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BRANCH ORGANIZATION

PURPOSE: To describe the organization of the Right-of-Way (ROW) Branch and its function within the Highways Division of the Department of Transportation, State of Hawaii.

OBJECTIVE: The organization plan is set to provide:

- A. Land Title Services (Abstracting), Appraisal, Land Acquisition and Property Management Services for the Highways Division's proposed and completed projects.
- B. Relocation advisory assistance services and payments to eligible displaced persons of the Highways Division's projects.
- C. Verification of federal reimbursement of right-of-way costs expended on Federal-Aid projects.
- D. Contracts, legal documents, clerical functions and services in support of the ROW Branch Administration and Sections' programs and functions.

ADMINISTRATION: The ROW Branch is administered by the Right-of-Way Manager, who oversees all branch functions and activities. He reports directly to the Highways Division Administrator, who in turn reports to the Deputy Director of Transportation for Highways and ultimately to the Director of Transportation. The Director of Transportation is the Chief Administrative Officer of the Department of Transportation, which consists of three divisions, namely, the Highways Division, Airports Division and Harbors Division. The Department of Transportation's Organization Chart is shown on page 1.1-A.

ORGANIZATION:

The ROW Branch is one of six branches within the Highways Division. Other branches include Planning, Design, Materials Testing and Research, Construction, Maintenance and Traffic. The Highways Division also includes the Highways Division Administrator's Office, Staff Services, Motor Vehicle Safety, Landscape Services, Engineering Services and four district offices – one for each of the counties of Oahu, Hawaii, Maui and Kauai. The Highways Division's Organization Chart is shown on Page 1.1-B.

The ROW Branch is comprised of the Abstracting, Appraisal, Land Acquisition and Property Management Sections. A Right-of-Way Agent VI is the administrative, technical and operational head of the Appraisal, Land Acquisition and Property Management Section, while the Abstractor X is the administrative, technical and operational head of the Abstracting Section.

The ROW Branch is also comprised of a secretary to the Right-of-Way Manager, a clerk who is in charge of the files and clerical functions for the branch and a Contract Services Office. The organizational chart of the Right-of-Way Branch is shown on Page 1.1-C.

CONTRACT SERVICES OFFICE:

The Contract Services Office accomplishes its functions and activities through a Request for Contract Assistant work-order form submitted by the various sections for the specified contract, legal document, work products and/or services required.

The Contract Services Office is staffed by two Contract Assistants and provides contract, legal document and clerical services and support for the other sections of the ROW Branch. The Contract Services Office staff prepares, processes and maintains contracts and other legal documents for the branch; prepares and finalizes legal documents, including, but not limited to, deeds, warranty deeds, petitions, grants of easement, rights-of-entry, leases, public auctions, revocable permits, use and occupancy agreements, and professional services agreements for the procurement of appraisal, review and/or specialty reports; coordinates the processing of the documents with the Land/Transportation Division of the Department of the Attorney General of the State of Hawaii, Land Court, Bureau of Conveyances, State Board and Department of Land and Natural Resources, Department of Transportation's Contracts Office, Highways Division's

Fiscal Office and all other parties involved in the execution of the legal documents; prepares and maintains the statewide acquisition chart for every State and Federal-Aid highway project; and prepares and maintains the statewide inventory of improvements chart for every highway project in which improvements are affected.

FUNCTIONS:

The functions of the ROW Branch are directed primarily towards acquiring and managing lands, right-of-way, easements and other real property interests required for the construction of the Highways Division's projects on a statewide basis.

The Land Acquisition Section as lead coordinator, in conjunction with the Abstracting and Appraisal Sections, is responsible for the land acquisition function, which includes title searches for the determination of land ownerships or interests in land; appraisal and appraisal review related to establishing just compensation; acquisition and/or temporary rental of lands, improvements and/or interests in land by negotiation and/or initiation of condemnation proceedings through the Department of the Attorney General; closing process of title conveyance documentation and recordation and rental documentation; processing payments for purchase, rental and/or deposits in Court; Federal and State tax reporting; right-of-way certification; and processing of utility relocation agreements.

The Property Management Section is responsible for providing relocation advisory assistance services and payments and purchase and/or rental replacement housing payments for the orderly relocation of eligible displaced persons.

The Property Management Section is also responsible for the property management function of clearing acquired right-of-way of improvements, buildings and structures prior to or as a part of construction; the management, use and occupancy of all right-of-way acquired, including land-use and subdivision reviews affecting all highway right-of-way; disposal of improvements, highway right-of-way, including access rights, air rights and easements, and highway remnants authorized by the Department of Land and Natural Resources; and rental of highway right-of-way, including airspace and remnants.

The Contract Services Office is responsible for providing contract and legal document and clerical services to all sections of the ROW Branch through a Request for Contract Assistant.

The ROW Branch is also responsible for verification of reimbursement of federal funds for right-of-way costs expended; provides right-of-way and real property services in connection with preliminary engineering and design phases of a Highways Division project by obtaining rights-of-entry for geo-technical (topographic surveying and soil test borings) and archaeological field reconnaissance and surveys; providing right-of-way cost estimates; and monitors real property acquisition and relocation activities conducted by Local Public Agencies (LPA), being the various agencies of Counties of Hawaii, Maui and Kauai and the City and County of Honolulu, involved in federally-assisted highway projects.

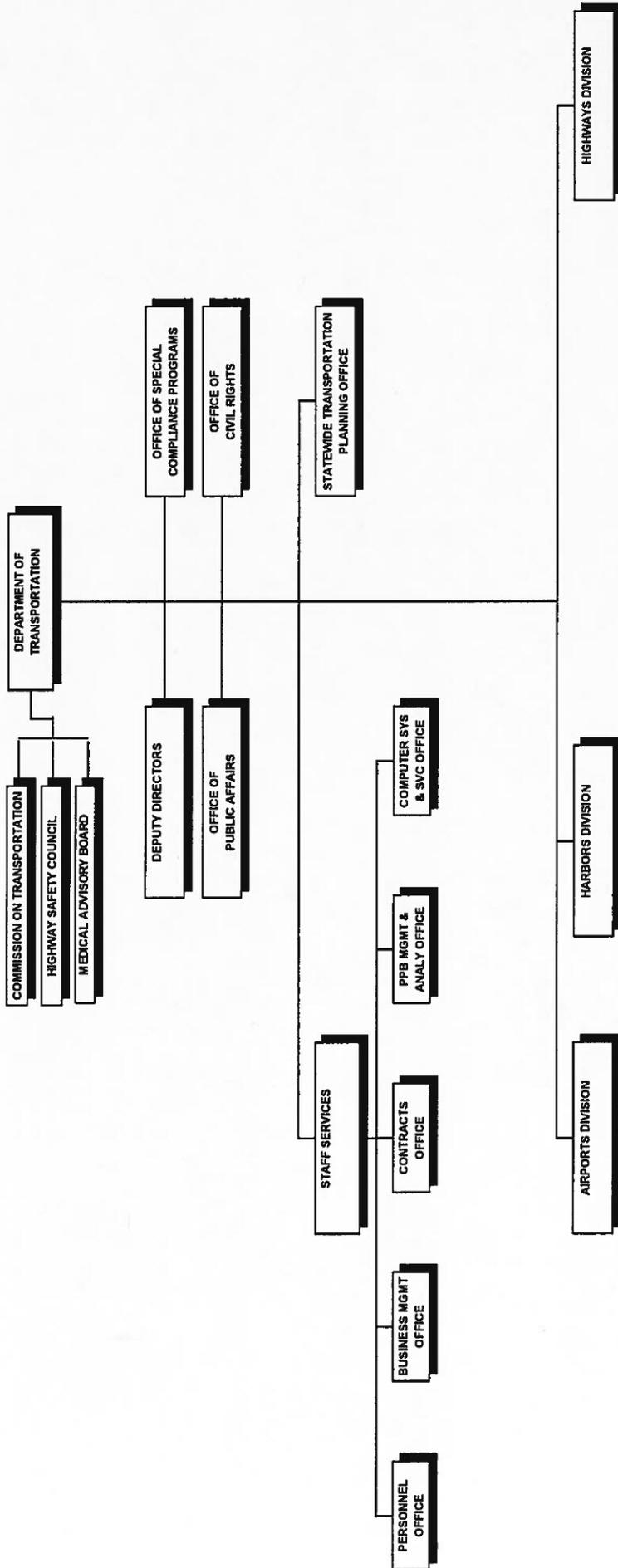
TITLE VI CIVIL RIGHTS ACT:

Title VI, Section 601 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, provides:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.”

