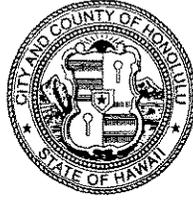


OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 300 • HONOLULU, HAWAII 96813
TELEPHONE: (808) 523-4141 • FAX: (808) 527-5552 • INTERNET: www.honolulu.gov

MUFI HANNEMANN
MAYOR



March 31, 2006

Ms. Denise C. De Costa
City Clerk
Office of the City Clerk
City and County of Honolulu
Honolulu, Hawaii 96813

RECEIVED

MAR 31 1 24 PM '06

CITY CLERK
HONOLULU, HAWAII

Dear Ms. De Costa:

Re: APPROVED RESOLUTION

The following resolution is approved and returned herewith:

Res. 06-017
FD-1

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.

Yours truly,

A handwritten signature in black ink, appearing to read "Mufi Hannemann", is written over a horizontal line.

Mufi Hannemann
Mayor

MH:aa

Attachments

Mayor's Message No. 049



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

D-0250

COR0003, FD1.R06



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:

Donovan M. Dela Cruz (br)

DATE OF INTRODUCTION:

January 19, 2006
Honolulu, Hawaii

Councilmembers

Approved this 31st day of March, 2006.



MUFU HANNEMANN, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

RESOLUTION 06-017, FD1

Introduced: 01/19/06 By: DONOVAN DELA CRUZ (BR)

Committee: COUNCIL

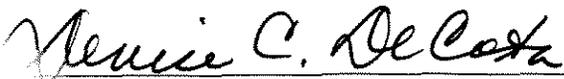
Title: RESOLUTION APPROVING COURT-MEDIATED SETTLEMENT IN THE CONDEMNATION CASE DESIGNATED AS CITY AND COUNTY OF HONOLULU V. ATTRACTIONS HAWAII, ET AL., CIVIL NO. 01-1-3622-12, BY AMENDING RESOLUTION NOS. 01-151 AND 02-161 TO AUTHORIZE THE ACQUISITION OF A CONSERVATION EASEMENT AND A PUBLIC ACCESS EASEMENT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

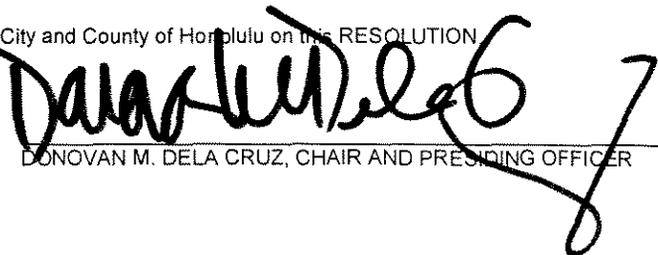
Links: [RES06-017](#)
[RES06-017, FD1](#)
[D-0048](#)

RESOLUTION RE-REFERRED TO COUNCIL FLOOR FROM EMLA. (CC-10)

COUNCIL	01/25/06	RESOLUTION LAID OVER AND ORDERED PUBLISHED.				
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y	
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y		
PUBLISH	01/28/06	RESOLUTION GIST PUBLISHED IN THE HONOLULU STAR BULLETIN.				
COUNCIL	03/15/06	RESOLUTION AMENDED TO FD1 ON THE COUNCIL FLOOR AND SUBSEQUENTLY ADOPTED, AS AMENDED (RESOLUTION 06-017, FD1)				
	APO Y	CACHOLA E	DELA CRUZ Y	DJOU E	GARCIA Y	
	KOBAYASHI E	MARSHALL Y	OKINO Y	TAM E		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION


JENISE C. DE COSTA, CITY CLERK


DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER