

relationship between the owner and the authorized Agent shall be filed with HWY-R.

2. Where the owner(s) are an Estate or Corporation, the negotiations shall be conducted with said Estate or Corporation through their authorized staffs.
3. Where the lands are leased, the lessee(s) are informed of their share(s) of the consideration. The tenant(s) are given the opportunity to join in with the owner/lessor in the acceptance or rejection of the State's offer. In typical cases, the offer is made to both parties where the distribution of just compensation is left to the various parties to allocate, unless so otherwise stipulated. Most leases have a Condemnation Clause that spells out the terms and conditions of such condemnation action.
4. Where an Agreement of Sale is in effect, negotiations are conducted jointly with the vendor/vendee, unless instructed otherwise by the parties concerned. Title usually does not pass to the vendee until the agreement is satisfied. Again, careful due diligence must be exercised to carefully review all documents involved.

#### **Offers to Purchase**

After completion of the pre-acquisition work, including any environmental assessments, environmental impact statements, findings of no significant impact, or a categorical exclusion, the acquisition process shall commence with the initial submittal of the Offer to Purchase to the property owner for the purchase of the property.

The offer shall be in writing based on the value established by the Review Appraiser and approved by the Right-of-Way Manager (ROW Branch Head). In no event shall such amount be less than the Review Appraiser's approved estimate of just compensation or the amount of just compensation as established based on the waiver of appraisal process.

The letter of offer shall include, but not be limited to:

##### **A. Minimum Requirements.**

- Property identification by Parcel number, Tax Map Key number or a combination of both.
- Area of the taking and the amount of the offer including a statement on whether it includes a taking of access rights, severance damages, if any, and improvements when applicable.

- Statement as to whether conveyance is to be by Quitclaim deed or Warranty deed, free and clear of all liens and encumbrances.
- Provisions for acceptance of the State's offer. Where no displacements are involved, the grant of and interim right-of-entry pending execution of the conveyance document may be requested on projects requiring immediate possession for the advertisement of bids for construction.
- By reference and/or enclosure:
  - i. Statement of Just Compensation, Appraisal Summary Statement and Negotiation Policies and Payments Statement (see page 2.6-A).
  - ii. Right-of-Way map with parcels, easements and boundaries highlighted and/or outlined.

B. Where improvements are affected.<sup>1</sup>

- The owner of the improvements shall be given the option of retaining his improvement at a retention value pre-determined by the Property Management Section (HWY-RM) or by the Appraisal Section (HWY-RP).
- If the retention value is not available at the time of the offer, the option may be offered subsequently within a reasonable period of time after the owner expresses an interest in the retention concept. He must, however, remove the improvements from the right-of-way by a date to be established by the State. This option is not given where the relocation of the building(s) would not be consistent with planned urban development.
- If the tenant is the owner of the improvements, offer for the purchase of said improvements shall be made to him. Payments, however, shall not be made unless the owner of the land waives and disclaims all interest in the improvements.

C. Where property or utility adjustment work is required.

- Provide a brief explanation of the work to be performed at no cost to owner.

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<sup>1</sup> 49 CFR 24.105 Acquisition of Tenant Owned Improvements

- Enclosed plan of the proposed property or utility adjustment.
- Request owner's approval by having him attest his signature to the plan.
- Request interim right-of-entry to enter upon owner's property to perform the work.

D. Where Owner-Occupant or Tenant-Occupant is being displaced.

- Provide for the transmittal of the copy of the letter of offer to HWY-RM. The letter of offer should indicate that an Agent from our Property Management Section will contact the Owner-Occupant or Tenant-Occupant to explain the Relocation Assistance Program to them.
- The Relocation Assistance Brochure and Displacement Certificate will be issued to the Owner-Occupant or Tenant-Occupant at the time that the Agent from our HWY-RM contacts them. The owner is generally given 30 days to reply to the offer signed by the ROW Agent.

### **Approval of Offers to Purchase**

All offers to purchase shall be approved by the ROW Branch Head prior to delivery to the property owner.

- A. The offer package is reviewed by the Principal ROW Agent and routed to the ROW Branch Head.
- B. The ROW Branch Head makes the final review and the offer is made when it is approved by him. If there is a discrepancy in the offer package, it is returned for corrections before delivery to the property owner.

### **Revised Offers**

Revised offer to purchase and the summary of basis for just compensation shall be provided to the owner if:

- A. Extent of taking is revised.
- B. The approved estimate of just compensation is revised by the Review Appraiser and approved by the ROW Branch Head.

**Negotiation Contacts (Personal Contact)**

The negotiating ROW Agent shall make all reasonable efforts to make personal (face-to-face) contact with each State resident owner or his designated representative to explain the offer package.

- A. The ROW Agent shall explain the offer and the full effect of the taking, including all enclosures submitted with the offer.
- B. If the owner needs additional time to study the offer, a later meeting is arranged. A concerted effort is made by the ROW Agent to obtain an acceptance during the period of negotiations and all possible means are exhausted within the scope of his authority to reach a satisfactory settlement.
- C. If the offer is accepted, the negotiator completes and files the Statement of the Negotiator, (see page 2.6-F), DOT 4-300, certifying the successful negotiation. He then follows up with closing procedures.
- D. If the offer is rejected or negotiations appear stalemated, the offer is withdrawn and the owner is notified that the State will file condemnation proceedings to complete the acquisition. The Agent follows up with the condemnation request to Legal Counsel.
- E. If personal contact cannot be made to resident-owner, documentation shall be made in the parcel file to show that reasonable efforts have been made to achieve this contact and explanation of the circumstances and actions taken. In such cases written offers shall be sent by mail.
- F. Offers to purchase to owners residing out-of-state shall be made by certified mail. There shall be no disparity in the conduct in the negotiations between minority and non-minorities. All owners shall be equally apprised of their benefits, rights and options in connection with the negotiations and possible condemnation process.
- G. In every case, a complete Negotiation Diary, (see page 2.6-G), DOT 4-238 shall be kept and maintained by the negotiating ROW Agent during the period of negotiations. The negotiator shall enter in writing, immediately after each contact with the property owner or his representative information such as, but not be limited to, the date and place of contact, persons present, offers made (dollar amounts), counter-offers, reasons settlement could not be reached and any other pertinent data. The diary shall be signed and dated by the negotiator and filed in the project parcel file.

### **Negotiation Contact (Contact by Mail)**

Negotiation by mail is a permitted option. This optional approach may involve complete negotiations by mail without personal contact, or a limited use of this approach such as the first offer by mail with follow-up personal contacts.

- A. Under the first offer by mail approach, the Negotiating ROW Agent may initially mail the letter of offer to the owner. There should then be a follow-up telephone call to the owner. Any questions can be answered or, at the owner's election, an appointment for a personal contact can be made. If personal contact is required, negotiations will follow the normal negotiation process. The owner, however, can still sign the acceptance section of the letter of offer and return it to the State by mail.
- B. This process may not be utilized on parcels where relocation is involved, and will be applied on a project or parcel-by-parcel basis, dependent on the project construction schedule and lead time.

### **Notification to Property Management Section**

Whenever occupants are involved in parcels acquired, HWY-RL shall so inform HWY-RM for interim management and provision of relocation advisory services and replacement housing payments. Immediately after purchase, the ROW Agent shall transmit a memorandum to HWY-RM through the Principal ROW Agent with the following information:

- A. The name of the owner, address, Parcel number, Tax Map Key number, purchase price, date of purchase, allocation of purchase price as to land and improvements and any other information that may be of assistance to HWY-RM.
- B. That the acquisition was completed by negotiated settlement, with concessions related to rent free occupancy and rent pro-ration. Rent free occupancy is permitted, but should not be regarded as usual and customary.
  - Rent free occupancy – While the owner-occupants and immediate members of the family are in search of replacement housing, or being assisted by the State in search of said replacement housing they will be permitted to occupy the premises on a rent-free basis for a period not to exceed 90 calendar days. The 90 calendar days shall be computed from the date payment is made for the property.

- Rent pro-ration – If the property was tenant occupied, the rent collected is prorated between the State and the owner as of the date payment for the property is made to the owner.

C. Notification is not required where the property is vacant.

No concessions are made where properties are to be acquired under condemnation proceedings. Concessions in these instances may be made by the Deputy Attorney General handling the proceedings as part of the condemnation settlement.

### **Negotiation Impasse**

If an impasse is reached in attempting to acquire the property by negotiations, the ROW Agent shall submit his recommendations to acquire the property by condemnation proceedings.

- A. The property owner is informed in writing that the State will deposit in court the amount of just compensation and that acquisition will be by condemnation proceedings. He is also informed of the steps he may take because of the condemnation action being taken.
- B. The request for condemnation to Legal Counsel is prepared and submitted on Form DOT 4-111 (HWY-RL 8/70), Request for Eminent Domain Proceedings. It shall include the Project Title and number, Parcel number(s), the Date of Possession desired and other pertinent data covered in said form. It shall also include but not be limited to the following exhibits:
- 25 prints each of the appropriate right-of-way maps and descriptions.
  - Certificate of Search.
  - Appraisal Report. The report may be submitted by separate cover by HWY-RP.
  - Report of Reviewer.
  - Letter of Offer.
  - Negotiation Diary.
  - Written communications between owner and State.
  - Any other attachments or communications that may be of assistance to Legal Counsel in the condemnation case.
- C. The Request for Eminent Domain Proceedings is reviewed by the Principal ROW Agent and with his concurrence, forwarded to the ROW Branch Head for his approval.

- D. The Request for Eminent Domain Proceedings is submitted to Legal Counsel upon approval by the ROW Branch Head.
- E. The ROW Agent shall assist Legal Counsel in the proceedings upon request.