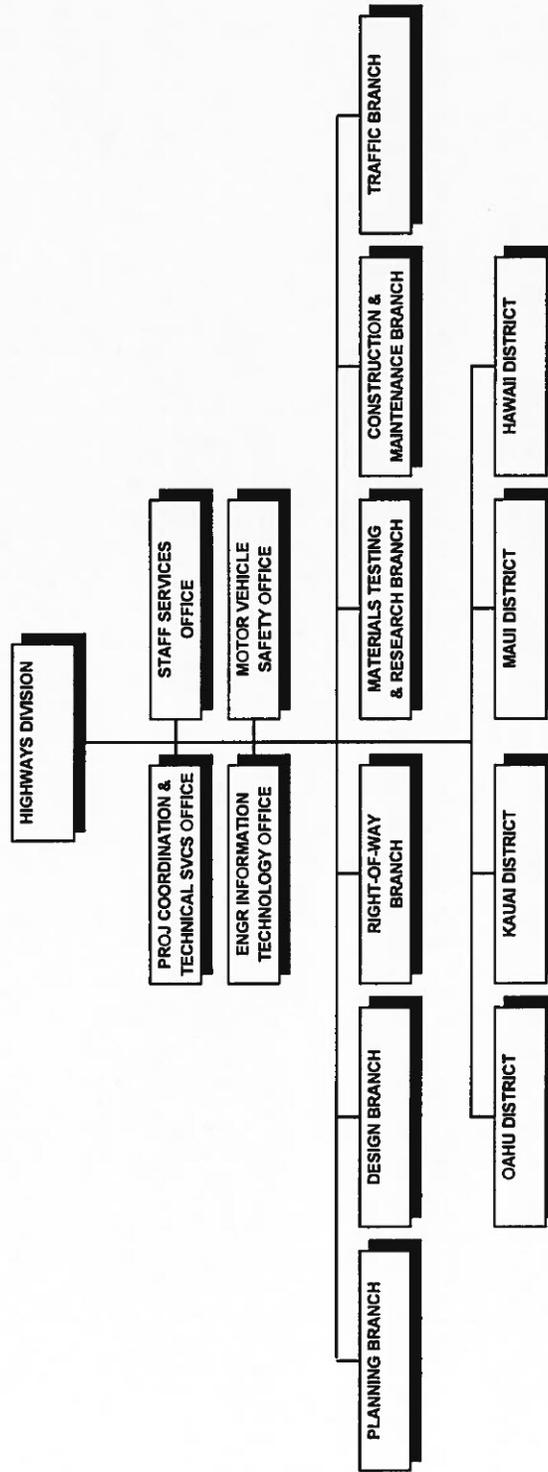
The Hawaii Department of Transportation’s Title VI Plan and policy is to ensure that no person in the United States shall, on the grounds of race, color, national origin, age, or gender be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The ROW Branch’s implementation assures that all services and benefits to be derived from any ROW Branch programs, functions or activities will be administered in accordance with this policy.

STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 ORGANIZATION CHART

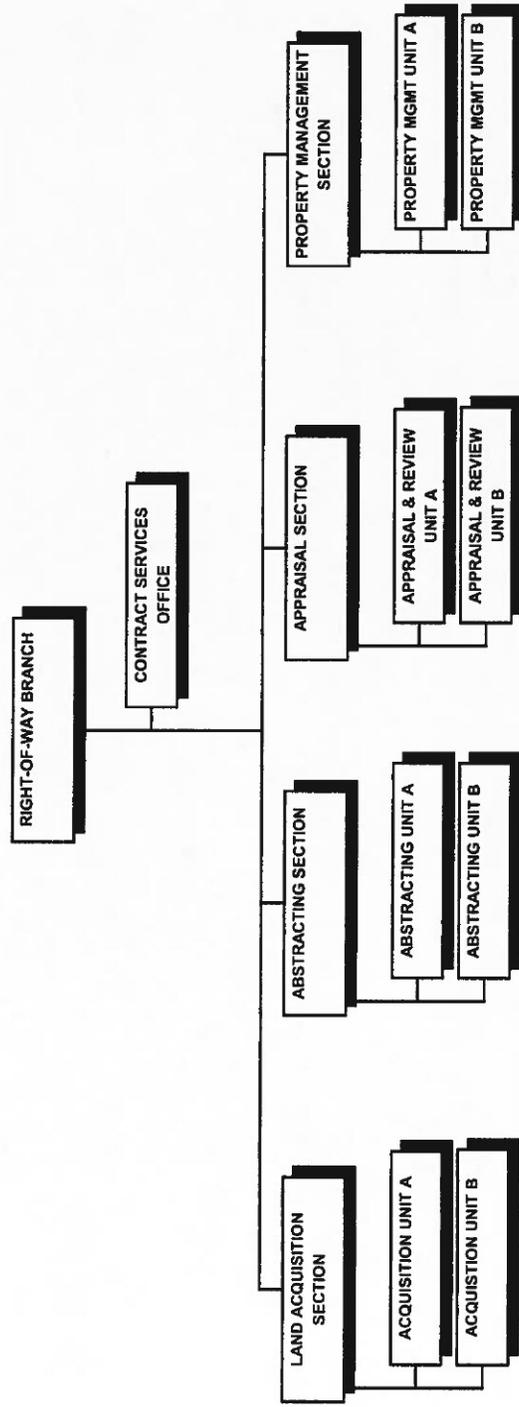


STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION

ORGANIZATION CHART

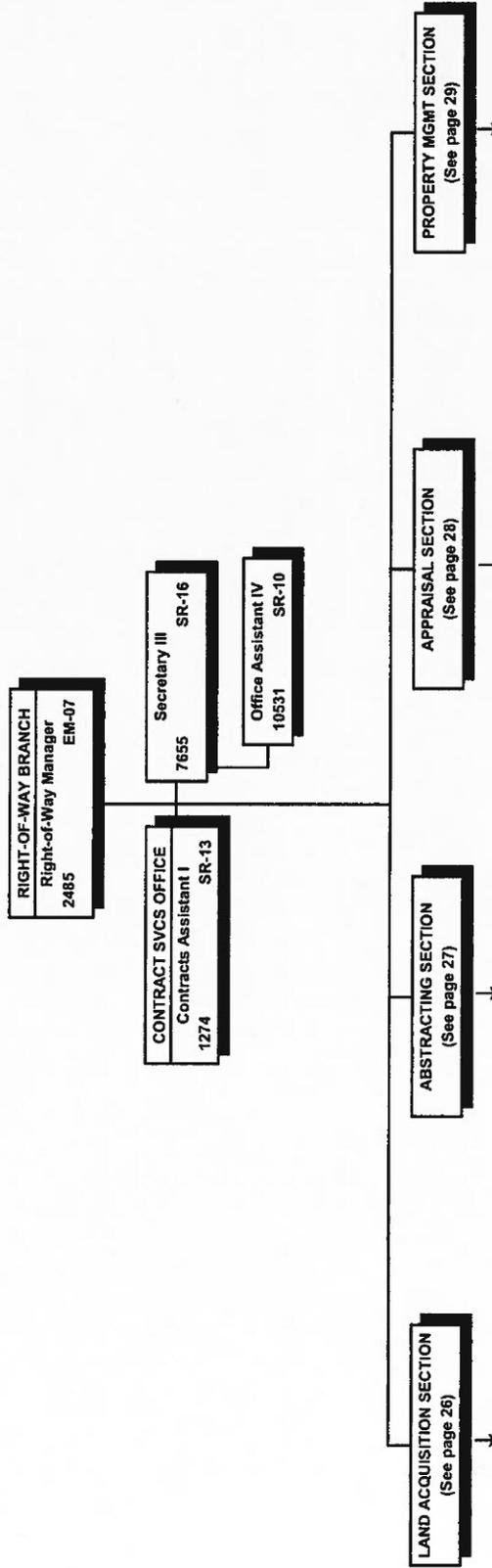


STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
RIGHT-OF-WAY BRANCH
ORGANIZATION CHART



STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 HIGHWAYS DIVISION
 RIGHT-OF-WAY BRANCH

POSITION ORGANIZATION CHART



All project funded positions.

RIGHT-OF-WAY BRANCH

Acquires and manages lands, right-of-ways, easements and other real property interests required for the construction of highways and for other transportation projects on a state-wide basis.

Provides advisory relocation assistance and relocation payments to individuals, families, businesses including farm operators and non-profit organizations displaced by the Department of Transportation projects.

Disposes access rights, easements and airspace within highway rights-of-way and disposes of highway remnants authorized by the Department of Land and Natural Resources.

Monitors right-of-way activities by political subdivisions involved in County Federal-aid projects statewide.

Contract Services Office

Prepares, processes and maintains contracts and other legal documents for the branch; prepares and finalizes legal documents including but not limited to deeds, warranty deeds, petitions, grant of easements, rights-of-entry, leases, public auctions, revocable permits, use and occupancy agreements, and professional services agreements for the procurement of appraisal, review and/or specialty reports; coordinates the processing of the documents with the Department of Attorney General, Land Court, Bureau of Conveyances, Divisional Fiscal Office, State Board of Land and Natural Resources, Departmental Contracts Office and all other parties involved in the execution of the legal documents; prepares and maintains the statewide acquisition chart for every State and Federal-aid highway project; prepares and maintains the statewide inventory of improvements chart for every highway project in which improvements are affected.

Land Acquisition Section

Acquires lands, improvements, easements and other real property interests required for statewide transportation projects; negotiates with owners on property adjustments; provides purchase transaction information to Internal Revenue Service and state Department of Taxation; prepares utility relocation agreements.

Acquisition Units A & B

Negotiates for the acquisition of lands, improvements, easements and other real property interests required for statewide transportation projects; reviews right-of-way maps and construction plans and makes a parcel by parcel ground inspection of the entire right-of-way for each project; recommends changes in parcel boundaries and proposes construction features to mitigate severance damages, if warranted; negotiates with owners on property adjustments; may assist the Deputy Attorney General assigned to the case in the acquisition of parcels by eminent domain proceedings; provides purchase transaction information to Internal Revenue Service and state Department of Taxation; prepares utility relocation agreements; prepares statistical reports on right-of-way acquisitions.

Abstracting Section

Prepares all preliminary and final title examinations required for highways and other transportation projects as assigned; prepares continuations of title examinations for the Land Acquisition Section prior to the drafting of deeds, petitions for Land Court Subdivisions, filing of condemnation action by the Attorney General's Office; provides expert testimony in court in condemnation cases involving disputes in land titles.

