

Pre-Construction Property Management cont'd

- **Clearance of R/W**
- **Rodent control**
- **Disposal of improvements**
- **Maintenance**
- **Leasing**

Post-Construction -- Federal Requirements

- "The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project." [23 CFR 1.23(a)]
- The State "...shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments." [23 CFR 1.23(b)]

Post-Construction – Status of Facility

- If on the Interstate, Federal approval is required prior to "...allowing any change in access control or other use or occupancy of acquired property....".
- If off the Interstate, Stewardship Agreement will generally apply.

State/Local Relationship

- “The State shall assure that local agencies follow the State’s approved procedures, or the local agencies own procedures if approved for use by the STD.”

General Criteria for Lease/Disposal

- NEPA analysis: "The STD shall evaluate the environmental effects of disposal and leasing actions requiring FHWA approval, as provided in 23 CFR part 771."
- Must be consistent with the continued safety and maintenance of facility.
- Must serve a defined interest (e.g., transit, utilities, or public service), or be excess to needs.

Utilities

- FHWA issuing guidance to distinguish between private and public utility uses and requirements to allow within the ROW.
- Public utilities may be permitted under 23 CFR 645, Utilities Accommodation
- Private (e.g., proprietary) utilities require an airspace lease per 23 CFR 710.405

Fair Market Rent

- Must be charged unless disposal/lease is for excepted uses (e.g., public transit or other public transportation)
- If property was acquired with Federal funds, request to dispose/lease for less than FMV must come to FHWA

Safety is No. 1

- In considering any lease or other disposal of ROW acquired with Federal funds, including access control, agency must address safety of disposal.

Federal Share of Income

- The Federal share of income received for the lease or sale of Federally-participating ROW may be used by the State for other projects eligible under Title 23. Must be tracked.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 2 – RENTAL OF IMPROVEMENTS & REMNANTS

RENTAL OF IMPROVEMENTS AND REMNANTS

- PURPOSE:** To describe the procedures for the rental of improvements and remnants acquired in connection with Federal-Aid highway projects.
- POLICY:** It is the policy that real properties acquired for, and in conjunction with, the right-of-way for Federal-Aid highway projects be rented if and when it is determined practicable to do so.
- RESPONSIBILITY:** The Property Management Section (HWY-RM) or its consultant is responsible for the rental of improvements and remnants; the Fiscal Staff is responsible for billing and collection of the rentals.
- SCOPE:** The provisions of this section apply to the Right-of-Way Branch (HWY-R), the Fiscal Staff (HWY-SF) and the Legal Section of the Department of the Attorney General (AG), Land Transportation Division.
- PROCEDURES:** As soon as Title by Deed or Order of Possession by Condemnation is received by the State for properties improved with dwellings, rentals of these properties are initiated if determined practicable to do so. If rental is not practicable, the improvements are disposed of as covered under Disposition of Improvements.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 2 – RENTAL OF IMPROVEMENTS & REMNANTS

Owner-Occupied Properties:

- A. Where the State has acquired title by deed to properties which are owner-occupied, said owners and immediate members of the families who are occupants may be permitted to remain on the premises rent-free for a period not to exceed 90 calendar days. The rent-free occupancy is based on the following:
 - 1. The 90-day free occupancy shall be computed as of the date of the warrant.
 - 2. Such occupancy is considered as part of the negotiated settlement but must be affected by an executed Rental Agreement (Revocable Permit) effective as of the date of the warrant stating terms and conditions of the occupancy such as; end of the rent-free period, fair rental thereafter, indemnification of the State and insurance requirements.
 - 3. Tenants shall notify Property Management or its consultant at least 30 days prior to the time they intend to vacate the premises; and
 - 4. Tenants will maintain a liability insurance policy on the premises during their occupancy, naming the State of Hawaii, Department of Transportation as co-insured.
- B. The letter permitting free occupancy to the former owner-occupants shall be issued by the Right-of-Way Agent from the Land Acquisition Section (HWY-RL). The letter shall include the expiration date and a copy is transmitted to HWY-RM for their information. In condemnation cases, the policy of providing free occupancy by HWY-R shall not apply. The attorney in charge of the condemnation may issue free occupancy as part of the settlement, in which case he shall notify HWY-R of the free occupancy and the expiration date.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 2 – RENTAL OF IMPROVEMENTS & REMNANTS

- C. If the occupancy goes beyond the 90-day rent free period, a revocable permit is issued at the fair rental value by HWY-RM. The recommendation for the rent is made by HWY-RM to the HWY-R Manager. The following is the minimum information required but other factors may be considered in determining the rent to be charged for the premises:
1. Memorandum from HWY-RL indicating the purchase price and allocation of values, deed dates, etc.;
 2. Appraisal report in respect to the particular property;
 3. Economic rent as determined by the Appraisal Section.
 4. Utilities affected.
- D. Prior to final determination, the premises are inspected by the Right-of-Way Agent from HWY-RM and the occupant interviewed. If the rental period runs for an extended time, the property is revalued for rental adjustments. The amount of rent required shall not exceed the fair rental value of the property to a short-term occupier in cases where a former owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the State on short notice.

Tenant-Occupied Properties:

Where the State has acquired title by Deed or Order of Possession by Condemnation to properties occupied by tenants, rent will be charged the tenants from the date of the warrant made out to the property owner by the State, of the effective date of the Order of Possession. The 90-day rent-free occupancy does not apply to tenants.

The rental determination is the same as covered in owner-occupied properties except that in addition, actual rent is also considered.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 2 – RENTAL OF IMPROVEMENTS & REMNANTS

Rental of Remnant Properties:

- A. In determining the rent to be charged for remnant properties the following is considered:
 - 1. The purchase price;
 - 2. The use of the property, parking, storage, etc;
 - 3. The capitalization rate in effect at the time (Or the rate as set by the Departmental Staff Manual);
 - 4. Market rent (if remnant has a dwelling or improvement on it);
 - 5. Fair rent as determined by the Appraisal Section (HWY-RP) or its consultant.
- B. Other factors may also be considered in determining the rent to be charged for the remnant parcels.
- C. The above information is also required in the rental determination for the use of portions of the highway right-of-way.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 2 – RENTAL OF IMPROVEMENTS & REMNANTS

Revocable Permits:

After the rent has been determined, the agreement for occupancy - Revocable Permit (RP) is prepared by HWY-RM or its consultant which permits a qualified tenant to occupy the premises as part of the conditional requirement. The tenant is required to place a security deposit of one months rent or the maximum provided by the Landlord Tenant Code, Chapter 521, Hawaii Revised Statutes, whichever is greater, and take out a General Comprehensive Liability Insurance Policy, naming the State as additional insured. The rental is for 30 days (month to month) with a clause for termination upon 30 days written notice either by the State or the tenant.

- A. Four copies of the RP are prepared and submitted to the tenant for execution by the agent from HWY-RM.
- B. After execution by the tenant, all copies of the RP are routed to the Highway Administrator for approval.
- C. The approved RP is distributed as follows:
 - 1. One copy to the tenant;
 - 2. One copy to the County's Taxation Assessment Department (Tax Map Branch.);
 - 3. Two copies retained by HWY-RM, the original filed in an RP folder and the other filed in the HWY-R project folder;
 - 4. One copy to HWY-SF.
- D. A New Tenant Data form is prepared indicating parcel number, charge code, project number and a determination as to whether the rental is a participating or non-participating item and is put in the tenant's folder with a copy sent to HWY-SF for their information.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 2 – RENTAL OF IMPROVEMENTS & REMNANTS

Billing and Collection:

The billing and collection is done by HWY-SF. Reference is made to the New Tenant Data from HWY-RM or its consultant to establish an accounts receivable ledger entry to record billings and collections.

Cancellations:

Upon thirty days written notice from the tenant or if the property is required to be cleared for project construction, a cancellation of the RP shall be made by a written notice of 30 days, prepared by the agent in HWY-RM. Prior to cancellation of the RP, the following will be done:

- A. Prepare cancellation form and send it to the tenant for signature (original and five copies);
- B. Inspection of the premises to be vacated to determine any damages, removal of fixtures, etc., to ascertain if any charges are to be levied against the tenant's security deposit. If so, HWY-SF must be notified.
- C. Check with HWY-SF to determine if the tenant is delinquent in their rent.

Refer also to attached Revocable Permit Procedures.

**INVENTORY AND DISPOSITION OF IMPROVEMENTS, REMNANTS
AND RODENT CONTROL**

PURPOSE: To describe the procedures for maintaining an inventory of improvements purchased for highway projects, disposition of same, inventory of remnants and for rodent control measures.

POLICY: All improvements and remnants shall be inventoried and documented so that records will show the disposition recovery from sale or salvage, and/or demolition if construction schedules for other factors warrant it.

RESPONSIBILITY: The Property Management Section (HWY-RM) shall be responsible for the disposition of improvements, inventory of remnants and rodent control.

- A. The Land Acquisition Section (HWY-RL) shall be responsible for the preparation and maintenance of the inventory of improvements.
- B. The Design Branch (HWY-D) and Programs and Contracts Office (CON) shall be responsible for demolition of improvements.
- C. The Fiscal Staff (HWY-SF) shall be responsible for the collection of proceeds from the sale of improvements.

SCOPE: The provisions of this section extend to the Right-of-Way Branch, Design Branch, Fiscal Staff and the Contracts Office.

PROCEDURES: Once the property is acquired HWY-RM is responsible for the interim management of the property including, but not limited to, the disposition of improvements and/or remnants, maintenance of an inventory of remnants and rodent control. The inventory of improvements chart is maintained by the Acquisition Section and is covered under Land Acquisition Sections Procedure No. 8-07-03. Inventory of Improvements.

RIGHT-OF-WAY MANUAL CH 5 SEC 3—INVENTORY & DISPOSITION OF IMPROVEMENTS

DISPOSITION OF IMPROVEMENTS:

- A. All improvements acquired for a project and located within the right-of-way must be cleared from said right-of-way prior to the date of the advertisement of bids for construction. This is accomplished either by sale at a public auction or demolition under a demolition contract. If the improvements cannot be removed prior to the advertising date, they are included for clearance by demolition with the highway construction contract, in any event, prior to removal of the improvements:
 - 1. The Superintendent of Buildings or other proper official of the County in which the improvements are situated is requested to inspect and submit his recommendations on whether the improvements can be relocated or must be demolished; and
 - 2. The Department of Health is requested to inspect and determine whether conditions are such that rodent control measures are necessary.
- B. Sale of Improvements
 - 1. Where approvals have been received from the Superintendent of Buildings or other proper officials of the appropriate County for the relocation of buildings, they shall first be offered to the Department of Accounting and General Services (DAGS) at an established upset price or disposed of by public auction.
 - 2. The Property Management Head or an agent for Property Management shall prepare a recommendation as to the upset price and date of public auction and submits the same to the Right-of-Way Manager for approval.