### **Donations**

Gifts or donations of real property or any part thereof, or any of the compensation paid therefore, shall be accepted on behalf of the State by the Director of Transportation, subject to the approval of the Governor provided that the donor has first been fully informed of his right to receive just compensation for the acquisition of his property.<sup>2</sup>

The ROW Agent shall prepare and have executed the proper document for the transfer by way of a gift or donation.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation except as provided in 24.102 (c)(2).<sup>3</sup>

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<sup>2</sup> HRS 171-30 State Donations

<sup>3</sup> 49 CFR 24.108 Federal Aid Donations

**STATEMENT OF JUST COMPENSATION**

**PROJECT:**

Identified on Right-of-Way Map as Parcel xxx

**TAX MAP KEY:**

**SUBJECT:** xxx sq. ft. portion

**OWNER:**

**PURPOSE:** In accordance with the law, the State of Hawaii, Department of Transportation, herewith submits a written statement of, and summary of the basis for the amount it has established as just compensation for the above identified property.

The Hawaii State Constitution, Section 18, Article I, states: "Private property shall not be taken or damaged for public use without just compensation."

The State of Hawaii has obtained the services of competent and experienced real estate appraisers who employ established appraisal techniques and approaches in arriving at an estimate of fair market value. All appraisals utilized in establishing the fair market value are reviewed by qualified State Review appraisers to assure compliance with accepted principles and techniques in the evaluation of real estate in accordance with existing State and Federal requirements. Consideration is given to those items which are compensable under State of Hawaii law and those items which are considered as non-compensable are excluded.

The amount established as just compensation is not less than the State of Hawaii's approved appraisal of the fair market value of the property being acquired. Any decrease or increase in fair market value of this real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that this property would be acquired for such

improvement, other than due to physical deterioration within reasonable control of the owner, has been disregarded in determining the compensation for this property

Unless otherwise stated in the attached letter of offer, the amount established as just compensation is for the real property being acquired, which includes land, buildings, structures, or improvements located on, or damaged as a result of the taking of the areas and interest described in the attached letter of offer.

The amount established as just compensation does not include items of personal property such as household furnishings, clothing and appliances. The State of Hawaii will pay the owner of personal property reasonable and necessary moving cost in accordance with the Department of Transportation's brochure entitled "Relocation Advisory Assistance and Relocation Payments."

In the case of leasehold, the lessor's interest and the lessee's interest will be allocated separately. If the lessor and lessee disagree on the amounts so allocated or distribution made in the letter of offer, payments will not be made to either party. The matter will then be resolved by agreement of the parties or through litigation. This non-payment to either party will prevent prejudice and will not place the State in the position as adjudicator.

**JUST**

**COMPENSATION:** The Estimated Annual Fair Market Rental Value that represents the full amount of just compensation for the xxx sq. ft. subject Parcel xxx as of \_\_\_\_\_1, 2010 was determined to be a rent of \$xxx annually.

**APPRAISAL SUMMARY STATEMENT**

**PROJECT:**

Identified on Right-of-Way Map as Parcel

**TAX MAP KEY:**

**SUBJECT :** xxx sq. ft.

**PROPERTY ACQUIRED:** All: \_\_\_\_\_ Part:  X

**OWNER (S):**

**ADDRESS:**

**ZONING:**

**PRESENT USE:**

**HIGHEST & BEST USE:**

**INTENDED USE:**

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The Market Rent Estimate is as follows:

Rent for xxx sq. ft. construction parcel	\$ xxx annually
Damages to remainder less benefits, if any	<u>xxx</u>
Just compensation for rental	\$xxx annually

The market rent estimate is based upon an appraisal estimate prepared in accordance with accepted appraisal procedures. Full and careful consideration has been given to the highest and best use for development of the property and to all features inherent in the property in order that the highest valuation possible can be made. The Market Rent Estimate was developed and reported in conformity with Federal and State statutes, and Right-of-Way branch policies.

STATE OF HAWAII  
Department of Transportation  
Right-of-Way Branch  
601 Kamokila Boulevard, #691  
Kapolei, Hawaii 96707

NEGOTIATION POLICIES AND PAYMENTS

The following briefly explains your rights as to payments for the purchase and/or rental of your property and for expenses incidental to the transfer of said property; your rights as to uneconomic remnants; and steps that are available to you if you choose to reject the State's offer.

I. PAYMENTS FOR PURCHASE AND/OR RENTAL OF PROPERTY.

As soon as settlement is arrived at by negotiation between you and the State Right-of-Way Agent, the documents for purchase and/or rental of your property will be prepared by the State and mailed or delivered to you. Upon full execution, the claims will be processed and full payment made. In the event settlement is through condemnation proceedings, payment will be processed through the courts.

In the case of acquisition through negotiation, we will not require you to surrender possession to your premises without receiving the agreed price. In the case of acquisition through condemnation, we will not require you to surrender possession until the State has deposited the appraised value of your property with the court. In exceptional circumstances, with the prior approval of the owner, the State may obtain a right-of-entry for construction purposes before making payment available to an owner.

II. PAYMENTS FOR EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY.

In the transfer of your property to the State, you are entitled to receive reimbursement or have the State pay to the extent it deems fair and reasonable, expenses incurred for the following:

1. Recording fees, transfer taxes and similar expenses incidental to conveyance of such property;
2. Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the property; and

3. 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 of Hawaii, or the effective date of possession by the State, whichever is earlier.

### III. UNECONOMIC REMNANT.

In the event the State's acquisition of a portion of your property leaves you with an uneconomic remnant, the State will offer to acquire the uneconomic remnant.

### IV. REJECTION OF STATE'S OFFER.

If you choose to reject the State's offer to purchase and/or rent your property, we will request the Department of the Attorney General to file proceedings in eminent domain to acquire and/or rent the necessary property. You may do the following:

1. Obtain an appraisal by a qualified appraiser, and then confer with the Deputy Attorney General assigned to your case. If you prefer, you may engage an attorney to represent you from the outset. Once you retain an attorney, all negotiations will be carried out by the attorney.
2. If an out of court settlement is reached, the conveyance will be made by a Stipulated Judgment and Final Order of Condemnation.
3. If no settlement can be made, the case will be litigated and a Decision, Judgment and Final Order of Condemnation will be issued by the court.

Please communicate with the Right-of-Way Agent who has signed the letter of offer or the Agent who contacted you if you need clarification of any of the information contained herein.

STATEMENT OF NEGOTIATOR

This is to certify that I have successfully negotiated and received the acceptance of the State's offer to purchase Parcel(s) \_\_\_\_\_ from \_\_\_\_\_ dated \_\_\_\_\_ for the total consideration of \_\_\_\_\_ The acceptance received embodies all of the considerations agreed upon between the negotiator and the property owner(s) and was reached without coercion, promises other than those shown in the letter of offer \_\_\_\_\_ dated \_\_\_\_\_ or threats of any kind whatsoever by or to either party.

I understand that the parcel(s) is (are) to be secured for use in connection with the construction of \_\_\_\_\_

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I have no direct or indirect present or contemplated future personal interest in the parcel(s) or in any benefit from the acquisition of such property.

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## NEGOTIATIONS – ADMINISTRATIVE SETTLEMENTS

- PURPOSE:** To describe procedures relating to settlement of acquisitions, which are in excess of the State's approved estimate of just compensation.
- POLICY:** To acquire right-of-way through an administrative process prior to condemnation if conditions warrant settlement.
- RESPONSIBILITY:** The Right-of-Way (ROW) Agent/Negotiator is responsible for recommendation of administrative settlements. The ROW Manager (Branch Head) is responsible for the final decisions and approvals.
- SCOPE:** This section applies to all negotiating ROW Agents.
- PROCEDURES:** Prior to filing the request for condemnation, if the ROW Agent cannot obtain an acceptance from the property owner through normal negotiation procedures, he may submit his recommendations to settle the acquisition administratively.

### **Basis for an Administrative Settlement**

When settlements cannot be reached through the negotiation process, it may become necessary for the agency to consider making an administrative settlement or a subsequent legal settlement. There are situations where it will be in the public interest to seriously consider the settlement of an acquisition with the expediency of project completion and/or cost savings being a driving force or justification.

An administrative settlement is any settlement made or authorized to be made by the responsible acquiring official, which is in excess of the agency's approved valuation of just compensation, prior to filing a condemnation proceeding based on value related evidence, administrative considerations or other factors approved by an authorized agency official. Negotiation implies honest effort by the acquiring agency to resolve differences with the property owners and recognizes the inexact nature of the process by which just compensation is determined.

Cost savings are in the areas of salaries, witness fees, travel, per diem costs, excessive court awards, appraiser's fees, etc. Significant cost savings can be realized through the use of administrative settlements.

The agency may also want to consider negotiations by mediation or arbitration for similar reasons. Mutual third party involvement may ease the stress of conflict and bias. Suggestions of having a State Ombudsman hear a case for the public may also be considered.

Mediation is a viable alternative and affords flexibility in resolving conflict that may arise in the acquisition process through reduced administrative costs. The Federal Highway Administration (FHWA) may participate in the cost of mediation services and the cost of a mutually agreed to settlement between the State and the property owner. The Agency should check with the local FHWA District office before proceeding with this option.

The ROW Agent may submit recommendations for an administrative settlement if it is deemed that such action is in the public interest.

Every effort should be made to contact the appraiser or the reviewer to discuss any differences before making an administrative settlement.

The recommendations shall be in writing and the extent of the explanation consistent with the situation, circumstances and the amount of money involved. Written justification should also include all available information, appraisals, recent court awards, trial costs and risks, valuation problems and support for a settlement.

Recommendations shall first be submitted to the Principal ROW Agent for review and concurrence prior to forwarding it to the ROW Manager (Branch Head) for final approval. The parcel file should be reviewed and the recommendations be based by giving full consideration of all pertinent information including but not limited to:

- A. All available appraisals, including owner's appraisal. Where two acceptable appraisals were obtained, and the offer was based on the lower appraisal, consideration should be given to settling up to the supported part of the higher appraisal if an honest difference of opinion exists.
- B. State's approved estimate of just compensation.
- C. Recent court awards for similar type of property, showing the percentage increase over the fair market value for cases that went to trial.
- D. The negotiator's recorded information.
- E. The opinion of the State's Legal Counsel, regarding:
  1. Valuation problems, including the probable range of testimony as to fair market value by both sides should the case go to trial.
  2. The estimate of trial cost.

- F. Where the just compensation determination includes compensable items under State laws but ineligible for Federal participation, the ineligible items and the amounts shall be listed.

#### **Authorization for Administrative Settlement <sup>1</sup>**

The ROW Manager shall make the final determination and approve or disapprove recommendations for administrative settlements.

- A. If the recommended settlement is approved and authorized, the ROW Agent shall complete negotiations on the approved settlement amount. The file shall indicate that the approved amount was established prior to an agreement with the owner.
- B. If the recommended settlement is disapproved, the ROW Agent shall so inform the owner. Acquisition shall then be by condemnation proceedings, unless the owner reconsiders and accepts the original offer or an alternative settlement can be reached.
- C. ROW Manager may request FHWA's prior concurrence to an administrative settlement, particularly in cases involving substantial differences in amounts of money, complex valuations, or where legal considerations are involved. FHWA approval is not required for administrative settlements. However, good communications with the local FHWA District Office is advised.
- D. There is no limit for an administrative settlement. However, great caution should be given for large differentials without a second opinion appraisal, market evidence of just compensation and/or other justification for the recommendation for administrative settlements.

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<sup>1</sup> 49 CFR 102 (i) and 23 CFR 712.401-408. See also FHWA Right of Way Project Development Guide Chapter 11 Settlements.

P-072-1(39), East Halemau Street to Keahole Street, Honolulu, City and County of Honolulu, State of Hawaii

(hereinafter referred to as the "Project"); and

WHEREAS, the State acquired a strip of land adjacent to the Property along the front of the Property from the Owner's predecessor in title by Warranty Deed dated June 3, 1992, with Kit Lee Halvorsen, as Grantor, and the State of Hawaii, as Grantee, which Deed was filed with the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1921889 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-096410; and

WHEREAS, the Owner and the State have subsequently determined that it is in the best interest of both parties that the State acquire the Property from the Owner for the Project,

NOW, THEREFORE, the Owner and the State enter into this Agreement in order to provide for the payment to Owner of a sum certain in full settlement and discharge of all claims which the Owner has, or may have, relating to the Property, the Project and/or the effect of the Project on the Property, upon the terms and conditions set forth below:

1. Public Use. The public use to be served by the acquisition of the Property is the construction, preservation, and protection of the Project, which is a public highway.
2. Acquisition required. The aforesaid public use requires the acquisition of the Property by the State in fee

#### SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into this \_\_\_ day of APR 28 1995, 1995, by and between ALBERT K. SERRANO and GEORGINA C. SERRANO (hereinafter collectively referred to as the "Owner"), whose residence and post office address is 795 Kalaumoi Way, Honolulu, Hawaii 96825, and the STATE OF HAWAII, by its Director of Transportation, whose business address is 869 Punchbowl Street, Honolulu, Hawaii 96813 (hereinafter referred to as the "State").

#### WITNESSETH THAT:

WHEREAS, the Owner owns certain property situated at 5995 Kalamansole Highway, designated as Tax Map Key No. 3-8-02:27, consisting of approximately 12,441 square feet, being all of Lot A-7-B-1-1, as shown on Map 227 of Land Court Application No. 579, and noted on Transfer Certificate of Title No. 392,736, all as filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the "Property"); and

WHEREAS, the State is constructing that certain highway project known as Kalamansole Highway, Federal Aid Project No.

(2) Receipt by the State of the following:

- (a) Fully executed original of this Settlement Agreement;
  - (b) Fully completed and executed originals of Form N-289 (Rev. 1993) pursuant to which the Owner represents that they are resident persons of the State of Hawaii for purposes of qualifying for an exemption from the withholding tax required under Chapter 235, Hawaii Revised Statutes; and
  - (c) Tax clearances showing that Owner does not owe and is not delinquent with the payment of any taxes, fees or charges to the State or the City and County of Honolulu.
- b. Owner's right to payment. The Owner acknowledges that the payment of the Settlement Amount cannot be accelerated, deferred, increased or decreased by the Owner; nor shall the Owner have the power to sell or mortgage, encumber, or anticipate the payment of the Settlement Amount, or any part thereof, by assignment or otherwise.
- c. Owner's beneficiaries. If either of the persons constituting the Owner dies or becomes legally incapacitated

simple absolute, free and clear of all liens and encumbrances, except those encumbrances listed in Exhibit B attached hereto and incorporated herein by reference (hereinafter referred to as the "Exhibit B encumbrances").

3. Just compensation. The amount of just compensation and damages of every kind or nature whatsoever, including any blight of summons, severance damages and/or interest, to be paid to the Owner as a result of the acquisition of the Property, in fee simple absolute, free and clear of all liens and encumbrances (except for the Exhibit B encumbrances), is the sum of SEVEN HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$770,000.00) (hereinafter referred to as the "Settlement Amount").

4. Payment.

a. Payment date. The State will pay the Settlement Amount to Owner within seven (7) days after all of the following are completed:

- (1) The acceptance for filing of the Warranty Deed transferring and conveying to the State fee simple absolute title to the Property, free and clear of all liens and encumbrances (except for the Exhibit B encumbrances), by the Assistant Registrar of the Land Court of the State of Hawaii (hereinafter the "Land Court");

prior to the time the State is to pay the Settlement Amount to the Owner, the State shall pay the Settlement Amount to the surviving or non-legally incapacitated person constituting the Owner. If both of the persons constituting the Owner die or become legally incapacitated prior to the time the State is to pay the Settlement Amount to the Owner, the State shall pay the Settlement Amount to Dana Lynne Serikaku, daughter of Owner, and Michele Lee Serikaku, daughter of Owner, in equal shares but if either is not living at the time of the death or legal incapacity of the Owner, then all to the survivor of them. The present residence and post office address of both daughters is 795 Kalaanui Way, Honolulu, Hawaii 96825. If both of the above described beneficiaries of the Owner are not living at the time of the death or legal incapacity of both persons constituting the Owner, the State shall pay the Settlement Amount to the estates of the persons constituting the Owner. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the State. The designation must be in a form acceptable to the State before payment of the Settlement Amount is made.

5. No further interest. The Owner has not suffered any further or other damages in connection with the State's acquisition of the Property herein and the Owner hereby disclaims any further interest in and to the Property, and any

further compensation payable therefor, and hereby fully release any and all of the Owner's interests in and to the Property.

6. Release and Discharge.

a. Complete release. In consideration of the payment of the Settlement Amount pursuant to paragraphs 3 and 4 herein, the Owner hereby completely releases and forever discharges the State from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Owner now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of the Property, the Project or the effect of the Project on the Property,

including, without limitation, any and all known or unknown claims for bodily and personal injuries to the Owner, or any future claims of the Owner's representatives or heirs which have resulted or may result from or are related to the Property, the Project and/or the effect of the Project on the Property.

It is specifically understood and agreed that the payment of the Settlement Amount is for the State's acquisition of the Property from the Owner and in full settlement of any and all claims which the Owner has or may have with respect to

the Property, the Project and/or the effect of the Project on the Property.

This release shall not apply to the State's payment of relocation, replacement housing, moving and other displacement expenses in connection with the State's acquisition of the Property, provided the type and amount of such expenses to be paid by the State to the Owner shall be determined by the State in accordance with law, and provided further, that this release shall apply to the payment of such expenses before the Warranty Deed referenced in paragraph 4 herein is accepted for filing by the Land Court.

b. Applicable to agents. This release and discharge shall also apply to all of the State's officers, employees, agents, representatives, successors and assigns. This release and discharge shall also apply to the Owner's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms, or corporations with whom any of the former have been, are now or may hereafter be affiliated.

c. Fully binding. This release and discharge, on the part of the Owner, shall be fully binding and a part of the complete settlement between the Owner, the State, and their respective heirs, assigns and successors.

d. General release. The Owner acknowledges and agrees that the release and discharge set forth above is a general release. The Owner expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the Owner does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Owner's decision to enter into this Agreement. The Owner further agrees that the Owner has accepted payment of the Settlement Amount as a complete compromise of matters involving disputed issues of law and fact. The Owner assumes the risk that the facts or law may be other than the Owner believes. It is understood and agreed to by the parties that this settlement is a compromise of doubtful and disputed claims, and the payment of the Settlement Amount is not to be construed as an admission of liability on the part of the State by whom liability is expressly denied.

7. Attorney's fees. Each party hereto shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with this Agreement, the transfer of the Property to the Releasee, and all related matters.

8. Owner's authorization to complete conveyance. The Owner hereby authorizes the State to file said Warranty Deed transferring and conveying the Property to the State with the

Land Court and take all other actions necessary to ensure that fee simple absolute title to the Property, free and clear of all liens and encumbrances (except for the Exhibit B encumbrances), are properly transferred and conveyed to the State.

9. Denial of Liability. The State denies liability, negligence, breach of duty, breach of any assignment, misconduct, violation of statute, and/or wrongdoing of any kind, character or nature whatsoever, and the Settlement Amount paid by the State to the Owner is solely for the conveyance of the Property to the State, in fee simple absolute, free and clear of all liens and encumbrances (except for the Exhibit B encumbrances), and in compromise of disputed claims, and the State expressly reserves the right to assert any claim and cause of action which the State may have against the Owner or any other person.

10. Reimbursement. If it is ever adjudged that any person or persons other than the Owner is entitled to all or any portion of the Settlement Amount to be paid to the Owner pursuant to paragraphs 3 and 4 of this Agreement, the Owner, their successors and assigns, jointly and severally, do hereby agree to reimburse and pay to the State so much of the Settlement Amount paid to the Owner as may be adjudged to be due and owing to such other person or persons, together with

interest at the rate of five percent (5%) simple interest per year from the date payment of the Settlement Amount is made hereunder to the Owner until the date of such adjudication or judgment, but not to exceed five (5) years worth of interest. Furthermore, additional interest at the rate of five percent (5%) simple interest per year shall be assessed from the date of such adjudication or judgment until said adjudicated or judgment amount is paid by the Owner to the State, unless full payment is received by the State within thirty (30) days of when the Owner is notified by the State of such adjudication or judgment.

