

NOTICE OF REQUISITION OF REAL PROPERTY

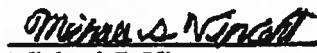
Pursuant to section 128-22, Hawaii Revised Statutes and the Governor's Proclamation of November 3, 2000, and First Supplemental Proclamation of November 8, 2000 (copies of which are attached) notice is hereby given that the Governor of the State of Hawaii requisitions and takes over that portion of real property designated as tax map key numbers (3) 9-6-12-10 and 9-6-13-04 containing areas of approximately 572.400 and 316.060 acres, respectively, Kaalaala, District of Kau, Island and County of Hawaii, State of Hawaii (hereafter referred to as the "Property"), necessary for the highway project known as the reconstruction of Mamalahoa Highway, Keaiwa Bridge, at Kaalaala, District of Kau, Island and County of Hawaii, State of Hawaii from the date of service of this requisition until terminated by the Governor.

The owner or other person entitled thereto, shall be entitled to compensation for the property or use, as provided for in section 128-23, Hawaii Revised Statutes.

Done at the State Capitol State of Hawaii,
this 9th day of November, 2000.


BENJAMIN J. CAYETANO
Governor of Hawaii

APPROVED:


Michael S. Vincent
Deputy Attorney General
State of Hawaii

Note

Chapter 85, part II referred to in text is repealed.

§128-22 Notice of requisition. The governor may requisition and take over any materials, facilities, real property or improvements, required for the purposes of this chapter, or requisition and take over the temporary use thereof. The requisition shall be made by serving notice thereof which notice may be served upon any person found in occupation of the premises or having the property in the person's custody, possession, or control; provided that a like notice shall also be served upon any person who has filed with the governor, or with such person as the governor may designate for the purpose, a request for notice with respect to the property; provided further that whenever all persons entitled to compensation for the property have not been served in the manner aforesaid, the governor shall publish a notice of the requisition at the earliest practicable date. [L 1951, c 268, pt of §2; RL 1955, pt of §359-21; HRS §128-22; gen ch 1985]

§128-23 Determination of compensation. Whenever the governor requisitions and takes over any property or the temporary use thereof, the owner, or other person entitled thereto, shall be paid as compensation for the property or use, such sum as the governor determines to be fair and just, within twenty days after it has been requisitioned and taken; provided that the compensation for temporary use may be paid in monthly or lesser installments. If any person is unwilling to accept, as full and complete compensation for the property or use, the sum determined by the governor, the person shall be paid seventy-five per cent of the sum determined by the governor, and shall be entitled to sue the State for such additional sum as, when added to the sum already received by the person, the person may consider fair and just compensation for such property or use, in the manner provided by chapter 661; provided that the suit is instituted within two years after the requisition in the case of the taking of real property in fee simple, or within one year after the requisition in all other cases, subject, to sections 657-13 to 657-15 which are hereby made applicable to such a suit; except that no more than six months shall be allowed for the bringing of a suit after the appointment of a guardian of the property of the person under disability, or the removal of the disability, or after the appointment of personal representatives; provided further that recovery shall be confined to the fair market value of the property or its fair rental value, as the case may be, without any allowance for prospective profits, punitive or other damages. Whenever the owner of property, or other person entitled to compensation on account of the requisitioning of property or the use thereof, is under a disability, or has died, and no guardian, or personal representative has been appointed, the State acting through the attorney general, may apply for the appointment of a guardian of the property of the person, or for the appointment of a personal representative. [L 1951, c 268, pt of §2; RL 1955, pt of §359-21; HRS §128-23; am L 1976, c 200, pt of §1; am L 1986, c 339, §5]

§128-24 Determination of damages. The governor shall appoint a board of three disinterested appraisers with whom may be filed any claim for damages arising out of any failure to return private property, the temporary use of which was requisitioned, or which was leased, or any claim for damages arising out of the condition in which the private property is returned, provided that no such claim shall be filed for deterioration of property resulting from ordinary wear and tear, not for any deterioration or damage except such as is shown to have resulted from the taking or use of the property. The claim shall be filed within thirty days after the return of the property or after the governor proclaims that all private property has been

returned to the owners, whichever is earlier. The decision of the appraisers shall be final and binding upon both the governor and the claimant, provided that either party may file a petition in the circuit court within sixty days after the rendering of a decision of the board, praying for the decision of the court upon the claim. The petition, if filed by the government, shall be entitled in the name of the State, by the attorney general, and shall be heard and decided by the circuit court without the intervention of a jury. If filed by any other party, the petition shall be filed, heard, and decided in the manner provided for suits against the State. A further review by the supreme court may be had as provided by law in such cases. The court may order the joinder of other parties, or may allow other parties to intervene. Any award which has become final shall be paid out of any funds available under this chapter, and if not sufficient, out of the general revenues of the State not otherwise appropriated. [L 1951, c 268, pt of §2; RL 1955, pt of §359-21; HRS §128-24]

§128-25 Investigations and surveys. The governor may make investigations and surveys for the purpose of ascertaining facts to be used in administering this chapter, and in making the investigations and surveys may require the making or filing of schedules or statements, under oath or otherwise, may administer oaths, take evidence under oath, subpoena witnesses, make inspections, and require the production of books, papers, and records. The circuit court of any circuit or judge thereof, may enforce by proper proceedings the making or filing of the schedules or statements, the attendance and testimony of any witness subpoenaed to appear within the circuit, or the production of books, papers, and records. The proceedings shall be in addition to, and not exclusive of, any other means or methods of enforcement.

No person shall be excused from attending and testifying, or from producing books, papers, or records before the governor or in obedience to the subpoena of the governor, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter or any rule, regulation, or order thereunder, on the ground, or for the reason, that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person is compelled after having claimed the person's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Witnesses shall be allowed their fees and mileage as in cases in the circuit courts. [L 1951, c 268, pt of §2; RL 1955, §359-22; HRS §128-25; gen ch 1985]

§128-26 Proclamations, how made; service of papers. Every proclamation of the governor for which provision is made by this chapter, shall be promulgated by publication thereof, or when immediate promulgation is necessary in the opinion of the governor, who shall be the sole judge thereof, by official announcement thereof by means of radio broadcast or such other means as may be available.

Any process, notice, or order, service of which is provided for by this chapter, may be served by any police officer or person authorized by the governor, any other provision of law to the contrary notwithstanding. [L 1951, c 268, pt of §2; RL 1955, §359-23; HRS §128-26]

§128-27 Rules, regulations, and orders. For the purpose of carrying out any provision of this chapter, the governor may prescribe rules and regulations, which may, if so stated in the rules or regulations, have the force and effect of law.

EMERGENCY RIGHT OF ENTRY FOR DISASTERS

As part of emergency measures and efforts to reconstruct State highways and/or bridges damaged and/or washed-out by natural and/or other disasters, the Land Acquisition Section Head of the Right-of-Way Branch ("HWY-RL") has responsibility to obtain verbal and/or written right(s) of entry ("ROE") from property owner(s) of abutting/adjoining property for the immediate occupancy and use of property required to store construction equipment and materials, for staging, mobilization, construction and work areas, for field office site, and/or for a detour road.

Upon assignment to obtain immediate ROEs under such emergency circumstances, information and/or materials should be provided by and/or obtained from the following:

Project Coordinator/Engineer:

1. Name of Deputy Attorney General assigned to disaster/emergency projects (Lane Ishida, Bruce Matsui and Edsel Yamada), to coordinate and consult with and process right-of-way documents, information and materials through.
2. Governor's Proclamation, for information and use by Deputy Attorney General assigned to prepare the Right of Entry Agreement ("Agreement").
3. Full Project Title and Number, for use in the Agreement.
4. Authorized Charge Codes and Function and/or Job Authorization, for charge code and function to be used.
5. Right-of-Way Map, showing the location and delineating the area(s) required and designated for: (a) immediate rental of construction parcel(s) for temporary occupancy and use for storage of construction equipment and materials; staging; mobilization; construction and work areas; for field office site; and/or for a detour road; and/or (b) acquisition of parcel(s) and/or easement(s) for permanent ownership and/or interest for access, maintenance, etc. purposes.
6. Identify any: (a) existing driveways, accesses, irrigation and/or water pipeline(s) crossings under culverts and/or bridges (possibly, authorized and/or unauthorized) that have been impacted and require reconnections; and (b) utility relocation (i.e., by utility agreement).

Abstracting Section (HWY-RA):

1. Cursory Search, to identify owner(s) and lessee(s), how registered (if company/corporation), address and telephone number (if available or can be found).

PROCESS FOR DISASTER/EMERGENCY PROJECTS

PROBLEM

TIME IS OF THE ESSENCE to clear all right-of-way ("ROW") matters/requirements in order to expedite the design and construction of a disaster/emergency project ("Project").

However, such a Project is under compressed time schedules and requires initial, early entry onto affected properties to conduct field/topographical survey and/or geo-technical (test-boring) investigations and/or archaeological monitoring/assessment ("Work"). The Work is required before the design and ROW phases of the Project can proceed and is a prerequisite for the preparation of the ROW map(s) for the Project.

The urgency for consultants to start the Work involves compressed/short leadtime available for the Right-of-Way Branch ("HWY-R"), and its Abstracting ("HWY-RA"), Appraisal ("HWY-RP") and Land Acquisition ("HWY-RL") Sections, and more particularly the HWY-RL Right-of-Way Agent ("HWY-RL Agent") assigned the Project, to correctly prepare and process the necessary and required right-of-entry ("ROE") documents and request/transmittal letters to and obtain the approvals from property owners, lessees and other signatories that have possessory interests to the affected property.

Requisite for any Project whose land and/or real property requirement limits and scope go beyond the existing ROW are the following, which are not usually immediately available at the beginning of the Project and Work to begin ROW activities:

- (1) detailed map(s), showing the project title and number, limits and areas of the affected properties required for the Work; and
- (2) standard distribution of properly reviewed and approved, final ROW Map(s) that designate and show the required parcels and/or easements for acquisition and construction parcels for temporary rentals.

FACTS

ROW acquisition functions and activities are controlled by the following State and/or Federal statutory and regulatory requirements:

STATE

Section 101-8, HRS, Entering and surveying land, which states, "Any agent or servant of a plaintiff may, for the

purpose of locating or surveying land to be condemned in accordance with this part, enter upon the land and make examinations and surveys. The entry shall not constitute a cause of action in favor of the owner of the land, except for damages resulting from wilful acts or negligence on the part of the agent or servant." [NOTE: A couple of Deputy A.G.'s have indicated that this Section is to be used only if we know definitely that we will condemn the property we want entry onto, that even though a letter-form notice pursuant to this Section is cited and used, an owner can object to and prohibit entry. Also, this Section does not necessarily cover and apply to archaeological monitoring and/or assessment.]

Section 113-1, HRS, Application, of Chapter 113, Land Acquisition Policies for Federally Assisted Programs, wherein "This chapter shall be applicable to the acquisition of real property under the laws of the State for use in any project or program in which federal or federal-aid funds are used."

Section 113-5, HRS, Policy Provisions, of Chapter 113, Land Acquisition Policies for Federally Assisted Programs, wherein "In acquiring real property for any project or program in which federal or federal-aid funds are used, the State shall comply with the following policies: (1) ... (14)"

Section 128-22, HRS, Notice of requisition, where "The governor may requisition and take over any materials, facilities, real property or improvements, required for the purposes of this chapter, or requisition and take over the temporary use thereof. The requisition shall be made by serving notice thereof which notice may be served upon any person found in occupation of the premises or having the property in the person's custody, possession, or control;...."

Section 128-23, HRS, Determination of compensation, wherein "Whenever the governor requisitions and takes over any property or the temporary use thereof, the owner, or other person entitled thereto, shall be paid as compensation for the property or use, such sum as the governor determines to be fair and just, within twenty days after it has been requisitioned and taken; provided that the compensation for temporary use may be paid in monthly or lesser installments."

Section 171-30(a), HRS, Acquisition of real property:
general, wherein "The board of land and natural resources shall have the exclusive responsibility, except as provided herein, of acquiring, including by way of dedications: (1) All real property or any interest therein and the improvements thereon, if any, required by the State for public purposes,.... The board shall upon the request of and with the funds from the state department or agency effectuate all acquisitions as provided under this section."

[NOTE: Under this Section, the Board of Land and Natural Resources ("Land Board") has the exclusive responsibility of acquiring all real property or any interest therein and the improvements thereon. Therefore, the Department of Transportation, Highways Division must obtain authorization from the Land Board to negotiate for the acquisition and/or rental of real property and interests for 100% State-funded highway projects.]

Section 171-30(c), HRS, Acquisition of real property:
general, wherein "A state department or agency may directly acquire such real property for its purposes whenever the acquisition by the department or agency is required to conform to mandatory requires of the United States in the case where federal funds are furnished to the department or agency." **[NOTE:** Under this Section, DOT can directly acquire real property without prior Land Board approval whenever federal funds are involved in any phase of a project.]

FEDERAL

FHWA letter HEC-HI dated October 5, 2000 (Re: Right-of-Entry vs. Right-of-Way Certification) states, "In an effort to continually improve the quality of the project delivery system, there is a need to maintain our open communication line between the Hawaii Department of Transportation (HDOT) and the Federal Highway Administration (FHWA). As a result, we appreciate the HDOT's request for additional clarification on the subject topic.

"In accordance with 23 CFR 635.309, in order for the FHWA to authorize or obligate projects, a statement is received from the HDOT that all right-of-way clearance has been completed or that all necessary arrangements have been made. The HDOT accomplishes this task by submitting right-of-way certifications to the FHWA for each project. The right-of-way certifications basically inform the FHWA that the HDOT

has legal and physical possession of the property. Unfortunately, sometimes we confused rights-of-entry (ROE) with legal and physical possession of property. ...

"Based on discussions with our FHWA Rights-of-Way Officer from Headquarters, a ROE allow the HDOT to perform limited work on a particular private property before the owner is compensated for the property rights. In other words, an owner may or may not be compensated for the temporary advanced physical possession and the use of the property by the HDOT. If an owner is not compensated for the ROE, then the owner may cancel the ROE in writing at any time. Essentially, a ROE provides limited physical use but not legal possession of the property needed by a particular project.

"A ROE does not replace compensation nor acquisition and is only a stop-gap measure. The HDOT has no right to begin construction prior to having all legal and physical possession of all properties needed by the project. In other words, the HDOT should only issue the right-of-way certification when the HDOT has legal and physical possession of each property needed by the project.

"To summarize, in conjunction with our quality initiative to improve PS&E, the FHWA will only approve projects with right-of-way certifications. A ROE is not sufficient for FHWA to approve projects for advertisement. Any projects with ROE will be reviewed on a case by case basis and is the exception to the rule and not routine practice. In hardship circumstances, the FHWA may allow the HDOT to advertise projects with ROE but will not concur in award until the HDOT has legal and physical possession of the property."

FHWA letter HEC-HI dated January 29, 2001 (Re: Right-of-Entry vs. Right-of-Way Certification for Emergency Projects, Islands of Hawaii, Maui, and Molokai) states, "FHWA is informing HDOT that the emergency projects currently being developed for the islands of Hawaii, Maui, and Molokai will be considered a 'hardship situation.' In accordance with 23 CFR 635.309, and if required, we will approve PS&E for the subject projects provided that the ROE has been obtained prior to the advertisement for each project.

"At the time of the PS&E submittal, we also request that the right-of-way certifications list the outstanding activities and the associated schedules for completing those activities. The FHWA will expect these activities to be

completed in the required time.

"We hope that this information will assist the HDOT in streamlining the project development process and to better serve the traveling community."

23 CFR 635.309, Authorization, where in 23 CFR 635.309(c)(1), "All necessary rights-of-way, including control of access rights when pertinent, have been acquired, including legal and physical possession."

49 CFR 24.102(j), Payment before taking possession, wherein "Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner."

Appendix A to Part 24 - Additional Information, reads, "It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process."

DISCUSSION

The time factor in obtaining ROE approvals from property owners and other signatories for the Work is contingent upon our receipt of detailed maps showing the limits of the Work, preparation and approval of ROE Agreements, transmittal to and receipt of ROE Agreements that are promptly returned, uncontested, fully approved and executed by the property owner(s) and applicable signatories, along with their receipt of certificate(s) of insurance naming the applicable signatories as additional insureds. Although we conduct written and/or telephone follow-ups, we have no control over the questions, concerns, delayed response or non-action of property owners.

Although such ROEs and possession for whatever purpose(s), even for temporary occupancy and use, can also be obtained through

eminent domain/condemnation proceedings, such an alternative would require the Land/Transportation Division of the Department of the Attorney General ("LEG-DOT") to rush the preparation and filing of appropriate papers/petitions with the Circuit Court having jurisdiction.

Using the Notice of Requisition statute, Section 128-22, HRS, would enable immediate entry and possession of those lands designated as part of the Notice; HOWEVER, the 20-day requirement for full and complete payment under Section 128-23, HRS, will be difficult to achieve, as is still being experienced with the Keaiwa project. The reason for this is that a final and approved right-of-way map(s), showing the full and final limits of the right-of-way taking and/or rental, including the possible staking of the right-of-way, must be completed and distributed before a proper title search, appraisal and appraisal review can be requested and completed to establish fair market values for the purchase, rental, crop damage and/or severance damage to the remainder.

I think everyone involved would be hard-pressed to start and complete the following upon the first notification of the impending issuance of the Notice of Requisition and within 20-days from the date the Notice of Requisition is issued:

(1) establishing the limits of area(s)/ROWS required for requisition; (2) preparation and distribution/delivery of map(s), and possibly metes and bounds description(s), that adequately and accurately delineates, designates and describes the area(s)/ROWS required for requisition; (3) cursory identification of ownership; (4) delivery and receipt of the Notice to the property owner and HWY-R; (5) request for and obtain an initial cursory search and subsequent certificate of search; (6) selection of appraiser, appraisal and appraisal review; (7) offer(s) to purchase and/or rent and acceptance(s) therefrom of the area(s)/ROWS requisitioned; (8) preparation of metes and bounds description, or Land Court map(s), descriptions and Petition if applicable; (9) filing for and obtaining subdivision approval from the appropriate County agency for acquisitions and designations of easements; and (10) preparation of Land Court map and Petition and filing same, if applicable. If any person is unwilling to accept such sum as the Governor determines to be fair and just, as full and complete compensation for the property or use within 20-days after the property has been requisitioned and taken, the property owner is entitled to sue the State for such additional sum within 2 years after the requisition in the case of the taking of real property in fee simple, or within 1 years after the requisition in all other cases.

ALTERNATIVES

The entering and surveying statute, Section 101-8, HRS, through consultation with LEG-DOT could be "strengthened or enhanced" by inclusion of appropriate language, if legally permissible, to clearly permit DOT and/or its employees, consultants, contractors, etc., immediate entry and possession upon receipt of a letter-form notice by the property owner and other parties-of-interest, and to include archaeological monitoring/assessment.

A method or means could be established for such Projects, from the start, to go directly to LEG-DOT for immediate eminent domain/condemnation proceedings to fast-track legal and physical possession (e.g., such as was apparently done to preserve Ka Iwi from future development), versus by Governor's Notice of Requisition under Section 128-22, HRS, although both methods would still require customary ROW activities (i.e., completed ROW map(s), title searches, appraisals and appraisal reviews, metes and bounds parcel and/or construction parcel descriptions, rush payment processing for deposit in court, etc.) discussed in the Discussion section above but on an accelerated basis.

RECOMMENDATIONS

Suggested items for review, consultation, discussion and possible implementation to improve the disaster/emergency response process to facilitate the work for the front-line Right-of-Way Agent assigned are listed and should be the action of, provided by and/or obtained from the following:

STATUTORY

1. Expanding/enhancing the entering and surveying statute, Section 101-8, to:
 - a. Clearly define and include, but not limited to, all aspects and activities of the following related to and in connection with highway and/or disaster/emergency project: field/topographic surveys, including the setting of points, markers/stakes, etc.; geo-technical investigations, including test-borings and other sub-strata investigations; archaeological monitoring and/or assessment, including controlled excavations and collection of artifacts; and other on-site field inspections, surveys, damage assessment for other emergency work and public purposes via notification only, if legally permissible, and without the

requirement that "land to be condemned"; and

- b. Allow the Highways Division of the Department of Transportation (HWY/DOT), its employee(s), contractor(s), consultant(s) and/or persons acting for or on its behalf to conduct the foregoing preliminary engineering and design work.
2. Lengthening the 20-day requirement under Section 128-23, HRS, that will allow a more adequate and reasonable time to start and complete all required ROW work, activities, processes, recordations, filings, etc. to accomplish full and complete payment of compensation for the property requisitioned.

PROJECT COORDINATOR/MANAGER/ENGINEER

1. **Name of Deputy Attorney General.** Immediate notification to LEG-DOT of the Project; LEG-DOT's notification to HWY-R of the name of the Deputy Attorney General ("Deputy A.G.") assigned to the Project; the early involvement and attendance at preliminary meetings to provide legal advisement, opinions and/or insights; and to coordinate and consult with and process ROW documents, information and materials through.
2. **Governor's Proclamation, and Supplements.** Should be immediately obtained and provided to the Deputy A.G. and HWY-RL Agent assigned for information and appropriate use.
3. **Designate Disaster/Emergency Coordinator for HWY-R.** Either HWY-R's Branch Manager or a middle management level Section Head should be designated and serve as HWY-R's emergency/disaster coordinator/liaison whose responsibility should be to obtain clarifications, advisements, opinions, etc. from appropriate parties (e.g., LEG-DOT, CON, etc.), establish uniform ROW policies and practices, and answer policy/procedural questions (e.g., amount of insurance policy limits, etc.) and coordinate other general matters that will allow the front-line HWY-R Agent(s) assigned to handle the Project to concentrate his/her efforts of preparing and processing the necessary paperwork and relieve him/her of having to take time to obtain and disseminate such policy/procedural information and/or clarifications.
4. **Advance/Early Notification and Coordination at the Departmental Level.** Advance/early notice/notification of and coordination with other County and/or State department

heads/agencies (e.g., Land Board/DLNR when/where State-owned/DLNR-managed lands are involved, such as was apparently the case with the emergency Waimea Bay Rockfall project), possibly at the Departmental level, will greatly and hopefully expedite/facilitate any processing/reviews/approvals required.

