
STEWARDS OF



WAIMEA VALLEY

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Honorable Members of the City Council
City & County of Honolulu
Honolulu, Hawai`i 96813-3065

December 7, 2005

Re: Proposed Settlement – Waimea Valley
Special Council Meeting on December 7, 2005

Dear Honorable Members of the City Council:

Ua mau ke ea o ka aina i ka pono. “The life of the land is perpetuated in righteousness.” The state motto defines the fundamental duty of every public servant of the Islands, and we call upon you today to give this wisdom true meaning by acting to protect in perpetuity the entire ahupua`a of Waimea. Four years ago, in December 2001, the City Council had the foresight to unite behind this important principle when it took legal action to acquire the entirety of Waimea Valley for the public. Today, the Council should stand by that promise and make that vision a reality.

We strongly urge you to reject the proposed settlement proposed by Attractions Hawai`i. The settlement would allow Attractions Hawai`i, the prior owner, to re-acquire 1,500 of 1,800 acres of the Valley and, apparently with the City’s acquiescence, to obtain City and State permits for multiple private homes and commercial uses. The proposed secret settlement is deeply offensive to the community, which has worked so hard for many years, successfully in partnership with the City and the Audubon Society, to put Waimea into public hands, in perpetuity.

We urge you to demonstrate publicly your true commitment to saving Waimea Valley by voting unanimously against the secret proposal crafted by Attractions Hawai`i and instead commit the City to an open process that removes the prior private owner from any future scenario for the Valley. The City should move quickly toward a final judgment. We are confident the jury will establish a fair value for the Valley, which has long been zoned – in its entirety – as State Conservation/Preservation Lands, and therefore is now highly protected by law. That highly protected status would be shattered by the settlement.

The ahupua`a of Waimea is a sacred place. The ahupua`a has a long-term association with the Hawaiian religious leaders (for forty generations), and is affiliated with Kamapua'a and the Paoa lineage. Its makai portion is flanked by two important heiau – Pu`u O Mahuka (the largest heiau on O`ahu) and Kupopolo Heiau. The valley itself has powerful spiritual and cultural values, including more than 33 known cultural features, such as burials, heiau, and agricultural sites, with perhaps hundreds more waiting to be discovered, according to a recent archeological study. There are at least 78 surface cultural features in the valley and many more yet-to-be-discovered sites both above and below ground. In addition, the former presence of Fujita Camp makes the

valley important to the Japanese community and emphasizes that Waimea has a rich multi-cultural history.

Waimea is also an ecological treasure because it is one of the last undeveloped ahupua`a on the island of O'ahu. It has one of the last streams with native species, including four of the five known species of o`opu, endemic hapawai and `opae. And through the years, the Valley has created an internationally recognized botanical collection, serving as refuge for endangered plant species from around the world – Asia, South America, Africa, Central America and the Caribbean – some of them already extinct in their home habitats. The educational and scientific value of Waimea is incalculable.

Waimea Valley is not only of statewide and global importance for its cultural, historical, and environmental values, but also for its community, recreational, and educational significance. Under the strong stewardship of the Audubon Society, and despite the very difficult operational conditions imposed on Audubon by a miserably drawn-out condemnation proceeding, the Valley enhanced by the Audubon Center has become a vibrant community resource, offering a wide variety of trails, rare botanical collections and wildlife, community events, and hands-on educational programs for children, residents and tourists alike. The protracted delay in reaching a resolution of the lawsuit that would result from the proposed settlement would put Audubon and its devoted professional staff in the untenable position of perpetual uncertainty, interfering with basic planning and hiring functions, and ultimately undermining the decades of dedicated work of these employees and community volunteers -- who are our neighbors, friends, and us. The settlement will result in uncertainty, greater costs to all parties, and years of additional legal proceedings and maneuvering.

The North Shore community shares a COMMON VISION for Waimea Valley: the entire ahupua`a of Waimea – from mountains to the sea – should remain in public hands for public use, now and forever. In 2002, through a bottoms-up, grassroots process that won an international award, the North Shore community published a Master Plan for the area and for the Valley that the Council used as its basis for granting a long-term lease to the Audubon Society; copies are available for your reference. The democratically expressed wishes of the community, which drew in support from civic groups all around O'ahu, should not be set aside lightly by this Council. We are firmly committed to ensuring that there is no rollback to the days when commercial schemes by private owners exploited the valley.

If the case goes to trial as scheduled on February 13, 2006, a jury will determine the fair market value of the Valley due to the prior private owner, Attractions Hawai`i. The proper value to be set is the market value *as of the date of condemnation* and, under well-established law, cannot be inflated to the higher levels of the recent real estate market boom or by exaggerated offers to purchase the property. Despite the self-serving claims being made in court documents by the prior owner and others about high market values, the legal value is fixed *as of 2001*, a time when the O'ahu real estate market was flat. Through condemnation, the City wisely locked in the price as of 2001. And, through condemnation, the City now essentially holds legal rights to the entire property. The only remaining legal interest of the prior private owners is monetary – Attractions Hawai`i is entitled to receive the 2001 fair market value as determined by the jury – and nothing more.

