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OUR REFERENCE NO.:
901-30

December 6, 2005

VIA HAND DELIVERY

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

Re: Testimony in Opposition to Proposal to Settle Condemnation Lawsuit
Entitled *City and County of Honolulu v. Attractions Hawaii, et. al.*

Dear Chairman Dela Cruz and Members of the Council:

I am testifying against the recommendation by the Committee of the Whole that the City and County of Honolulu settle the condemnation lawsuit entitled *City and County of Honolulu v. Attractions Hawaii et al.*

I am writing this letter on behalf of The Stewards of Waimea Valley, a group of very concerned citizens and organizations on the North Shore who believe that the City and County of Honolulu (the "City") should not settle this condemnation lawsuit, but instead should proceed to trial with all deliberate speed.

The condemnation suit was brought for the purpose of preserving for this and future generations the entire ahupuaa of Waimea Valley. This was the intent of the City Council in 2001, and should remain the overriding objective of the City Council today.

The City is already in possession of the land; the only issue left for decision is the price which the City should pay the Landowner for the property. According to the condemnation law (Hawaii Revised Statutes Section 101-24), this price is the value of the property on the date on which the condemnation suit was filed in 2001. It is irrelevant that property values may have increased since the date the suit was filed; it doesn't matter.

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The City valued the property at \$5,100,000 as of the valuation date and deposited this sum into Court when the City took possession of the property. The deposit has been earning interest since that date.

We urge the City to abandon settlement discussions and proceed to trial. Under ordinary condemnation procedures, Attractions Hawaii will have secured an appraisal. Although we don't know if our information is correct, but we heard rumors that the Landowner's appraisal estimated a value of \$18,000,000. The City may or may not have secured a second appraisal. In any event, the jury will decide whether the land is worth the amount as appraised by the City (\$5,100,000), or the amount as appraised by the landowner (possibly \$18,000,000), or somewhere in between. Comments in the newspapers that the "City is not going to write a blank check" are completely off the mark. The jury is limited to what it can set as value, which will be somewhere between \$5,100,000 and \$18,000,000.

Speaking of trial, the newspapers are asserting that this matter might go to arbitration. I believe that agreeing on arbitration would be a bad idea for the City. Discovery is apparently completed and the matter is ready for a trial by jury. The City is much more likely to get a fair price from a jury than from an unknown arbitrator. Therefore, we urge the City not to arbitrate value.

Some members of the City Council have stated that they are afraid that the value set by a jury might be larger than the City may wish to spend. Other entities (such as the State of Hawaii and Office of Hawaiian Affairs) have expressed interest in helping with an acquisition. A common thread is that everyone wants to know the "price". An immediate trial would set the price.

Let us assume that the price set by the jury is \$10,000,000. It might be possible for the state to purchase, for example, the land mauka of Waimea Falls, namely, the same land that the Landowner would acquire from the City under the proposed settlement. This would reduce the amount which the City would be required to pay. The City could manage the area from the Falls to the makai end of the property, which is an area with greater people usage, and the State could manage the mauka area, which is mostly a wilderness area.

I am sure that the City recognizes that even the proposed settlement reported by the news media would require a complicated Settlement Agreement. This Agreement would have to provide that the City would apply for various subdivisions and permits before the Department of Land and Natural Resources. Our groups would certainly resist

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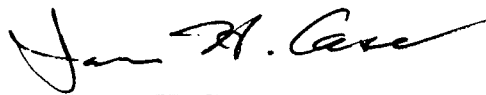
those efforts as the proposed Settlement contemplates extensive private usage of the area. This would be a protracted hearing and would postpone, we believe, any final resolution for several years. In addition, all of the costs of going through an adversarial proceeding would be on top of the costs of going to trial and might be costs which merely go down the drain. A trial would settle the value very soon.

What happens if the trial results in a value greater than the City is willing to pay, and the City can find no partners in the purchase? The City could drop the condemnation suit, deed the land back to the Landowner, and pay the Landowner any damages. These would be, we believe his costs of defending the condemnation suit. This is, in reality, a small price to pay for the opportunity to have a jury determine the value of the land in 2001, and then for the City to find the funds, whether solely by the City or with partners, to pay the required value.

In fact, it is entirely possible that the Landowner wouldn't mind at all if the proceedings before the DLNR resulted in a failure to obtain the subdivision results required by the settlement. The condemnation suit would then stop, the Landowner would recover his attorneys fees, and he could then sell the land at 2006 values instead of 2001 values. It is obvious that the Landowner is better off if this case doesn't go to trial and if the City drops the suit. Conversely the City is better off if there is an immediate trial.

In conclusion, we urge the City Council to disapprove the proposed settlement and go to trial for the purpose of determining the purchase price.

Sincerely,


James H. Case