, which amount has already been paid; and

WHEREAS, under the terms of the settlement, the City will convey its fee-simple title to said real property to OHA which will thereafter convey back to the City 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; and

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 at least \$5.1 million, the amount the City has previously deposited with the Circuit Court in said condemnation lawsuit; and



RESOLUTION

WHEREAS, the City Council approval of the proposed settlement is requested since the interest to be ultimately 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 the City and County of Honolulu to condemn the fee-simple title to the property for the sole purpose of ultimately acquiring 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 in accordance with the following steps: the contributing parties shall deposit their respective contributions into escrow. Subsequently, the court shall issue an order of condemnation of fee simple title to the property in favor of the City whereupon the City shall by Deed convey the property to OHA, who in turn shall execute and deliver a Deed of Conservation Easement and a Right of Entry and Grant of Public Access Easement in favor of the City; and



RESOLUTION

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 McCorriston, 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:

Honolulu, Hawaii

Councilmembers

Approved this _____ day of _____, 2006.

MUFU HANNEMANN, Mayor
City and County of Honolulu