Appraisal Section

Prepares staff appraisals for all parcels, easements, access rights, construction parcels or other real property interests required for state-wide transportation projects; reviews both staff and consultant real estate appraisals for appropriateness and technical correctness and prepares a Report of Reviewer for each parcel; provides preliminary estimates of value for right-of-ways proposed for corridor public hearing by the Planning Branch and design public hearings by the Design Branch; negotiates fees and completion dates with selected fee appraisers; makes field inspections on a parcel by parcel basis for each project; provides supportive services to the Attorney General's Office in condemnation cases.

Property Management Section

Plans, directs, and coordinates the statewide property management and relocation programs for the Highways Division.

Property Management Units A & B

Prepares Relocation Program Plans for routes proposed by the Planning Branch and environmental impact statement for Federal Highway Administration review and approval of job authorizations for right-of-way acquisition; provides relocation advisory assistance services and payments to individuals, families, businesses including farm operations and non-profit organizations displaced by highways and other transportation projects; updates relocation assistance procedures whenever Federal or State laws governing relocation assistance are amended; computes replacement housing payments and moving expense allowances in accordance with Federal and State laws; maintains records as supporting documentation and files reports on relocation activities as required by the Federal Highway Administration.

Administers the rental of real properties acquired as rights-of-way for highway projects; disposes improvements in conjunction with the clearing of rights-of-ways either by public auction sale or by requesting demolition; prepares, executes, and monitors leases and permits on excess land; acts as Agent for the Department of Land and Natural Resources for the disposition of remnants that are surplus to highway needs.



ORGANIZATION AND FUNCTIONS

PURPOSE:

To describe the organization and functions of the Land Acquisition Section (HWY-RL) of the Right-of-Way Branch, Highways Division. HWY-RL is directed and guided by, but not limited to, the following: Code of Federal Regulations (CFR), United States Code (USC), Hawaii Revised Statutes (HRS) and other State and Federal acquisition policies listed below:

23 CFR 200.9 (State Highway Agency Procedures),
23 CFR 635.309 (Authorization/Right-Of-Way Certification),
23 CFR 710.201 (State Responsibilities),
23 CFR 710.203 (Funding and Reimbursement),
23 CFR 710.309 (Acquisition),
23 CFR 710.313 (Design-Build Projects),
49 CFR 24.101 to 102 (Applicability of Acquisition Requirements, Basic Acquisition Policies),

23 USC 200 (Title VI of the Civil Rights Act of 1964),
42 USC Chapter 21 (Civil Rights), Subchapter V, Sec. 2000d,
42 USC Chapter 61 (Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs),

HRS 101 (Eminent Domain),
HRS 113 (Land Acquisition Policies for Federally Assisted Programs),
HRS 128 (Civil Defense and Emergency Act),
HRS 171 (Public Lands, Management And Disposition Of),
HRS 264 (Highways),

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended, Federal-Aid Highway Act of 1987, and other related laws, statutes, directives, opinions, rules and governing agencies.

OBJECTIVE:

The organization plan is set to provide:

- Land Acquisition services for the Division's projects (49 CFR 24.101).
- Internal control and verification of Federal reimbursement of funds expended for right-of-way activities on Federal-Aid projects (23 CFR 710.203).

- Right-of-Way Acquisition services in general for all of the division's branches and sections.

ADMINISTRATION: HWY-RL is headed by the Right-of-Way (ROW) Agent VI (Position Number 9859) who carries the title of Principal ROW Agent. The Principal ROW Agent or Section Head is responsible for the functions and activities of the section and operates under the general supervision of the ROW Manager.

ORGANIZATION: HWY-RL is comprised of two Acquisition Units; Acquisition Unit A and Unit B. The organizational chart of HWY-RL is shown on page 2.1-A.

Acquisition Units:

Each unit is headed by a ROW Agent V who carries the title of Supervising ROW Agent. The Supervising ROW Agent of the Acquisition Unit operates under the general supervision of the Principal ROW Agent and is responsible for the functions and activities of their respective unit. The supervisory position is assisted by two ROW Agents IV or lower, in carrying out projects and/or special assignments assigned to the supervising agent's unit. Each unit has the following responsibilities:

- Processes Right-of-Way Cost Estimates for project agreements with the Federal Highway Administration (FHWA) and other requesting agencies.
- Performs preliminary right-of-way work such as but not limited to, obtaining right-of-entry documents to conduct test boring surveys (HRS 101-3), boundary surveying, archaeological surveys, etc., and general right-of-way services required during the preliminary engineering stages of the projects.
- Acquires all land and/or real property interests required for the construction of the division's projects, which may also include rental of land for construction parcels, securing property adjustments and easements and obtaining use and occupancy agreements and/or appropriate approvals as required and requested for highway related projects.
- Processes utility agreements, memorandum of understandings, facility relocation agreements, memorandum of agreements and other documents for the orderly relocation of utility facilities affected by projects.

- Performs other related right-of-way work for various agencies including the Right-of-Way Certification (ROW CERTs 1, 2 and/or 3) for Federal-Aid Projects.

Qualifications of Right-of-Way Agents:

The minimum qualification requirements of the ROW Agent in the various classifications are referenced in individual position descriptions referenced in personnel files.

Specialized Training and Skills for All Agents

- Knowledge of local Hawaiian real estate terms and Land Tenure¹;
- Knowledge of special land divisions and transfer of title, e.g., Mokus, Apanas, Kuleanas, Great Mahele, Land Commission Awards, Land Court properties, Ceded lands and other Hawaiian references;
- Ability to read State of Hawaii Land Management Maps, Right-of-Way Maps², DOT "as built" plans, and Subdivision maps;
- Ability to decipher and analyze appraisal reports and certificates of title;
- Ability to draft acquisition documents, e.g., Offer letters, Warranty Deeds, Quitclaim Deeds, Personal Representative Deeds, Dedication Deeds, Right-of-Entry documents, Right-of-Way Certifications, Utility Agreements, Memorandums of Understanding, Memorandums of Agreements, Mortgage Releases, etc.;³
- Ability to close escrow and disburse payments, e.g., Request for payments, filing of W-9 Internal Revenue Service forms, withholding forms, reimbursement forms, etc.;

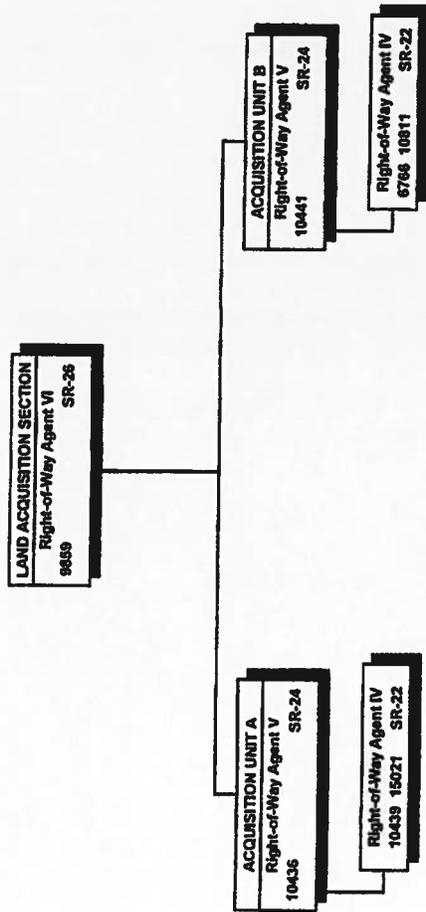
¹ Original Land Title in Hawaii, Jon Chinen, 1961, Great Mahele, Hawaii Land Division of 1848, Jon Chinen, UH Press 1958, The Origins of Hawaii Land Titles and of the Rights of Native Tenants by Louis Cannelora, Security Title Corporation, Honolulu, December 1974., Hawaiian Land Titles by Robert D. King, Principal Cadastral Engineer, Circa 1950.

² See Drafting Instruction Manual, March 31, 2000, Ch. 7, Cadastral Engineering Mapping Guidelines.

³ Hawaii Conveyance Manual, 4th Edition, Gino Gabrio, Esq., Gail Tamashiro, Esq., Hawaii State Bar Association Continuing Legal Education, Honolulu, Hawaii, 2001.

- Ability to coordinate and assemble local requirements for eminent domain requests with the Attorney General's Office, Land Transportation Division, through HRS 101.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
RIGHT-OF-WAY BRANCH
LAND ACQUISITION SECTION
POSITION ORGANIZATION CHART



All project funded positions.

REAL PROPERTY ACQUISITION POLICIES

- PURPOSE:** To describe uniform policies related to the acquisition function.
- OBJECTIVE:** Uniform real property acquisition policies are established in order to:
- Encourage and expedite the fair acquisition of real property by agreements with owners, in accordance with state and federal laws;
 - Avoid litigation and relieve congestion in the courts;
 - Assure consistent treatment for owners and tenants of real property acquired for state, federal and federal-assisted highway and highway-related programs and projects;
 - Promote public confidence in the State's land acquisition practices and the agents in the Land Acquisition Section.
- SCOPE:** This section applies to the Land Acquisition Section of the Right-of-Way Branch (HWY-R) of the Highways Division.
- POLICIES:** To the greatest extent practicable, Right-of-Way Agents involved in the acquisition functions shall be guided by the following policies in real property acquisitions.

A. Civil Rights (Title VI):

The right-of-way acquisition function shall be conducted in such a way and manner as to ensure that no person shall, on the grounds of race, color, gender, or national origin, be denied the benefits to which the person is entitled, or be otherwise subjected to discrimination.¹

As a condition of receiving Federal assistance, the Hawaii Department of Transportation is required to comply with various non-discrimination laws and regulations. Title VI forbids discrimination against any agency receiving Federal assistance. The Federal-Aid Highway Act of 1973 added the requirement that there be no discrimination on the basis of gender. Additionally, the Civil Rights Restoration Act of 1987 defines the word "program" to make clear that discrimination is

¹ 2.04.01.00 Title VI, Section 601, Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d-42 USC. 2000d-4, Title VI Plan Hawaii Department of Transportation, Office of Civil Rights, February 18, 2003.

prohibited throughout the entire agency if any part of the agency receives Federal financial assistance.²

The State (Recipient) shall include the clauses of Appendix B of the assurances as a covenant running with the land, in any deed from the United States affecting a transfer of real property, structures or improvements thereon, or interest therein.

The Granting Clause will include: Now, therefore, the US Department of Transportation, as authorized by law, and upon the condition that the State, will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of the Federal-Aid Program and the policies and procedures prescribed by the Federal Highway Administration of the United States Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the United States Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964, (78 Stat. 252, 42 USC 2000d to 2000-4), does hereby remise, release, quitclaim and convey unto the State of Hawaii all the right, title and interest of the US Department of Transportation in and to said lands described in Exhibit “___” attached hereto and made a part hereof.

The State shall also include a Habendum Clause where appropriate as follows: To have and to hold said lands and interests therein unto the State and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the State, its successors and assigns.

The State in consideration of the conveyance of said lands and interests in lands does hereby covenant and agree as a covenant running with the land for itself, its successors and

² 23 CFR 200 Federal Highways Administration (FHWA) Title VI regulations, 49 CFR 21 US Department of Transportation (USDOT) Title VI regulation and 49 CFR, US Dept of Transportation, Subtitle A, Office of Secretary, Part 21, Non-discrimination of Federally-assisted programs of the US Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964. Subsections 21.23(e) and 21.23(b).

assigns, that (1) no person shall on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed and (2) that the State, shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49 CFR US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the US Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the US Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the United States Department of Transportation and its assigns as such interest existed prior to this instruction.

That where the State receives federal financial assistance in the form or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.

That the State shall include the appropriate clauses set forth in Appendix C of the assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the State with other parties: (a) for the subsequent transfer of real property acquired or improved under Federal-Aid Program; and (b) for the construction or use of or access to space, on, over, or under real property acquired, or improved under the Federal-Aid Program.

The (grantee, license, lessee, permittee, etc, as appropriate) for himself, his heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases and "as a covenant running with the land") that in the event facilities are constructed, maintained or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended for another purpose involving the provisions of similar services or benefits, the (grantee, license, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination

in Federal-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

The following shall be included in licenses, leases, permits, etc: That in the event of breach of any of the above nondiscrimination covenants, the State, shall have the right to terminate the (license, lease, permit, etc.) and to re-enter the repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

The following language shall be included in deeds: That in the event of breach of any of the above nondiscrimination covenants, the State, shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the State and its assigns.

The following shall be included in all deeds, licenses, leases, permits or similar agreements entered into by the State, pursuant to the provisions of Assurance: The (grantee, licensee, permittee, as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add “as covenant running with the land”) that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such lands and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the US Department of Transportation – Effectuating of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. Basic Negotiation Procedures:

The agency shall make all reasonable efforts to contact the owner or owner’s representatives and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including payment of incidental expenses in

accordance with 49 CFR 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase. The State shall consider any and all owner presentations.³

C. Negotiated Purchase:

Every reasonable effort shall be made to acquire the necessary real property interests expeditiously by negotiations. The offer should be fair, reasonable and based on not less than an approved appraisal or other negotiations achieved by administrative settlements. The owners should not be coerced into accepting the State's offer. A prompt offer shall be made to acquire real property for the full amount the State has established as just compensation.⁴

D. Notice to Owner:

As soon as feasible, the State shall make every effort to notify the affected owner(s) in writing of the State's interest in acquiring the real property (ies) and the basic protections provided to the owner(s) by law and this part.

When additional public meetings are required due to unusual circumstances, e.g., changes in a state project, notices of such informational meetings shall be mailed to the affected owners. See also 49 CFR 24.203 Relocation Notices.⁵

E. Summary Statement:

Upon initiation of negotiations, the State shall provide the owner of real property to be acquired, a written statement of, and summary of the basis for, the amount it has established as just compensation, including damages, for the proposed acquisition. (Ref 49 CFR 24.102 (e)). The Summary Statement may be made part of the offer letter. At a minimum, the summary statement shall include:

- The amount established as just compensation and in the case of a partial acquisition, the amount of just compensation and the amount of compensation for damages, if any, to the remaining real property shall be separately stated.

³ 49 CFR 24.102 (f) Basic Negotiation Procedures.

⁴ Reference: 49 CFR 24.102 (a) Expeditious Acquisition and Establishment , (d) Offer of Just Compensation

⁵ Reference: 49 CFR 24.102 (b)

- Identification of the real property to be acquired, including the estate or interest being acquired.
- Identification of improvements and fixtures considered to be part of the real property to be acquired.
- Where appropriate, the just compensation for the real property to be acquired shall be separately stated.

An offer should be adequately presented to the owner (s), and the owner (s) should be properly informed. Personal face-to-face contact should take place, if feasible, but this section does not require such contact in all cases. This section also provides that the property owner be given a reasonable opportunity to consider the Agency's offer and to present relevant material to the State. In order to satisfy this requirement, the State must allow owners time for analysis, research and development and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but 30 days would seem to be the minimum time these actions can reasonably expect to be required. Regardless of the project time pressures, property owners must be afforded this opportunity.

Some jurisdictions initiate formal eminent domain procedures at the earliest opportunity because of the long and time consuming process, including gaining possession of the needed real property. These provisions are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations and the State's adherence to the Uniform Act ban on coercive action (Section 301 (7) of the Uniform Act). If the owner expresses intent to provide an appraisal report, the State is encouraged to provide the owner or representative a copy of the State's appraisal requirements and to inform parties that their appraisal should be based on those requirements.⁶

F. Surrender of Possession:

No owner shall be required to surrender possession of real property before the State pays the agreed purchase price or deposits with the court, for the use and option to withdraw by the owner, an amount not less than the State's approved estimate of just compensation, or the amount of the award of compensation in the condemnation proceeding for such property.

⁶ Addendum A 49 CFR 24.102 (f) Additional Information Basic Negotiation Procedures.

G. Notice to Vacate:

To the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, or to move his business or farm operation without at least 90 days written notice from the State of the date by which such move is required.

H. Fair Rental:

The State may permit an owner or tenant to occupy the real property acquired on a short-term rental basis or for a period subject to termination by the State on short notice. The amount of rent required shall not exceed the fair rental value of the property to a short term occupier. (ref. 49 CFR 24.102 (m)) Other terms may be negotiated as part of an administrative settlement when circumstances warrant such terms and conditions.

I. Coercive Action:⁷

In no event shall the State, in order to compel an agreement on the price to be paid for the property:

- Advance the time of condemnation; or
- Defer negotiations; or defer condemnation and the deposit of funds in court for the use of the owner; or
- Take any other action coercive in nature.

J. Condemnation:

If any interest in real property is to be acquired by exercise of the power of eminent domain, the State shall institute formal condemnation proceedings. The State shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

K. Uneconomic Remnant:

If the acquisition of only a part of a property could leave its owner with an uneconomic remnant(s), the State shall offer to acquire the remnant(s). The owner shall have the right to retain such uneconomic remnant if the owner so chooses. The agreement shall be in writing.

⁷ 49 CFR 24.102 (h) Coercive Action

L. Improvements – Interest to be acquired:

If the State acquires any interest in real property, it shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which it requires to be removed from the real property or which it determines will be adversely affected by the use to which the real property acquired will be put.

M. Improvements – Just Compensation:

For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under the above paragraph, the building, structure, or other improvement shall be deemed to be part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building structure, or improvement at the expiration of the lease.

N. Improvements – Tenant Owned:

The tenant who owns a building, structure, or other improvement to be acquired under paragraph L shall be paid the fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is greater, unless so specified in the Lease Document covering the subject parcel(s).

O. Duplication of Payment:

Payment under paragraph N shall not result in duplication of any payments otherwise authorized by law. No such payments shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the State all his right, title, and interest in and to such improvements. A separate summary statement shall be provided to such tenant where his improvements are being separately acquired.

P. Tenant Rights:

Nothing in the above paragraphs (L through N) shall be construed to deprive the tenant of any rights to reject payment under these paragraphs and to obtain payment for such property interests in accordance with other applicable law.

Q. Incidental Expense Reimbursement:

The State, as soon as practicable after the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the State deems fair and reasonable, for expenses necessarily incurred for:

- Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;
- Penalty costs for prepayments of any pre-existing recorded mortgage entered into in good faith encumbering such real property; and
- The pro rata portion of real property taxes paid, which are allocable to a period subsequent to the date of vesting title in the State, or the effective date of possession of such real property by the State, whichever is earlier.

R. When to Pay Owner's Litigation Expenses:

The State shall pay to the owner of any right, title, or interest in real property such sum as the court, having jurisdiction of a proceeding instituted by the State to acquire the real property by condemnation, awards the owner reimbursement for his reasonable costs, disbursement, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if:

- The final judgment is that the State cannot acquire the real property by condemnation; or,
- The proceeding is abandoned by the State.

S. Inverse Condemnation:

If the State intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact the taking of the real property.⁸

Where an inverse condemnation or similar proceeding is successfully maintained for the taking of real property, the State shall pay the owner, as a part of the judgment or

⁸ 49 CFR 24.102 (l) Inverse Condemnation