RIGHT-OF-WAY MANUAL CH 5 SEC 3-INVENTORY & DISPOSITION OF IMPROVEMENTS

3. Upon approval, the Property Management Head shall notify by formal letter, regarding if DAGS would like to purchase any or all improvements at the upset price. Those improvements not purchased by DAGS will be sold at public auction.
 - a. The Property Management Head or his designated Right-of-Way Agent contacts the Contracts Office for the processing of the advertisement.
 - b. HWY-RM contacts CON to obtain publication identification number for the advertisement, to select the publishers, and to determine the date of publication of the advertisement.
 - c. A requisition for the publication is submitted to the Fiscal Staff and a purchase order obtained.
 - d. Upon submittal of two copies of the legal notice and the purchase order by HWY-RM to CON, the latter will assume all work thereafter in arranging for publication, checking correctness of published notice, checking frequency of publication, filing copies of notices, receiving and checking bills and affidavit of publication, distributing affidavits and authorizing payment of bills. One copy of the affidavit is sent to HWY-RM, one retained by CON and a third copy to Office Services Staff.
4. Copy of the public auction notice with the terms and conditions attached thereto is mailed by HWY-RM to each person listed on the auction list.
5. Two copies of the public auction are transmitted by letter to the FHWA to notify them of the auction.
6. The public auction shall be conducted on the date, place and time at the upset price publicized in the newspaper.
7. No less than two staff members of the Right-of-Way Section shall be present at the auction to conduct the sale.
8. A member of HWY-SF shall also be present to receive the payment and issue a pre-numbered official receipt.

RIGHT-OF-WAY MANUAL CH 5 SEC 3-INVENTORY & DISPOSITION OF IMPROVEMENTS

9. The receipt shall be coded as to parcel, project number and the participating or non-participating nature of the parcel.
10. The Buyer receives the original receipt and a copy remains in HWY-SF for auditing and recording purposes.
11. The results of the public auction sale are transmitted by letter to the FHWA.
12. The Right-of-Way Agent from HWY-RM prepares a Bill of Sale and obtains Legal Counsel's approval as to form. This is then sent to HWY-SF for the approval of the Fiscal Officer. Upon approval, the original Bill of Sale is mailed to the purchaser by HWY-RM.
13. After the sale and removal of the building, the HWY-RM Agent inspects the premises to see that the terms and conditions of the sale have been fulfilled by the purchaser. When it has been determined that the purchaser has fulfilled his requirements, a memorandum is transmitted from HWY-R to HWY-SF recommending that the performance bond be returned to the purchaser. In cases where the requirement is not met the purchaser shall forfeit the bond.
14. If items, such as fences, walls, plants etc., are separately sold, a memo signed by the HWY-R Manager is submitted to the FHWA informing them of the items sold and amounts received from the sale.

RIGHT-OF-WAY MANUAL CH 5 SEC 3—INVENTORY & DISPOSITION OF IMPROVEMENTS

Demolition of Buildings:

Where demolition has been recommended by the Superintendent of Buildings or other proper official of the affected County, or efforts to sell buildings have failed, the buildings shall be cleared from the right-of-way by special demolition contract or under the highway construction contract.

- A. HWY-RM shall prepare a letter to the FHWA requesting approval for the demolition of the building. The letter is signed by the Administrator, Highways Division.
- B. HWY-RM by memorandum signed by the HWY-R Manager, shall submit a request for demolition to HWY-D. The request shall state whether the improvements are to be demolished with or without federal participation.
- C. The memorandum shall be attached with a Right-of-Way map indicating the buildings to be demolished. Additional information such as parcel number, tax map key number, and address of the building are also furnished in the memo.
- D. HWY-D shall determine whether or not the demolition is to be done by separate contract or shall be included as part of the highway construction or shall be included as part of the highway construction contract. In cases where the building creates a health or fire hazard demolition, a separate contract shall be recommended by HWY-RM to HWY-D. HWY-D shall be responsible for the preparation and execution of the demolition contract.

DISPOSALS

PURPOSE: To describe the procedures used for disposing of highway right-of-way “in excess to” highway purposes.

POLICY: It is the policy that all highway right-of-way no longer needed for highway purposes shall be disposed of in accordance with the provisions of the law.

A. The provisions of this section do not apply to the following:

1. Where a section of highway including right-of-way is abandoned;
2. Where only changes in access control are involved;
and
3. To relinquishments of highway facilities for continued use for highway purposes.

SCOPE: The provisions of this section extend to the Property Management (HWY-RM) and Acquisition (HWY-RL) Sections under the Right-of-Way Branch (HWY-R), the Design Branch (HWY-D), the Traffic Branch (HWY-T), the Planning Branch (HWY-P), the Island District Offices (HWY-K, HWY-O, HWY-M, HWY-H), the Fiscal Staff (HWY-SF) and the State Department of Land and Natural Resources (DLNR).

RIGHT-OF-WAY MANUAL CHAP 5 SECT 4 – DISPOSALS, ACCESS, REMNANTS, U & O

PROCEDURES:

The disposal may be to any public entity or private party.

- A. When disposal of unneeded portions of the highway right-of-way involve a change in the access control line, the provisions of Section V, Relinquishment, also apply.
- B. Federal, State, and local conservation, recreation, park or other appropriate agencies shall be afforded the opportunity to acquire by purchase or donation in accordance with the law, any portion of the right-of-way being considered for disposal. If said lands have a present or potential use for parks, conservation, recreational or related purposes then HWY-RM shall notify the appropriate agencies of its intention to dispose of unneeded portions of right-of-way.
- C. Land and interests therein shall not be disposed of if they are suitable for retention in order to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the highway.
- D. Where credit to Federal funds is required on right-of-way acquired with Federal-Aid participation and is disposed of, the instrument of conveyance shall contain appropriate provisions of "Appendix C" of the State's Title VI Civil Rights Assurances with respect to the Civil Rights Act of 1964, and the Department of Transportation Regulation (49CFR 21).