Suggestions that the value is \$16-\$18 million, or more, are designed to extract from the public and this Council a windfall profit from Hawaiian lands and public funds by a failed private ownership scheme. Similarly, suggestions that numerous luxury homes and enterprises can be legally built on the mauka portion – in a Conservation Zone – are wishful thinking and are not supported by existing state and county law. The community and its many supporters are firmly committed to fighting and defeating every permit application for development permits in Waimea Valley – whether the forum is the Land Use Commission, the Board of Land and Natural Resources, or the City Council on an SMA application. None of these discretionary permits should

be granted, waived, weakened, endorsed or pre-approved for Waimea Valley.

On the other hand, we do respect and understand the rights of private property, ownership and investment, and do not wish to be unfair to Attractions Hawai'i, their shareholders, investors and bankruptcy holders. Many of us are property holders, business owners, too, and we are all taxpayers. We agree that Attractions Hawai'i is entitled to a fair price for the land. There is a well-established legal process for acquiring lands for public use, for establishing value, and for paying a price arrived at through a transparent process that is fair to all parties. Until the proposed settlement, the Council had correctly followed this established process. We need to follow it through to its logical conclusion: trial. There is no good reason to abandon this process now because of intimidation based on inflated estimations of value from the prior owner.

Please remember you are spending the public's money, entrusted with land that now belongs to the public, and must carry out prior commitments made with overwhelming public support – to keep Waimea Valley whole. The public is watching carefully what you do, and the Stewards of Waimea, as well as the major newspapers, are keeping them informed every day. We therefore urge you to *vote against the proposed secret settlement* for the following five reasons:

1. The City Council Must Keep Its Promises The City Council already decided in 2001 to purchase Waimea Valley, in full. The City filed the condemnation action and the legal rights to possess the property soon thereafter passed to the City. The property now belongs to the public. The \$5.1 million of public funds sent by the City to the Circuit Court upon commencement of the condemnation action was deposited in escrow and then later disbursed by court order to a major debtor and directed to the court handling the bankruptcy proceeding of Attractions Hawai'i. The check written by the people of O'ahu has been cashed. We own the valley. Thus the \$5.1 million investment of public funds in Waimea Valley – which closely matches the City's assessed value of \$5.2 million for the property that formed the basis of taxes paid for years by Attractions Hawai'i -- was made nearly four years ago. Allowing any kind of settlement that would roll back this public ownership and pass any part of the land – let alone 1500 acres – back to the prior private owner would be a gross violation of the City's promise to preserve and protect Waimea forever. Given that \$5.1 million has already been invested in purchasing Waimea Valley, abandoning the prior promise when the process is so close to completion and the ultimate price is within reach is truly unthinkable, and without justification in the law.

2. Preserve All of Waimea Valley The valley is indivisible and should be preserved in its entirety as State Conservation-zoned public lands. Waimea Valley is one of the last undeveloped ahupua`a on O'ahu – a complete ecosystem with rich cultural sites and priceless botanical, educational, and recreational potential. It should not be chopped up into private homes, private resorts parading as “eco camps” or other commercial schemes.

3. Open Up the Secret Process - Go to Trial The community objects to any secret settlement with the prior private owner. The fair market value of the property should be determined in a public process by a jury, where the truth will come out and the community can judge the validity of the City's and the private owner's appraisals, evidence, and legal counsel. When the City filed the condemnation action, the City asked for a jury trial. The City should have the fortitude to stand by that original request and demonstrate faith in our jury system and the good sense of the City's citizenry. Let the case go to a jury. That court process will be more open, fairer, and quicker than the secret deal under consideration, which could drag on for years as the prior owner pursues a host of permits with the City's apparent blessing.

4. Invite Interested Partners To Secure Full Public Ownership The City should immediately invite and

seek interested partners to secure full protection for the Valley. Our elected officials -- State Senator Robert Bunda and State Representative Michael Magaoay -- have issued firm statements offering the State's assistance. As Representative Bryan Schatz has suggested, Legacy Lands funding is a potential source of support. DLNR Director Peter Young has publicly stated that he welcomes the opportunity to work with the City on creative solutions that will secure the Valley as public lands. The Office of Hawaiian Affairs has long had an interest in assisting. Yet, the City continues to forge ahead with the settlement seemingly ignoring all of these potential alliances.

In addition, other personal, non-profit, and business interests, which include the 500,000-strong membership of the National Audubon Society, are ready to step up and follow your leadership. The City should welcome and not be timid about inviting federal, state, and private parties to step in and contribute resources, either monetary or in-kind. Rather than sliding backwards into an isolated corner, the City should show true leadership by seeking partners *now* and not when the deal and damage are done. Indeed, the community finds it surprising that the City has not, apparently to our knowledge, taken any such initiative to date.

5. Protect the Jewel of the North Shore Waimea Valley is the crown jewel of the North Shore. Enjoyed daily by local residents for decades, it is also a key destination for visitors from around the world seeking an authentic rural experience. The Valley is adjacent to the City and County of Honolulu's Waimea Beach Park, bordered by the beautifully restored Pu`u O Makua Heiau State Park, contiguous to the recently expanded State Pupukeya-Waimea Marine Life Conservation District, and faces the offshore Hawaiian Islands Humpback Whale National Marine Sanctuary. It is truly a keystone for the North Shore community. A wide range of businesses, Native Hawaiians, community organizations, ordinary citizens, conservation groups, residents, and visitors all favor full protection for Waimea.

Thank you for considering our concerns. We trust that you will vote to reject the proposed settlement and instruct your attorneys to prepare for trial.

*malama i ko makou aloha 'aina... to care for the land we love
Akua lako... God provides*

Mahalo nui loa,
Signed,

Stewards of Waimea