5. Advance/Early Dissemination of Project-Related Information.
As soon as reasonably practicable, there should be advance/early dissemination of

- a. **Full Project Title and Number** for use in various Project and Work documents.
- b. **Authorized Charge and Function Codes and Job Authorization** so HWY-R personnel know what to charge to early-on.
- c. **Preparation and distribution of preliminary map(s), plan(s), etc., and final ROW map(s) that:**
 - (1) Adequately and accurately delineates and designates the ROWs required for field/topographic survey, geo-technical/test boring investigation, and archaeological monitoring/assessment purposes.
 - (2) Adequately and accurately delineates and designates the required ROWs for legal and physical possession under and for:
 - (a) requisition of property by Governor's Notice of Requisition of Real Property under Section 128-22, HRS, if used;
 - (b) acquisition of parcels, easements and/or boundaries for permanent ownership and/or interest by the State for ROW, access, maintenance, etc. for highway project purposes; and/or
 - (c) rental of construction parcels for the temporary use and occupancy for storage of construction equipment and materials; staging; mobilization; construction and work areas; for field office site; and/or for a detour road purposes.
 - (3) Suitable to our ROW needs/requirements (e.g., title search and appraisal purposes, if

applicable), acceptable to the Cadastral Engineering Section, Highway Design Branch, mapping and other standards, and particularly adequate and accurate metes and bounds description(s) and reduce-sized ROW map(s) for filing as exhibits to the Complaint in eminent domain/condemnation proceedings by LEG-DOT, if necessary.

6. **Identify** any: (a) existing driveways, accesses, irrigation and/or water pipeline(s) crossings under culverts and/or bridges (possibly, authorized and/or unauthorized) that have been impacted and require re-connections; and (b) utility relocation (i.e., by utility agreement).

SUMMARY

HWY-R, including its HWY-RA, HWY-RP and HWY-RL Sections and their staff, has responsibility to obtain verbal and/or written ROEs from property owner(s) of affected/abutting/adjoining property for the immediate use and occupancy of property required initially for preliminary engineering and design purposes that include, but are not limited to, archaeological assessment/monitoring, field/topographic surveys and geo-technical investigations (i.e., test boring).

Thereafter, during the design, ROW and construction phases, and prior to advertisement of the project, HWY-R is required to obtain legal and physical possession of the necessary and required rights-of-way through negotiated means, including properly executed conveyance and rental documentation (e.g., by recordation of appropriate conveyance documents and payment of purchase price or by ROE and rental agreements), or as a last resort to request eminent domain proceedings for condemnation of the following:

1. Pre-construction ROEs for archaeological, field survey and/or geo-technical investigations; and/or
2. Rental of construction parcels for temporary use and occupancy of properties for staging, mobilization, storage of equipment and/or materials, construction and work areas, for field office site, for detour road purposes, and/or other related purposes; and/or
3. Acquisition/purchase of additional and permanent rights-of-way (parcels, easements, boundaries, property interests,

etc.) for incorporation in the existing highway right-of-way, access and/or maintenance purposes.

As part of emergency measures and efforts to repair, reconstruct and/or replace State highways and/or bridges damaged and/or washed-out by natural and/or other disasters, based on the issues, concerns and problems encountered with the Pahala/Molokai emergency bridge replacement projects, HWY-RL Agents that were assigned to and worked the Pahala/Molokai emergency projects highly recommend that the actions listed in the Recommendations section above be initiated by the Department's/Division's designated Disaster/Emergency Coordinator and incorporated in and as an integral part of the process.

Prepared/By: August 30, 2001/DKS

PROJECT ASSIGNMENTS

PURPOSE:

To describe procedures to fairly assign right-of-way work to the acquisition units within the Land Acquisition Section of the Right-of-Way (ROW) Branch.

POLICY:

Assignment(s) of all right-of-way work under the jurisdiction of the Land Acquisition Section (HWY-RL) are made at the discretion of the Principal Right-of-Way Agent (RW Agent VI), taking into consideration the below assignment considerations, changing priorities, lapsing of funds, administrative priorities, 3-year and 6-year STIP (Statewide Transportation Improvement Program), federal funding constraints, project delivery, emergency priorities, etc. and other extenuating circumstances.

RESPONSIBILITY:

The Principal Right-of-Way (ROW) Agent of HWY-RL is responsible for all project assignments to the various acquisition units. Unit heads are responsible to prioritize workload, train, update, coach, and guide and supervise all subordinates. The unit heads are senior agents with experience in negotiations and problem solving. For more complicated and irresolvable situations, the unit heads are responsible to document problems, analyze, research and write alternative solutions and recommend appropriate action by supported findings. It should be the goal for each unit head to take responsibility for their assigned projects, try their best to resolve their problems and find alternative solutions. Should no solutions or requirements be found in this manual, research and suggestions should be made to add and/or correct this manual to refine and improve the process for the betterment of the section.

SCOPE:

The provisions of this section extend to all acquisition units within HWY-RL.

PROCEDURES:

All requests for right-of-way work to be performed by ROW Branch are first submitted by the requesting Branches to the ROW Manager (Branch Head). Work under the jurisdiction of HWY-RL is then referred to the Principal ROW Agent for completion of the assignment.

Assignment Consideration:

The following are considered in right-of-way assignments:

- Workload of Acquisition Units A & B
- Location of Projects
- Complexity

- Possible Condemnation
- Rush or Emergency Priorities
- Project Experience
- Level of Confidence
- Others

Zoning and land uses are also considered in the assignment so that the acquisition units may gain experience and expertise in right-of-way negotiations involving land under various uses and/or potential uses.

Project Assignments- How Assigned:

Project assignments are made directly from the Principal ROW Agent to the Supervising ROW Agent of each Acquisition Unit. Once assigned, the Supervising ROW Agent shall be responsible for all activities, deadlines, scheduling, coordination, problem solving, etc. in completing the project/assignment. Assistance from the Principal ROW Agent may be requested if needed.

Assignments shall commence upon receipt of the Job Authorization (JA) from the Project Management Staff (HWY-SM), other requests, distribution from Branch Manager, etc.

In the absence of right-of-way authorization, preliminary work may be performed based upon authorization on use of appropriate charge and function codes from the requesting agency. As an example, project scoping may use a Design Charge Code, when authorized.

Questionable codes shall be cleared with the Principal ROW Agent or through HWY-SM or through other authorized staff.

Closeout Projects may include, but not be limited to, actual closeout projects that needed more work after the project has closed on the books, encroachments found after the project closed or due to re-surveys, or parcels that were never acquired and discovered years later. Closeout Projects need to be administered by the branch and accounted for on a specific project basis. Any new closeout project would need authorization and placed on the Closeout Project list to HWY-SM.

Should an agent transfer, retire, quit, or for some other reason leave the section, the unit heads are responsible for the projects left behind by the subordinate agent. Work can be reallocated among the remaining agents or put on hold until another agent can take the place of the vacating one. Every reasonable effort should be made to continue the projects as much as possible.

Communication and flexibility should be exercised in such situations.

Types of Assignments:

Assignment types may vary in complexity, funding and other work assigned to the section to assist the branch and other agencies in clearing the right of way for highway projects. The projects range from simple to large complex projects, scoping or certifications that the right of way has been cleared. The various components are shown on the attached flow chart. Two major funding sources come from Federal-Aid projects and State funded projects.

Assignments are to comply with corresponding laws, administrative rules, code of federal regulations, federal and local constitutions, and county policies and ordinances. Right-of-Way work is constantly changing and new federal and state policies change in context and tone. The project manager assigned the required work must therefore constantly adapt to such changes and technology.

Miscellaneous Assignments:

Miscellaneous work may be assigned directly to the Supervising ROW Agent or his subordinate by either the Principal ROW Agent or the ROW Manager. The supervisor is kept informed if the assignment is made to his subordinate. The ROW Agent reports directly to the assignor in these assignments.

Should problems occur in the assignments, the Supervising Unit Heads are responsible to research the situation and history, and gather all pertinent data, formulate written alternative solutions and propose recommendations. If a problem cannot be resolved, the unit heads will then consult the Principal ROW Agent for a solution. If the Principal ROW Agent cannot formulate a solution, a staff study memo to the authorizing decision making body (Attorney General Office if it is a legal opinion requested or to the Branch Manager or to the Administration if it is a policy decision) will be transmitted.

Project Development Phase (Preliminary Phase)



PRELIMINARY RIGHT-OF-WAY WORK

- PURPOSE:** To describe procedures for right-of-way acquisition work regarding project development phase and pre-acquisition phase, as shown on attached flow chart (see page 2.4-A).
- POLICY:** To complete all preliminary right-of-way work as support for the final design, mapping, right-of-way acquisition and project funding.
- RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) of the Right-of-Way Branch (HWY-R) is responsible to coordinate and complete all preliminary right-of-way work. Work includes, but is not limited to: data gathering, document set up, project scoping, cost estimation, set up on Division's Project Status System (PSS), review of preliminary plans (65%, 95% and 100%), meetings and consultation with staff engineers, design consultants, owners, owner's representatives, other state forces, e.g., project managers, fiscal officers, personnel officers, etc. and attend status meetings.
- The preliminary acquisition right-of-way work will be assigned to Units A and B of the Section by the Principal Right-of-Way (ROW) Agent as discussed in the previous sections of this manual. The unit heads are responsible for all preliminary work described below, under the direction and approval of the Principal ROW Agent.
- SCOPE:** The provisions of this section extend to HWY-R, Highway Design Branch (HWY-D), and to other Staff Services Offices, as appropriate. The scope of work includes: preparing a checklist of things to do, requesting final right-of-way and subdivision maps (DOT 4-147), running tax data of larger parcels, preparing and designating log number for utility agreements, memorandum of understandings, etc., requesting appraisal (DOT 4-316) and title search (DOT 4-128) and working with the property managers regarding any relocation (49 CFR 24.201 to 09 and 49 CFR 24.401 to 404 and other appropriate State Statutes).
- PROCEDURES:** HWY-RL under the supervision of the Supervising ROW Agent reviews and completes the assigned preliminary work. The completed work, including any comments and/or recommendations is returned by memorandum through the Right-of-Way Manager (ROW Branch Head) to the respective requesting unit or organization. A job authorization, charge code and project number should be supplied by requesting Branch. If not, the assigned agent will follow up on these items before proceeding with the work.

SET UP ACQUISITION/NEGOTIATION CHECKLIST

Upon receipt of the Cadastral Engineering Section (HWY-DC) Transmittal Memorandum for the Standard Distribution of the four Right-of-Way (ROW) maps for a project:

- File HWY-DC's Transmittal Memo with one copy or set of ROW map(s);
- Request project information;
- Request title search;
- Request appraisal;
- Request subdivision approval from County.

Set up Acquisition Chart with the following columns:Pre-Acquisition:

1. Project information;
2. Appraisal report;
3. Reviewer's report;
4. Searches;
5. Subdivision approvals.

Negotiation/Acquisition:

1. Offers: (a) Settlement, (b) Revised offers.
2. Acceptances: (a) Right-of-Entry (ROE)s, (b) Property adjustment agreements.

Eminent Domain/Condemnation:

1. Request eminent domain;
2. Order of possession.

Closing Process:

1. Update searches;
1. Prepare conveyance documents;
2. Legal review and approval of documents;
3. Transmit for execution: (a) Conveyance documents, (b) Land Court documents, (c) Allocation of values, (d) Tax reporting forms;
4. Recordation of documents;
5. Request for payment;
6. Tax reporting to the Internal Revenue Service (IRS);
7. Close-Out Agent's file.

Other:

1. Utility Agreements;

2. ROW Certification.

Before beginning a project, the following checklist should be set up:

PROJECT CHECKLIST

PRE-ACQUISITION PHASE

Immediately preceding or soon after the standard distribution of the ROW map(s), set up Agent's working files/folders to include, but not be limited to:

General project file/folder to include such matters as:

- Initial requests for appraisal, search and subdivision;
- Copies of Transmittal Memos from HWY-DC for the standard distribution of ROW map(s) and revisions, deletions, etc.;
- Job Authorization and updates for the project;
- Cost estimates and updates;
- Right-of-Way Certification to FHWA or HWY-D;
- General project information;
- Listing of parcels, Tax Map Keys, property location, property owners, addresses and telephone numbers, project/parcel acquisition status, etc.;
- And dissemination of Right-of-Way Requirements.

Individual parcel file/folder with each containing:

- Negotiation Diary;
- All copies of correspondence, papers and materials related specifically to the parcel.

Upon receipt of the four copies of the ROW map(s) from HWY-DC for standard distribution, distribute one copy (or set) each of the map(s) for:

- Acquisition Agent's/Negotiator's working copy;
- HWY-R as office copy, together with original of HWY-DC Transmittal Memorandum (for acquisition folder in the main files);
- HWY-RM, together with copy of HWY-DC's Transmittal Memo, for review for Displacement/relocation impacts;
- HWY-RP with the below request for appraisal.

Prepare and transmit:

- Request project Information from Project Manager/Design.
- Request to HWY-DC (original and one) requesting appropriate number of copies of the ROW map(s) for (1)

extra (field, working or distribution) copies, (2) transmittal to property owners and parties of interest, and (3) Counties for subdivision approval.

- Request for Appraisal (original and three copies for routing, do not need letter number), together with ROW map(s), to HWY-RP for valuation of the required parcels, easements, boundaries and/or construction parcels.
- Request to HWY-RA (original and one, do not need letter number), together with ROW map(s), for certificates of search on the required parcels, easements, boundaries and/or construction parcels.
- Letter, together with City and County of Honolulu, Department of Planning and Permitting, Site Development Division Master Application Form (or other Counties' form) and 20 to 25 copies of the ROW or Subdivision map(s), of which, eight copies are for the County of Hawaii, ten for Maui, and 12 for Kauai, to C&C of Honolulu DPP (or other Counties' Planning Department) requesting subdivision of parcels and/or designation of easements and/or boundaries.

NEGOTIATION/ACQUISITION PHASE

Upon receipt of Report of Review Appraiser, together with Statement of Just Compensation and Appraisal Summary Statement from HWY-RP and the Certificate of Search from HWY-RA, prepare and transmit to property owner(s) and all parties of interest the Letter of Offer/Acceptance for acceptance and return, together with the following:

- Duplicate Copy of Offer/Acceptance Letter;
- ROW map(s);
- Negotiation Policies and Payments Statement;
- Statement of Just Compensation (may be combined with offer letter);
- Appraisal Summary Statement (may be combined with offer letter);
- Return Address Envelope (stamped for individuals, no stamp for businesses).

Negotiation phase/period is between 30 to 45 days from transmittal of letter of offer to:

- Acceptance → Closing Process or;
- Counter-offer/-proposal → review, comments and recommendations from Property Management, Design, Highway Design and Technical Design Services Sections, District Offices, etc. → possible recommendation for administrative settlement, if approved by HWY-R → revised offer → acceptance of revised offer → Closing Process or;

- Rejection/No Response → Letter withdrawing original offer
→ Eminent Domain/Condemnation Proceedings.

EMINENT DOMAIN /CONDEMNATION PROCEEDINGS.

- Upon transmittal of letter withdrawing offer:
- Prepare and Transmit Request for Eminent Domain Proceeding (form DOT 4-111), together with:
 1. 25 copies of reduced ROW map(s) showing the parcel outlined in red and other designated easements, boundaries, restriction of access, etc., delineated in various colors, when time permits;
 2. Copies of all correspondence to and from property owner(s) and all parties of interest, internal memos, reviews, negotiator's diary, tax map showing right-of-way alignment thereon, etc.;
 3. HWY-RA Title Search (Agent's Copy) original;
 4. Prepare condemnation package using form DOT 4-111, including all attachments.

CLOSING PROCESS

Upon receipt of acceptance from property owner(s) and all parties of interest, begin closing process, in sequential order, by preparing and submitting:

- Request to the HWY-RA, together with the ROW Agent's and office copies of the search, for updating and/or continuation, if the original search is over three months.
- Request to the HWY-DC for parcel or Land Court description(s) with endorsed "Description Check" stamp thereon and when applicable, at least four to six Land Court maps for transmittal to and stamping by C&C of Honolulu, DPP (or Planning Department of other Counties).
- Request for Documents to the Legal Department (LEG-DOT) for review and approval as to form, together with draft finals of:
 - a. Appropriate conveyance (Deed, Grant of Easement), Rental agreement and/or Land Court (Petition) Documents and;
 - b. Relevant exhibit(s) and ROW and Land Court map(s);
 - c. Updated search, acceptance of offer, and other materials, to LEG-DOT for review and approval as to form.

Upon receipt of conveyance and Land Court Documents and Request for Payment that have been approved by LEG-DOT and Land Court Map(s) from HWY-DC, prepare and transmit the Transmittal Letter to property owner(s) and all parties of interest for execution and return of:

- "Allocation of Proceeds of Consideration" as part of Transmittal Letter, when multiple ownership/interests are involved;
- Appropriate number of copies (typically, original and three) of the conveyance and Land Court Documents for signature by all signatories;
- Conveyance Bill (original and three) for signature by appropriate signatories;
- Notary Bill (original and three) rendered by the notary public for the execution of the document(s) by the signatory;
- IRS's Form W-9, "Request for Taxpayer Identification Number and Certification", requesting individual or corporate taxpayer identification number for the reporting of real estate transactions to the IRS;
- State of Hawaii Department of Taxation's Form N-289, "Certification For Exemption From The Withholding Of Tax On The Disposition Of Hawaii Real Property", pursuant to which the transferor/seller represents and certifies that they are resident person(s) of the State of Hawaii, as defined in Section 235-68, for purposes of qualifying for an exemption from the withholding tax required under Chapter 235, HRS. Otherwise, Form N-288B, "Application for Withholding Certificate for Dispositions by Non-resident Persons of Hawaii Real Property", must be filed, no later than ten working days prior to the date of transfer (closing date), with the Department of Taxation's Office of Technical Review for review and approval to waive or adjust withholding on dispositions by nonresident persons;
- Duplicate Copy of Transmittal Letter;
- Return Address Envelope (stamped for individuals; no stamps for businesses);

Memo-for Advance Request for Payment (original and one), together with two copies of the conveyance and/or rental documents (one certified to be a true copy), to HWY-SF (Fiscal) to begin the advance processing of the check;

Letter, together with at least four to six copies of the Land Court Map, to DPP (or other Counties) for stamping of subdivision approval and return of at least three to five stamped maps (one each for: submittal to Land Court with Petition; parcel working file/folder; main office parcel folder; two additional (optional) for property owner and an extra copy).

PROCESSING FOR RECORDATION

Upon receipt of fully executed conveyance and Land Court Documents, prepare and submit:

- Request to HWY-RA (original and one) for updating of search, if last continuation was over three months.
- Request to HWY-DC (original and one) for custody of the tracing of Land Court Map for submittal to the Land Court upon filing of the Petition and Land Court map with DPP's (County's) endorsement thereon.

Upon receipt of updated search and there are no changes in ownership, encumbrances/liens, etc., prepare transmittal forms and checklist and submit to:

For Regular System Properties:

- Original and one copy to HWY-RA for recordation within 90 days after the "Date of Transaction" (equals the date the document is executed, or the date of the last acknowledgment, whichever is later) at the Bureau of Conveyances of;
- Conveyance document(s) (original and appropriate number of copies); and;
- Form P-64B, "Exemption from Conveyance Tax" (green form);
- Original to Tax Maps Branch, Real Property Assessment Division, C&C of Honolulu, Department of Finance, together with;
- Copy of fully executed conveyance document;
- ROW Map.

For Land Court System Properties:

- Original and one copy to Land Court for filing of the Petition (original and two copies), together with the C&C DPP/County subdivision-approved stamped Land Court Map, Tracing, and Notice of Issuance of Land Court Order to HWY-RA (yellow form);
- HWY-RA for recordation within 90 days after the "Date of Transaction" (equals the date the document is executed, or the date of the last acknowledgment, whichever is later) with the Office of the Assistant Registrar of the Land Court of the State of Hawaii at the Bureau of Conveyances of;
- Conveyance document(s) (original and appropriate number of copies); and,
- Form P-64B (green form), upon notification from HWY-RA that Land Court Order has been issued;

- Tax Maps Branch, Real Property Assessment Division, C&C Department of Finance, together with;
- Copy of fully executed conveyance document;
- ROW map(s);
- Request(s) for Payment (original and one) to HWY-SF, one to appropriate Payee(s), if a Memo for Advance Request for Payment was not initiated earlier, together with;
- Purchase Order/Purchase Requisition;
- Conveyance Bill (original and one) with "Certification of Goods/Services" stamped and filled thereon;
- Copies of conveyance document (two, one certified to be true and correct);
- To Notary Public, together with;
- Purchase Order/Purchase Requisition
- Notary Bill (original and one) with "Certification of Goods/Services" stamped and filled thereon.

Upon receipt of conveyance document(s) with recordation data stamped thereon from HWY-RA and check from HWY-SF, prepare letter or short-form transmittal and transmit:

- Copy of recorded conveyance document, check and Copy B of IRS Form 1099-S, "Proceeds from Real Estate Transactions", for the applicable year of the "Date of Closing" (equals the earlier of the date title transfers or the date the economic burdens and benefits of ownership shift to the transferee), to property owner(s), if no mortgage(s) are involved;
- Copy of recorded conveyance document and Copy B of IRS Form 1099-S, to property owner, if mortgage(s) encumber the parcel;
- Copy of recorded conveyance document and check in the name(s) of the Grantor(s) and mortgagee(s) to the first mortgagee (holder of the first mortgage);
- Copy of the recorded conveyance document to all other parties of interest.

CLOSE-OUT FILING

Upon receipt of recorded original of conveyance document(s) from HWY-RA, prepare and complete:

- Statement of Negotiator;
- IRS Form 1096, "Annual Summary and Transmittal of U.S. Information Returns", for the applicable year, together with Copy A of Form 1099-S, and transmit to IRS by, but not later than, February 28th of the year following the closing date;

- Dated copy of the IRS Form 1096 with Copy C of Form 1099-S kept in Agent's working parcel file for subsequent close-out filing.
- Assemble and bundle for filing in the main office project/parcel files all correspondence, papers and materials in the Agent's working parcel file, as listed and including the recorded original of the conveyance and/or rental document(s) as shown above.

Right-of-Way Cost Estimate

Based on preliminary maps, the Right-of-Way Cost Estimates for State, Federal-Aid Programming, Project Agreements, Capital Improvement Projects or other purposes shall be prepared upon request. The ROW Agent shall coordinate with other sections within HWY-R for the appropriate estimates and compile the information into a final report. The estimate shall contain, but not be limited to, the following costs:

- State Labor Forces Staff labor costs of the Appraisal, Abstracting, Land Acquisition and Property Management Sections. Besides straight staff-labor charges, an updated administrative cost additive must be included.
- Non-Labor Charges Air travel fares, car rental fees, per Diem, excess lodging, consultant fees, etc. Appraisal Fees (Contract fees for services of independent appraisers), a Request for Proposal (RFP) for Right-of-Way Consultants and Escrow Agents for closing must be requested for. Recordation, project specific steno hires, etc.
- Relocation Assistance Relocation payments to displacees, last resort, other relocation benefits, housing, etc.
- Acquisition Costs Just compensation to be paid for acquisition costs of total and partial takings, rentals, landscaping, damages, etc.
- Attorney Fees Legal fees, filing fees, depositions, expert witnesses, service notice and recording fees, etc. charged to the project.
- Other Costs e.g., special studies etc, (Cadastral Engineering Costs under Design or if special request to HWY-D for services rendered, if required).

Items not covered above may be paid as a right-of-way item when programmed and claimed as such.

The Right-of-Way Cost Estimate shall be submitted on Form DOT 4-149 Request for Right-of-Way Cost, as amended, or on a Project Cost Estimate Worksheet (PCEW), unless requested

otherwise. The estimates shall be updated and revised whenever costs exceed or it is anticipated that costs will exceed estimate. The reason for updating or revisions shall be noted in the estimate.

Review of Right-of-Way Maps

Preliminary ROW map(s) shall be reviewed on the basis that information needed by the property owners, appraisers and right-of-way negotiators are clearly covered. The map(s) shall be reviewed and checked with respect to, but not be limited to, the following guidelines:

- Identification of all right-of-way parcels, remnants, easements, etc. and all property owners;
- Areas of right-of-way parcels, remnants and remainders;
- Delineation of existing improvements, including fencing, landscaping, etc. and conventions and symbols for ROW maps are shown on the attachment;
- Locations of existing access and the location and adequacy of proposed access. Special purpose access such as for over or under viaducts, agricultural use only, etc., should be noted on the maps;
- Possible solutions in mitigating damages to proposed land locking of large remainder areas;
- Alternative in right-of-way taking to avoid, if possible, any displacements;
- Consultations with other sections within HWY-R shall be held, if needed, in submitting final comments and/or recommendations;
- Effects of changes in elevation and slope access drainage considerations.

Topographic Surveying

Topographical Surveying is the process of determining the positions, on the earth's surface, of the natural and artificial features of a locality for the purpose of delineating them by means of conventional signs upon a topographic map. Such a map shows both the horizontal distances between the features and their elevations above a given datum plane. The representation of the differences in elevation is called the relief. In addition to the relief, the topographic map depicts such natural and artificial features as rivers, lakes, highways, railroads, towns, houses, fences and property lines. On some maps, the character of the vegetation is shown by means of conventional signs.

The preparation of a topographic map is the first step in the planning and designing of most engineering projects. Such a map

is indispensable in many cases, such as the layout of industrial plants, the location of railways and highways, the design of irrigation and drainage systems, the development of water power, city planning and landscape architecture.

Right-Of-Entry

Right-of-Entry (ROE) shall be obtained from the property owner(s) whenever it shall be necessary to enter upon their premises to conduct right-of-way surveys, sub-strata investigations (test borings), archaeological surveys, noise studies, etc. The ROE shall be for a specific purpose and for a specified period. In exceptional circumstances with prior approval of the owner(s), the Agency may obtain a ROE for construction purposes before making payment available to an owner [49CFR Part 24.102(j)]. The ROE may be obtained on the following basis:

- ROE Agreement. Generally printed Form DOT 4-107 (HWY-RL 5/90), ROE Agreement, as attached, or as amended or similar format is used for most of the ROE. Specific conditions agreed upon by the State and property owner are contained in this agreement and must be "approved as to form" by Legal Counsel before execution by the Director of Transportation, or his assigned, for the State;
- ROE by letter. This form of entry is generally issued by Federal Agencies, the Department of Land and Natural Resources (DLNR) or other State agencies for lands under their jurisdiction.
- Verbal ROE. This method is used only in rare instances where time is of the essence and the nature of entry is brief and minor, such as, but not be limited for, noise studies where noise readings only are conducted. Verbal ROE shall be followed up with a written acknowledgement of the permission received.
- Special consideration. Or conditions to be included in the grant of a ROE arising out of negotiations shall first be approved by the requesting organization and/or Legal Counsel. A copy of the fully executed ROE agreement with special considerations or conditions shall be forwarded to the requesting organization by memorandum with instructions to comply.
- ROE by Law. HRS 101-8, entering and surveying land. Any agent or servant of the plaintiff may, for the purpose of locating or surveying land to be condemned in accordance with this part, enter upon the land and make examinations and surveys. This entry shall not constitute a cause of action in favor of the owner of the land, except for damages resulting from willful acts or negligence on the part of the agent or servant.

Conservation District Use Application

Whenever work for a permitted use within a conservation district is to be performed by the Highways Division, the ROW Agent, DLNR Land Agent or the Project Engineer, shall process the completed request for permit to the Chairman, Board of Land and Natural Resources (BLNR).

The request shall be in accordance with Title 13, Chapter Two, Hawaii Administrative Rules, a regulation of DLNR, State of Hawaii, providing for land use regulations within conservation districts pursuant to Section 183-41, Hawaii Revised Statutes, as amended, providing for zones, sub zones, permitted uses, appeals, enforcement and penalty.

The attachments required for the permit may be obtained by the ROW Agent from the Design Engineer and/or other appropriate governmental agencies as required. Notice of receipt of permit shall be forwarded to the Design Engineer. If work to be performed is not a permitted use within a conservation district, the Highway Design Branch (HWY-D) of the Highways Division shall take the appropriate steps necessary to obtain the permit.

In cases where a project involves submerged lands or where a highway project is situated near the shoreline, coordination with DLNR and County Officials need to be made. Conservation District Use Permits (CDUP), Shoreline Management Area (SMA) and Shoreline Setback Variances are required. Before construction can begin, the owner(s) need to sign the above various permits, right-of-way possession needs to occur, then subsequently or simultaneously, a shoreline survey needs to be completed. The shoreline survey will then need to be certified by the Department of Accounting and General Services (DAG)'s Land Survey Office. Finally, the permit applications for the CDUP, SMA and Shoreline Setback Variances can be submitted to DLNR and the various County offices for approval.

General Right-of-Way Services

The ROW Agent shall assist the Design Engineer by providing right-of-way information and/or expertise during the preliminary engineering phases as requested. He shall attend preliminary project meetings as requested by the Design Engineer.

Project Status System (PSS)

The project status system is an integrated way of tracking multiple resources and disciplines involved in a delivery of all highway projects. The agents are responsible to populate the data system (using Microsoft Access installed on all ROW Agent's computers)

monthly. The system is to be used by project engineers and administration to track the status of the various projects.

WORKFLOW DETAIL — Revised 10/21/04

STATE PROJECTS

Six-Year Plan Initial Phase (Planning or Design)

- A. The Management, Budget and Analysis Staff (HWY-SM) to maintain six-year plan project records.
- B. Highway Administrator (HWY) to hold a project assignment meeting, from which a list of project assignments will be established. This list will be used to determine which new records for the fiscal year need to be created.
- C. HWY-SM created records for initial phases of assigned projects.
- D. HWY-SM assigned Project I.D.'s for each project record.
- E. Duplicate fields will be copied from the six-year plan record to the initial phase record.

PLANNING

Project Manager (PM) to complete and maintain their records monthly (3rd week of the month), at minimum.

PLANNING (PLAN) or DESIGN (DES) -> Right-of-Way

- A. HWY-SM to create record for HWY-R at the direction of the PLAN or DES PM.
- B. Duplicate fields will be copied from the PLAN/DES record to the Right-of-Way record.

Right-of-Way

ROW Agent to complete and maintain their records monthly (3rd week of the month), at minimum.

ATTACHMENTS

PM to e-mail files for attachment to the Engineering Services Office (HWY-E) & cc: HWY-SM.

The following information is required by HWY-E for proper placement of attachments:

- A. Project Identification and Extension;
- B. Type of file: JA / Location Map / Table R / Project Cost Estimate (PCEW) / Project Assessment Report (PAR) / Photos.

NEW RECORDS

PM to e-mail requests to HWY-SM.

The following information is required by HWY-SM for proper creation of records:

- A. Project Title;
- B. Route Number.

RECORDS TO DELETE / CHANGE OF RECORD STATUS

PM to e-mail requests to HWY-SM. The following information is required by HWY-SM for edits:

- A. Project I.D. and Extension;
- B. Record Phase (PLAN / DES / ROW / Construction (CON)).

Statewide Transportation Improvement Program (STIP) DATABASE UPLOADING

STIP data base administrator to e-mail HWY-E updated versions of the STIP database upon approval of the STIP amendments by Federal Highways Administration (FHWA).

**PROJECT COST ESTIMATE WORKSHEET
(ENGINEER'S ESTIMATE)**

1/29/2008

PROJECT: _____

CONTACT: _____
 OFFICE: _____
 PHONE: _____
 DATE: _____

GREEN FIELDS: INPUT FIELDS

YELLOW FIELDS: REVISED / NEW FIELDS

PHASE OF WORK	TOTAL COST	FEDERAL+STATE AMOUNT	FEDERAL SHARE	STATE SHARE	OTHERS SHARE	SCHEDULE (MO/YR)	FEDERAL PARTICIPATION RATE	INFLATION SCHEDULE
PLANNING PHASE	PLANNING PROJ. NO.:				CC:	Begin PLAN (mo / yr)	0.00%	FFY PLAN Est Made
A. CONSULTANT COST	0.00		0.00	0.00				
B. STAFF NON-LABOR COST	0.00		0.00	0.00		PLAN NTP (mo / yr)		FFY PLAN Funded
C. SUBTOTAL (A+B)	0.00	0.00	0.00	0.00	0.00			
D. Staff Labor Cost (Direct + Overhead)	0.00		0.00	0.00		End PLAN (mo / yr)		
E. Construction Admin	0.00	0.00		0.00	0.00			Fund & Est Yr Diff
F. Total Staff Labor (D+E)	0.00	0.00	0.00	0.00	0.00			0
G. TOTAL PLANNING (C+F)	0.00	0.00	0.00	0.00	0.00			
H. TOTAL PLANNING (including Inflation)	0.00	0.00	0.00	0.00	0.00			Infl Multiplier
								1
CONTRACT AMENDMENT NO: _____		CONTRACTOR: _____		CONTRACT NO: _____				
DESIGN PHASE	DESIGN PROJ. NO.:				CC:	Begin DES (mo / yr)	0.00%	FFY DES Est Made
A. CONSULTANT COST	0.00		0.00	0.00				
B. STAFF NON-LABOR COST	0.00		0.00	0.00		DES NTP (mo / yr)		FFY DES Funded
C. SUBTOTAL (A+B)	0.00	0.00	0.00	0.00	0.00			
D. Staff Labor Cost (Direct + Overhead)	0.00		0.00	0.00		End DES (mo / yr)		
E. Construction Admin	0.00	0.00		0.00	0.00			Fund & Est Yr Diff
F. Total Staff Labor (D+E)	0.00	0.00	0.00	0.00	0.00			0
G. TOTAL DESIGN (C+F)	0.00	0.00	0.00	0.00	0.00	B.O. Date (mo/yr)		
H. TOTAL DESIGN (including Inflation)	0.00	0.00	0.00	0.00	0.00			Infl Multiplier
								1
CONTRACT AMENDMENT NO: _____		CONTRACTOR: _____		CONTRACT NO: _____				
RIGHT-OF-WAY PHASE	ROW PROJ. NO.:				CC:	Begin ROW (mo / yr)	0.00%	FFY ROW Est Made
A. CONSULTANT COST	0.00		0.00	0.00				
B. LEGAL COST	0.00		0.00	0.00		End ROW (mo / yr)		FFY ROW Funded
C. ACQUISITION COST	0.00		0.00	0.00				
D. STAFF NON-LABOR COST	0.00		0.00	0.00	0.00			
E. SUBTOTAL (A+B+C+D)	0.00	0.00	0.00	0.00	0.00			Fund & Est Yr Diff
F. Staff Labor Cost (Direct + Overhead)	0.00		0.00	0.00				0
G. Construction Admin	0.00	0.00		0.00	0.00			
H. Total Staff Labor (F+G)	0.00	0.00	0.00	0.00	0.00			Infl Multiplier
I. TOTAL RIGHT-OF-WAY (E+H)	0.00	0.00	0.00	0.00	0.00			1
J. TOTAL RIGHT-OF-WAY (including Inflation)	0.00	0.00	0.00	0.00	0.00			
CONTRACT AMENDMENT NO: _____		CONTRACTOR: _____		CONTRACT NO: _____				
CONSTRUCTION PHASE	CONSTR. PROJ. NO.:				CC:	CON Award (mo / yr)	0.00%	FFY CON Est Made
A. CONTRACT ITEMS	0.00		0.00	0.00				
B. CONTINGENCY	0.00	0.00	0.00	0.00	0.00	CON NTP (mo / yr)		FFY CON Funded
C. SUBTOTAL (A+B)	0.00	0.00	0.00	0.00	0.00			
D. CONSTRUCTION ENGR						End CON (mo / yr)		
1. CONSULTANT (CM / CSS)	0.00		0.00	0.00				Fund & Est Yr Diff
2. CONSULTANT (POST DESIGN)	0.00		0.00	0.00				0
3. STAFF NON-LABOR COST	0.00		0.00	0.00				
4. SUBTOTAL (D1+D2+D3)	0.00	0.00	0.00	0.00				Infl Multiplier
5. Staff Labor Cost (Direct + Overhead)	0.00		0.00	0.00				1
6. Construction Admin	0.00	0.00		0.00	0.00			
7. Total Staff Labor (D5+D6)	0.00	0.00	0.00	0.00				
E. FORCE ACCOUNT (Work by Others)	0.00		0.00	0.00				
F. TOTAL CONSTRUCTION (C+D4+D7+E)	0.00	0.00	0.00	0.00	0.00			
G. TOTAL CONSTRUCTION (including Inflation)	0.00	0.00	0.00	0.00	0.00			
CONTRACT AMENDMENT NO: _____		CONTRACTOR: _____		CONTRACT NO: _____		0.00 CON ALLOTMENT		
TOTAL PROJECT	0.00	0.00	0.00	0.00	0.00			

NOTES:

- FEDERAL PARTICIPATION RATE:
Indicates the fed participating rate (%) that the estimate is based on. Check with Hwy-SM for federal participating % for your project.
- CE RATE: **15%**
- Construction Admin is a % of the staff labor cost. This rate is subject to change. The current rate is: **40.0%**
Construction Admin is a NON-participating cost for Fed-Aid projects, as of 7/1/05.
- Staff Labor and Indirect Cost are provided by the Staff Labor appropriation (X225) (not the Project Appropriation).
- Inflation Rate is based on a 3-year average of annual CPI changes. This rate is verified annually. The current rate is **4.0%**

REMARKS:

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 your entire property.

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, 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.

RIGHT-OF-ENTRY AND RENTAL AGREEMENT

THIS AGREEMENT, made and entered into by and between the STATE OF HAWAII, by its Director of Transportation, hereinafter called the "STATE", and _____ (hereafter "GRANTOR"), and _____ (hereafter "TENANT"),

WITNESSETH THAT:

WHEREAS, the STATE requires certain property designated as _____, containing an area of approximately _____, identified by Tax Map Key _____ (portion), situated at _____, State of Hawaii, all of which are more particularly shown on Exhibit A attached hereto and incorporated herein by reference (hereafter collectively called the "Property"), for a public purpose, to wit: the construction, preservation and protection of the _____ (hereafter the "Project"); and

WHEREAS, the STATE desires to obtain immediate entry to and possession of the Property to commence construction of the Project without delay, it being contemplated that a construction contract will be awarded in the near future; and

WHEREAS, GRANTOR is the fee owner of the Property which will be affected by the Project; and

WHEREAS, TENANT is the lessee of the Property; and

WHEREAS, both the GRANTOR and the TENANT desire to cooperate with the STATE to allow the construction of the Project to proceed without delay,

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the parties hereto mutually agree as follows:

1. Right of entry and possession. The GRANTOR and TENANT hereby grant to the STATE, its officers, employees and contractors, permission to enter upon and take possession of the Property as shown on the Parcel Map for the Project filed in the Highways Division, Department of Transportation, State of Hawaii, for the purposes of the Project. The Property will be used to

_____.

The STATE will take reasonable steps to ensure that the STATE's contractor(s) for the Project will permit the GRANTOR, TENANT, and utility companies to exercise any existing rights each may have relating to the Property, including but not limited to, access over and through the Property, as long as said exercise of rights, including any exercise of said access rights, does not unreasonably delay or interfere with the Project work.

2. Rental. The STATE agrees to pay to GRANTOR the amount of _____ as the annual rent for the

use of the Property. The STATE shall give the GRANTOR and TENANT thirty (30) days written notice prior to the start of construction. The first annual payment will be made within sixty (60) days from the start of construction and each subsequent annual payment, if any, will be made on the anniversary date of the construction start date, with the final payment being pro-rated accordingly. If GRANTOR does not receive any payment when due, interest will accrue on the overdue unpaid balance at the rate of one percent (1%) simple interest per month.

3. State's Responsibility. The State shall be responsible, to the extent permitted by law, for damage or injury caused by the State's officers and employees in the scope of their employment provided that the State's liability for such damage or injury has been determined by a court or agreed to by the State. The State shall pay for such damage and injury provided that funds are appropriated and allotted for that purpose.

4. No limit on eminent domain power. Nothing herein contained shall be deemed to preclude, limit, restrict, waive or affect in any way the STATE's right as sovereign to acquire, by its power of eminent domain, the Property or any portion thereof or any interest therein.

5. No unreasonable interference. The GRANTOR and the TENANT agree not to unreasonably interfere with the STATE's

facilities, operations and activities in, on or connected with the Property.

6. Extension. The term of this Agreement may be extended upon mutual written agreement of the parties hereto and the annual rental payable from the STATE to GRANTOR for the use of the Property during such extended term will be the same as the annual rental set forth in Paragraph 2 herein.

7. Termination. This Agreement may be terminated upon thirty (30) days written notice by the STATE.

8. Excess annual rent. GRANTOR agrees to reimburse and pay in full to the STATE the appropriate and proper prorated amount of the excess annual rent paid by the STATE for the use of the Property. GRANTOR shall fully reimburse and pay such excess rental to the STATE within sixty (60) days of the effective termination date.

9. Restoration. Upon the full or partial termination of this Agreement, the STATE and/or its contractors shall remove all equipment or tangible personal property from the Property or such portion thereof not required by the STATE and shall restore the ground surface only of that portion of the Property to a condition as similar as reasonably possible to that which existed prior to the STATE's possession of the Property, excepting reasonable wear and tear and any improvements within the Property purchased by the STATE.

10. Headings, captions. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define or limit the paragraphs to which they may pertain.

11. Assignment. The GRANTOR, TENANT, and the STATE may not assign or otherwise transfer any interest in this Agreement without the mutual written consent of all parties to this Agreement.

12. Amendment. This Agreement shall not be amended except in writing signed by the GRANTOR, TENANT, and the STATE.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document binding all of the parties hereto notwithstanding all of the parties are not signatory to the original or the same counterpart. For all purposes, including without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and remaining pages assembled as one document.

14. Plural, singular. In this Agreement, the singular shall include the plural, and the plural shall include the singular, as the case may be.

15. Binding effect. The term "GRANTOR" wherever used herein shall include the GRANTOR, and the heirs, representatives, successors and assigns of the GRANTOR. The term "TENANT"

wherever used herein shall include the TENANT, and the heirs, representatives, successors and assigns of the TENANT. The term "STATE" wherever used herein shall include the State of Hawaii, its contractor(s), representatives, successors and permitted assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have executed this
Right-of-Entry and Rental Agreement this _____ day of
_____, 20____.

GRANTOR:

By _____

TENANT:

STATE:

STATE OF HAWAII

By _____

Print Name _____

Its Director of Transportation

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOMELANDS

RIGHT-OF-ENTRY NO. 333

Dated this _____ day of _____, 2003, by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose principal place of business is 1099 Alakea Street, Suite 2000, Honolulu, Hawaii and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, as "GRANTOR", DEPARTMENT OF TRANSPORTATION, as contractor to the (Federal Highway Administration), including subconsultants or subcontractors whose mailing address is 869 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter "GRANTEE".

GRANTOR hereby grants to GRANTEE a right to enter upon those certain parcels of Hawaiian home lands in the Humuula area, along Saddle Road, located on the Island of Hawaii, as shown on the attached map (Exhibit "A") and identified as Tax Map Key Nos. (3) 3-8-01:07 and 22 (por.) for the final design and construction of the Saddle Road PTA-1 Project, No. A-AD-7 (1) and Tax Map Key Nos. (3) 3-8-01:07, 08, 019 (por.) for completion of the preliminary survey work and design work on the Saddle Road East Side.

NOW THEREFORE, this Right-of-Entry is granted subject to the following conditions:

1. TERM. The term shall commence, retroactive, on May 1, 2003 for the period of three (3) years and end on April 30, 2006 or sooner, if the work is completed.
2. OPTION TO EXTEND. The Chairman of the Hawaiian Homes Commission shall have the option to extend the term of this permit should it be required.
3. FEE. The fee for the term of this Right-of-Entry shall be gratis because GRANTOR'S beneficiaries will benefit.
4. DOCUMENT REVIEW. This document shall be subject to the review and approval of the Department of the Attorney General.
5. USE. The use shall be limited to complete the preliminary work on the east side of Saddle Road and to begin construction as the final phase of the project.

AFTER RECORDATION RETURN BY: MAIL () PICK-UP ()

Affects Tax Map Key No.: (3) 3-8-01:07, 08, 19 & 22

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

RIGHT-OF-ENTRY NO. 333

6. REPAIR AND MAINTENANCE. GRANTEE shall, during the period of the Right-of-Entry, repair and maintain all improvements now or hereafter erected upon the premises and will keep the premises and all improvements thereon in a strictly clean, sanitary and orderly condition, and shall not make, permit or suffer any waste, strip, spoil, nuisance, or any unlawful, improper or offensive use of the premises. GRANTEE shall comply with all rules, regulations, ordinances and/or laws of the State of Hawaii and any other municipal and/or Federal Government authority applicable to the premises and improvements. Furthermore, GRANTEE agrees to correct or repair, at GRANTEE'S cost, any damages it may cause to other roadways or properties in the course of gaining access to the job site and to remove all construction debris upon completion of the work.

Minor cuttings of branches or shrubs and clearing for line of sight and for laying targets are anticipated with no damage to the parcel or parcels of lands.

7. BREACH. It is expressly agreed that this Right-of-Entry is granted upon the continuing condition that if GRANTEE shall, thirty (30) days after demand, fail to observe or substantially perform any of the covenants and agreements herein contained and on its part to be observed or performed, and such failure of substantial compliance shall continue for thirty (30) days after mailing of notice of such failure by Certified Mail to the last known address of GRANTEE, or if GRANTEE shall make an assignment for the benefit of its creditors, or shall file any debtor proceedings, or take or have taken against it for good cause any proceeding of any kind or character whatsoever under any provisions of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition or reduction of GRANTEE'S debts, liabilities or obligations, or shall abandon the premises, then and in any such event GRANTEE may at its option cancel this Right-of-Entry forthwith and thereupon take possession of the premises without prejudice to any remedy or right of action which GRANTEE may have.

8. TERMINATION OR ABANDONMENT. Upon termination or abandonment of the specific purpose for which this Right-of-Entry is granted, all interests granted by this Right-of-Entry shall revert to GRANTOR. In the event operations cease for reasons beyond GRANTEE'S control, such as fire or other casualty that renders the facilities unusable, GRANTEE shall have a

reasonable period of time in which to resume operations.

9. RESTORATION OF DEMISED PREMISES. In the event of breach or termination by abandonment, GRANTEE shall, at or within thirty (30) days of the termination of this permit, restore, at its own cost and risk, the premises to a condition similar to that which existed prior to the effective date of this permit, reasonable and ordinary wear and tear and damage by acts of God excepted, and peacefully surrender possession thereof to GRANTOR. This includes the removal of any complete or incomplete structure constructed by GRANTEE. In the event GRANTEE fails to effectuate such restoration of the premises, GRANTOR reserves the right to accomplish the same by its own employees or by an independent contractor and to assess GRANTEE the total costs thereof.

PREMISES. The term "premises", when it appears herein, includes and shall be deemed to include the lots described above and outlined on the maps attached hereto as Exhibit "A" and made a part hereof and all improvements whenever and wherever erected or placed thereon.

IN WITNESS WHEREOF, GRANTOR and GRANTEE have caused this Right-of-Entry permit to be executed by their duly authorized officers as of the day and year first above written.

APPROVED BY THE
HAWAIIAN HOMES COMMISSION
on May 20, 2003

State Of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

By-

Micah A. Kane, Chairman
Hawaiian Homes Commission

GRANTOR

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

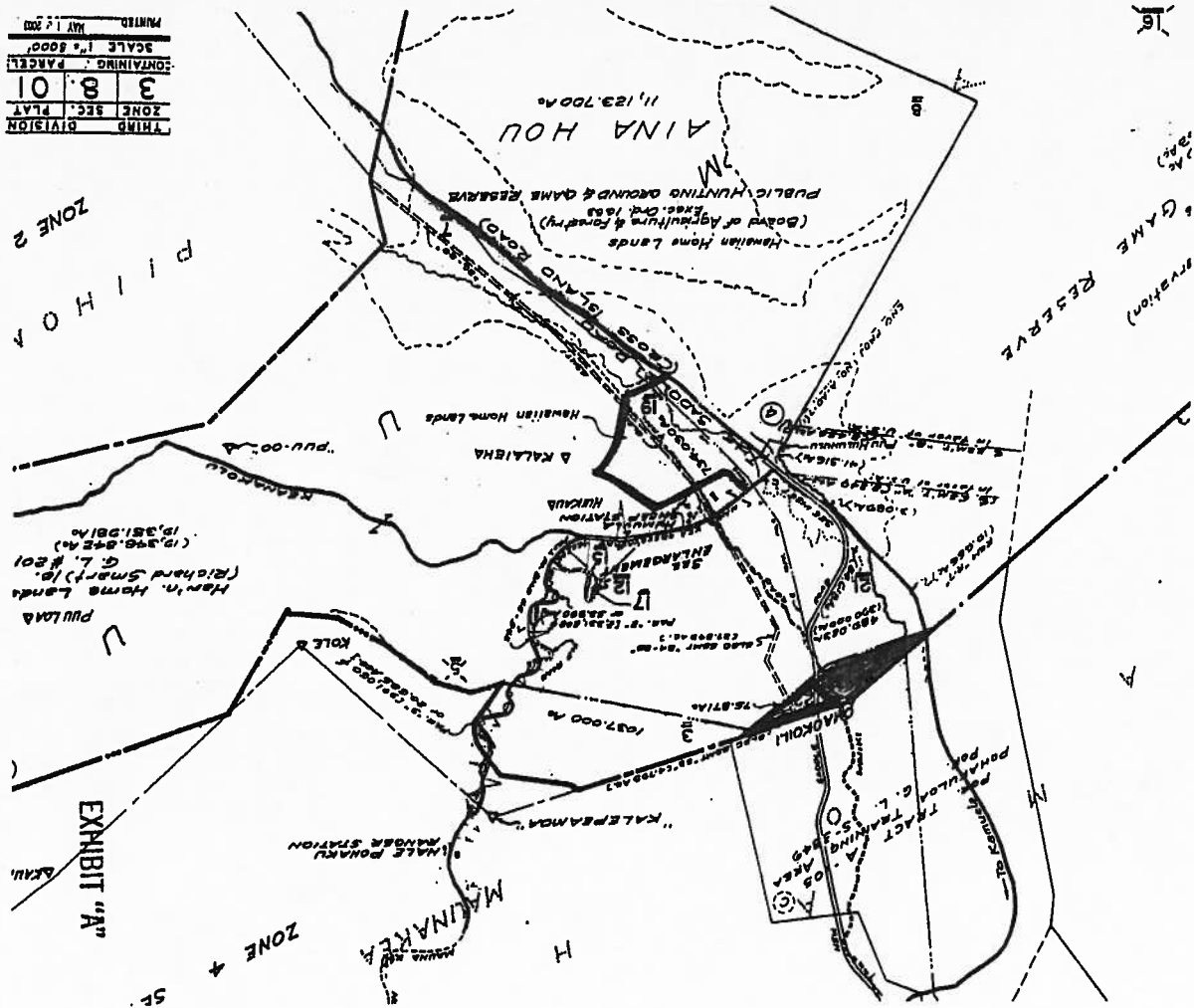
APPROVED AS TO FORM:

~~Deputy Attorney General~~
State of Hawaii

By

Rodney K. Haraga, Director
Department of Transportation

GRANTEE



NEGOTIATIONS – PRE-ACQUISITION

PURPOSE:	To describe preparatory work prior to negotiating a right-of-way acquisition.
POLICY:	To process and review all pertinent data required for negotiation purposes, prior to negotiations.
RESPONSIBILITY:	Under the general supervision of the Principal Right-of-Way (ROW) Agent, the Acquisition Section (HWY-RL) is responsible for the coordination of all pre-acquisition work, data gathering, related meetings, following up on required maps, funding, environmental clearances, etc. necessary to effectuate the required acquisition.
SCOPE:	This section applies to all units within the Right-of-Way Branch (HWY-R), Acquisition Section.
PROCEDURES:	Requests to have pre-acquisition work completed shall be initiated by the Supervising ROW Agent of HWY-RL immediately upon receipt of the Job Authorization (JA) authorizing the right-of-way work. The agent shall follow up on requests and familiarize themselves and subordinate right-of-way agents with all information and data received for proper negotiation purposes. Should a JA not be available for a specific assignment, the Supervising ROW Agents are responsible for all funding, charge codes, function codes, etc. and authorizations prior to commencing any work. Coordination should be with the requesting Branch and/or Project Management Staff (HWY-SM). For Federal-Aid programs, authorization and funding must be approved within the Statewide Transportation Improvement Program (STIP) process.

Early Acquisition (Advance Acquisition/Protective Buying)

- The State may initiate acquisition of real property at any time it has the legal authority to do so based on programs or project considerations. The State may undertake early acquisition for corridor preservation, access management or other programs, e.g., to prevent imminent development and increased costs on the preferred alignment or to alleviate hardship to a property owner or owners on the preferred location.¹

Conditions to be met:

- The project is a Federal-Aid project only and is on the Statewide Transportation Improvement Program (STIP) and has cleared Sec. 106 of the NHPA (36 CFR 800).

¹ 23 CFR 710.501 and 503 Early acquisition and Protective buying and hardship acquisition.

- State has given official notice to public.
- Public hearings have been held
- Proper documentation to show that the acquisition is in the public interest and it is necessary to alleviate particular hardship to a property owner based on their written request and/or prevent imminent development and increased project costs and limit choice of a highway alignment.

Design/Build Projects

In cases of design/build projects, right-of-way must be acquired and cleared in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and STD right-of-way procedures. The State has to ensure that legal and physical possession of all right-of-way is available prior to the start of physical construction on individual properties.

Certain right-of-way acquisitions and clearance services may be incorporated into the design/build contract that may include language that provides that construction will not commence until all property is acquired and relocations have been completed. If the right-of-way services are included in the design/build contract, the design builder must submit written approved acquisition and relocation plans and procedures prior to commencement of the right-of-way activities and provide approved non-compressible reasonable time frames to meet all requirements.

In certain instances and in some Federal-Aid design/build projects, a Certification 3 may be required to initiate the procurement of the design builder. Coordination with FHWA is required to establish due dates and other requirements in the certification.

Certificate of Search (Title Search)

Certificate of Search to determine ownerships is required for all right-of-way parcels, remnants, easements and other areas or interests to be acquired for the project.

Requests for Certificates of Search: Requests for Certificates of Search are made to the Abstracting Section (HWY-RA) of HWY-R on Form DOT 4-128 (HWY-RL 6/88) or as amended, Request to Abstract Section (see page 2.5-A).

1. All available information shall be provided on said Form DOT 4-128 to facilitate Abstracting Section's work in completing the assignment. Examples of such information shall include, but are not limited to, Right-of-Way (ROW) maps, County Tax maps, historical data, legal descriptions, Land Court maps, etc.;

2. Suspense dates for completion shall be included in the request whenever Certificates of Search are required immediately to meet acquisition schedules.

Review of Certificates of Search (Title Searches)

Completed Certificates of Search are reviewed by the negotiating ROW Agent for proper coordination of the right-of-way acquisition. The ROW Agent reviews the Certificates as to:

1. Legal owner of property;
2. Encumbrances affecting part to be taken, such as liens, mortgages, easements, special conditions, etc.;
3. Possible claimants if title to property is not clear;
4. For properties registered under the Land Court System, any marriages, deaths, etc., which have not been filed with Land Court;
5. Other notations as indicated by the Abstractor in the Certificate of Title which affect the right-of-way acquisition.

Any parcel that cannot be acquired through a normal conveyance document due to title defects, or clouds on the title, shall be referred to Legal Counsel for acquisition. In any event, the owner shall be informed of the just compensation and the action to be taken by the State to acquire the parcel due to the title defect, as soon as acquisition is authorized and said just compensation established.

Appraisals

Appraisals shall be requested for all parcels, easements, remnants, etc., to establish just compensation due to the property owner for any real property taking. Appraisals are not required where government parcels are involved requiring no compensation for the taking or transfer or if the owner voluntarily donates the right-of-way, unless accepted by law. Such agencies include, but are not limited to: the Department of Hawaiian Home Lands (DHHL), University of Hawaii (UH) and others.

Requests for appraisals shall be submitted to the Appraisal Section (HWY-RP) on Form DOT 4-316 (HWY-RL 07/01) or as amended, (see page 2.5-B).

The ROW Agent shall review and familiarize themselves with all completed Appraisal Reports, Report of Reviewer and the Statement of, and Summary as the Basis for Just Compensation. For negotiation purposes, and in order to make a sound offer, prior to the submittal of the letter of offer, the ROW Agents are responsible to understand the appraisal/review, how the value(s) were derived and be able to explain it to the affected owners. The ROW Agent may make the necessary arrangement with HWY-RP to accompany the Appraiser/Reviewer on their field inspection(s) of the property and comparable sales or on their own. The ROW Agent may also request briefings and informational meetings to discuss the values to gather more information to prepare for their negotiations.

Any discrepancy or misunderstanding of reports, or disagreement in the just compensation shall be returned for correction or clarification, and/or re-evaluation. The request for re-evaluation shall be submitted by memorandum, e-mail, or verbally. Well coordinated relationships can be the key to smoothing difficult situations.

A pre-bid meeting should be scheduled to communicate the specific scope of work and coordinate the selected appraiser with the land acquisition agent's request for appraisal. This would be a good time to insure what is needed in the report, the purpose of the report, why the report is needed and when the report is due in order to complete successful negotiations.

The recommended format is to have an individual report for each separate parcel to be acquired. For uncomplicated parcels, a form type report is also recommended to speed up the delivery process.

After the review is completed, and before the letter of offer is sent to the owners, a post-appraisal meeting is recommended to discuss the merits of the value being offered and the reasoning behind the value conclusions. This is a good time to learn more about the property and gather data useful in the negotiation process.

It is highly recommended, but not a requirement that the appraisal report be available and honestly discussed upon request by the affected owners, so an open and fair negotiation can take place.

In simpler appraisal requests, a value finding or compensation estimate may be requested. See above section on Appraisal Waivers and the Appraisal Section for more detail discussions.

Subdivision Approval

Request for subdivision approval shall be made to the appropriate county agency whenever there is to be partial and/or easement acquisition. The request should include, but not be limited to, the following:

- A. ROW maps indicating the proposed subdivision or specific maps such as Parcel maps or Land Court subdivision maps;
- B. A statement indicating the purpose for the subdivision;
- C. Reference to legislative authorization and/or appropriation when available;
- D. As required, a statement as to whether:
 - An Environmental Impact Statement (EIS) has been approved;
 - A negative declaration for an EIS has been filed with the Environmental Quality Control Commission; or
 - The project is considered exempted by the department from the provisions of Act 246, a Bill for an Act Relating to Environmental Impact Statements or under the Categorical Exclusion List.

The above information shall be obtained from the Project Design Engineer.

- E. As required, the appropriate filing fee;
- F. Where landlocked or remnant parcels are to be purchased by the State, a statement to the effect that the parcels are to be retained by the State or sold to the abutting property owners pursuant to existing statutes;
- G. Where the subdivision for right-of-way taking leaves the owner with a substandard remainder with possibility of being retained as an economic unit, the State shall file a request for variance for retention by the owner. The owner shall be informed whether the variance request has been approved or disapproved;
- H. Subdivisions approved shall have the stamp of approval affixed on the appropriate maps and filed in the project

files. Where property under the Land Court System is involved, the approved map shall be submitted to the Land Court with the appropriate Land Court Petition. The ROW Agent shall follow-up on all subdivision requests, including taking corrective actions until the subdivision approval is received.

Approved Right-of-Way Maps

Detailed review of the approved ROW maps on a parcel-by-parcel basis shall be made by the negotiating ROW Agent to familiarize him for negotiations.

- On the ground inspections of the affected properties are made prior to negotiations;
- Where projects are located on the neighbor islands and traveling is restricted, on the ground inspections are made at the time of actual negotiations;
- Although final maps have been approved, recommendations for further additions or revisions to the maps may be made if omissions or errors are discovered at the time of the ground inspections or negotiations.

Notification of Project and Intent to Acquire

In order to keep property owners informed, advance notices are issued to said owners of the State's contemplated project. This notice is typically issued upon receipt of the approved right-of-way maps and JA. Should the project change in nature and character at some point from the original intent, an informational meeting should be held with the affected parties. Where there is no Board, Committees or the like involved, 92F HRS may not apply. Informational meeting may be restricted to the involved parties only. Agents need to re-confirm their situation with OIP first before proceeding.² Information provided may include, but not be limited to the following:

- Estimated date of construction.
- Property to be appraised and that owner will have the right to accompany the State's appraiser(s) during his inspection of the property.
- Estimated date of offer for purchase to be submitted based on review of the completed appraisal report(s).

² Source: UIP Class November 14, 2005, Discussion with Jennifer Brooks, Staff Attorney, OIP.

- If owner is being displaced, provide owner with relocation brochure.

Where the property is tenant occupied, a copy of the letter to the property owner shall be transmitted to the Property Management Section (HWY-RM) so that they may provide the tenant-occupant with the same information within 15 days of the date information was provided the owner. Early coordination with the property management group may facilitate project delivery.

State and Federal Lands

Where State or Federal lands involving no compensation are affected, interim rights-of-entry for construction purposes are immediately requested, pending right-of-way transfer. Refer to procedures under State and Federal Lands covered in Procedure numbers 8-02-10 and 8-02-12, respectively.

Non-Federal-Aid Projects

Right-of-way acquisitions of all non-Federal-Aid projects are under the jurisdiction of the Board of Land and Natural Resources. Thus, on all Highways Division projects which are 100% State funded, immediate request shall be submitted to the Board of Land and Natural Resources authorizing the Department of Transportation, Highways Division to proceed with the right-of-way acquisition.

The Board of Land and Natural Resources shall have the exclusive responsibility, except as provided in 171-30 HRS, of acquiring all real property or any interest therein and the improvements, thereon, if any, required by the State for public purpose. A state department or agency may directly acquire such real property for its purpose whenever the acquisition by the department or agency is required to conform to mandatory requirements of the United States in the case where federal funds are furnished to the department or agency.

Utility Agreements, Relocation and Others

The Project ROW Agent is responsible to coordinate and process all utility agreements and include such processing in their right-of-way certification. See Procedure number 8-02-14.

REQUEST TO ABSTRACT SECTION

Project: _____

Section: _____

Parcel(s): _____

Tax Map Key Number(s): _____

Reported Owner(s): _____

Please furnish:

Search of Title ()

Continuation of Search ()

Memorandum of Chain of Title ()

Agent and office copies attached ()

Charge Code: _____ Suspense: _____

Remarks: _____

Date

Right-of-Way Agent (Ext. _____)

APPROVED:

Right-of-Way Branch, Manager

REQAPPR
DOT 4-316
(HWY-RL 7/01)

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

TO: Appraisal Section
FROM: Right-of-Way Manager
SUBJECT: Request for Appraisal

Project Designation & No. _____

Parcel(s) & Owner(s) _____

Charge Code or Job Authorization _____

Status of Title Search _____

Suspense Date _____

Right-of-Way Agent _____

Cadastral Engineer _____

Design Engineer _____

Remarks _____

Enclosures

() Right-of-Way Map
() Construction Map

Dean K. Yogi
Right-of-Way Manager

REQUEST TO CADASTRAL ENGINEERING SECTION

Project _____

Section _____

Parcel(s) _____

Tax Map Key Number(s) _____

Owner(s) _____

PLEASE FURNISH:

No. Required

Parcel Description () _____

Description of Access Rights () _____

Parcel Print () _____

Right-of-Way Map () _____

Map for Condemnation () _____

Map for Subdivision () _____

Tracing () _____

Duplicate Tracing () _____

Tax Map _____ () _____

Tax Key No.(s) _____

Schedule of Owners () _____

Please Stake Boundary () _____

REMARKS: _____

Date

Right-of-Way Branch

NEGOTIATIONS – ACQUISITION

- PURPOSE:** To describe procedures relating to acquisition of real property by negotiations.
- POLICY:** To extend every effort to acquire real property expeditiously by fair and lawful negotiations. Offer to be based on appraisal(s), review(s) and most current right-of-way maps. Offers should take into account the owner's perspectives and concerns, if possible, and the State's public purpose, project design and safety.
- RESPONSIBILITY:** Each Acquisition Unit of the Land Acquisition Section (HWY-RL) is responsible for expeditious negotiations for the project assigned.
- SCOPE:** This section applies to the Acquisition Section of the Right-of-Way Branch (HWY-R).
- PROCEDURES:** Negotiation is the process by which the State makes every reasonable effort to acquire real property through a voluntary transfer of such property. There are no hard and fast rules in carrying out negotiations by the Right-of-Way (ROW) Agents.
- The best tools are: courtesy, honesty, a thorough knowledge of appraisal techniques and values, and the ability to read plans so that the agent knows the manner in which the proposed highway will be constructed and the effects the highway has on the owner's property.
- In every case, "high pressure" methods shall not be used in negotiations for acquisition of right-of-way. Negotiations shall not be consummated by the same person making the appraisal and/or review, except as provided by law. In some cases, the State may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$10,000 or less. Further, no ROW Agent shall negotiate for the acquisition of the right-of-way where the agent has a direct or indirect presence or contemplated future interest in the parcels and would benefit from the acquisition of such parcel.

Negotiations – General

All negotiations shall be conducted with the property owner(s), unless requested otherwise in writing by the owner(s).

1. Where an owner is represented by an Agent, negotiations may be carried out with that Agent. A written statement verifying the