Application for Approval:

- A. A request is made to the Federal Highways Administration (FHWA) for approval to dispose of highway right-of-way when a determination is made that the property is no longer needed for highway purposes after:
 - 1. Final acceptance of the project where Federal funds have participated in the right-of-way and construction costs, or construction costs only; or
 - 2. Final acceptance of a right-of-way acquisition project where Federal funds have not participated in the cost of construction.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 4 – DISPOSALS, ACCESS, REMNANTS, U & O

- B. Prior to the request to FHWA, a request is made by memorandum to HWY-D, HWY-P, HWY-T, and that particular Island District Office for a determination and justification on the proposed disposal. The findings shall indicate that:
 - 1. The subject land will not be needed for highway purposes in the foreseeable future;
 - 2. That the right-of-way being retained is adequate under present-day standards for the facility involved;
 - 3. That the release will not adversely affect the Federal-Aid highway facility or the traffic thereon; and
 - 4. That the lands to be disposed of or relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of Title III of the Highway Beautification Act of 1965.
- C. The application to FHWA to dispose of highway right-of-way shall include the following:
 - 1. A right-of-way plan showing the old right-of-way lines and the new right-of-way lines; access control before and after and the original parcel number,
 - 2. Statements as to why the property was acquired; why it is no longer needed; and whether or not the disposal is in the public interest,
 - 3. Parcel number at time of purchase, the number of the parcel to be disposed (if different from the original parcel number); the present value of the parcel; the value of the parcel at the time of purchase and a statement as to whether or not there will be a credit to Federal funds.
- D. Upon approval for disposal of highway right-of-way by FHWA, a request to Cadastral Engineering Section (HWY-DC) through HWY-D is made to change the right-of-way line and for prints of the revised maps and descriptions.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 4 – DISPOSALS, ACCESS, REMNANTS, U & O

Excess Right-of-Way Resulting from Plan Changes:

- A. Prior to final acceptance of a project, if a portion of the acquired right-of-way becomes excess to highway needs due to plan changes, prior approval of disposal is not required from FHWA.
- B. The disposal of such excess right-of-way shall be made prior to the submission of the final voucher for the project or not later than two years from the time the highway facility is opened to traffic, whichever is earlier. If the property is not sold within these prescribed limits, the cost of acquisition of the unneeded portion must be credited to the State Highway Fund if Federal reimbursement has been made, unless extension of the two-year time limit has been approved by FHWA.

Uneconomic Remnants:

- A. Uneconomic remnants incorporated within the right-of-way not needed for highway purposes are disposed of like any other portion of the highway right-of-way as prescribed in paragraph 4.1 of this section.
- B. For uneconomic remnants not incorporated within the right-of-way, prior approval of FHWA is not required for their disposal and credit to Federal funds is not necessary.

The sale of uneconomic remnants is under the jurisdiction of the Department of Land and Natural Resources (DLNR) under existing statutes of the State of Hawaii. Prior to the disposition, the following is done:

- 1. HWY-RM routes a memorandum to the engineering branches, requesting determination as to whether or not the remnant is required for highway purposes or is a surplus to highway needs and may be disposed of. If the determination is that the remnant is a surplus to highway needs,
- 2. HWY-RM prepares a submittal through PMN, signed by the DIR, to Chairperson, DLNR requesting authorization for disposal of the remnant.

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3. HWY-RM will then dispose of the remnant pursuant to the provisions of the law.
- C. When authorization is given by DLNR to the Department of Transportation, Highways Division, to dispose of highway remnants, subject to the approval of the Board, HWY-RM shall:
 1. Make a list of all the abutting owners of the remnants to be disposed and a letter in duplicate shall be sent to each abutting owner notifying them that the remnant abutting their property is available for sale. The letter will ask them if they are interested in purchasing; or, if not interested, to waive their rights by signing their names in the appropriate spaces provided and return the copy to HWY-RM.
 2. Those who are interested shall be asked to advance the appraisal fee for the parcel. The sale will be by sealed bids if two or more abutting owners are interested. The bids shall start at the upset price. The unsuccessful bidders shall have their appraisal fees refunded to them. If there is only one abutting owner interested in purchasing, it will be a negotiated sale.
 3. A request shall be made to the Appraisal Section to have an appraisal made of the remnant either by a staff appraiser or an independent fee appraiser. The upset price is established from the appraisal.
 4. The conveyance documents shall be prepared by HWY-RM with the approval of the Legal Section of the DOT.
 5. The mode of payment shall be determined according to the terms of the purchase, either cash payment or by Special Agreement. Proceeds of the sales are handled by HWY-SF.
 6. Proceeds of highway remnants disposed of are credited to the Highway Fund. A copy of the deposit slip is routed from HWY-SF to HWY-RM.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 4 – DISPOSALS, ACCESS, REMNANTS, U & O

Inventory of Remnant Chart:

The following basic data shall be entered:

- A. Highway Project Number - all remnants shall be listed according to the highway project number;
- B. Parcel Number - obtained from the acquisition chart;
- C. Tax Map Key Number - obtained from the acquisition chart or tax maps;
- D. Area - obtained from the acquisition chart;
- E. Determination for Disposition - obtained from Design Section (HWY-DD);
- F. Notification of Availability and Disposition to Department of Land and Natural Resources (DLNR) date letter sent to DLNR regarding remnant parcel or parcels;
- G. Improvements - obtained from acquisition chart;
- H. Present Rental Status and Revocable Permit Number (if any) obtained from Revocable Permit chart;
- I. Date Sold-obtained from the receipts on sale or remnants sent by DLNR;
- J. Amount obtained from receipts on sale of remnants;
- K. Remarks on easements, pigeonhole numbers and/or sheet numbers of right-of-way maps and for Rodent Control.
 - 1. Prior to the sale or demolition of improvements, a determination shall be made as to whether or not control measures are necessary. HWY-RM, by letter signed by the HWY-R Manager requests the Department of Health (DOH) to inspect the properties to determine whether or not rodent conditions are such that controls are necessary, and if so, the estimated cost for the control.

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2. If controls are necessary, the control measures may be carried out by one of the following methods:
 - a. DOH may perform the work with their staff if the control measures are of minor nature: Where control measures are undertaken by DOH because of its minor nature, the Department shall submit a report of the measures taken immediately upon completion of the work to HWY-R.
 - b. If the estimated cost for control measures is less than \$25,000, HWY-RM may request two or more qualified individuals or firms to submit estimates and issue a purchase order to the individual or firm submitting the lowest estimate.
 - c. If the estimated work cost for control measures is more than \$25,000, an advertisement, after clearing with CON, is inserted in the newspaper of general circulation at least once for submittal of bids. A purchase order may be issued in lieu of a formal contract to the successful bidder.
 - d. If the estimated costs are more than \$25,000, a formal contract is required in compliance with Section 103-22, Hawaii Revised Statutes. The notice for the advertisement for bids must be inserted in the newspaper of general circulation at least three times. A formal contract is awarded to the successful bidder by CON. All formal contracts are handled by CON.
3. After control measures have been completed by the individual or firm engaged by HWY-R, a written request for a post inspection shall be submitted to DOT. Upon receipt, this report shall be filed in the project file.
4. The individual, firm or DOH performing the control measures shall submit a bill in triplicate for work performed. Payment shall be processed by HWY-R to HWY-SF upon receipt of a satisfactory post inspection report from DOH.

RIGHT-OF-WAY MANUAL CHAP 5 SECT 4 – DISPOSALS, ACCESS, REMNANTS, U & O

Board of Land and Natural Resources is Disposing Agency under State Law:

The Board of Land and Natural Resources is the disposing agency of all lands under the State jurisdiction (Hawaii Revised Statutes Chapter 171) and authorized to designate a representative to dispose.

Property Management Flow Chart- HRS 264-13 Disposition of Real Property Rights; 23 cfr 710.403(d)

Route Affected:

Project Name:

Applicant Name:

Assignment Received:

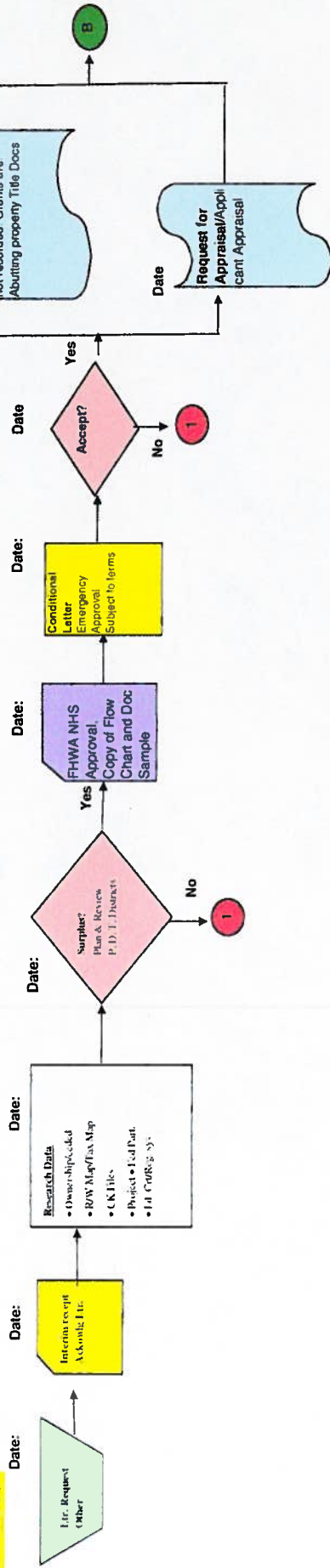
Agent Assigned:

Assignment Completed:

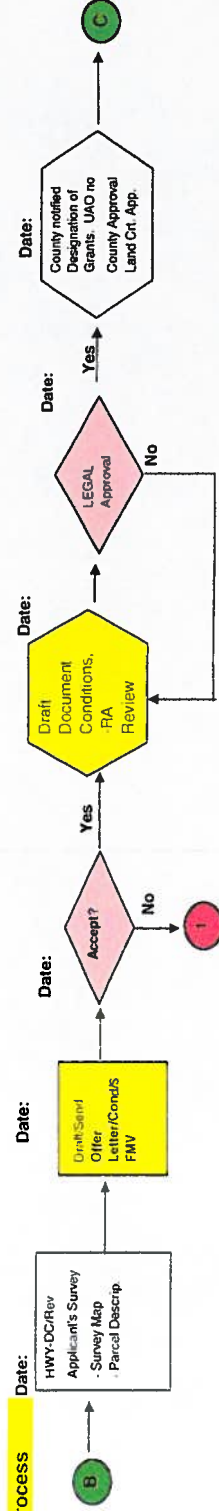
Type of Disposal:

A

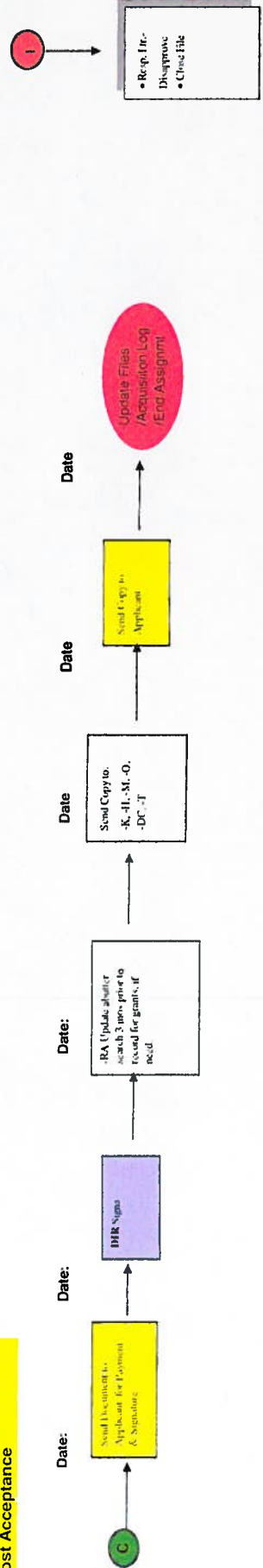
Pre-Process



Process



Post Acceptance



Use and Occupancy Agreement

Procedures

- What is a Use and Occupancy Agreement?
The right to use State DOT Right of Way, U&Os are unrecorded and based on appraisal.
- Who can get a U&O Agreement?
Any applicant approved by DOT.

Use and Occupancy

- Authority to issue U&O (disposition of a real property right)?
- HRS 264, 171,
- 23 CFR 710
- HAR Ch.
- DSM Ch. 8 Vol. 1
- ROW Manual

Use and Occupancy Steps

- Letter request. Plans preferred.
- Investigate request with preliminary check with files, acquisition chart, other agents,
- Route for comments and recommendations to HWY-P, T, District of Subject, Design, to respond within 3 weeks.
- Send interim Letter to say reviewing and will get back within 30 days, if no problems.

U&O Steps Cont.

- After receiving comments, if excess to highway needs can proceed, if not then deny,
- May clarify comments
- If approved then issue applicant conditional letter, which includes conditions such as comply with Federal, County, State laws, don't do anything illegal, need to execute use and occupancy agreement, rights cannot be sold, assigned released without DOT consent, subject appraised at fair market value that may assess applicant,
- Public agencies are exempt.
- Construction plans to District or Traffic.
- If State needs area due to DOT project applicant has to relocate at applicants expense.

U&O Agreement

- To complete the documentation, DOT needs metes and bounds to describe area.
- As built plans must be submitted to Design,
- If there is trenching involved, applicant must repair and damage to highway.
- Must indemnify State for claims for injury and accidents.
- Responsible for all administrative costs, documentation costs, recording costs, and appraisal costs,
- DOT has the right to impose additional conditions as necessary,

U&O Steps

- After construction is completed, applicant must submit certification of completion and everything on the approved plans were completed and conforming.
- A deposit of \$1,000 must be submitted to defray any administrative costs, appraisal, etc. Cost might be more than \$1,000.

U&O Agreement

- After Conditional Letter signed, and legal description received, DOT will order appraisal. Legal description checked by Cadastral for correctness.
- After appraisal received, review appraisal and e-mail Hwy-RP appraisal accepted.
- Make offer to applicant.
- If offer accepts, then have U&O agreement document approved by Attorney General's office.
- Get signature from applicant.
- Have Attorney General's office approve as to form.
- Get signature from DIR



Access Procedures

Training module for Property
Management 2007

Access Disposition

- ★ Access Policy:
Charge everyone for
access onto State
Hwys.
- ★ Access Authority:
HRS 264-13, 23
CFR 710. , DSM
Ch. 1, 2



The process does not have to be adversarial.

Access Process

1. Letter request from abutting owner.
2. Write Interim Letter.
3. Route for comments.
4. Request Search from abutting owner.
5. Write Conditional Letter.
6. When receive deposit, request for appraisal.
7. After appraisal, make offer.



Access Valuation

- Before and After Method
- Value of Abutting property before access granted.
- Value of Abutting property after access granted.
- After value based on any supportable method... eg. Alternative solutions, cost approach, direct comparison approach, income approach, subdivision approach, etc.
- Access valuation is typically a percentage of the difference of the before and after due to partnering, limited market, enhancements to the benefiting private entity for the grant of access.
- Valuation acceptance by the market is more than ATF method.



Access Conclusion

- The right to dispose of access is inherent to the State as stewards of the Sovereign.
- Access rights or boundary rights are acquired through the fee ownership transfer or by determination of any damages to the remainder.
- Access right valuations are separate from developers profit.
- If there is less than a two lot subdivision, access is granted and appraisal is waived.
- If the developer initiates actions for public good, eg. affordable housing, then access may be granted and appraisal waived.
- When the process is understood, everyone is a winner.



Revocable Permit Procedures

Revocable Permit Determinations

- Code of Federal Regulations, 23 CFR 710.407 Leasing (Federal Highways).
- Hawaii Revised Statutes 171-13 HRS (Disposition of public lands).
- Hawaii Revised Statutes 171-55 HRS (Permits).
- Hawaii Revised Statutes 264-13 HRS (Easements, etc., along state highways).
- Hawaii Revised Statutes, 521, 1-78 HRS (Landlord Tenant Code).
- Departmental Staff Manual (DSM) 8-05-02 Rental of Improvements and Remnants.
- Federal Highways Administration (FHWA) approval, if Interstate. Must be surplus to highway needs.

Revocable Permit Procedures

- Receive Request Letter. The letter must include a general statement of the use of the space.
- DOT sends interim letter to requesting party.
- Research data, ownership, ceded or non-ceded lands (through HWY-RA), ROW maps, tax maps, Land Court maps, check files, acquisition charts, Department of Commerce and Consumer Affairs, etc. *Note* if ceded lands, need to pay 30% of monthly rent to Department of Hawaiian Home Lands (DHHL).
- Route for comments whether surplus to Highway needs, D, P, T, C/Permits and District office.

Revocable Permit Procedures

Continued

- When remnant is determined as surplus and comments come back with no objections, then send request along with categorical exclusions to FHWA for approval, if Interstate. If not interstate, approval by FHWA is not needed.
- A determination by the Fish and Wildlife Service and State Historical Preservation Department that no wildlife or historical properties will be affected, must be submitted with the categorical exclusion to FHWA.

Revocable Permit Procedures

Continued

- Prior to submittal, the applicant shall clear with the appropriate County department a zoning variance or conditional use permit.
- If an Environmental Assessment (EA) is required by the County, the applicant shall submit the EA through HWY-RM.
- A conditional letter will be drafted by the agent, itemizing any special requirements made of the applicant.
- An determination of fair market rent is requested through the Appraisal Section (HWY-RP) of the Right-of-Way Branch.

Revocable Permit Procedures

Continued

Four (4) copies of the RP are prepared and submitted to the tenant for execution by the agent from HWY-RM.

All copies are sent to Highway Administrator, for signature and approval.

The approved RP is distributed as follows:

- 1) One copy to the tenant.
- 2) One copy to the County's Taxation Assessment Department (Tax Map Branch)
- 3) One copy retained by HWY-RM, the original filed in an RP folder.
- 4) One copy to HWY-SF.

Revocable Permit Procedures

Continued

- As part of the conditional requirement of the RP, the tenant is required to place a security deposit of two (2) month's rent or the maximum required by the Landlord Tenant Code, Chapter 521, Hawaii Revised Statutes, whichever is greater.
- The tenant is also required to take out a General Comprehensive Liability Insurance Policy, with a minimum coverage amount of \$1 million, combined single limit (CSL), naming the State as an additional insured.
- The rental is for one year (renewable annually) with a clause for termination upon 30 days written notice either by the State or the tenant. Payment should be made out to the Department of Transportation (DOT), and mailed to our fiscal office (HWY-SF) located at 869 Punchbowl Street, 2nd Floor, Honolulu, Hawaii, 96813, attention cashier.

Revocable Permit Procedures

Continued

- Applicant needs to submit tax clearances from the State Tax Office and the City and County of Honolulu for verification that applicant has no outstanding/ delinquent taxes, rents and/ or other obligations to the State or City and County of Honolulu.
- A “New Tenant Data” form is prepared indicating parcel number, charge code, project number and a determination as to whether the rental is a participating or nonparticipating item and is put in the tenant’s folder with a copy sent to HWY-SF for their information.
- The billing and collection is done by HWY-SF. They shall use the “New Tenant Data” form from HWY-RM to establish an accounts receivable ledger entry to record billings and collections.

Revocable Permit Procedures

Continued

- Cancellation: Upon thirty (30) days written notice from the tenant or if the property is required to be cleared for project construction, a cancellation of the RP shall be made by a written notice of 30 days, prepared by the agent in HWY-RM. Prior to cancellation of the RP, the following will be done-
 - 1) Prepare cancellation form and send it to the tenant for signature (original and three (3) copies).
 - 2) Inspection of the premises to be vacated to determine any damages, removal of fixtures, etc., to ascertain if any charges are to be levied against the tenant's security deposit. If so, HWY-SF must be notified.
 - 3) A check with HWY-SF to determine if the tenant is delinquent in his rent.



STATE OF HAWAII SCOPE OF SERVICES

1.1 General. In accordance with §3-122-143 Hawaii Administrative Rules, Indefinite Quantity Contract, the CONTRACTOR shall provide full real estate services as specified in the scope of work for the State of Hawaii, Department of Transportation (DOT), Highways Division for all Current Revocable Permits (RP), subject to change, for the Right-of-Way Branch (HWY-R), Property Management Section (HWY-RM), Statewide, Project No. HWY-R-01-10M, hereinafter referred to as the "Project."

Any changes to the Scope of Work will be mutually agreed upon in writing between the DOT and the CONTRACTOR, prior to any work being initiated.

1.2 Reviews by the State. The CONTRACTOR shall be available when the STATE desires to inspect, review, and discuss work progress and compliance with State policies and other requirements with the least amount of delay.

1.3 Project Assignments. Project Assignments will comply with Federal-aid or State-funded project laws by the Highways Division, Department of Transportation, for which property management expertise is required. Multiple project assignments may be assigned within a reasonable time span.

The assigned listing attached as Exhibit E shall be the initial Project Assignment, subject to change. STATE will issue additional Project Assignments by individual Project Assignment Orders (Exhibit F). Such orders will be issued only after the parties mutually agree that the assignment will not unreasonably burden the CONTRACTOR for their total compensation to be paid to the CONTRACTOR as stated in the contract for the completion of all work required under this Project Assignment. Total compensation is shown in Attachment – S2 (Compensation and Payment Schedule) of this Agreement and the scheduled of required submittals. If the parties hereto are unable to agree on the maximum total assignments for the Project or cannot agree on the schedule of required submittal dates, the STATE shall have the right to accomplish the Project by other means,



STATE OF HAWAII SCOPE OF SERVICES

including without limitation, the right to utilize in-house Right-of-Way Agents, retain another consultant, appraisers, or other firms to complete the Project Assignment.

1.4 No Minimum Amount of Services. The STATE makes no guarantee whatsoever as to the minimum amount of CONTRACTOR's services that will be required under this Agreement.

1.5 Work by the Contractor.

The CONTRACTOR shall provide full real estate services for our revocable permits program Statewide located on all major islands of Kauai, Hawaii, Maui, and Oahu. The STATE will provide CONTRACTOR with an assigned listing of all current Revocable Permits by individual and company for all assignments, which may be updated from time to time. The scope of work for this Project includes the property inspections (Exhibit A), review and confirmation of determination of fair market value (Exhibit B), completion of environmental report form (Exhibit C), review of insurance compliance and compliant reports (Exhibit D), collection of rental payments (i.e. late fees, delinquencies, etc), in coordination with State Highways, Fiscal Section (HWY-SF) for deposits, renewals, inventory, and other departmental requests as required.

Reports shall also include contact person, telephone number, and address as required in the site rental location inquiry. The CONTRACTOR shall provide all real estate management services necessary to complete the Project Assignment including, but not limited to the following in the Scope of Work services:

- a. Conduct complaint investigations to the extent necessary and any recommendations on how to resolve issues.
- b. Obtain and review plans and records on file with the Highways Division, Department of Transportation, and with other agencies and utility companies, as necessary.



STATE OF HAWAII SCOPE OF SERVICES

- c. Perform random site inspections and developing a relationship with Permittees.
- d. Perform an evaluation report of site inspections;
- e. Coordinate with utility companies and public agencies to verify the locations of and determine any impacts to the existing and proposed utilities if affected by Permittee(s), when necessary.
- f. Coordinate work with subconsultants, government agencies, or private entities.
- g. Ensure that all work under this contract conforms with, the applicable provisions of the latest editions of Americans with Disabilities Act;
- h. Attend meetings. The CONTRACTOR's Project Manager and any other personnel who have detailed knowledge of the Permittees/Licensees shall attend these meetings/hearings. This work shall include: aiding the STATE in presenting the environmental concerns, policies, procedures, etc.
- i. Aid the STATE in answering real estate questions regarding the revocable permits, taking notes, preparing meeting minutes for the STATE's and CONTRACTOR's use, and attending meetings with affected agencies, or private parties when requested by the STATE;
- j. Provide monthly schedule updates using compatible Microsoft based software.
- k. Complete the Scope of Work services required for the Project Assignment within the time period specified for each project assignment. All material and information used in the preparation of the inspections and reporting documents shall become the property of the STATE.



STATE OF HAWAII

SCOPE OF SERVICES

1. Permittee Check-In and Check-Out

1. Permittee Check-In and Check-Out Inspection. The CONTRACTOR shall make a visual inspection and take digital photos or video of each and every DOT Permittee's Premises at the start and end of the Permittee's occupancy and use of its Premises demised under the revocable permit in order to assess the appearance and condition of the Premises. The CONTRACTOR shall document the results of each and every check-in and check-out inspection in a written report, and submit it to HWY-R within five (5) working days after the visual inspection.
2. Orient new Permittee on DOT rules and regulations, financial responsibilities, and service available.

m. Site Inspection.

1. CONTRACTOR shall make a initial visual inspection of the DOT premises of all of the properties on the initial assigned list attached as amended, to assess the appearance and condition of the DOT Property, and the Permittee's compliance with the terms of their permits and any other matters that warrant attention of the DOT. Thereafter, CONTRACTOR shall make monthly on-site visual inspections of groups of the premises, as necessary and/or on a rotation basis. It is understood that each Permittees' Premises assigned to the CONTRACTOR will be inspected. CONTRACTOR shall document the results of the premises inspected in a report and submit it to HWY-R by the end of each month.
2. During the monthly visual inspection, should CONTRACTOR notice any possible violations of Federal, State, or local laws, rules, regulations, or ordinances, including



STATE OF HAWAII SCOPE OF SERVICES

illegal dumping, the CONTRACTOR shall commence efforts to have Permittee rectify the situation, then notify HWY-R immediately.

3. Schedule an informal meeting with any Permittee believed to be in violation and breach of any revocable permit term or condition within ten (10) calendar days of initial discovery of violation and breach.
4. The State may conduct inspections at sites at any time without prior notification to the CONTRACTOR.

n. Pest Control Services

The CONTRACTOR shall take steps to cause Permittee to contract for or provide, at Permittee's sole cost and expense as stated in its revocable permit's terms and conditions, pest control services to prevent and control unwanted: (1) vegetation, including all weeds, and invasive plants; and (2) nuisance and structurally damaging arthropod and vertebrate pests.

o. Compliance with Environmental, Safety, and Health Requirements

1. The CONTRACTOR shall take reasonable steps to and attempt to cause the Permittee to comply with, adhere to and completely satisfy all City and County of Honolulu, State, and Federal law, statutes, codes, ordinances, requirements, rules and regulations that govern similar operations in the private sector, such as worker safety, recycling, hazardous material or waste cleanup or remediation, and Permittee's protection during maintenance, repair or restoration work projects.
2. The CONTRACTOR shall direct the Permittee(s) to take precautions to not cause the escape, disposal, or release of any hazardous materials within or on any areas of



STATE OF HAWAII SCOPE OF SERVICES

the DOT property.

3. The CONTRACTOR agrees to indemnify, defend, and hold the DOT and State harmless, from any and all damages and claims resulting from the escape, disposal, or release of hazardous materials caused solely by the negligence of the CONTRACTOR.
4. The CONTRACTOR shall not be responsible or liable for the escape, disposal, or release of any hazardous materials on the DOT property that pre-dates this Contract. CONTRACTOR does not warrant or represent that it has any expertise with respect to compliance with federal, state, and local environmental laws, regulations, and ordinances. CONTRACTOR shall not be responsible for monitoring or ensuring Permittees' compliance with federal, state, or local environmental laws, regulations, and ordinances. CONTRACTOR shall be responsible for monitoring or confirming that Permittees have proper federal, state, or local permits or approvals. CONTRACTOR shall not be responsible or liable for the escape, disposal, or release of any hazardous materials on the DOT property caused by Permittees or third parties.

p. Fiscal Management, Records and Reporting Services

The CONTRACTOR will be required to perform the following fiscal management, records and reporting services for the DOT;

1. Make appropriate charges for damages to any unit by inspecting such unit with the Permittee prior to vacating, submit any such charges to be deducted from the security deposit or to be billed to the Permittee or request to DOT for security deposit refund processing within 30 days of the revocable permit termination date;



STATE OF HAWAII SCOPE OF SERVICES

2. Coordinate with HWY-SF on rental payments, security deposits, increase or decrease of rentals, terminates, etc.
3. HWY-R shall provide a monthly list of all current tenants with a copy of its RP.

q. PERMITTEE RELATIONS

The CONTRACTOR, through its Property Manager, shall promote and maintain good relations with all DOT Permittees and is required, when needed, to satisfy the following tasks, among others:

1. Permittee Complaints.

Respond to all Permittee complaints involving concerns about conditions at DOT , HWY properties and resolve all significant or recurring problems;

2. Resolution of Permittee Disputes

The CONTRACTOR will to the best of its ability resolve any disputes with Permittees. If no mutually satisfactory resolution between CONTRACTOR and the Permittee can be achieved; either party can request a decision from the Highways Administrator, who will make the final decision.

3. Institute and maintain informative Permittee communications to advise Permittees of any changes in DOT policies, DOT rules and regulations, and/or pertinent and necessary instructional bulletins regarding DOT facilities; and