11. Indemnity. The Owner hereby stipulates and agrees, for the payment of the Settlement Amount, to indemnify, forever hold harmless, and defend the State and its respective officers, directors, stockholders, attorneys, agents, servants, insurers, representatives, employees, subsidiaries, affiliates, partners, predecessor and successors in interest, heirs and assigns, against loss and liability from any and all claims, liens, judgments, costs, expenses, attorney's fees, demands or actions, claims or actions for contribution, indemnity or reimbursement (contractual or otherwise), cross-claims and third-party claims, whether such claims or actions have merit or not, that may have been or may hereafter at any time be made or brought against the State by the Owner or by anyone acting

on the Owner's behalf, or holding by or through the Owner, or by any other person.

The Owner specifically understands and agrees that the aforementioned indemnification includes the defense, payment and satisfaction of the claims by all persons who have claimed or in the future may claim that they have money due and owing to them from the settlement described herein.

12. Warranty of Capacity to Execute Agreement. The Owner represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein; that the Owner has the sole right and exclusive authority to execute this Agreement and receive the Settlement Amount specified in it; and that the Owner has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement.

13. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Hawaii and the courts of the State of Hawaii shall have exclusive jurisdiction to resolve any disputes relating to this Agreement.

14. Additional Documents. All parties agree to fully cooperate and execute any and all supplementary documents and

to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

15. No Reliance by the Owner. The Owner has not relied upon any express or implied representation of the State, or any of its agents, as to the tax consequences of this Agreement, and the Owner releases the State from any and all liabilities in connection with such tax consequences.

16. Entire Agreement and Successors in Interest. This Agreement contains the entire agreement between the Owner and the State with regard to the matters set forth in it and shall be binding upon and enure to the representatives, heirs, successors and assigns of each.

17. Effectiveness. This Agreement shall become effective immediately following execution by the Owner and the State.

18. Headings. The headings and captions used herein are for convenience of reference only and are not intended to fully describe, define or limit the provisions of this Agreement to which they may pertain.

19. Singular, Plural. All words used herein in the singular number shall extend to and include the plural. All

words used in any gender shall extend to and include all genders.

OWNER:

Albert K. Shrikaku  
ALBERT K. SHRIKAKU  
Date: APR 24 1995

Georgina C. Shrikaku  
GEORGINA C. SHRIKAKU  
Date: APR 24 1995

STATE OF HAWAII

By Keou Hayashida  
Keou Hayashida  
Its Director of Transportation  
Date: APR 24 1995

Approved as to Form:

Deputy Attorney General  
Deputy Attorney General

14401

STATE OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 24th day of April, 1995

before me personally appeared ALBERT KESJI SHRIKAKU and GEORGINA CHUN SHRIKAKU, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the instrument as their free act and deed.

Veron C. H. Long  
Notary Public, ~~of~~ Judiciary  
Circuit, State of Hawaii  
My commission expires: Oct. 8, 1998

14401

KALANIANAOLE HIGHWAY  
Federal Aid Project No. F-072-1(39)  
East Halemauan Street to Kaohole Street

REMAINDER PARCEL 75

Land situated at Kuliouou 1st., Honolulu, Oahu, Hawaii

Being all of Lot A-7-B-1-M-1, together with an undivided  
1/10th interest in Lot A-7-B-1-Q, as shown on Map 227 of Land  
Court Application 578, covered by Transfer Certificate of Title  
No. 392,736, filed in the Office of the Assistant Registrar  
of the Land Court and containing an area of 12,441 square feet.

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
Highways Division

BY   
Cadastral Engineer

Honolulu, Hawaii  
April 21, 1995

Tax Map Key: 3-8-02:27

(Calc. Folder 557, Page 2, P4G1)

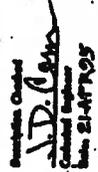
Registration Clerk  
  
Cadastral Engineer  
No. 21-47703

EXHIBIT B

The "Property", as defined in that certain Settlement Agreement dated APR 2 A 1995, 1995, between Albert K. and Georgina C. Serikaku, as "Owner", and the State of Hawaii, which describes the State's acquisition of the "Property", is subject to the following:

1. Deed covenants. The covenants contained in that certain Deed dated June 6, 1944, between Rubys-Les Johnson Lamb, as Grantor, and John Hollis Moulton, Jr., as Grantee, filed with the Assistant Registrar of the Land Court of the State of Hawaii (hereinafter the "Land Court") as Document No. 73402, which set forth certain building and racial restrictions.
2. Party wall agreement. The Party Wall Agreement dated November 9, 1989 between Rihoo Corporation (the owner of the property adjacent to Remainder Parcel 75) and Edward J. Stanley, as Trustee for the L. Don Halverson (Halvorsen) Estate (predecessor in interest to the Serikakus), filed with the Land Court as Document No. 1710168.
3. Deed condition. The following condition set forth in that certain Warranty Deed dated June 10, 1992, between Kit Lee Halvorsen, as grantor, and Albert Kenji Serikaku and Georgina Chun Serikaku (by Albert Kenji Serikaku as her attorney-in-fact), as Grantee, filed with the Land Court as Document No. 1923050, as noted on Transfer Certificate of title No. 392,736:

Any adverse claim based upon the assertion that some portion of said land is tide or submerged land or has been created by artificial means or has accreted to such portion so created.

14401

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
**MEMORANDUM**

**TO:** HWY-R *Dean Yogi* **DATE:** June 19, 2009  
**THRU:** HWY-RL *Mike Auerbach*  
**FROM:** HWY-RLA (B. SHIMOKAWA) *Bruce Shimokawa*  
**SUBJECT:** REQUEST FOR ADMINISTRATIVE SETTLEMENT  
FORT WEAVER ROAD WIDENING  
VICINITY OF AAWA DRIVE TO GEIGER ROAD  
FEDERAL AID PROJECT NO. CMAQ-076-1(9)

=====

**PROJECT:**

The project will widen Ft. Weaver Road from its present four (4) lane thoroughfare to a six (6) lane thoroughfare from Aawa Drive to Geiger Road in Ewa, Oahu. The project includes construction of new concrete sidewalks, curbs and gutters, relocating bus stops, drainage improvements and upgrading the traffic and lighting system. This project has been designated as a design build project with a completion date of August 2009.

**BACKGROUND:**

On June 29, 2007, a revised offer was transmitted to the fee owner of the property, Seven-Eleven Hawaii, Inc. (7-11) thru its attorney, Mr. John Yamano, esq. to acquire Parcels 11, 12 and 14 (Property), together with abutter's right of vehicle access, inclusive of all improvements thereon for a total sum of \$68,850. The revised offer for the parcels was based on the value 7-11 provided, in their acquisition of the property. As anticipated, 7-11 readily accepted our revised offer to acquire 1,377 square feet for \$68,850.00 (\$50.00 psf).

The subject property is currently encumbered by a lease from 7-11 to FCH Enterprises, Inc., dba Zippy's Restaurants (Zippy's) and a sublease with West Oahu Community Federal Credit Union. Being a party of interest to the Property, we sought Zippy's concurrence to the conveyance. Zippy's refused to give its concurrence to the conveyance and claimed it suffered damages as a result of the State's acquisition of the Property. Zippy's contention of damages suffered included the cost to redesign its restaurant (\$40,000.00), lost of parking space, unusable "pockets" located on both sides of Parcel 12, loss of income due to the construction and unauthorized encroachment of construction onto their property.

The Property is required to accommodate the construction of new sidewalks, curbs and gutters, wheelchair ramps and bus shelter. Construction is currently at the site and has come to a complete halt until the conflict has been resolved. In view of the rapidly approaching completion date of the project and our desire to avoid further delays to the construction schedule and incur costly demobilization and mobilization costs, eminent domain procedures were initiated. While communicating with Zippy's attorney, LEG found that Zippy's would be willing to drop all damage claims against the State in return for the State to acquire additional property. This additional property would be the "pockets" on both sides of Parcel 12 consisting of an additional 569 square feet of landscaped property, adjacent to the bus stop fronting Ft. Weaver Road.

RECOMMENDATION:

Time is of the essence for this project. The completion date for the project is August 2009. Demobilization and mobilization of equipment and manpower to complete the construction may result in costly overrun that may not be eligible for federal participation. We believe that 7-11 will not object to the State acquiring the additional areas if the State's offer is based on the previously agreed amount of \$50.00 per square foot.

Administration has given its consent to acquire the additional areas instead of prolonging the completion of construction. It was determined that it would be prudent to acquire the additional areas on both sides of Parcel 12 than incur costly delays to the project. As a matter of reference, please refer to the attached ROW Map where Parcel 12 is delineated in red and the additional "pockets" on both sides of Parcel 12 is delineated in green. Based on the foregoing, we recommend your approval to administratively approve the acquisition of the additional "pockets" consisting of an additional 569 square feet at \$50.00 per square feet for an additional compensation of \$28,450.00, or a revised total amount of \$97,300.00 for the Property. The Right of Way Map has been revised to reflect the additional areas being acquired. The revised Right of Way Map will now show Parcel 12 (Rev.1) consisting of 1,292 square feet or 0.030 acre. Upon approval of the revised offer of \$97,300.00, we will transmit a revised offer to 7-11 for their consideration and acceptance.

Computation of the revised offer follows:

<u>Parcel Nos.</u>	<u>Area (Sq. Ft.)</u>	<u>Compensation</u>
11	564	\$28,200.00
12 (Rev. 1)	1,292	\$64,600.00
14	90	\$ 4,500.00
Revised Total:		<u>\$97,300.00</u>

BS:bs

Attachment

APPROVED/DISAPPROVED:

*Dean K. Yogi*

---

DEAN K. YOGI  
Right-of-Way Manager

---

June 19, 2009  
Date

## NEGOTIATIONS – CLOSING

- PURPOSE:** To describe the closing procedures for the acquisition process accomplished through negotiations.
- POLICY:** To facilitate the closing process for early payment to property owners and recording of conveyance documents.
- RESPONSIBILITY:** The Land Acquisition Units of the Land Acquisition Section (HWY-RL) are responsible for the coordination and completion of the closing process.
- SCOPE:** This section extends to the Land Acquisition and Abstracting Sections of the Right-of-Way Branch, Cadastral Engineering Section of the Highway Design Branch, Legal Counsel and Fiscal Staff.
- PROCEDURES:** The closing process of all negotiated acquisition shall commence immediately upon receipt of the owner's acceptance of the State's offer for the purchase of the parcel. The closing process involves the preparation, execution, recording and distribution of documents and payments to property owners for purchase of their parcels; including the reporting of the real estate purchase to the Internal Revenue Service (IRS) and/or State Department of Taxation (DOTAX) as required.

### Preparation of Documents

Legal Counsel is responsible for preparation of conveyance documents. <sup>1</sup> The Right-of-Way (ROW) Agents, however, may assist Legal Counsel in preparing drafts and final forms of the documents to expedite the process.

- A. Where documents are to be prepared by Legal Counsel, the following are provided:
1. Metes and bounds description of the parcel if land is unregistered; Land Court description if land is registered.
  2. Right-of-Way or parcel map if land is unregistered; Land Court map if land is registered.

---

<sup>1</sup> Memorandum dated July 26, 1972, LEG 3.1919, Preparation of Drafts of Legal Documents.

- 3. Updated Certificate of Search, if more than three months from the last continuation or original search.
- 4. Copy of owner's acceptance of the State's offer.

The Request for Documents is submitted on Form DOT 4-122 (HWY-RL 9/80) or as amended, (see page 2.8-A).

- A. Any pertinent information that may assist Legal Counsel in preparing the document shall be included in this form. Where the acquisition involved partial takings, easements or access rights affecting registered lands, request for the appropriate Land Court Petitions shall be included. All documents in final form shall be returned by Legal Counsel to HWY-RL with their "Approval as to Form".
- B. Where documents are prepared in draft or final forms by the ROW Agents, the documents shall be transmitted to Legal Counsel together with a copy of the Certificate of Search. Legal Counsel:
  - 1. Reviews the final forms and "Approve as to Form" if they are in order or revise documents in final form if revisions required.
  - 2. Reviews drafts and prepares documents in final form.

All documents shall be returned to HWY-RL with Legal Counsel's "Approved as to Form".

The responsibility for the content of any legal document shall be the responsibility of the signing authority as recommended by all personnel, subs, assigns, administration, federal or state, et al. and/or all other personnel connected to the acquiring agency.

- C. Certified Bills requesting payment for the right-of-way purchase and notary services are prepared by ROW Agents or Contract Assistants and transmitted together with the closing document package.

### Execution of Documents

ROW Agents having the capacity to act as a notary public shall deliver and have conveyance documents executed where personal contact can be made. Where contact cannot be made or is not feasible, documents may be mailed for execution.

- A. All documents shall be executed and acknowledged by a notary public.
- B. Acknowledgment may be taken by the U.S. Counsel or an authorized official in his office in foreign countries where no notary publics are available.

Simultaneously with the execution of the documents, the owner shall also be requested to execute the Certified Bill requesting payment for the conveyance. The owner shall also be requested to have the notary public execute a bill for notary services if execution is performed by a notary public other than the ROW Agent.

### Expenses Incidental to Transfer of Property

To the extent the State deems reasonable, the following expenses incurred by the owner in the transfer of his property to the State shall be paid for by the State or reimbursed to the owner, including, but not limited to:

- A. Recording fees, transfer taxes and similar expenses incidental to conveying real property;
- B. Penalty costs for pre-payment of any pre-existing recorded mortgage loans entered into in good faith and encumbering such real property; processing fee to a lending institution; and
- C. 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 the earlier.

If any of the above costs are incurred by the owner, he shall be requested to submit his claim for reimbursement with supporting data.

### Payments

Payments shall be processed immediately upon execution of the conveyance documents and bills requesting payment. In the case of expenses incidental to the transfer of real property, payments shall be processed upon receipt of the owner's claim.

- A. Request for Payment to the owner shall be processed through Fiscal Staff (HWY-SF) by Form DOT 4-100 (6/90) or as amended (see page 2.8-B), properly coded, with the attachments indicated on the form.
- B. Payment can be made directly to the owner/mortgagee by the Department of Accounting and General Services and the information returned to HWY-SF, when the payment does not exceed \$600 and need not be reported to the IRS.
- C. When payment must be reported to the IRS, the ROW Agent should request that HWY-SF send the warrant for payment to the Right-of-Way Branch (HWY-R). The warrant is then mailed to the owner/mortgagee by the ROW Agent with a recorded copy of the deed.

The ROW Agent may personally deliver warrants to the owner when extenuating circumstances require it.

### Recordation of Documents

All conveyance documents shall be transmitted to Abstracting Section (HWY-RA) for recording with the Bureau of Conveyances.

- A. The original and duplicate document with recordation information is returned by HWY-RA on unregistered lands.
- B. Two duplicate originals are returned by HWY-RA on registered lands.

### Distribution of Recorded Documents

Distribution of recorded documents is made immediately upon receipt of the documents from HWY-RA.

- A. Original copy for unregistered lands and duplicate original for registered lands are filed with the Project File.
- B. Duplicate originals go to the owner.

- C. A copy goes to the respective County Real Property Tax Division where acquired parcel is located.

### **Reporting of Real Estate Purchases to the IRS**

When real estate purchase exceeds the total consideration of \$600.00, the State must file IRS Form 1099-S, Proceeds from Real Estate Transactions, (see page 2.8-C), with IRS. The State is not required to furnish Form 1099-S when the transferor is a Corporation, Governmental Unit, or an Exempt Transferor.

- A. To comply with the reporting requirement, transmit IRS Form W-9, Request for Taxpayer Identification Number and Certification, (see page 2.8-D), to the owner when the conveyance documents are transmitted for execution. The owner should be instructed to fill in the information requested on the form and return it to the State together with the conveyance documents.
- B. After the fully executed conveyance document is recorded and returned to the ROW Agent from HWY-RA and the warrant for payment is received from HWY-SF as requested, the ROW Agent should process Form 1099-S by filling in the required information then distributing the form as indicated.
1. Transmit to the IRS with the standard cover letter, Form 1096 – Annual Summary and Transmittal of U.S. Information Returns, (see page 2.8-E); Form 1099-S – Real Estate Transaction, Copy A; and a Description of the Parcel.
  2. Transmit to the Owner with the standard cover letter, recorded copy of the Warranty Deed and Form 1099-S, Copy B.
  3. File recorded copy of the Warranty Deed, Form W-9 and Form 1099-S, Copy C.

### **Withholding of State Tax on the Disposition of Real Property by Nonresident Persons**

Section 235-68 of the HRS requires the withholding of 5% from the proceeds of the consideration paid for land purchased from a non-resident owner of property in Hawaii for submittal to the State Department of Taxation (DOTAX). The amount of withholding is determined by DOTAX based on information provided on Form N-

288B. To comply with the requirement of the law, Form N-289 and Form N-288B should be submitted to the owner when the conveyance documents are transmitted for execution to close the purchase of a parcel. The owner should be instructed to fill-out the form that is applicable to him and return both forms together with the conveyance documents for processing.

State DOTAX Form N-289, Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property, (see page 2.8-F), which certifies that the seller is a resident of the State of Hawaii. When this form is filled out and returned for processing no return need be filed with DOTAX, the form must be retained in the project file.

State DOTAX Form N-288B, Application for Withholding Certificate for Disposition by Nonresident Persons of Hawaii Real Property Interest, (see page 2.8-G) (Copy A), (Instructions) (Copy B). When the owner fills out and returns this form, it must be approved by DOTAX for determination of whether taxes should be withheld based on:

- a. Exemption – the total sales price is exempt from withholding on the basis of no gain from the transaction.
- b. Partial Exemption of the Sales proceeds – which requires that the appropriate amount of taxes must be withheld and submitted to DOTAX.

Under both total and partial exemption cases, Form N-288B must be filed with DOTAX no later than ten days prior to the date of transfer (closing date).

DEPARTMENT OF TRANSPORTATION  
Highways Division  
Right-of-Way Branch

\_\_\_\_\_  
Date

SUBJECT: Request for Documents

TO: Legal Section, Department of Transportation

PROJECT TITLE: \_\_\_\_\_

PLEASE PREPARE: \_\_\_\_\_ SUSPENSE DATE: \_\_\_\_\_

- ( ) Bill of Sale (in connection with acquisition)
- ( ) Deed (Quitclaim)
- ( ) Deed (Warranty)
- ( ) Petition for Land Court Subdivision
- ( ) Right-of-Entry Agreement
- ( ) Grant of Easement
- ( ) Release of Mortgage (Complete)
- ( ) Release of Mortgage (Partial)
- ( ) Surrender of Lease
- ( ) \_\_\_\_\_
- ( ) \_\_\_\_\_

ATTACHMENTS:

- 1. Draft \_\_\_\_\_ ( )
- 2. Search of Title (up-to-date) . . . . . ( )
- 3. Date of last search \_\_\_\_\_ ( )
- 4. Maps (ordinary) . . . . . ( )
- 5. Maps (Land Court) . . . . . ( )
- 6. Letter(s) of acceptance . . . . . ( )
- 7. Written agreements & documents on file in office . . . ( )

FOR:

Tax Map Key or	Consider-	Pro-
Parcel Number _____	ation \$ _____	ration _____

<u>Party</u>	<u>Interest</u>	<u>Spouse</u>	<u>Address</u>
_____			
_____			
_____			
_____			
_____			
_____			

(Please use a separate sheet if necessary.)

REMARKS:

\_\_\_\_\_  
for Supervising Right-of-Way Agent

Attachments

DOT 4-100  
 (HWY-RL 8/04)  
 HWY-RL  
 3.75XXXX

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

TO: HWY-SF, Fiscal Officer  
 FROM: Dean Yogi, Manager, Right-of-Way Branch  
 SUBJECT: Request for Payment

PROJECT DESIGNATION: \_\_\_\_\_

AND NO.: \_\_\_\_\_

PARCEL: \_\_\_\_\_

PLEASE ISSUE WARRANT

TO: \_\_\_\_\_

AMOUNT: \_\_\_\_\_

P.O. No.	Tr. Code	Appropriation				Object Code	Sub- Div.	Charge Code	Function Code	Amount	Parcel No.
		F	Yr.	Acct.	D						

PLEASE SEND WARRANT

TO: Payee \_\_\_\_\_  
 (Address)  
 \_\_\_\_\_  
 \_\_\_\_\_

REMARKS:

ENCLOSURES:

- ( ) Certified Bills
- ( ) Deed
- ( ) Purchase Requisition
- ( ) Requisition & Purchase Order
- ( ) Mortgage Release
- ( ) Release of Severance Damages
- ( ) Release of Crop Damages
- ( ) Other: \_\_\_\_\_

\_\_\_\_\_  
 Dean Yogi  
 Right-of-Way Branch Manager

7575

VOID

CORRECTED

FILER'S name, street address, city, state, ZIP code, and telephone no.		1 Date of closing	OMB No. 1545-0097
FILER'S federal identification number	TRANSFEROR'S i	ZIP code)	
TRANSFEROR'S name			
Street address (including apt. no.)		4 Check here if the transferor received or will receive property or services as part of the consideration ▶	
City, state, and ZIP code			
Account or escrow number (see instructions)		5 Buyer's part of real estate tax \$	

**Proceeds From Real Estate Transactions**

**Copy A**  
**For Internal Revenue Service Center**  
**File with Form 1096.**  
**For Privacy Act and Paperwork Reduction Act Notices, see the 2010 General Instructions for Certain Information Returns.**

Form 1099-S

Cat. No. 84292E

Department of the Treasury - Internal Revenue Service

**Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page**

## Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions)	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
OR
Employer identification number

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ►	Date ►
------------------	----------------------------	--------

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

**Return this entire page to the Internal Revenue Service. Photocopies are not acceptable.**

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature ▶

Title ▶

Date ▶

**Instructions**

**Reminder.** The only acceptable method of filing information returns with Enterprise Computing Center—Martinsburg (ECC—MTB) is electronically through the FIRE system. See Pub. 1220, Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, 8935 and W-2G Electronically.

**Purpose of form.** Use this form to transmit paper Forms 1098, 1099, 3921, 3922, 5498, and W-2G to the Internal Revenue Service. Do not use Form 1098 to transmit electronically. For electronic submissions, see Pub. 1220, Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, 8935 and W-2G Electronically.

**Caution:** If you are required to file 250 or more information returns of any one type, you must file electronically. If you are required to file electronically but fail to do so, and you do not have an approved waiver, you may be subject to a penalty. For more information, see part F in the 2010 General Instructions for Certain Information Returns.

**Who must file.** The name, address, and TIN of the filer on this form must be the same as those you enter in the upper left area of Forms 1098, 1099, 3921, 3922, 5498, or W-2G. A filer is any person or entity who files any of the forms shown in line 8 above.

**Preadressed Form 1098.** If you received a preaddressed Form 1098 from the IRS with Package 1098, use it to transmit paper Forms 1098, 1099, 3921, 3922, 5498, and W-2G to the Internal Revenue Service. If any of the preprinted information is incorrect, make corrections on the form.

If you are not using a preaddressed form, enter the filer's name, address (including room, suite, or other unit number), and TIN in the spaces provided on the form.

**When to file.** File Form 1098 as follows.

- With Forms 1098, 1099, 3921, 3922, or W-2G file by February 28, 2011.
- With Forms 5498, 5498-ESA, or 5498-SA, file by May 31, 2011.

**Where To File**

Send all information returns filed on paper with Form 1098 to the following:

If your principal business, office or agency, or legal residence in the case of an individual, is located in

Use the following three-line address

Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, West Virginia

Department of the Treasury  
Internal Revenue Service Center  
Austin, TX 73301

**CERTIFICATION FOR EXEMPTION FROM THE  
WITHHOLDING OF TAX ON THE DISPOSITION OF HAWAII  
REAL PROPERTY**

(To be completed by transferor/seller and given to transferee/buyer. The transferor/seller should NOT file Form N-289 with the Department of Taxation for approval.)

Section 235-68, Hawaii Revised Statutes (HRS), provides that a transferee/buyer of Hawaii real property must withhold tax if the transferor/seller is a non-resident person. To inform the transferee/buyer that withholding of tax is not required upon the disposition of Hawaii real property by \_\_\_\_\_ (name of transferor/seller), the undersigned hereby certifies the following:

Transferor/seller's identification number (Last 4 numbers of the SSN or FEIN) \_\_\_\_\_

Transferor/seller's address (home address for individuals, office address for corporations, partnerships, trusts, or estates)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The withholding of tax is not required upon the disposition of Hawaii real property because (check whichever box is applicable):

1 The transferor/seller is a resident person as defined in section 235-68, HRS. Resident person means any: (1) individual included in the definition of "resident" in section 235-1, HRS; (2) Corporation incorporated or granted a certificate of authority under Chapter 414, 414D, or 415A, HRS; (3) Partnership formed or registered under Chapter 425 or 425E\*, HRS; (4) Foreign partnership qualified to transact business pursuant to Chapter 425 or 425E\*, HRS; (5) Limited liability company formed under Chapter 428, HRS, or any foreign limited liability company registered under Chapter 428, HRS; provided that if a single member limited liability company has not elected to be taxed as a corporation, the single member limited liability company shall be disregarded for purposes of section 235-68, HRS, and section 235-68, HRS, shall be applied as if the sole member is the transferor; (6) Limited liability partnership formed under Chapter 425, HRS; (7) Foreign limited liability partnership qualified to transact business under Chapter 425, HRS; (8) Trust included in the definition of "resident trust" in section 235-1, HRS; or (9) Estate included in the definition of "resident estate" in section 235-1, HRS.  
\*Note: Chapter 425E, HRS, replaced chapter 425D, HRS, effective July 1, 2004.

2 That by reason of a nonrecognition provision of the Internal Revenue Code as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer. (See Instructions) (Complete A and B below.)

A. Brief description of the transfer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3 For the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and that the amount realized for the property does not exceed \$300,000. (See Instructions)

\_\_\_\_\_  
State of Hawaii, Department of Taxation (name of transferor/seller) understands that this certification may be disclosed to the  
I declare, under the penalties set for this certification has been examined by me, and to the best of my knowledge and belief, it  
is true, correct, and complete. In the case of trusts, or estates, further declare that I have authority to sign this document on behalf  
of \_\_\_\_\_ (name of transferor/seller).

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**FORM N-288B**  
(REV. 2008)

STATE OF HAWAII — DEPARTMENT OF TAXATION  
**Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interest**

Copy A - For State of Hawaii, Department of Taxation

- File Copies A and B of this form with the Department of Taxation.
- DO NOT file Form N-288B if the transfer of property has already taken place. The Department of Taxation will not approve Form N-288B after the date of transfer reported on Line 4a has passed.
- Please be sure to complete ALL lines and attach ALL supporting documentation OR your application will be rejected.
- See Instructions on the back of Copy B.

1 Name of applicant (Transferor/seller) Identification number (SSN or FEIN)

Mailing address where you want withholding certificate sent Daytime phone no. of applicant  
( )

City, State, and ZIP code (province, postal code, and country)

2 Names of all transferors/sellers (Attach additional sheets if more than one transferor/seller.) Identification number (SSN or FEIN)

Address (number and street)

City, State, and ZIP code (province, postal code, and country)

3 Names of all transferees/buyers (Attach additional sheets if more than one transferee/buyer.) I.D. no. (Last 4 numbers of the SSN or FEIN)

Address (number and street)

City, State, and ZIP code (province, postal code, and country)

4 Description of Hawaii real property transaction:  
a Date of transfer (month, day, year). \_\_\_\_\_ DO NOT file Form N-288B if the transfer of property has already taken place. The Department of Taxation will not approve Form N-288B after the date of transfer has passed.

b Location and general description of property (Include tax map key number) \_\_\_\_\_

5 Check the box to indicate the reason a withholding certificate should be issued.  
NOTE: The transferor/seller is required under section 235-92, HRS, to file an income tax return whether or not the person derives a taxable gain.

- a The transferor/seller will not realize any gain with respect to the transfer. (Complete 5a on the back of Copy A.)
- b There will be insufficient proceeds to pay the withholding required under section 235-68(b), Hawaii Revised Statutes, after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property. (Complete 5b on the back of Copy A.)

6 Was the property used at anytime as a rental? ..... Yes  No  Hawaii Tax I.D. Number  
W \_\_\_\_\_  
If yes, enter your Hawaii Tax I.D. Number.

**Please Sign Here** I hereby declare under penalties provided by section 231-36, HRS, that I have examined this application and accompanying attachments, and, to the best of my knowledge and belief, they are true, correct, and complete.

➤ \_\_\_\_\_ Signature \_\_\_\_\_ Title (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

➤ \_\_\_\_\_ Spouse's signature (if applicable) \_\_\_\_\_ Title (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

**FOR OFFICIAL USE ONLY:**

Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_  
Month Day Year Month Day Year

Amount required to be withheld \$ \_\_\_\_\_

Signature \_\_\_\_\_

**Form N-288B**  
**(REV. 2008)**

**5a. Calculation and written justification showing that the transferor/seller will not realize any gain with respect to the transfer. Attach a copy of a tentative statement from your escrow company for this transaction showing the gross sales price. Also attach a copy of your closing escrow statement from your purchase or acquisition of this property. (Note: You must provide documentation for all items in the calculation.)**

1. Sales Price \$ \_\_\_\_\_

2. Cost or other basis (including selling expenses). *Attach a schedule or list below to indicate the breakdown of your calculations.*  
(If you checked "Yes" on line 6, page 1, or used the property for business purposes, provide your adjusted basis for the property, i.e., cost less depreciation. Also, attach a copy of your depreciation schedule, regardless of whether or not you have taken any depreciation.) \_\_\_\_\_

3. Line 1 minus line 2. (If greater than zero, you **DO NOT** qualify for a waiver of the withholding. Do not file this form with the State of Hawaii, Department of Taxation.) \$ \_\_\_\_\_

**5b. Calculation and written justification showing that there will be insufficient proceeds to pay the withholding required under section 235-68(b), Hawaii Revised Statutes, after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property. Attach a copy of a tentative statement from your escrow company for this transaction showing the distribution of funds received.**

1a. Sales price \$ \_\_\_\_\_

1b. Sales proceeds to be received in forms other than cash (describe) \_\_\_\_\_

1c. Sales proceeds to be received in cash (Line 1a minus line 1b) \_\_\_\_\_

2a. Selling expenses. *Attach a schedule or list below to indicate the breakdown of your calculations.* \$ \_\_\_\_\_

2b. Mortgage(s) secured by the property sold to be paid off with cash proceeds. \_\_\_\_\_

2c. Other (list):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Add lines 2a through 2c \_\_\_\_\_

4. Amount to be withheld. Line 1c minus line 3 (If less than zero, enter zero.) \$ \_\_\_\_\_

## CONDEMNATION – LEGAL SECTION

- PURPOSE:** To describe the procedures in condemnation proceedings by the Land/Transportation Division of the Department of the Attorney General (LEG).
- POLICY:** Condemnation proceedings shall be initiated whenever an impasse is reached in acquiring right-of-way for public purpose by negotiations or whenever there is a title defect in the parcel(s) to be acquired.<sup>1</sup>
- RESPONSIBILITY:** The Right-of-Way Branch (HWY-R), through the Director of Transportation,<sup>2</sup> shall be responsible for initiating the request for condemnation and maintaining the case file after condemnation is completed. LEG shall be responsible for filing condemnation proceedings and conclusions either by stipulated judgments or court trials.
- SCOPE:** The provisions of this section apply to HWY-R and LEG, Department of Transportation.
- PROCEDURES:** Condemnation proceedings are initiated whenever an impasse is reached in acquiring right-of-way by negotiations or whenever there is a title defect in the parcel to be acquired. The proceedings are instituted upon receipt of the request from HWY-R. All further contact with the owners is handled by LEG.

### Case Assignments

The Senior Deputy Attorney General assigns condemnation cases to his Deputy Attorneys on a case-by-case basis and preferably by projects. The Deputy Attorney assigned to a specific case shall:

- A. File the condemnation proceedings and conclude the proceedings by court trial or stipulated judgment;
- B. Where settlement by stipulated judgment is possible, submit his recommendations for settlement for approval by the Right-of-Way Branch Manager (Branch Head);

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<sup>1</sup> 101-2 HRS Taking private property for public use; disposal of excess property, 101-6 What property may be taken, 101-7 Superior public use, 101-9 Actions; priority, 101-10 Circuit Courts have jurisdiction, 101-11 Procedures as in civil actions, 101-12 Evidence

<sup>2</sup> 101-14 HRS Plaintiff.

- C. Return the case file to HWY-R for filing upon conclusion of the case.

### Filing of the Complaint<sup>3</sup>

Condemnation action is initiated by the attorney in charge of the case by filing a complaint in the Circuit Court, citing all persons who may have or may claim an interest in the land sought for highway purposes. It shall contain:

- A. Statement of the use to which the land sought to be condemned is to be put.
- B. Description of the property to be taken. The description is generally attached to the Complaint and designated as Exhibit A.<sup>4</sup>
- C. Map or maps showing the property and its location. The map is attached to the Complaint and designated as Exhibit B. Where more than one map is used, the first is designated as Exhibit B-1, the second Exhibit B-2, etc.<sup>4</sup>
- D. Summons attached requiring an answer to be filed within 20 days.

When the owner or claimant of the land sought to be condemned is known, the summons shall be served by the Sheriff by delivering to him a certified copy thereof, together with a copy of the Complaint. If the owner or claimant, although known, cannot be found, then the service of the summons shall be made by publication in a newspaper of general circulation. The Affidavit of Publication is filed in the court by the newspaper agency. If the owner or claimant fails to answer or otherwise defend against the Complaint within 20 calendar days, default is taken. However, judgment by default must still be obtained after a prima-facie proof is made.<sup>5</sup>

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<sup>3</sup> 101-15 HRS Complaint; defendants

<sup>4</sup> 101-16 HRS Complaint; additional contents; map

<sup>4</sup> Ibid

<sup>5</sup> 101-20 HRS Notice

### Order of Possession <sup>6</sup>

Generally, there is a time delay from the date condemnation action is initiated to the date of the condemnation trial. This is due to time involved in negotiating for possible out-of-court settlements and setting of the trial date based on the court's calendar. Thus, it is necessary to take possession of the property before the court trial to proceed with the State's project construction. The possession date desired is contained in the Request for Condemnation submitted by HWY-R.

Possession is accomplished by filing a Motion for Order of Possession, which is considered *ex parte* by the Court. The Motion for Order of Possession may also be filed simultaneously with the Complaint. An Affidavit signed by the Deputy Attorney General is attached to the Motion stating:

- A. The reasons for requiring an immediate occupation of land sought to be condemned.
- B. The sum of money estimated by the plaintiff to be the Just Compensation or damages for the taking of the land.

The Judge grants an Order of Possession based upon the motion and any defendant(s) who wish to contest the possession of the State may do so within ten calendar days after receipt of the Order. A deposit of the estimated Just Compensation is required before the Order is granted. (Section 101-28, Hawaii Revised Statutes.) <sup>7</sup>

### Court Deposit <sup>8</sup>

The amount to be deposited for possession of the property to be condemned is based upon the affidavit signed by the Deputy Attorney General attesting to the estimated Just Compensation for deposit. The deposit shall be no less than the Review Appraiser's determination of Just Compensation except when there is a legal question regarding the compensability of any item.

The procedure for deposit and any subsequent additional deposit is as follows:

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<sup>6</sup> 101-26 HRS Final order of condemnation.

<sup>7</sup> 101-21 HRS Intervenors, 101-28 HRS Possession pending action; immediate occupation by plaintiff.

<sup>8</sup> 101-31 Payment of estimated compensation; effect thereof.

- A. Legal Section shall submit the Request for Payment, (see page 2.9-A), for the court deposit to the Fiscal staff (HWY-SF) through HWY-R properly coded.
- B. HWY-R shall verify the coding and allocation of costs on a parcel basis. The verified request is then forwarded to HWY-SF.
- C. HWY-SF prepares and submits a warrant voucher to the Department of Accounting and General Services (DAGS) for issuance of a State warrant.
- D. Upon receipt of the State warrant from the DAGS, LEG shall:
  1. Deposit the warrant with the Circuit Court where the complaint is filed.
  2. Obtain a Receipt of Deposit, (see page 2.9-B), for the deposit from the Court Clerk.
    - a. File the Receipt of Deposit with the pleading of the condemnation case file.
    - b. Forward a copy of the Receipt of Deposit to HWY-R.
  3. Certify the fact of the deposit and date of possession to the Director of Taxation.
  4. Submit a copy of the Certificate of Deposit and Possession, (see page 2.9-E), to HWY-R.

The Receipt of Deposit may be combined with the Date of Possession and submitted as the Certificate of Deposit and Possession.

#### **Withdrawal of Court Deposit**

Pending litigation, the owner is allowed to withdraw all or a portion of the deposit. The conditions for withdrawals are as follows:

- A. The State stipulates to the withdrawal if it is determined that the owner's title is clear.

- B. Where the owner's title is not clear, the owner will have to move for withdrawal (Section 101-31, HRS). The owner must satisfy the Court that he is the owner and thereby entitled to the money.
- C. The owner shall obtain a tax clearance before he is allowed to withdraw any portion of the deposit (Sections 101-36 and 101-37, HRS).
- D. Whenever the owner withdraws all or any portion of the court deposit, he abandons all defenses except for his claim to additional compensation.<sup>9</sup>

### Condemnation Settlements

Condemnation proceedings may be settled out of court in lieu of a court trial. The recommendation for settlement over and above the Review Appraiser's determination of fair market value shall be initiated by the deputy attorney handling the case. It is based pursuant to his negotiations with the property owner or his representative.

- A. The deputy attorney submits his recommendation to the Right-of-Way Branch Manager (Branch Head) for concurrence through the Senior Deputy Attorney General. The request shall be in writing and contain his reasons for settlement with supporting data.
- B. HWY-R approves or disapproves the recommendation for settlement. He may forward the recommendation to the Review Appraiser for preliminary review and recommendations.
- C. Concurrence by the Federal Highway Administration (FHWA) may be obtained for settlement substantially in excess of the Review Appraiser's determination of value.
- D. The Right-of-Way Branch Manager (Branch Head) shall inform the deputy attorney through LEG the approval or disapproval of the recommendation for settlement.

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<sup>9</sup> 101-32 Possession pending appeal, If the defendant who is entitled to the amount of money assessed as compensation or damages and paid into court under this section has appealed to the Supreme Court, the defendant shall have the right to demand and receive payment of the same at any time thereafter, upon filing a receipt therefore and an abandonment of all defenses to the action or proceedings except as to the amount of compensation or damages that the defendant may be entitled to if a new trial shall be granted.

1. If settlement is approved, the case is concluded by a Stipulated Judgment.
2. If settlement is disapproved, then the case is concluded by court trial.

### **Trial by Court**

When an impasse is reached in settlement of condemnation, the case is tried in court for the final determination. Prior to the actual trial date, the attorney handling the case usually holds pre-trial conferences with the appraiser(s) and the right-of-way agent(s) from the Appraisal and Land Acquisition Sections. The conferences are held to see that the appraisal(s), data, maps and other exhibits to be used for the trial are accurate and current. Generally, the attorney and the appraiser(s) test their proposed presentation at this time.

A demand for jury trial may be applied for by either the State (plaintiff) or the property owner (defendant). The attorney handling the case is responsible for the State's presentation in the court trial. He may have the Senior Deputy Attorney or other deputy attorneys, appraisers and/or right-of-way agents assist him during the trial. Generally, a trial by jury proceeds as follows:

- A. Selection of the jury which panel consists of 12 members.
- B. Opening statement by Plaintiff briefly explaining what he intends to prove.
- C. Presentation of evidence by Plaintiff.
- D. Opening statement by Defendant and presentation of Defendant's case.
- E. Opening argument by Plaintiff.
- F. Answering argument by Defendant.
- G. Closing argument by Plaintiff.

Viewing of the premises by the Jury or Court is at the discretion of the Court. It is normally based on the premise of whether a viewing would assist the Court or Jury in arriving at its determination of Just Compensation.

**Interests**<sup>10</sup>

The owner is entitled to interest payment for blight of summons in condemnation proceedings which is computed as follows:

- A. Non-statutory blight. Interest rate of 5% is computed on the total award from the date of summons to the date of deposit. In as much as the State's deposit is concurrent with the filing of a Complaint, there would be no such blight of summons. On a Federal-Aid project, this interest payment cost is not eligible for federal reimbursement.
- B. Statutory blight. Interest rate of 5% is computed on the differences of the total award less the amount deposited (Section 101-33, HRS).

If payment is delayed more than 30 days after the final judgment, additional interest at the rate of 5% shall also be added to the final judgment. On a Federal-Aid project, this interest payment cost is also not eligible for federal reimbursement (Section 100-25, HRS).

**Trial Report**

Upon completion of the trial, the trial attorney is required to prepare and submit a report of said trial to HWY-R.

- A. The report shall be signed by the trial attorney and contain but not be limited to, the following information concerning the proceedings:
  - 1. Caption of the case.
  - 2. Approved estimate of value and date.
  - 3. Appraisal valuations and dates.
  - 4. Date, place and length of trial.
  - 5. A brief factual report of the trial, including range of value testimony by the parties, etc.

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<sup>10</sup> 101-33 HRS Allowance of interest, etc., 101-25 Payment of judgment, penalties.

6. A statement of the major issues involved and the development thereof.
  7. A description of the major differences, if any, in approaches to value among the State's witnesses and those of the landowner.
  8. An explanation of any substantial variance between the review appraiser's estimate of value and the State's high testimony.
  9. Comments on possible legal error in the record and explanation of the State's action regarding motions, objections, etc. and the court's rulings relative thereto.
- B. The Trial Report shall be filed in the owner's file by HWY-R.

**Appeals**

The trial attorney makes the initial recommendation as to whether an appeal should be taken.

- A. The recommendation is reviewed by the Senior Deputy Attorney General who is in charge of the legal staff.
- B. Final approval is made by the Right-of-Way Manager. Any additional information desired by the Right-of-Way Manager for final determination shall be furnished by LEG upon request.

The basis of appeal in the State of Hawaii is the same as in most states, which is error in substantive law and procedures as well as the awards not being supported by the evidence, etc.

**Special Counsel**

Special Counsel may be employed on a case-by-case basis. The counsel is selected by the Senior Deputy Attorney General. The need for Special Counsel shall be documented to show that:

- A. The employment of special counsel is in the public interest;
- B. That the fee is reasonable; and
- C. That the fee is not a percentage basis.

### Petition for Subdivision

Petition for subdivisions shall be filed for all partial takings of land registered under the Land Court System after Final Order of Condemnation.

- A. LEG shall request the Cadastral Engineering Section (HWY-DC) to furnish HWY-RL with the Land Court Subdivision maps and descriptions.
- B. Upon receipt of the maps and descriptions from HWY-DC, HWY-RL shall:
  1. Obtain subdivision approval from the Planning Department of the County where the registered land is located or Department of Planning and Permitting when the land is located in the City and County of Honolulu.
  2. Furnish LEG with a print of the Land Court Subdivision map with the Planning or Planning and Permitting Department's stamp of approval together with the descriptions and Land Court Subdivision tracing for filing with the Land Court.
- C. The attorney handling the condemnation case shall prepare and file the Petition for Subdivision with Land Court.

### Condemnation Case File

Upon conclusion of the condemnation proceedings and where no further land court subdivision or action is required, the case file shall be returned to HWY-R for filing.

Final Order of Condemnation's (FOC)'s and other pertinent documents shall be extracted from the returned files and filed in the owner's file and project folders in the office file room. Other non-pertinent documents shall be filed in the Branch's excess storage container.

### Inverse Condemnation

The right of filing an inverse condemnation is a common law remedy which any property owner has. Under Article I, Section 18

of the State's Constitution, as amended by Constitutional Convention in 1968, the words "or damaged" were added so that private property shall not be taken or damaged for public use without just compensation.

- A. A property owner may file inverse condemnation action where his property is being damaged although there may not be any taking.
- B. Whether the owner is successful or not in an inverse condemnation suit, he is not entitled to attorney, appraisal, engineering or other costs involved in the litigation of an action. This is qualified, however, in that engineering costs which are incurred for the development of a property may be considered where it enhances the value of said land. State v. Chang, 50 Haw. 195 (1967) and State v. Trustees of Campbell Estate Supreme Court Nos. 5124 to 5127, decided July 20, 1972.
- C. Section 113-4, HRS, however, provides for the reimbursement for reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred where the owner is successful in any inverse condemnation suit in any program or project in which Federal or Federal-Aid funds are used.

#### **Property Not Acquired; Reimbursement of Owner**

- A. Section 101-27, HRS, allows property owners certain damages upon abandonment or dismissal of proceedings. It provides that the owner shall be awarded his cost of court, a reasonable amount to cover his attorney's fee paid by him and other reasonable expenses. Said section appears to be broad enough to cover all costs. It would also apply where the final court judgment is that the property cannot be acquired by condemnation.
- B. Section 113-3, HRS is similar to Section 101-27 except that it applies to any project or program in which Federal or Federal-Aid funds are used.

The State shall pay the owner such sums as will, in the opinion of the State, reimburse such owner for his reasonable attorney, appraisal and engineering fees, actually incurred if (1) the final judgment is that the real property cannot be acquired by condemnation or (2) the proceeding is abandoned.

STATE OF HAWAII  
Department of the Attorney General  
Land/Transportation Division

August 12, 2008

TO: HWY - FISCAL  
THRU: HWY - R  
FROM: Legal Section – Fawn Y. J. Yamada, Deputy Attorney General  
SUBJECT: Request for Payment  
PROJECT: Interstate Route H-3, Halawa Interchange to Koolau Range,  
FAIP No. I-H3-1(38)  
PARCELS: 24, 25, 27(Rev.2), 28, 29, 15-C and Easement 26  
CIVIL NO.: 08-1439-07 BIA, First Circuit Court  
CASE NO.: State of Hawaii vs. Queen Emma Land Company, et al.

ISSUE  
WARRANT TO: DENNIS H. NAKATA  
55 S. Kukui St., #810, Honolulu, Hawaii 96813  
(Payee)

AMOUNT: \$83.00

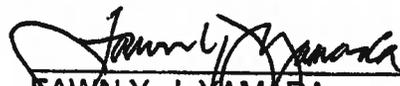
SEND CHECK TO: Department of the Attorney General  
c/o: Fawn Y. J. Yamada  
Land/Transportation Division  
465 South King Street, Room 300  
Honolulu, Hawaii 96813

REFERENCE  
CODE:

FY

FOR: ( ) Deposit in Court  
( ) Additional Deposit in Court  
() Service of Summons

REMARKS: 220-S-05-101-D-7103-497-1134-1A788<sup>9 msd</sup>

  
FAWN Y. J. YAMADA  
Deputy Attorney General

ATTACHMENT:  
() Certified (original) invoice dated 8/11/08



Numbers: S 0082211

B 0003567

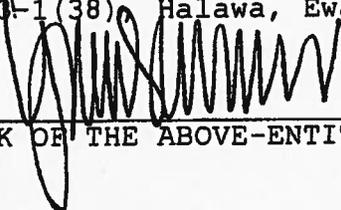
Dated: June 24, 2008

June 24, 2008

Amount: \$630,270.00

\$70,030.00

For: Interstate Route H-3, Halawa Interchange to Koolau  
Range, FAIP No. I-H-1(38), Halawa, Ewa, Hawaii



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CLERK OF THE ABOVE-ENTITLED COURT

CIRCUIT COURT  
HAWAII  
FILED

MARK J. BENNETT 2672  
Attorney General of Hawaii

2008 AUG 20 AM 8:30

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J. TUBO  
CLERK

Attorneys for Plaintiff  
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its	)	CIVIL NO. 08-1-1439-07 BIA
Attorney General,	)	(Condemnation)
	)	
Plaintiff,	)	CERTIFICATE OF DEPOSIT AND
	)	POSSESSION AND CERTIFICATE OF
vs.	)	SERVICE
	)	
QUEEN EMMA LAND COMPANY, a	)	
Hawaii nonprofit corporation;	)	
HAWAIIAN CEMENT COMPANY, INC.,	)	
a Hawaii corporation; JOHN DOES	)	
1-100; MARY ROES 1-100; DOE	)	
PARTNERSHIPS 1-100; DOE TRUSTS	)	
1-100; DOE ENTITIES 1-100; DOE	)	
ESTATES 1-100; and DOE	)	
CORPORATIONS 1-100,	)	
	)	
Defendants.	)	

CERTIFICATE OF DEPOSIT AND POSSESSION

TO: DIRECTOR OF FINANCE, CITY AND COUNTY OF HONOLULU

Pursuant to Section 101-36, Hawaii Revised Statutes, as modified by Chapter 246A, Hawaii Revised Statutes, the undersigned certifies to the following: