Hawaii Department of Transportation, Highways

# Right-of-Way Manual

June 2025

***Preface***

This manual was prepared by the Right-of-Way Branch and provides guidance on statewide policies and standard practices for real estate transactions related to highway construction.

The Hawaii State Department of Transportation, Highways Division (HDOT) follows the federal regulations found in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and is guided by the state laws that control the valuation, acquisition, relocation, and property management processes. These laws are intended to assure fair and equitable treatment of displaced persons, to encourage and expedite acquisitions by negotiations, and provide direction on properly managing properties once acquired by HDOT or any of the sub-agencies belonging to the counties of the state that receive federal funds for highway projects.

This Right of Way Manual was updated in 2025. Revisions are made throughout the year and any questions regarding the current guidelines can be directed to the Right-of-Way Branch. This is an electronic only manual and no printed copies will be provided. The manual can be accessed through the HDOT website: https://hidot.hawaii.gov.

Approved by:



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Edwin H. Sniffen Date
Director
Department of Transportation



# TABLE OF CONTENTS

## Chapter 1 – Branch Organization

1.1-1 Purpose
1.1-1 Objective
1.1-1 Administration
1.1-2 Organization
1.1-3 Functions
1.1-4 Title VI Civil Rights Act
1.1-A Department of Transportation Organization Chart
1.1-B Highways Division Organization Chart
1.1-C Right-of-Way Branch Organization Chart

## Chapter 2 – Land Acquisition Section

**Organization and Function**

2.1-1 Purpose
2.1-1 Objective
2.1-2 Administration
2.1-2 Organization
2.1-2 Acquisition Unit
2.1-3 Qualifications of Right-of-Way Agents
2.1-A Land Acquisition Organization Chart

**Real Property Acquisition Policies**

2.2-1 Purpose
2.2-1 Objective
2.2-1 Scope
2.2-1 Policies
2.2-1 Civil Rights (Title VI)
2.2-5 Basic Negotiation Procedures
2.2-5 Negotiated Purchase
2.2-5 Notice to Owner
2.2-6 Summary Statement
2.2-7 Surrender of Possession
2.2-7 Notice to Vacate
2.2-7 Fair Rental
2.2-8 Coercive Action
2.2-8 Condemnation
2.2-8 Uneconomic Remnant
2.2-8 Improvements-Interest to be Acquired
2.2-8 Improvements-Just Compensation
2.2-9 Improvements-Tenant Owned
2.2-9 Duplication of Payment
2.2-9 Tenant Rights
2.2-9 Incidental Expense Reimbursement
2.2-10 When to Pay Owner's Litigation Expenses
2.2-10 Inverse Condemnation
2.2-10 Donations
2.2-11 Appraisal Waiver and Invitation to Owners
2.2-12 Conflict of Interest
2.2-13 When to Update an Offer of Just Compensation
2.2-13 Administrative Settlement
2.2-14 Payment before Taking Possession
2.2-15 Expenses Incidental to Transfer of Title to the Agency
2.2-15 Emergency Projects
2.2-A Overview of Hawaii Revised Statutes Chapter 127A
2.2-B-D Emergency Management
2.2-E Emergency Right of Entry for Disasters
2.2-F-P Process for Disaster/Emergency Projects

**Project Assignments**

2.3-1 Purpose
2.3-1 Policy
2.3-1 Responsibility
2.3-1 Scope
2.3-1 Procedures
2.3-2 Assignment Consideration
2.3-2 Project Assignment – How Assigned
2.3-3 Types of Assignments
2.3-3 Miscellaneous Assignments

**Preliminary Right-of-Way Work**

2.4-A Acquisition Flow Chart
2.4-1 Purpose
2.4-1 Policy
2.4-1 Responsibility
2.4-1 Scope
2.4-1 Procedures
2.4-2 Set Up Acquisition/Negotiation Checklist
2.4-3 Project Checklist
2.4-10 Right-of-Way Cost Estimates
2.4-11 Review of Right-of-Way Maps
2.4-11 Topographic Surveying
2.4-12 Right-of-Entry
2.4-13 Conservation District Use Application
2.4-14 General Right-of-Way Services
2.4-14 Project Status System (PSS)
2.4-14 State Projects
2.4-A Project Cost Estimate Worksheet
2.4-B Negotiation Policies and Payments Form
2.4-C Right-of-Entry and Rental Agreement Form
2.4-G Department of Hawaiian Homelands Right-of-Entry Form

**Negotiations – Pre-Acquisition**

2.5-1 Purpose
2.5-1 Policy
2.5-1 Responsibility
2.5-1 Scope
2.5-1 Procedures
2.5-1 Early Acquisition
2.5-2 Design/Build Projects
2.5-2 Certificate of Search (Title Search)
2.5-4 Appraisals
2.5-5 Subdivision Approval
2.5-6 Approved Right-of-Way Maps
2.5-7 Notification of Project and Intent to Acquire
2.5-7 State and Federal Lands
2.5-8 Non-Federal-Aid Projects
2.5-7 Utility Agreements, Relocation and Others
2.5-A Request to Abstract Section Form
2.5-B Request for Appraisal Form
2.5-C Request to Cadastral Engineering Section Form

**Negotiations – Acquisition**

2.6-1 Purpose
2.6-1 Policy
2.6-1 Responsibility
2.6-1 Scope
2.6-1 Procedures
2.6-1 Negotiations – General
2.6-2 Offers to Purchase
2.6-5 Approval of Offers to Purchase
2.6-5 Revised Offers
2.6-5 Negotiation Contacts (Personal Contact)
2.6-6 Negotiation Contacts (Contact by Mail)
2.6-7 Notification of Property Management Section
2.6-8 Negotiation Impasse
2.6-9 Donations
2.6-A Statement of Just Compensation Sample
2.6-C Appraisal Summary Statement Sample
2.6-D Negotiation Policies and Payment Statement
2.6-F Statement of Negotiator Form

2.6-G Negotiation Diary Sample

**Negotiations – Administrative Settlements**

2.7-1 Purpose
2.7-1 Policy
2.7-1 Responsibility
2.7-1 Scope
2.7-1 Procedures
2.7-1 Basis for an Administrative Settlement
2.7-3 Authorization for Administrative Settlement
2.7-A Sample Legal Settlement Agreement
2.7-B Sample Administrative Settlement

**Negotiations – Closing**

2.8-1 Purpose
2.8-1 Policy
2.8-1 Responsibility
2.8-1 Scope
2.8-1 Procedures
2.8-1 Preparation of Documents
2.8-2 Execution of Documents
2.8-3 Expenses Incidental to Transfer of Property
2.8-3 Payments
2.8-4 Recordation of Documents
2.8-4 Distribution of Recorded Documents
2.8-4 Reporting of Real Estate Purchases to the IRS
2.8-5 Withholding of State Tax on the Disposition of Real Property by Nonresident Persons
2.8-A Request for Documents Form (Legal)
2.8-B Request for Payment
2.8-C Proceeds from Real Estate Transactions Form 1099-S
2.8-D Request for Taxpayer Identification Number and Certification Form W-9
2.8-E Annual Summary and Transmittal of U.S. Information Returns Form 1096
2.8-F Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property Form N-289
2.8-G Application for Withholding Certificate for Dispositions by Non-resident Persons of Hawaii Real Property Interest Form N-288B

**Condemnation – Legal Section**

2.9-1 Purpose
2.9-1 Policy
2.9-1 Responsibility
2.9-1 Scope
2.9-1 Procedures
2.9-1 Case Assignment
2.9-2 Filing of the Complaint
2.9-3 Order of Possession
2.9-3 Court Deposit
2.9-5 Withdrawal of Court Deposit
2.9-5 Condemnation Settlements
2.9-6 Trial by Court
2.9-7 Interests
2.9-8 Trial Report
2.9-9 Appeals
2.9-9 Special Counsel
2.9-9 Petition for Subdivision
2.9-10 Condemnation Case File
2-9-10 Inverse Condemnation
2.9-11 Property Not Acquired: Reimbursement of Owner
2.9-A Request for Payment Form Sample
2.9-B Receipt of Deposit Sample
2.9-D Certificate of Deposit and Possession Sample
2.9-H Condemnation Checklist Sample
2.9-I Request for Eminent Domain Proceedings Form 4-411
2.9-N Negotiation Diary Form

**Acquisition of State Lands**

2.10-1 Purpose
2.10-1 Policy
2.10-1 Responsibility
2.10-1 Scope
2.10-1 Procedures
2.10-1 Appraisals
2.10-2 Land Board Submittals
2.10-3 Land Exchange
2.10-4 Public Land Trust
2.10-5 Other State Lands Under Public Property

**Acquisition of County Lands**

2.11-1 Purpose
2.11-1 Policy
2.11-1 Responsibility
2.11-1 Scope
2.11-1 Procedures
2.11-1 Right-of-Way Purchases
2.11-3 Right-of-Entry
2.11-3 Right-of-Way Adjustments
2.11-3 Examples of Right-of-Way Adjustments

**Acquisition of Federal Lands**

2.12-1 Purpose
2.12-1 Policy
2.12-1 Responsibility
2.12-1 Scope
2.12-1 Procedures
2.12-1 Authority for Federal Land Transfers
2.12-2 Application
2.12-3 Processing Transfer of Documents
2.12-4 Improvements
2.12-5 Right-of-Entry (No Acquisition)

**Landscaping and Scenic Enhancement**

2.13-1 Purpose
2.13-1 Policy
2.13-1 Responsibility
2.13-1 Scope
2.13-1 Procedures
2.13-1 Project Agreements
2.13-2 Certificate of Search and Appraisals
2.13-2 Subdivision Approval and Variances
2.13-3 Preliminary Information to Property Owners
2.13-3 Negotiations
2.13-3 Closing

**Utility Agreements**

2.14-1 Purpose
2.14-1 Policy
2.14-1 Responsibility
2.14-1 Scope
2.14-1 Procedures
2.14-1 Utility Agreement Requirements
2.14-2 Utility Relocation Cost Estimates
2.14-3 Utility Agreement Forms
2.14-4 Assignment of Utility Agreement Number
2.14-4 Other Concerns
2.14-5 Preparation of Utility Agreement
2.14-6 Execution of Utility Agreement
2.14-7 Approval of Agreements (FHWA)
2.14-7 Distribution
2.14-8 Utility Agreement Log
2.14-8 Relocation of Utility Facilities
2.14-A Utility Agreement Form DOT 4-204 (Private >$50,000 Utility Cost)
2.14-B Memorandum of Understanding (Private <$50,000)
2.14-1 Utility Agreement Form DOT 4-204-A (Accommodate Existing Facility-No Utility Work Involved)
2.14-K Utility Agreement Form DOT 4-204-F (Facilities Located on Private Property)
2.14-M Basis of Payments, Records and Accounts-Exhibit A
2.14-P Responsibilities of the Company-Exhibit B
2.14-U Utility Cost Estimate for UA/Utility Payment Standards Comparison Form DOT 4-232
2.14-V Utility Agreement Form DOT 4-204-C
2.14-22 Utility Agreement Form DOT 4-204-D
2.14-23 Utility Agreement Log

**Certification of Right-of-Way Clearance**

2.15-1 Purpose
2.15-1 Policy
2.15-1 Responsibility
2.15-1 Scope
2.15-1 Procedures
2.15-1 Verification of ROW Clearance Status
2.15-2 Certification of Right-of-Way Clearance
2.15-A Request for Right-of-Way Certification Form DOT 4-561
2.15-AA FHWA Certification Notes
2.15-AB Right-of-Way Certification Letter Sample
2.15-AD Approval for Utility Agreements and Right-of-Way Certification Guidelines

**Reports**

2.16-1 Purpose
2.16-1 Policy
2.16-1 Responsibility
2.16-1 Scope
2.16-1 Procedures
2.16-1 Annual Report on Real Property Acquisitions
2.16-3 Project Status Report
2.16-3 Project Activity Report (PAR)
2.16-4 Pre-Construction Activity Report
2.16-4 Annual Title VI Accomplishments and Goals Report
2.16-5 Annual Report to the Auditor
2.16-5 Miscellaneous Reports
2.16-A FHWA Form RCS-HRW-10-07, Real Property Acquisition Statistics
2.16-B Project Status Report Sample
2.16-C Project Activity Report Sample

# Chapter 3 – Appraisal Section

## Organization and Functions

3.1-1 Introduction
3.1-1 Purpose
3.1-2 Branch and Appraisal Policies
3.1-3 Market Value Definitions
3.1-3 Organization
3.1-5 Functions
3.1-5 Responsibility
3.1-6 Qualifications of Right-of-Way Agents
3.1-4 Appraisal Section Organization Chart

## General Policies and Procedures

3.2-1 Introduction
3.2-1 Definition of an Appraisal
3.2-1 Appraiser Responsibilities
3.2-2 Owner's Right to Accompany Appraiser
3.2-2 Appraisal Waiver Policy
3.2-3 Appraisal Waiver and Conflict of Interest
3.2-5 Number of Appraisal Report Required
3.2-5 Minimum Payment
3.2-6 Partial Acquisitions
3.2-6 Excess Acquisitions
3.2-6 Uneconomic Remnant
3.2-6 Access Rights
3.2-6 Administrative and Legal Settlements
3.2-7 Status Reports
3.2-7 Project Enhancement or Diminution
3.2-7 Appraisal of Donated Right-of-Way
3.2-8 Compensable and Non-Compensable Damages
3.2-8 Benefit
3.2-8 State Share of Project Cost
3.2-A Compensation Estimate

**Preliminary Right-of-Way Activities**

3.3-1 Purpose
3.3-1 Policy
3.3-1 Responsibility
3.3-1 Scope
3.3-1 Procedure
3.3-2 Right-of-Way Cost Estimating

**Qualifications of Staff Appraisers**

3.4-1 Purpose
3.4-1 Policy
3.4-1 Responsibility
3.4-1 Scope
3.4-1 Procedure

**Staff Appraisals**

3.5-1 Purpose
3.5-1 Policy
3.5-1 Responsibility
3.5-1 Scope
3.5-1 Procedure
3.5-2 Appraisal Reports
3.5-2 Contract Appraiser
3.5-2 Inspections

**Qualifications of Appraisers**

3.6-1 Purpose
3.6-1 Policy
3.6-1 Responsibility
3.6-1 Scope
3.6-1 Procedures

**Selection and Procurement of Fee Appraisers**

3.7-1 Purpose
3.7-1 Policy
3.7.1 Responsibility
3.7-1 Scope
3.7-2 Procedures
3.7-4 Processing the Appraiser's Fee for Payment

**Appraisal Review**

3.8-1 Purpose
3.8-1 Policy
3.8-1 Responsibility
3.8-1 Scope
3.8-1 Procedure
3.8-2 Field Inspection
3.8-2 Review Process
3.8-3 Corrections and Revisions of Appraisal Reports
3.8-3 Retention of Appraisal
3.8-4 Report of Review Appraiser
3.8-4 Basis of Offer Forms
3.8-4 Approval of Report of Review Appraiser
3.8-4 Distribution of Report of Review Appraiser
3.8-5 Review of Reappraisals or Property Owner's Appraisal Report
3.8-5 Court Testimony
3.8-A Report of the Review Appraiser Form DOT 4-182
3.8-B Review Certification Form DOT 4-182
3.8-C Report/Review Process
3.8-D Statement of Just Compensation & Appraisal Summary Statement

**Non-Federal -Aid Projects**

3.9-1 Purpose
3.9-1 Policy
3.9-1 Responsibility
3.9-1 Scope
3.9-1 Procedure

**Acquisition of Government Lands**

3.10-1 Purpose
3.10-1 Policy
3.10-1 Responsibility
3.10-1 Scope
3.10-1 Procedure

**Administrative Legal Settlements**

3.11-1 Purpose
3.11-1 Policy
3.11-1 Responsibility
3.11-1 Scope
3.11-1 Procedures
3.11-2 Request for Legal Settlement
3.11-2 FHWA's Concurrence to Legal Settlement

**Condemnations**

3.12-1 Purpose
3.12-1 Policy
3.12-1 Responsibility
3.12-1 Scope
3.12-1 Procedures
3.12-1 Assignment to Deputy Attorney General
3.12-2 Pre-Trial Conference
3.12-2 Court Trial

**Definitions**

3.13-1 Purpose
3.13-1 Appraisal Definitions

# Chapter 4 – Relocation Assistance Section

## Organization and Function

4.1-1 Purpose
4.1-1 Objective
4.1-2 Administration
4.1-2 Organization
4.1-2 Functions
4.1-3 Qualifications of Right-of-Way Agents
4.1-A Property Management Organization Chart

## General

4.2-1 Purpose
4.2-1 Policy
4.2-1 Responsibility
4.2-1 Scope
4.2-2 Procedures
4.2-2 Definitions
4.2-15 Written Notices
4.2-17 Availability of Comparable Replacement Dwelling Before Displacement
4.2-18 Relocation Planning, Advisory Services and Coordination
4.2-23 Relocation Program at Construction Stage
4.2-25 Records
4.2-28 Reports
4.2-28 Relocation Program on Projects Affected by a Major Disaster
4.2-31 Eviction for Cause
4.2-31 General Requirements-Claims for Relocation Payments
4.2-32 Relocation Payments Not Considered as Income

## Relocation Assistance Advisory Services

4.3-1 Purpose
4.3-1 Policy
4.3-1 Responsibility
4.3-1 Scope
4.3-1 Procedures
4.3-1 Relocation Assistance Advisory Services
4.3-4 Manner of Notices
4.3-9 Appeals

**Moving Payments**

4.4-1 Purpose
4.4-1 Policy
4.4-1 Responsibility
4.4-1 Scope
4.4-1 Procedures
4.4-1 Payment for Actual Reasonable Moving and Related Expenses
4.4-10 Fixed Payment for Moving Expenses – Residential Moves
4.4-11 Related Nonresidential Eligible Expenses
4.4-12 Reestablishment Expenses-Nonresidential Moves
4.4-13 Fixed Payment for Moving Expenses – Nonresidential Moves
4.4-16 Discretionary Utility Relocation Payments

**Replacement Housing Payments**

4.5-1 Purpose
4.5-1 Policy
4-5-1 Responsibility
4.5-1 Scope
4.5-1 Procedures
4.5-1 Replacement Housing Payment for 90-day Homeowner-Occupant
4.5-7 Replacement Housing Payment for 90-day Tenants and Certain Others
4.5-9 Additional Rules Governing Replacement Housing Payments
4.5-13 Non-Availability of Comparable Housing
4.5-14 General Provisions
4.5-18 Replacement Housing Payments for Owner-Occupant for 90 Days or More Who Purchases
4.5-23 Rental Replacement Housing Payment to Owner-Occupant for 90 Days or More Who Rents
4.5-24 Replacement Housing Payment to Owner-Occupant for 90 Days or More Who Purchases
4.5-26 Replacement Housing Payments to Tenant-Occupant for Not Less Than 90 Days Who Purchase
4.5-27 Replacement Housing Payments to Tenant of a Sleeping Room for More Than 90 Days
4.5-28 Forms Used for Relocation Assistance and Payments
4.5-A Fixed Residential Moving Cost Schedule
4.5-B Claim for Interest Differential Payment
4.5-C Claim for Incidental Expenses
4.5-D Request for Relocation Services

4.5-E Request for Determination of Entitlement for Moving Expense Payment Based on Income
4.5-F Claim for Payment Income Basis in Lieu of Moving Expense
4.5-G Claim for Payment Moving Expense
4.5-I Claim for Payment Replacement Housing-Purchase Supplement
4.5-J Claim for Payment Replacement Housing-Rent Supplement
4.5-K Computation for Replacement Housing Payment for Owner Occupant of 90 Days or More
4.5-L Computation of Down Payment Assistance for Claimant Who Moved to Replacement Unit Purchased
4.5-N Determination of the Amount Necessary to Rent a Comparable Dwelling
4.5-O Computation of Rental Replacement Housing Amount (Tenant-Occupant for at Least 90 Days)
4.5-P Computation for Replacement Housing Payment for Owner Occupant of 90 Days or More
4.5-R Standards for Decent, Safe, and Sanitary Housing for Permanent Relocation Housing for Families
4.5-S Survey Information Occupant(s)

**Replacement Housing of Last Resort**

4.6-1 Purpose
4.6-1 Policy
4.6-1 Responsibility
4.6-1 Scope
4.6-1 Procedures
4.6-1 Replacement Housing of Last Resort
4.6-3 State's Responsibility
4.6-4 Implementation
4.6-5 Programming and Authorization
4.6-6 Preliminary Housing Studies
4.6-7 Replacement Housing Plan
4.6-12 Implementation of Housing Plan (Construction)
4.6-12 Advice and Technical Assistance by HUD and Other Federal Agencies
4.6-12 Compliance with Other Statutes
4.6-13 Advisory Committee

# Chapter 5 – Property Management Section

**Organization and Functions**

5.1-1 Purpose
5.1-1 Objective
5.1-2 Administration
5.1-2 Organization
5.1-2 Functions
5.1-3 Property Management Program
5.1-4 Functions Prior to Construction
5.1-4 Functions after Construction
5.1-5 Procedures Implementing Property Management Program
5.1-5 Qualifications of Right-of-Way Agents
5.1-A Property Management Organization Chart

**Rental of Improvements and Remnants**

5.2-1 Purpose
5.2-1 Policy
5.2-1 Responsibility
5.2-1 Scope
5.2-1 Procedures
5.2-1 Owner-Occupied Properties
5.2-3 Tenant-Occupied Properties
5.2-3 Rental of Remnant Properties
5.2-4 Revocable Permits
5.2-5 Billing and Collection
5.2-5 Cancellation

**Inventory and Disposition of Improvements, Inventory of Remnants and Rodent Control**

5.3-1 Purpose
5.3-1 Policy
5.3-1 Responsibility
5.3-1 Scope
5.3-1 Procedures
5.3-2 Disposition of Improvements
5.3-4 Demolition of Buildings
5.3-5 Inventory of Remnant Chart

**Disposals**

5.4-1 Purpose
5.4-1 Policy
5.4-1 Scope
5.4-1 Procedures
5.4-2 Application for Approval
5.4-3 Excess Right-of-Way Resulting from Plan Changes
5.4-4 Uneconomic Remnants
5.4-5 Board of Land and Natural Resources is Disposing Agency Under State Law

**Relinquishment**

5.5-1 Purpose
5.5-1 Policy
5.5-1 Responsibility
5.5-1 Scope
5.5-2 Procedures

**Airspace**

5.6-1 Purpose
5.6-1 Policy
5.6-1 Responsibility
5.6-1 Scope
5.6-1 Procedures

# Chapter 6 – Abstract Section

## Organization and Functions

6.1-1 Purpose
6.1-1 Objective
6.1-1 Administration
6.1-1 Organization
6.1-2 Qualifications of Title Abstractor
6.1-A Organizational Chart

## Title Examinations

6.2-1 Purpose
6.2-1 Policy
6.2-1 Responsibility
6.2-1 Scope
6.2-1 Procedures
6.2-1 Preliminary Title Examinations (Type 1)
6.2-3 Final Title Examinations (Type 2)
6.2-4 Continuations (Type 3)
6.2-5 Cursory Examinations (Type 4)
6.2-5 Worksheets and Title Sheets
6.2-A Abstract Worksheet Exhibit A

## Title Evidence

6.3-1 Purpose
6.3-1 Policy
6.3-1 Responsibility
6.3-1 Scope
6.3-1 Procedures
6.3-1 Preparation of Title Evidence
6-3.2 Review of Title Evidence
6.3-2 Distribution

**Recordation – State's Title**

6.4-1 Purpose
6.4-1 Policy
6.4-1 Responsibility
6.4-1 Scope
6.4-1 Procedures
6.4-1 Preceding Recordation
6.4-3 Recordation
6.4-5 Following Recordation
6.4-A Exemption From Conveyance Tax Exhibit B
6.4-B Conveyance Tax Certificate Exhibit C

**Miscellaneous Title Services**

6.5-1 Purpose
6.5-1 Policy
6.5-1 Responsibility
6.5-1 Scope
6.5-1 Procedures
6.5-1 Cadastral Engineering Section
6.5-2 Acquisition Section
6.5-3 Legal Counsel

**Special Title Studies**

6.6-1 Purpose
6.6-1 Policy
6.6-1 Responsibility
6.6-1 Scope
6.6-1 Procedures
6.6-2 Examples

**Glossary**

1. Glossary of Terms
2. Acronyms

# BRANCH ORGANIZATION



**PURPOSE:**

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

**OBJECTIVE:**

The organization plan is set to provide:

A. Land Title Services (Abstracting), Appraisal, Land Acquisition and Property Management Services for the Highways Division's proposed and completed projects.

B. Relocation advisory assistance services and payments to eligible displaced persons of the Highways Division's projects.

C. Verification of federal reimbursement of right-of-way costs expended on Federal-Aid projects.

D. Contracts, legal documents, clerical functions and services in support of the ROW Branch Administration and Sections' programs and functions.

**ADMINISTRATION:**

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

**ORGANIZATION:**

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

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

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

**FUNCTIONS:**

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

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

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

The Property Management Section is also responsible for real estate functions for anything other than highway projects which includes, the property management function of auctioning economically feasible property or buildings and structures deemed excess to highway's needs; the management, use and occupancy of all right-of-way acquired, including land-use and subdivision reviews affecting all highway right-of-way; disposal of improvements, highway right-of-way, including access rights, air rights and easements, and highway remnants authorized by the Department of Land and Natural Resources; and rental of highway right-of-way, including airspace and remnants.

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

**TITLE VI CIVIL RIGHTS ACT:**

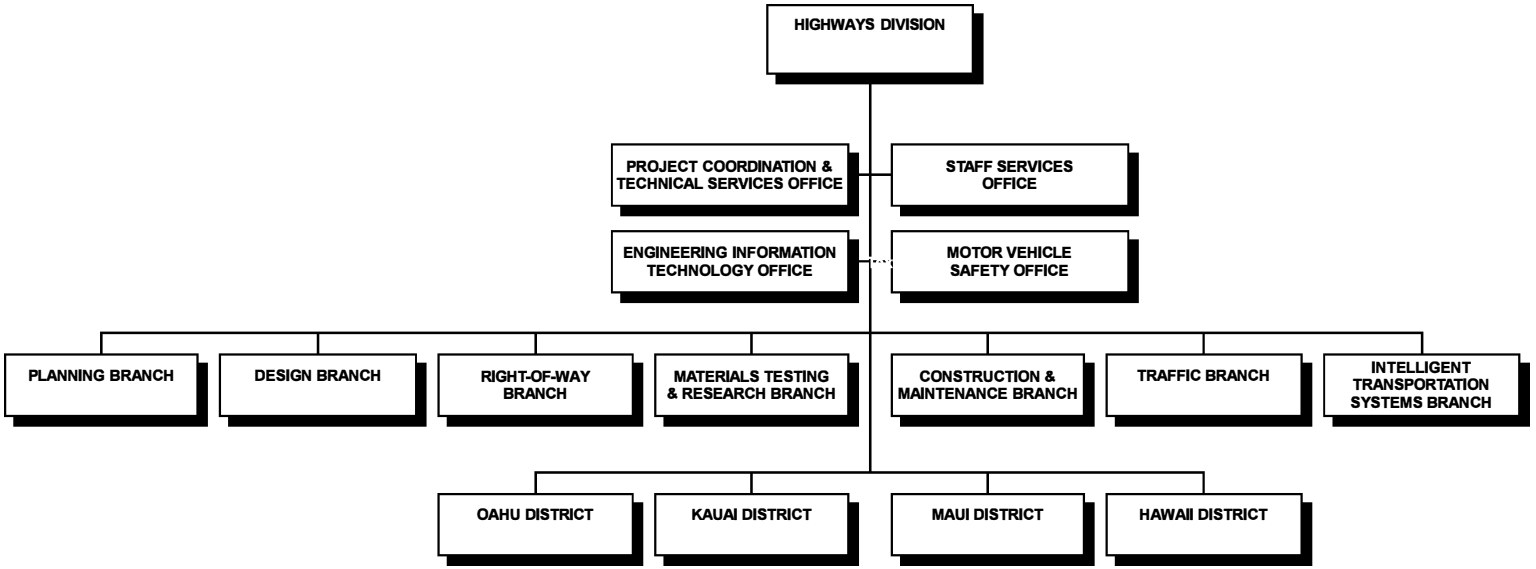
Title VI, Section 601 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, provides:

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

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

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

ORGANIZATION CHART



# ORGANIZATION AND FUNCTIONS

**PURPOSE:** To describe the organization and functions of the Land Acquisition Section (HWY-RL) of the Right-of-Way Branch, Highways. Code of Federal Regulations (CFR), United States Code (USC), Hawaii Revised Statutes (HRS) and other State and Federal acquisition policies listed below:

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

23 USC 324 (Title VI of the Civil Rights Act of 1964),
42 USC Chapter 21 (Civil Rights, Sec. 2000d,
42 USC Chapter 61 (Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs),

HRS 101 (Eminent Domain),
HRS 113 (Land Acquisition Policies for Federally Assisted Programs),
HRS 128 (Civil Defense and Emergency Act),
HRS 171-30 (State Lands),
HRS 264 (Highways),

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

**OBJECTIVE:** The organization plan is set to provide:

- Land Acquisition services for the Division's projects (23 CFR 710 and 49 CFR 24 Part 101).
- Internal control and verification of Federal reimbursement of funds expended for right-of-way activities on Federal-Aid projects (23 CFR 710.203).
- Right-of-Way Acquisition services for the division.

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

**ORGANIZATION:** HWY-RL is comprised of two Acquisition Units; namely, Acquisition Units A & B. The organizational chart of HWY-RL is shown on page 2.1-A.

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

- Processes Right-of-Way Cost Estimates for project agreements with the Federal Highway Administration (FHWA) and other requesting agencies.

- Performs preliminary right-of-way work such as, but not limited to, obtaining right-of-entry documents to conduct test boring surveys (HRS 101-3), boundary surveying, archaeological surveys, etc., and general right-of-way services required during the preliminary engineering stages of the project.

- Acquires all land and/or real property interests required for the construction of the division's projects, which may also include rental of land for construction parcels, securing property adjustments and easements and obtaining use and occupancy agreements and/or appropriate approvals as required and requested for highway related projects.

- Processes utility agreements for the orderly relocation of utility facilities affected by projects.

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

**Qualifications of Right-of-Way Agents:**

The minimum qualification requirements of the ROW Agent in the various classifications shall be as follows:

**A. Right-of-Way Agent VI (Section Head)**

**ROW VI Section Head Experience and Training:**

- Graduation from an accredited college or university.
- Five years of progressively responsible professional work experience in negotiating for the acquisition of real property, appraising or managing property, all of which shall have been direct employment experience in the field of acquisition of real property for public purposes and one year of which must have been comparable to that of the next lower level in this series, or an equivalent combination of training and experience;
- Possession of a valid driver's license.

**ROW VI Section Head Knowledge:**

- A thorough knowledge of principles and practices of appraising, negotiation and/or managing of properties of all categories for acquisition purposes;
- Laws pertaining to the acquisition of right-of-way; real estate market conditions and trends;
- Pertinent laws, rules and regulations, precedent decisions and agency instructions; condemnation laws;
- Appraisal and land acquisitions for Federal-Aid programs;
- Surveys and Boundaries;
- Legal instruments affecting real property;
- Principles and practices of supervision and public relations;
- Principles of report writing;
- Arithmetic; mathematical problem solving;

- Real property values in Hawaii;
- Methods of determining ownership of property and existence of liens against property;
- Hawaiian land system[1].

**ROW VI Section Head Ability:**

- Coordinate and direct right-of-way operations; interpret real estate market conditions and trends;
- Analyze appraisal and land acquisition factors and accurately estimate real property values;
- Speak and write effectively;
- Maintain effective public relations;
- Effectively deliver projects in a timely manner.

**B. Right-of-Way Agent V (Supervising Right-of-Way Agent)**

**ROW V Supervisor Experience and Training:**

- Graduation from an accredited college and university;
- Four years of progressively responsible work experience in the appraisal of real property, acquisition of real property and right-of-way and interim property management, of which at least one year of experience must have been comparable to that of the next lower level in this series, or an equivalent combination of training and experience;
- Possession of a valid driver's license

**ROW V Supervisor Knowledge:**

- A thorough knowledge of principles and practices of appraising, negotiation and/or managing real property of all categories for acquisition purposes;

- Laws pertaining to the acquisition of right-of-way, sources of appraisal data, pertinent laws, precedent decisions, and agency instructions;
- Legal instruments affecting real property; condemnation laws; principles and practices of supervision;
- Public relations;
- Report writing;
- Arithmetic, mathematical problem solving;
- Real property values in Hawaii;
- Methods of determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW V Supervisor Ability:**

- Plan, schedule, assign, review and evaluate the work of others;
- Review and analyze appraisal and negotiation reports;
- Serve as expert witness in condemnation proceedings;
- Conduct orientation and training activities;
- Make conclusions and derive estimates based on facts;

[1] See Title Searching for the Non-Professional, A Layperson's Guide: Searching for Chain of Land Ownership in Hawaii by Jackie Mahi Erickson, 1980, Final Report on the Public Land Trust, Report No. 86-17, December 1986, Conducted by the Office of the Legislative Auditor, Crown, Government and Fort Lands, Enumerated L. 1848, p 22., C.C p. 374, An Act Relating to the Lands of His Majesty the King and the Government.

- Meet and deal effectively with property owners and others;
- Speak and write effectively; maintain effective public relations.

**C. Right-of-Way Agent IV (Journeyman Level)**

**ROW IV Agent Experience and Training:**

- Graduation from an accredited college or university;
- Two and one half years of progressively responsible work experience in the appraisal of real property, acquisition of real property and right-of-way and interim property management, of which at least one year of experience must have been comparable to that of the next lower level in this series, or an equivalent combination of training and experience;
- Possession of a valid driver's license.

**Row IV Agent Knowledge:**

- A thorough knowledge of principals and practices of appraisal, acquisition or management of all categories of real property;
- Laws pertaining to the acquisition of right-of-way, sources of appraisal data, pertinent laws, precedent decisions, and agency instructions;
- Legal instruments affecting real property; condemnation laws;
- Report writing;
- Arithmetic, mathematical problem solving;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**Row IV Agent Ability:**

- Perform all categories of real property acquisition and negotiation work;
- Gather, organize, and analyze data, facts and figures;
- Make sound conclusions and estimates based on facts;
- Understand and apply acquisition and real property laws;
- Make arithmetic computations;
- Prepare reports and compile data, maps, sketches and other materials;
- Read maps, plans and specifications and other materials;
- Meet and deal effectively with property owners and others;
- Serve as expert witness in condemnation proceedings;
- Assign, review and correlate the work of other lower level agents as assigned;
- Use computer and commonly accepted office technology, equipment and machines that are, or become available for use.

**D. Specialized Training and Skills for all Agents**

- Knowledge of local Hawaiian real estate terms and Land Tenure[2];
- Knowledge of special land divisions and transfer of title, e.g., Mokus, Apanas, Kuleanas, Great Mahele, Land Commission Awards, Land Court properties, Ceded lands and other Hawaiian references;
- Ability to read State of Hawaii Land Management Maps, Right-of-Way Maps[3], DOT “as built” plans, and Subdivision maps;
- Ability to decipher and analyze appraisal reports and certificates of title;

- Ability to draft acquisition documents, e.g., Offer letters, Warranty Deeds, Quitclaim Deeds, Personal Representative Deeds, Dedication Deeds, Right-of-Entry documents, Right-of-Way Certifications, Utility Agreements, Memorandums of Understanding, Memorandums of Agreements, Mortgage Releases, etc.;[4]

- Ability to close escrow and disburse payments, e.g., Request for payments, filing of W-9 Internal Revenue Service forms, withholding forms, reimbursement forms, etc.;

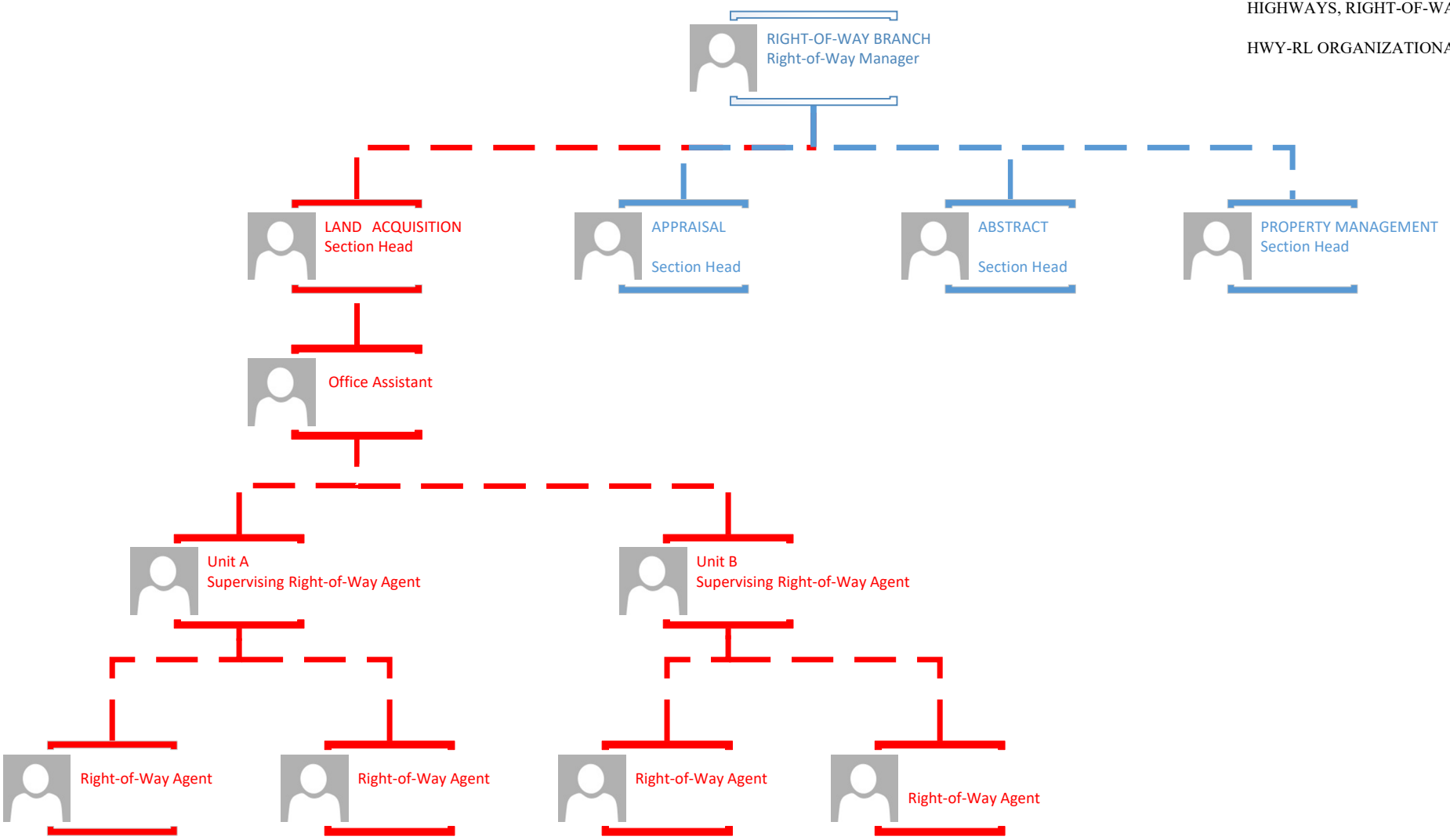
- Ability to coordinate and assemble local requirements for eminent domain requests with the Attorney General's Office, Land Transportation Division, through HRS 101.

[2] Original Land Title in Hawaii, Jon Chinen, 1961, Great Mahele, Hawaii Land Division of 1848, Jon Chinen, UH Press 1958 , The Origins of Hawaii Land Titles and of the Rights of Native Tenants by Louis Cannelora, Security Title Corporation, Honolulu, December 1974., Hawaiian Land Titles by Robert D. King, Principal Cadastral Engineer, Circa 1950.
[3] See Drafting Instruction Manual, March 31, 2000, Ch. 7, Cadastral Engineering Mapping Guidelines.

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

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

HWY-RL ORGANIZATIONAL CHART



# REAL PROPERTY ACQUISITION POLICIES

**PURPOSE:** To describe uniform policies related to the acquisition function.

**OBJECTIVE:** Uniform real property acquisition policies are established in order to:

- Encourage and expedite the fair acquisition of real property by agreements with owners, in accordance with state and federal laws;
- Avoid litigation and relieve congestion in the courts;
- Assure consistent treatment for owners and tenants of real property acquired for state, federal and federal-assisted highway and highway-related programs and projects;
- Promote public confidence in the State's land acquisition practices and the agents in the Land Acquisition Section.

**SCOPE:** This section applies to the Land Acquisition Section of the Right-of-Way Branch (HWY-R) of the Highways Division.

**POLICIES:** Right-of-Way Agents involved in the acquisition functions shall be guided by the following policies in real property acquisitions.

**A. Civil Rights (Title VI):**

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

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

As a condition of receiving federal assistance, the Hawaii [2]Department of Transportation is required to comply with various non-discrimination laws and regulations. Title VI forbids discrimination against any agency receiving Federal assistance. The Federal-Aid Highway Act of 1973 added the requirement that there be no discrimination on the grounds of gender. Additionally, the Civil Rights Restoration Act of 1987 defines the word "program" to make clear that discrimination is prohibited throughout the entire agency if any part of the agency receives Federal financial assistance.[2]

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

The Granting Clause will include: Now, therefore, the US Department of Transportation, as authorized by law, and upon the condition that the State will accept title to the lands and maintain the project constructed thereon, in accordance with (Name of Appropriate Legislative Authority), the Regulations for the Administration (Name of Appropriate Program), the Federal-Aid Program and the policies and procedures prescribed by the (Name of Appropriate Program) and also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation (herein after referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964, (78 Stat. 252, 42 USC 2000d to 20004), does hereby remise, release, quitclaim and convey unto the State all right, title and interest of the US Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

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

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

The State in consideration of the conveyance of said lands and interests in lands does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed and (2) that the State shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49 CFR US Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964, (78 Stat. 252, 42 USC 2000d to 2000-4, as amended and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the United States Department shall have a right to re-enter said lands and facilities on said land and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the United States Department of Transportation and its assigns as such interest existed prior to the instruction.

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

That the State shall include the appropriate clauses set forth in **Appendix C** of the assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the State with other parties: (a) for the subsequent transfer of real property acquired or improved under Federal-Aid Program; and (b) for the construction or use of or access to space, on, over, or under real property acquired, or improved under the Federal-Aid Program.
The (grantee, license, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases and “as a covenant running with the land”) that in the event facilities are constructed, maintained or otherwise operated on the said property described in this (deed,

license, lease, permit, etc.,) for a purpose for which a Department of Transportation program or activity is extended for another purpose involving the provisions of similar services or benefits, the (grantee, license, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federal-Assisted programs of the Department of Transportation –Effectuation of Title VI of the Civil Rights Act of 1964 and as said regulations may be amended.

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

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

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

**B. Basic Negotiation Procedures**:

The agency shall make all reasonable efforts to contact the owner or owner's representatives and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including payment of incidental expenses in accordance with 49 CFR 24.106. The owner shall be given 30 days to consider the offer and present materials which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase. The State shall consider any and all owner presentations. [3]

**C. Negotiated Purchase**:

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

**D. Notice to Owner**:

As soon as feasible, the State shall make every effort to personally serve or notify the affected owner(s) in writing by certified or registered first-class mail, return receipt requested (or by companies other than the United States Postal Service that provide the same function as certified mail with return receipts) of the State's interest in acquiring the real property (ies) and the basic protections provided to the owner(s) by law and this part. A Federal funding agency may approve a process to permit the use of electronic signature which meet the requirements of 49 CFR 24.5 (a)(e).

A property owner or tenant may designate a representative to receive offers, correspondences, and information on their behalf required by the displacing agency by providing a written request to the agency.[6]

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

[3] 49 CFR 24.102 (f) Basic Negotiation Procedures.
[4] Reference: 49 CFR 24.102 (a) Expeditious Acquisition and Establishment, (d) Offer of Just Compensation
[5] Reference: 49 CFR 24.102 (b)
[6] Reference: 49 CFR 24 Subpart A §24.5 (d)

**E. Summary Statement**:

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

- The amount established as just compensation, including any damages to the remainder and acquisition of access rights when applicable as of the date of summons (ref 49 CFR 24.102 (d)).

- A statement explaining that the offer is based on the State's review and an analysis of an appraisal(s) of such property made by a qualified review appraiser(s) or qualified personnel in the cases of nominal values using the appraisal waiver provision (ref. 49 CFR 24.102 (c) (2)(ii)).

- Identification of the real property to be acquired, including the estate or interest being acquired.

- Identification of improvements and fixtures considered to be part of the real property to be acquired.

- Where appropriate, the just compensation for the real property to be acquired shall be separately stated.

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

Some jurisdictions initiate formal eminent domain procedures at the earliest opportunity because of the time consuming process, including gaining possession of the needed real property. These provisions are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations and the State's adherence to the Uniform Act ban on coercive action (49 CFR 24.301(7)) of the Uniform Act. If the owner expresses intent to provide an appraisal report, the State is encouraged to provide the owner or representative a copy of the State's appraisal requirements and to inform parties that their appraisal should be based on those requirements. [6]

**F. Surrender of Possession**:

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

**G. Notice to Vacate**:

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

**H. Fair Rental**:

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

Addendum A 49 CFR 24.102 (f) Additional Information Basic Negotiation Procedures and Appendix A 102(f).

**I. Coercive Action**: [7]

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

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

**J. Condemnation**:

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

**K. Uneconomic Remnant**:

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

**L. Improvements – Interest to be acquired**:

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

**M. Improvements – Just Compensation**:

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

[7] 49 CFR 24.106 (h) Coercive Action

**N. Improvements – Tenant Owned**:

The tenant who owns a building, structure, or other improvement to be acquired under paragraph $_4$L shall be paid the fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is greater, unless so specified in the Lease Document covering the subject parcel(s).

**O. Duplication of Payment**:

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

**P.Tenant Rights**:

Nothing in the above paragraphs L through N shall be construed to deprive the tenant of any rights to reject payment under these paragraphs and to obtain payment for such property interests in accordance with other applicable law. A property owner or tenant may designate a representative to receive offers, correspondences, and information on their behalf required by the displacing agency by providing a written request to the agency.[6]

**Q. Incidental Expense Reimbursement**:

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

- Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;
- Penalty costs for prepayments of any pre-existing recorded mortgage entered into in good faith encumbering such real property; and

- The pro rata portion of real property taxes paid, which are allocable to a period subsequent to the date of vesting title in the State, or the effective date of possession of such real property by the State, whichever is earlier.

**R. When to Pay Owner's Litigation Expenses**:

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

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

- The proceeding is abandoned by the State.

**S. Inverse Condemnation**:

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

Where an inverse condemnation or similar proceeding is successfully maintained for the taking of real property, the State shall pay the owner, as a part of the judgment or settlement, such sum as will in the opinion of the Court or the official effecting the settlement, reimbursements and expenses, including reasonable attorney, appraisal, and engineer fees, actually incurred because of the proceeding.

**T. Donations**:

An owner whose real property is being acquired may, after being fully informed by the State of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the State as such owner shall determine. The State is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the State from such obligation, except as provided in 49 CFR 24.102 (c)(2).

[8] 49 CFR 24.102 (l) Inverse Condemnation

HRS 264-24, Wherein Director may, on behalf of the State, with the approval of the Governor accept donations of land, money, or other property for deposit in the State Highway Fund or for any purpose of this part, upon such terms and conditions as are acceptable to the director, and not inconsistent with the proper discharge of the director's duties and functions or prejudice to the obtaining of the Federal-Aid funds payable to the State without such donations.

In other words, nothing in this procedure manual shall be construed to prevent a qualified bona fide owner whose real property is being acquired for a Federal-Aid highway project from making a gift or donation of such property or any part thereof, or of any of the compensation paid therefore, after such qualified owner has been fully informed of their rights to receive just compensation for the acquisition of the real property or interest.

## U. Appraisal Waiver and Invitation to Owner:

The purpose of the appraisal waiver provision is to provide the State a technique to avoid the cost and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The intent is that non-appraisers may make the waiver valuations freeing appraisers to do more sophisticated work. The State employee making the determination to use the appraisal waiver process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is of low value and uncomplicated. Since the waiver valuations are not appraisals, as defined by the Uniform Act, neither is there a requirement for an appraisal review. However, the Agency must have a reasonable basis for the waiver valuation and the Agency official must still establish an amount believed to be just compensation to offer the property owner(s).[9] In other words, comparables, data and some analysis must be presented in order to support the de minimus valuation.

An appraisal is not required if the State determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at $15,000 or less, based on review of available data. However, documentation and presentation is still recommended to support the valuation opinion.

[9] Appendix Subpart B 49 CFR 24.102 (c) (2). Appraisal Waiver.
[10] 49 CFR 24.102 (c) Appraisal Waiver thereof, and invitation to owner.

Although a Summary Statement is not required from the Appraisal Section, because no appraisal is required, justification and reasons for a nominal value should be documented and supported. A summary of those findings should be stated in the letter offer with the minimum information stated in Item E of this section.

(A) When an appraisal is determined unnecessary, the State shall prepare a waiver valuation or Compensation Estimate.

(B) The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation, preferably, one that has a license or certification of qualification.

(C) The Federal Agency funding the project may approve exceeding the $ 15,000 threshold, up to a maximum of $ 35,00 and up to $50,000, if the Agency acquiring the real property offers the property owner the option of having the State appraise the property, the State shall obtain an appraisal and not use procedures described in this paragraph. [10]

## V. Conflict of Interest:

No persons performing the waiver valuation shall have any interest, direct or indirect in the real property being valued by the Agency, nor shall compensation to the person performing a waiver valuation be based on the amount of valuation estimate. No person shall attempt to unduly influence or coerce an appraiser, review appraiser or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or appraisal waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work except if FHWA waives this requirement if it determines that the situation would create a hardship for the State. An appraiser, review appraiser or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation if the offer to acquire the property is $15,000 or less. Should the State wish to use this same authority to act as negotiator on a valuation between $15,000-$35,000, these acquisitions are subject to the following conditions: [11]

[11] 49 CFR 24.102 (n) (2) Conflict of Interest

(i)For those acquisitions where the appraiser or review appraiser will also act as the negotiator, an appraisal must be performed in compliance with § 24.103 and reviewed in compliance with § 24.104;

(ii) Agencies and recipients desiring to exercise this option must request approval in writing from FHWA;

(iii) The requesting agency shall have a separate and distinct quality control process in place and set forth in the written procedures approved by the FHWA.

**W. When to Update an Offer of Just Compensation**:

An appraisal should be updated or a new appraisal ordered if the information presented to the owner(s) indicates that there is a material change in the character or condition of the property that indicates the need for new appraisal. An update or new appraisal should also be made if a significant delay has occurred since the time of the appraisal of the property, the State shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in purchase offer is warranted, the State shall promptly reestablish just compensation and offer that amount to the owner in writing. [12]

**X. Administrative Settlement**:

The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized State official (Branch Manager) approves such an administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. [13]

[12] 49 CFR 24.102 (g) Updating Offer.
[13] 49 CFR 24.102 (I) Administrative Settlement.

An administrative settlement is any authorized settlement made by a responsible acquiring official, who the valuation is in excess of the State's approve valuation of just compensation. The Uniform Act requires that the head of an Agency shall make every reasonable effort to acquire expeditiously real property by negotiations. Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Negotiators should recognize the inexact nature of the process by which just compensation is determined. The law requires an attempt to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in courts. Cost savings are in the area of salaries, witness fees, travel, per diem costs, excessive court awards, appraiser's fees, etc. FHWA endorses administrative settlements as they can expedite agreement with owners. The administrative settlement process should be maintained separately from the appraisal/appraisal review function.

For example, if there is a difference of opinion between the owner and the State as to the Highest and Best Use that may be difficult to document, this could be a plausible basis for settlement before triggering the legal process. Some of the items that can assist the approving agency in his approval are: appraisals, offer of just compensation, recent court awards, negotiator's diary and records of negotiations, valuation problems and estimates of trial costs. [14]

## Y. Payment before Taking Possession:

Before requiring the owners to surrender possession of the real property, the State shall pay the agreed purchase price to the owner(s), or in the case of a condemnation, deposit with the court for the benefit of the owner(s) an amount not less than the State's approved appraisal of the market value of such property or the court award of compensation in the condemnation proceedings for the property. With prior approval of the owner, the State may obtain a right of entry (ROE) for construction purposes before making payment available to the owner. [15]

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project or dealing with another government agency, e.g., Department of Hawaiian Homelands, where licenses will not be given until the project is completed and the property owner is agreeable to the process. This can be accomplished by the Right-of-Way Certification (2): Although all necessary rights of way have not been fully acquired, the right to occupy and to use all rights of way required for the proper execution of the project has been acquired. [16]

[14] Project Development Guide Chapter 11, Page 11-1 to 11-5. August 4, 1992.
[15] 49 CFR 24.102 (j) Payment Before Taking Possession
[16] 23 CFR 635.309 Authorization

**Z. Expenses Incidental to Transfer of Title to the Agency**:

The owner of real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, legal descriptions of the real property, and any other similar expenses incidental to conveying the real property to the State. However, the State is not required to pay costs solely required to perfect the owner's title to the real property.

(2) Penalty costs and other charges for prepayment of any pre-existing recorded mortgage entered in good faith encumbering the real property.

(3) The pro-rata portion of any prepaid real property taxes, which are allocable to the period after the State obtains title to the property or effective possession of it whichever is earlier. Whenever feasible, the State shall pay these costs directly to the billing agent so that the owner will not have to pay such cost and then seek reimbursement form the Agency. [17]

**AA. Emergency Projects**:

Overview of Hawaii Revised Statutes Chapter 127A, Emergency Management (HRS 127A-21, 127A-22, 127A-23, 127A-24, 113-1, 113-5, 171-30(c), 23 CFR 635.309, 49 CFR 24.102(j). See attachment on pages 2.2-A through 2.2-P

[17] 49 CFR 24.106 Expanses Incidental to Transfer of Title to the Agency

# OVERVIEW OF HAWAI`I REVISED STATUTES CHAPTER 127A

Hawai`i Revised Statutes (HRS) Chapter 127A creates state and county emergency management agencies and defines the responsibilities and authorities of the Governor and Mayors related to emergency and disaster preparedness and response. Select duties and powers conferred by the statute are listed below. The full chapter is available here: https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0127A/.

| HI-EMA Responsibilities | General Emergency Management Powers (Mayor and Governor) | Gubernatorial Powers with an Emergency Proclamation |
|---|---|---|
| ▪ Perform emergency management functions within the state.<br>▪ Maintain a state comprehensive emergency management plan and standards for county and state agency plans.<br>▪ Assign responsibilities to state agencies for emergency support functions.<br>▪ Coordinate state response and recovery activities and all resource support to counties.<br>▪ Maintain a statewide system for detection, alert and warning of emergency conditions, including operation of a State Warning Point and maintenance of the Statewide Outdoor Siren Warning System.<br>▪ Institute public preparedness programs. | ▪ Declare an emergency via a mayoral or gubernatorial proclamation.<br>▪ Identify emergency workers required to report for duty<br>▪ Develop mutual aid agreements.<br>▪ Lease or lend county/state property for emergency purposes.<br>▪ Re-allocate county/state public property to be utilized for emergency purposes.<br>▪ Direct non-compulsory evacuations.<br>▪ Establish special accounting forms and practices to expedite access to financial resources.<br>▪ Fix or revise hours of government business. | ▪ Apply for federal assistance by requesting a Presidential Disaster Declaration.<br>▪ Suspend any law that impedes or is detrimental to the expeditious and efficient execution of emergency functions.<br>▪ Assume direct operational control for events deemed beyond capabilities of local government.<br>▪ Suspend state holidays.<br>▪ Assure continuity of service by critical infrastructure facilities, publicly and privately owned, by regulating or taking over operations.<br>▪ Shut off or suspend utility services.<br>▪ Take action to prevent price gouging and hoarding of supplies, commodities and services. |

**[§127A-21] Notice of requisition.** (a) The governor or mayor may requisition and take over any materials, facilities, or 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 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 mayor, or with such person as the governor or mayor 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 or mayor shall publish a notice of the requisition at the earliest practicable date.

(b) A requisition shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency in the State or local state of emergency, respectively, or by a separate proclamation of the governor or mayor, whichever occurs first. [L 2014, c 111, pt of §2]

**[§127A-22] Determination of compensation.** (a) Whenever the governor or mayor 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 or mayor 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.

(b) If any person is unwilling to accept, as full and complete compensation for the property or use thereof, the sum determined by the governor or mayor, the person shall be paid seventy-five per cent of the sum determined by the governor or mayor. The person shall also be entitled to sue the State or county 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 for actions against the State and any other applicable chapter for actions against the county. Any suit under this section shall be 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 conservator of a person under disability, or the removal of the disability, or after the appointment of personal representatives. 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, or 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 conservator or personal representative has been appointed, the State, acting through the attorney general, may apply for the appointment of a conservator or for the appointment of a personal representative. [L 2014, c 111, pt of §2]

**[§127A-23] Determination of damages.** The governor or mayor, as applicable, shall appoint a board of three disinterested certified 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, and not for any deterioration or damage, except such as is shown to have resulted from the taking or use of the property. Any claim shall be filed within thirty days after the return of the property or after the governor or mayor 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 the governor or mayor, as applicable, 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 State, shall be entitled in the name of the State, by the attorney general, and if filed by the county, shall be entitled in the name of the county, by its corporation counsel, 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. Appellate review may be had, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. The court may order the joinder of other parties or may allow other parties to intervene. Any award that 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 as appropriated or out of the general revenues of the county as appropriated. [L 2014, c 111, pt of §2]

**[§127A-24] Investigations and surveys.** (a) The governor or mayor, as applicable, 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; 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.

(b) No person shall be excused from attending and testifying, or from producing books, papers, or records, before the governor or mayor or in obedience to the subpoena of the governor or mayor, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter or any rule 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.

(c) Witnesses shall be allowed their per diem fees and mileage as in cases in the circuit courts. [L 2014, c 111, pt of §2]

# 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 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. **Project Title and Number**, for use in the Agreement.
4. **Job Authorization**, for charge code and function to be used.
5. **Map**, showing the location and delineating the area(s) required and to be used to store construction equipment and materials, for staging, mobilization, construction and work areas, for field office site, and/or for a detour road.

**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 127A-21, 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 127A-22, 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 127A-21, 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

4. Expanding/enhancing the entering and surveying statute, Section 101-8, to:

    1. 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

    2. 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.

5. 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

    1. **Full Project Title and Number** for use in various Project and Work documents.

    2. **Authorized Charge and Function Codes and Job Authorization** so HWY-R personnel know what to charge to early-on.

    3. **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:

            1. 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

            2. 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.

# 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, guide and supervise all subordinates. The unit heads are senior agents with experience in negotiations and problem solving. For more complicated and unresolvable 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 agencies 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 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, resign, 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.

r6/26/2023

# PROJECT COST ESTIMATE WORKSHEET
(ENGINEER'S ESTIMATE - Does NOT include "Others Share")

TRN
CPN

PROJECT: Kamehameha Highway, Scour Repairs at Paumalu Bridge

CONTACT: Ursula Calbero
OFFICE: HWY-DH
PHONE:
DATE: 05/19/25

**GREEN FIELDS: INPUT FIELDS** **BLUE 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 (PE1)*** | *PLANNING PROJ NO.:* | | | CC: | | Begin PLAN (mo / yr) | 0.00% | FFY PLAN Est Made |
| A. CONSULTANT COST | 0.00 | | 0.00 | 0.00 | | | | 2024 |
| 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. Indirect Cost | 0.00 | 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 | | | -2024 |
| 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 |
| | | | | | | | | 1.29676E-43 |
| **CONTRACT AMENDMENT NO:** | **See Below** | **CONTRACTOR:** See Below | | | **CONTRACT NO:** | **See Below** | | |
| ***DESIGN PHASE (PE2)*** | *DESIGN PROJ. NO.:* | | | CC: | | Begin DES (mo / yr) | 0.00% | FFYDES Est Made |
| A1. CONSULTANT COST (Design) | 0.00 | | 0.00 | 0.00 | | | | |
| A2. CONSULTANT COST (Post Design) [7] | 0.00 | | 0.00 | 0.00 | | DES NTP (mo / yr) | | FFY DES Funded |
| B. STAFF NON-LABOR COST | 0.00 | | 0.00 | 0.00 | | | | |
| C. SUBTOTAL (A1+A2+B) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | End DES (mo / yr) | | |
| D. Staff Labor Cost (Direct + Overhead) | 0.00 | | 0.00 | 0.00 | | | | |
| E. Indirect Cost | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | B.O. Date (mo/yr) | | 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 | | | |
| **H. TOTAL DESIGN (Including Inflation)** | **0.00** | **0.00** | **0.00** | **0.00** | **0.00** | | | Infl Multiplier |
| | | | | | | | | 1 |
| **CONTRACT AMENDMENT NO:** | **See Below** | **CONTRACTOR:** See Below | | | **CONTRACT NO:** | **See Below** | | |
| ***RIGHT-OF-WAY PHASE*** | *ROW PROJ NO.:* | **83B-02-23M** | | CC: | **6294** | Beg. ROW (mo / yr) | 0.00% | FFY ROW Est Made |
| A. CONSULTANT COST | 20,000.00 | 20,000.00 | 0.00 | 20,000.00 | | | | |
| B. LEGAL COST | 75,000.00 | 75,000.00 | 0.00 | 75,000.00 | | End ROW (mo / yr) | | FFY ROW Funded |
| C. ACQUISITION COST | 22,500.00 | 22,500.00 | 0.00 | 22,500.00 | | | | |
| D. STAFF NON-LABOR COST | 0.00 | | 0.00 | 0.00 | | | | |
| E. SUBTOTAL (A+B+C+D) | 117,500.00 | 117,500.00 | 0.00 | 117,500.00 | 0.00 | | | Fund & Est Yr Diff |
| F. Staff Labor Cost (Direct + Overhead) | 153,500.00 | 75,000.00 | 0.00 | 75,000.00 | | | | 0 |
| G. Indirect Cost | 51,100.00 | 25,500.00 | 0.00 | 25,500.00 | 0.00 | | | |
| H. Total Staff Labor (F+G) | 204,600.00 | 100,500.00 | 0.00 | 100,500.00 | 0.00 | | | Infl Multiplier |
| I. TOTAL RIGHT-OF-WAY (E+H) | 322,100.00 | 218,000.00 | 0.00 | 218,000.00 | 0.00 | | | 1 |
| **J. TOTAL RIGHT-OF-WAY (Including Inflation)** | **322,100.00** | **218,000.00** | **0.00** | **218,000.00** | **0.00** | | | |
| ***CONSTRUCTION PHASE*** | *CONSTR. PROJ. NO.:* | | | CC: | | CON Award (mo / yr) | 0.00% | FFY CON Est Made |
| A1. CONTRACT ITEMS | 0.00 | | 0.00 | 0.00 | | | | 2024 |
| A2. CONTRACT ITEMS (Non-Par) | 0.00 | 0.00 | | 0.00 | | CON NTP (mo / yr) | | FFY CON Funded |
| B1. CONTINGENCY | 0.00 | 0.00 | 0.00 | 0.00 | | | | 2024 |
| B2. CONTINGENCY (Non-Par) | 0.00 | 0.00 | | 0.00 | | End CON (mo / yr) | | |
| C. SUBTOTAL (A1+A2+B1+B2) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | | | |
| D. CONSTRUCTION ENGR | | | | | #DIV/0! | Duration | | |
| 1. CONSULTANT (CM / CSS) | 0.00 | | 0.00 | 0.00 | | | | |
| 2. CONSULTANT (Post Design) [7] | 0.00 | 0.00 | 0.00 | 0.00 | | | | Fund & Est Yr Diff |
| 3. STAFF NON-LABOR COST | 0.00 | 0.00 | 0.00 | 0.00 | | | | 0 |
| 4. SUBTOTAL (D1+D2+D3)} | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | | | |
| 5. Staff Labor Cost (Direct + Overhead) | 0.00 | 0.00 | 0.00 | 0.00 | | | | Infl Multiplier |
| 6. Indirect Cost | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | | | 1 |
| 7. Total Staff Labor (D5+D6) | 0.00 | 0.00 | 0.00 | 0.00 | #DIV/0! | | | |
| E. FORCE ACCOUNT (Work by Others) | 0.00 | 0.00 | 0.00 | 0.00 | | | | |
| F. TEMPORARY LAND PURCHASE [8] | 0.00 | 0.00 | 0.00 | 0.00 | | | | |
| G. TOTAL CONSTRUCTION (C+D4+D7+E+F) | 0.00 | 0.00 | 0.00 | 0.00 | #DIV/0! | | | |
| **H. TOTAL CONSTRUCTION (Including Inflation)** | **0.00** | **0.00** | **0.00** | **0.00** | **#DIV/0!** | | | |
| **CONTRACT AMENDMENT NO:** | | | | 0.00 | **CON ALLOTMENT** | | | |
| **CONTRACTOR:** | | | **CONTRACT NO:** | | | | | |
| ***TOTAL PROJECT*** | 322,100.00 | 218,000.00 | 0.00 | 218,000.00 | #DIV/0! | | | |

**NOTES:**

1. FEDERAL PARTICIPATION RATE: Indicates the fed participating rate (%) that the estimate is based on. Check with Hwy-SM for federal participating % for your project.
2. CE RATE: **#DIV/0!** (Calculated %)
3. (FY2010) Implement INDIRECT COST in lieu of Construction Admin.
   This is a PARTICIPATING cost for Federal Aid projects. The current rate is: **34.00%** FY2025
4. Staff Labor and Indirect Cost are provided by the Staff Labor appropriation (X225) (not the Project Appropriation).
5. Inflation Rate is based on a 3-year average of annual CPI changes. This rate is verified annually. The current rate is: **5.00%** FFY2023
6. Column G / Rows D1-3, 5 may be filled out for computational purposes.
7. Post Design may either be funded with DES or CON funds.
8. Temporary Land Purchases include: Moving costs, Rental payments, Utilities, and Other related costs. (As of 1/28/22, per B&F, they are to be funded with CON funds.)

(Rows to be "unhidden" as they are populated)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| DESIGN CONTRACT | PR | PR | PR | PR | PR | PR | PR |
| LAND | PR | PR | PR | PR | PR | PR | PR |
| CM/CSS | PR | PR | PR | PR | PR | PR | PR |
| CONSTRUCTION CONTRACT | | | | | | | |

REMARKS:

# 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.

**POLICY:** To complete all preliminary right-of-way work as a 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 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 the HWY-R, Highway Design Branch (HWY-DD), 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 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 agency. If

not, the assigned agent will follow up on these items before proceeding with work.

**SET UP ACQUISITION/NEGOTIATION CHECKLIST**
Upon receipt of the Cadastral Engineering Section (HWY-DC) Electronic transmittal Memorandum for the Standard Distribution (SD) of the Right-of-Way (ROW) maps for a project:

- HWY-R, HWY-RA, HWY-RP
- File HWY-DC's electronic transmittal memo with set of ROW map(s);
- Request project information;
- SD serves as request for title search;
- SD serves as request for 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;

Negotiation/Acquisition:

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

Eminent Domain/Condemnation:

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

Closing Process:

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

General project file/folder to include such matters as:

- 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 (TMK)s, 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 future copies of correspondence, papers and materials of every sort related specifically to the parcel.

HWY-DC standard distribution of ROW map(s) are distributed to:

- Acquisition Agent's/Negotiator's working copies (3);
- HWY-R (1) as office copy, together with original of HWY-DC Transmittal Memorandum (for acquisition folder in the main files);
- HWY-RM (1), together with copy of HWY-DC's Transmittal Memo, for review for displacement/relocation impacts, if applicable;
- HWY-RP (1) with the below request for appraisal, together with copy of HWY-DC Transmittal Memo.
- HWY-RA (1) together with copy of HWY-DC's transmittal memo

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.
- HWY-DC's Standard Distribution serves as automatic request for Appraisal for valuation of the required parcels, easements, boundaries and/or construction parcels. Request to HWY-RA by email, copying supervisors, together with Form DOT 4-128 (HWY-RL 8/95), for certificates of search on the required parcels, easements, boundaries and/or construction parcels.

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;

- Act 12, SLH 2008, Section 264-43 exempts the Department of Transportation from county subdivision ordinances. 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, five copies are for the County of Hawaii, fifteen copies for Maui, and 12 for Kauai, to C&C of Honolulu DPP (or other Counties' Planning Department) notification of subdivision of parcels and/or designation of easements and/or boundaries.

- 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, HWY-RL 7/01), 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 six 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 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 six 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 or appropriate county, 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 or appropriate county, 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 Programmed 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 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 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, 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 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 101-8 HRS, entering and surveying land. Any agent or servant of the plaintiff (State of Hawaii) 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. Following, the shoreline needs 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 tract the status of the various projects.

WORKFLOW DETAIL — Revised 10/21/04

**STATEWIDE TRANSPORTATION**

**IMPROVEMENT PROGRAM(STIP)**

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).

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

# NEGOTIATION POLICIES AND PAYMENTS

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

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

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

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

## II. PAYMENTS FOR EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY.

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

1. Recording fees, transfer taxes and similar expenses incidental to conveyance of such property;

2. Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the property; and

3. The pro-rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the State of Hawaii, or the effective date of possession by the State, whichever is earlier.

III. UNECONOMIC REMNANT.

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

IV. REJECTION OF STATE'S OFFER.

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

1. Obtain an appraisal by a qualified appraiser, and then confer with the Deputy Attorney General assigned to your case. If you prefer, you may engage an attorney to represent you from the outset. Once you retain an attorney, all negotiations will be carried out by the attorney.

2. If an out of court settlement is reached, the conveyance will be made by a Stipulated Judgment and Final Order of Condemnation.

3. If no settlement can be made, the case will be litigated and a Decision, Judgment and Final Order of Condemnation will be issued by the court.

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

**STATE OF HAWAII**
**DEPARTMENT OF TRANSPORTATION**
**MEMORANDUM**

HWY-RL 3.98215

**TO:** AMY YAGI, HWY-DD **DATE:** SEPTEMBER 21, 2023

**FROM:** FAWN Y. YAMADA, HWY-R

**SUBJECT:** FARRINGTON HIGHWAY WIDENING
KAPOLEI GOLF COURSE TO FORT WEAVER ROAD
PROJECT NO. 7101A-01-20
AT HONOULIULI, EWA, ISLAND OF OAHU, HAWAII
TAX MAP KEY NO. (1) 9-1-016:182
LANDOWNER: HAWAIIAN ELECTRIC COMPANY, INC.

Transmitted for your appropriate attention and action is the fully executed Right-of-Entry and Rental Agreement dated September 18, 2023 from Hawaiian Electric Company, Inc. for the following:

1. Rental of Parcel 6; and
2. Rental of Slope Easement S-12.

Please ensure that the 1) Insurance by Contractor requirements in paragraph 3 and 2) Indemnification by Contractor requirements in paragraph 4 are incorporated in the contract specification. Additionally, the State must give the landowner a 30-day written notice prior to start of construction. Please update and inform the landowner on the construction schedule.

Should there be any questions, please contact Mr. Kevin Simon, Supervising Right-of-Way Agent, of our Land Acquisition Section at (808) 692-7334 or email kevin.a.simon@hawaii.gov.

Enclosure

# RIGHT-OF-ENTRY AND RENTAL AGREEMENT

This AGREEMENT (Agreement) is made and entered into by and between the STATE OF HAWAII (STATE), by its Director of Transportation, whose address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, and HAWAIIAN ELECTRIC COMPANY, INC. (GRANTOR), a Hawaii corporation, whose principal place of business is 1001 Bishop Street, Suite 2500, Honolulu, Hawaii, and whose post office address is P.O. Box 2750, Honolulu, Hawaii 96840.

**WITNESSETH THAT:**

WHEREAS, the STATE requires specific property designated as Lot 18266 (Map 1418), Land Court Application 1069 identified as being the portion of Tax Map Key No. (1); 9-1-016: 182 containing an area of approximately .836 acres which is situated at Honouliuli, Ewa, Island of Oahu, Hawaii, as delineated on Exhibit A, which is attached hereto and incorporated herein by reference (hereafter referred to as the "Property"), for a public purpose, to wit: the construction, preservation, and protection of the highway project known as Farrington Highway Widening, Kapolei Golf Course to Fort Weaver Road, Project No. 7101A-01-20, (hereafter referred to as the "Project");

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, the STATE will be using the Property for Project work; and

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

WHEREAS, the GRANTOR will allow the STATE to enter upon and possess the Property pursuant to the terms of this Agreement.

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

1. Right of Entry and Possession. The GRANTOR hereby grants to the STATE, its officers, employees, contractors, and permitted assigns permission to enter upon and use the Property as shown on Exhibit A on and after March 15, 2023, for any purpose associated with the Project, which GRANTOR understands is for public use. The STATE will take reasonable steps to ensure that any contractor the STATE selects and uses to construct the Project (hereafter collectively and individually called the "CONTRACTOR") and the STATE will permit the GRANTOR and other 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; provided that the GRANTOR and other utility companies will not unreasonably delay or interfere with the Project work. The Property includes a part of the GRANTOR's Kaloi electrical substation ("Substation"), and the STATE agrees that to the fullest extent possible, the GRANTOR shall be able to access the Substation at all times during the term of this Agreement. If the Project work is anticipated to prevent the GRANTOR from accessing the Substation, the STATE shall provide to the GRANTOR at least forty-eight hours advanced notice thereof. In each event, such notice shall include the date(s) and time(s), and duration(s) during which the Project work will prevent GRANTOR from accessing the Substation. Notwithstanding the foregoing, in the event of an emergency affecting the Substation, the STATE shall immediately accommodate the GRANTOR's access to the Substation to the extent reasonably required for GRANTOR to address such emergency.

2. 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.

3. Insurance by CONTRACTOR. The STATE shall require the CONTRACTOR to include GRANTOR and the STATE as additional insureds on the insurance policies (Comprehensive Personal Injury and Property Damage Liability; Automobile Bodily Injury and Property Damage; and Worker's Compensation) that will be prescribed by the proposed Project construction contract. The insurance policies shall also provide a waiver of subrogation in GRANTOR's favor. The STATE shall require the CONTRACTOR to provide written verification of compliance in the form of an insurance certificate to the GRANTOR before the start of Project construction.

4. Indemnification by CONTRACTOR. The STATE shall require the CONTRACTOR to execute an agreement whereby the CONTRACTOR will indemnify the GRANTOR against any liability, including any loss, damages, costs, expenses, and attorney's fees, for any damage to real or personal property, and including environmental damage, if any, or injury to or death of persons when such damage, injury or death is caused by the negligence, gross negligence, or willful action of the CONTRACTOR in the exercise of the rights granted under this Agreement; provided that the CONTRACTOR shall not be obligated to indemnify the GRANTOR if and to the extent that such damage, injury or death is caused by the negligence, gross negligence, or willful action of the GRANTOR or any of the GRANTOR's officers, employees, agents, licensees, invitees, contractors, representatives, or guests.

5. Rental. The STATE agrees to pay $35,250 per year for Parcel 6 and $8,600 per year for Slope Easement S-12 to the GRANTOR as the annual rent for the use of the Property. The first annual payment will be made within sixty (60) days of the Notice to Proceed for the construction of the Project, and each subsequent annual payment, if any, will be made on the anniversary date of the Notice-to-Proceed date, with the final payment being pro-rated accordingly based on the actual period of use of the Property by the STATE. If the GRANTOR does not receive any payment when due, interest will accrue on the overdue unpaid balance at the rate of one percent simple interest per month and will stop accruing when the STATE initiates the processing of the payment.

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

7. Restoration. Prior to the expiration or termination of this Agreement, the STATE and/or its CONTRACTOR shall remove all equipment and tangible personal property from the Property and restore the condition of the Property to substantially the same condition it was immediately before construction commenced.

8. Term. The term of this Agreement shall commence upon the Notice-to-Proceed date for a term of ten (10) years unless terminated sooner. It is estimated that the duration of construction work will be 3.5 years form the Notice-to-Proceed date.

9. Extension. This Agreement may be extended upon mutual written agreement of the parties hereto, and the monthly rental payable from the STATE to the GRANTOR for the

Property during the extended term will be a prorated annual amount and further adjusted if any portion of the Property has been returned to the GRANTOR.

10. Termination. The STATE may terminate this Agreement upon thirty (30) days written notice to the GRANTOR.

11. No Unreasonable Interference. The GRANTOR agrees not to unreasonably interfere with the STATE's facilities, operations and activities in, on or connected with the Property.

12. Counterparts; Facsimile Signatures. 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 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 the remaining pages assembled as one document.

13. 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.

14. Singular, Plural. 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 "STATE," wherever used herein, shall consist of the State of Hawaii, its representatives,

successors, and permitted assigns. This instrument shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors, and assigns.

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

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

18. The GRANTOR shall pay all costs, including reasonable attorneys' fees and expenses incurred or imposed on the STATE if the STATE is made a party, without any fault on its part, to any litigation commenced by or against the GRANTOR (other than condemnation proceedings). The STATE shall pay all costs, excluding reasonable attorneys' fees and expenses, incurred or imposed on the GRANTOR if the GRANTOR is made a party, without any fault on its part, to any litigation commenced by or against the STATE (other than condemnation proceedings). Notwithstanding the foregoing, the STATE's ability to satisfy any such payment obligations is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations.

19. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii.

20. Entire Agreement. This Agreement and the exhibit hereto constitute the entire agreement between the parties pertaining to the subject matter hereto, and all prior and contemporaneous agreements, representations, and understandings of the parties hereto, oral or

written, are hereby superseded and merged herein. The exhibit hereto and every provision thereof are incorporated by this reference.

21. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be deemed a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. STATE is self-insured. The STATE, as a sovereignty is self-insured and therefore insurance, including but not limited to, public liability and property damage, is not required.

23. Compliance. Each party shall comply with all applicable federal, state, and local laws, statues, regulations, and rules pertaining to the Property and the performance of this Agreement.

-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 18th day of September, 20 23.

GRANTOR:

HAWAIIAN ELECTRIC COMPANY, INC.

8/24/2023
Date

By _____
Print Name: JOE VIOLA
Capacity: Senior Vice President, Customer, Legal and Regulatory Affairs

APPROVED AS TO LEGALITY, FORM, EXCEPTIONS, AND RESERVATIONS:

STATE:

STATE OF HAWAII

_____
Deputy Attorney General
Name: MARJORIE A. LAU
Dated: SEP 13 2023

By _____
EDWIN H. SNIFFEN
Director of Transportation

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

On this _____ day of _____, 20___, before me personally appeared to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

_____
Print Name
Notary Public, State of Hawaii

My commission expires: _____

Document Date : _____ # Pages : _____

Notary Name : _____ _____ Circuit

Doc. Description : _____

_____

_____
Notary Signature Date

STATE OF HAWAII )
: ss.
CITY AND COUNTY OF HONOLULU )

HECO

On this 24th day of August, 2023, before me appeared JOE VIOLA, to me personally known, who, being by me duly sworn, did say that such person is the Senior Vice President, Customer, Legal and Regulatory Affairs of **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, and the foregoing -10-page instrument entitled **RIGHT OF ENTRY AND RENTAL AGREEMENT**, dated undated, was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.

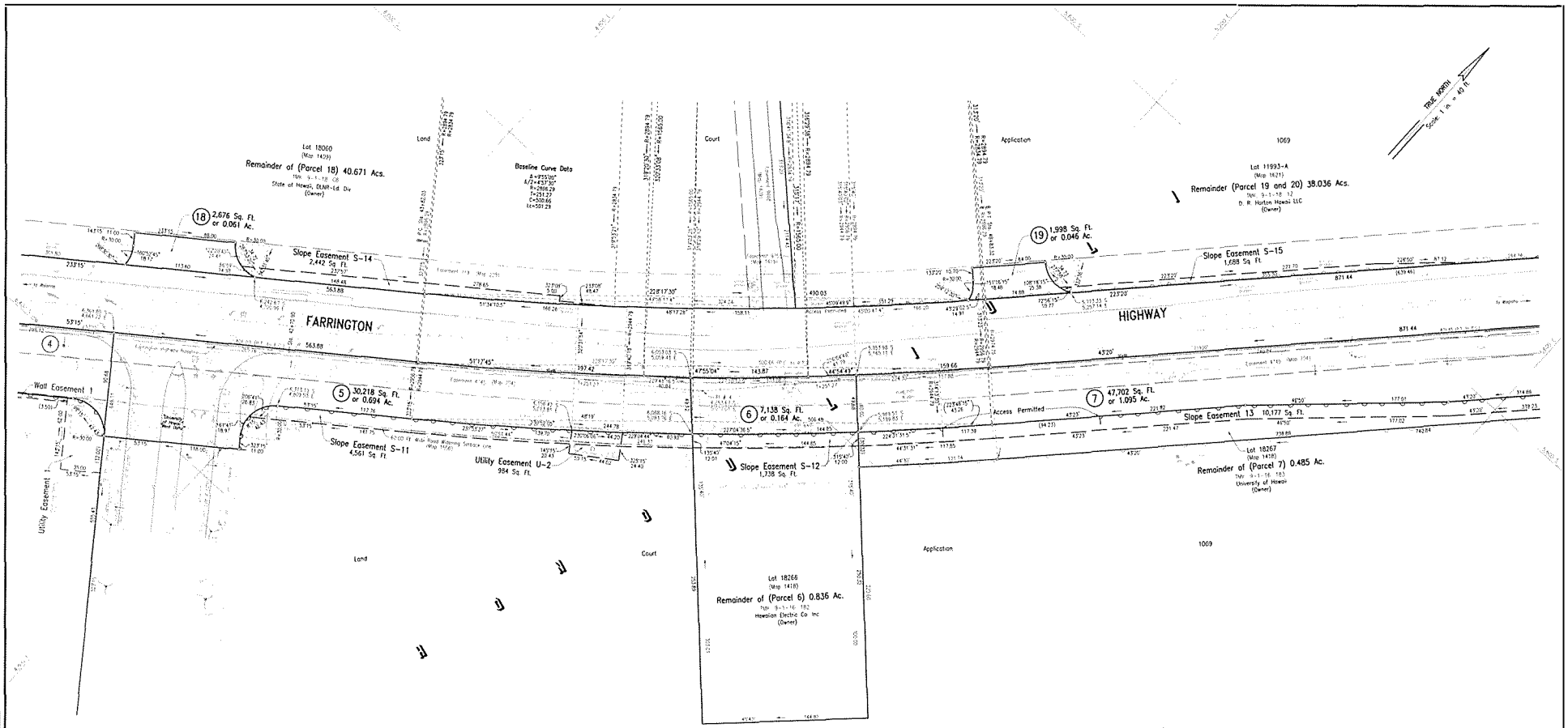
Notary Signature

Type or print name: Aloha Fontes
Notary Public, First Circuit, State of Hawaii

My commission expires: December 04, 2026

[Affix Seal]

ALOHA FONTES
NOTARY PUBLIC
No. 22-252
STATE OF HAWAII




# EXHIBIT A

STATE OF HAWAII
**DEPARTMENT OF TRANSPORTATION**
HIGHWAYS DIVISION

## RIGHT OF WAY MAP
## FARRINGTON HIGHWAY WIDENING
KAPOLEI GOLF COURSE ROAD TO FORT WEAVER ROAD
STA. 0+00 TO STA. 163+25
PROJECT NO. 7101A-01-20
AT HONOLULU, EWA, OAHU, HAWAII
SCALE

HONOLULU, HAWAII
JUNE 8, 2021

APPROVED:

FOR: ADMINISTRATOR, HIGHWAYS DIVISION

NOTES.
Lines of Easements "TAKEN NEW"
Easements referred to "TAKEN NEW"
Denotes access permitted
Denotes no vehicle access permitted
Denotes no access permitted
Denotes limited access as noted on plan

WILFRED Y.K. CHUN
LICENSED PROFESSIONAL LAND SURVEYOR
No. 3479
HAWAII, U.S.A.

This work was prepared by me or under my direct supervision

By Wilfred Y K Chun
Licensed Professional Land Surveyor
Certificate Number 3479
License Expires 4/22

| NO. | REVISION | APPROVED | DATE |
|---|---|---|---|

SHEET NO. 6 OF 16 SHEETS

TAX MAP KEY: 9-1-016: 182, 183 and 220; 9-1-18: 08 and 12
JOB No. 19105-24 (By 19105-24_FARRINGTON.dwg)

22" x 36" = 3.3 SQ. FT.

P. H. 865

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

**LICENSE NO. 758**
**(Easement)**

THIS LICENSE NO. 758 ("License") made and issued this 15th day of May, 2013 by and between the State of Hawaii, DEPARTMENT OF HAWAIIAN HOME LANDS, whose place of business is 91-5420 Kapolei Parkway, Kapolei, Hawaii, and whose mailing address is P. O. Box 1879, Honolulu, Hawaii 96805, hereinafter referred to as "LICENSOR," to the State of Hawaii, DEPARTMENT OF TRANSPORATION - HIGHWAYS DIVISION, whose business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as "LICENSEE."

W I T N E S S E T H  T H A T:

WHEREAS, under Section 207(c)(1) of the Hawaiian Homes Commission Act, 1920, as amended (HHCA), LICENSOR is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains and the like;

WHEREAS, LICENSOR has determined that Easement 2 established herein is essential for drainage utility purposes which directly benefit the roadway serving the Hawaiian home lands property immediately situated to the north and south of Kohala Mountain Road and adjacent fee simple properties as well by improving the general drainage situation of the area. The Easement 2 improvements will consist of an area covering approximately 436 (four hundred thirty-six) square feet of Hawaiian home lands and will include, a box culvert and headwalls. Installation and maintenance of said improvements shall be the responsibility of LICENSEE;

FURTHER, LICENSOR believes that the issuance of this easement will be beneficial to the LICENSOR and its lessees and the larger West Hawaii community as well.

NOW THEREFORE, LICENSOR, in consideration of the terms, covenants and conditions herein contained to be kept, observed and performed by the LICENSEE, hereby grants and conveys unto LICENSEE, a perpetual license as easement to excavate, install and maintain a box culvert and headwalls on a portion of that Hawaiian home lands parcel situated in Kawaihae, S. Kohala, Island of Hawaii, identified more specifically by Tax Map Key No. (3)6-1-001:002 (See Exhibit "A") and further delineated in the survey map (See Exhibit "B") hereinafter referred to as the "Premises," all Exhibits being attached hereto and incorporated herein.

TO HAVE AND TO HOLD the same unto LICENSEE, its successors and assigns, commencing upon the date that this document is duly executed unless sooner terminated as hereinafter provided, LICENSOR and



DHHL-LMD

LICENSEE agreeing that the nominal rental of ONE AND NO/100 DOLLAR ($1.00) for the entire term is waived.

LICENSOR AND LICENSEE mutually agree to the following terms, conditions and covenants:

1. DUE CARE AND DILIGENCE. LICENSEE shall use due care and diligence in the construction, operation, repair, renewal, maintenance and removal of the improvements and shall keep the appliances, equipment and improvements in good and safe condition and repair; should said appliances, equipment or improvements cause any damage or nuisance or waste or spoil the easement area, LICENSEE shall repair and restore the easement area within a reasonable time agreeable to LICENSOR.

2. CONDEMNATION. If at any time the easement area across which the License extends, or any part thereof, is condemned or taken for any public project by any governmental authority, LICENSEE will have the right to claim and recover from the condemning authority, but not from the LICENSOR, such compensation as is payable for the License and for LICENSEE'S appliances and equipment, if any, used in connection with this License, which shall be payable to LICENSEE as its interest appears.

3. ABANDONMENT. In the event the easement area, hereby granted, is abandoned by LICENSEE or remain unused for the purpose granted for a continuous period of one year, all rights granted hereunder shall terminate, and LICENSEE shall remove its appliances, equipment, and improvements and restore the land as nearly as is reasonably possible to the condition existing immediately prior to the time of installation or construction of its improvements, if any, LICENSOR hereby consenting and agreeing to such removal. Failure of LICENSEE to remove its appliances, equipment and improvements and/or to restore the land within 90 days after notification to do same from LICENSOR by certified mail at LICENSEE'S last known address, will constitute a breach and LICENSOR may remove LICENSEE'S appliances, equipment and improvements and/or restore the land to a condition similar to that existing immediately prior to the time of installation and LICENSEE will reimburse LICENSOR for all reasonable costs in connection with the removal and/or restoration subject to funds appropriated therefore.

4. RELOCATION. If LICENSOR determines that the continued exercise of the easement rights granted constitutes an undue interference with a subdivision or development of the land over which the granted easement crosses, LICENSOR shall have the right to terminate the easement granted to the extent necessary to eliminate such interference, provided, that it shall grant to LICENSEE a substitute easement within the reasonable vicinity to LICENSEE to effect relocation of any facility or portion thereof, which substitute easement shall be subject to the same terms and conditions as contained in this License. The cost of any such relocation shall be borne by LICENSOR.



RECEIVED

5. BREACH. If LICENSEE fails to observe or perform any of the covenants, terms, and conditions herein contained, and on its part to be observed and performed, LICENSOR shall deliver written notice of the breach or default by registered mail or certified mail to LICENSEE at its last known address, making demand upon LICENSEE to cure or remedy the breach or default within sixty (60) days from the date of the receipt of the notice. Upon failure of LICENSEE to cure or remedy the breach or default within the same time period provided herein or within such additional period as LICENSOR may allow for good cause, LICENSOR my terminate this License without prejudice to any other remedy or right of action.

6. RIGHT TO ENTER. LICENSOR or the County of Hawaii ("County"), and the agents or representatives thereof, shall have the right to enter and cross any portion of the easement area for the purpose of performing any public or official duties, such as inspections, provided, that in the exercise of such rights, LICENSOR or the County shall not interfere unreasonably with LICENSEE or LICENSEE'S use and enjoyment of the Premises.

7. HAZARDOUS MATERIALS. LICENSEE shall not cause or allow the escape, disposal, or release of any hazardous materials. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE'S business, and then only after written notice is given to the LICENSOR of the identity of such materials and upon LICENSOR'S consent, which consent may be withheld at the LICENSOR'S sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by LICENSEE, then LICENSEE shall be responsible for the costs thereof subject to funds appropriated therefore. In addition, LICENSEE shall execute affidavits, representations and the like from time to time at LICENSOR'S request concerning LICENSEE'S best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE if any.

For the purpose of this License, the term "hazardous material" as used herein shall include any substance, waste or material designated as hazardous or toxic or radioactive or other similar term by any present federal, state or local statutes, regulation or ordinance, such as the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Federal Clean Water Act, as amended from time to time, and also including but not limited to petroleum, petroleum based substances, asbestos, polychlorinated-byphenyls ("PCB"), formaldehyde, and also including any substance designated by federal, state or local regulations, now, as presenting a risk to human health or the environment.

Prior to the termination of the subject License, LICENSEE may be required to conduct a Level One (1) Hazardous Waste Evaluation and



DAGR.LND

conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health and LICENSOR subject to funds appropriated therefore.

8. SEVERABILITY. Whenever possible, each provision of this LICENSE shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License should be prohibited, or invalid under applicable law, such provision shall be ineffective to the extent to such prohibition or invalidated without invalidating the remaining provision of this License.

9. SINGULAR/PLURAL. The singular or plural depends on its appropriate use.

10. AGREEMENT. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal successors and assigns.

11. APPROVAL(S). LESSOR is responsible for obtaining any consent(s) required from any lessee(s), grantee(s), licensee(s) or permittee(s) who may be affected by this LICENSE.

12. NONDISCRIMINATION. The use and enjoyment of Easement 2 shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state or county law.

13. SPECIAL CONDITIONS.

None.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

APPROVED BY THE HHC
AT ITS MEETING HELD ON
May 26, 2011

APPROVED AS TO FORM:

Deputy Attorney General

State of Hawaii
DEPARTMENT OF HAWAIIAN HOME LANDS

By
Jobie M. K. Masagatani
Chairman
Hawaiian Homes Commission

LICENSOR

APPROVED AS TO FORM:

Deputy Attorney General

State of Hawaii
DEPARTMENT OF TRANSPORATION

By
Glenn Okimoto
Director of Transportation

LICENSEE



DISALLOWED

EXHIBIT "A"

DHHL-LMD

EXHIBIT "B"

DHHL-LHD

STATE OF HAWAII )
) SS
CITY & COUNTY OF HONOLULU )

On this 15th day of May, 2013, before me appeared Jadine Urasaki, to me personally known, who, being by me duly sworn, did say that she is the Acting Director of the Department of Transportation and the person who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily for the use and purposes therein set forth.

Sonnett K Francisco
Notary Public, State of Hawaii L.S.
Print Name Sonnett K. Francisco
My commission expires: 05-19-2015

| | | | |
|---|---|---|---|
| Document Date: | 5-15-2013 | # of Pages: | 8 |
| Notary Name: | Sonnett K. Francisco | 1st | Circuit |
| Doc. Description: | License No 758 (Easement) | | |

L.S. Sonnett K Francisco
Notary Signature

NOTARY CERTIFICATION

STATE OF HAWAII )

) SS.

CITY AND COUNTY OF HONOLULU )

On this 8th day of July, 2013, before me appeared JOBIE M. K. MASAGATANI, to me personally known, who, being by me duly sworn, did say that she is the Chairman of the Hawaiian Homes Commission and the person who executed the foregoing instrument and acknowledged to me that she executed the same freely and voluntarily for the use and purposes therein set forth.

ABIGAIL L. TUBERA NOTARY 04-666 PUBLIC STATE OF HAWAII

Abigail L Tubera

Notary Public, State of Hawaii

ABIGAIL L. TUBERA

Print Name of Notary Public

My commission expires: 11.21.16

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: license No. 758

Doc. Date: 05.15.13 or ☐ Undated at time of notarization.

No. of Pages: 9 Jurisdiction: 1st Circuit (in which notarial act is performed)

ABIGAIL L. TUBERA NOTARY 04-666 PUBLIC STATE OF HAWAII

Abigail L Tubera 07.08.13

Signature of Notary Date of Notarization and Certification Statement

ABIGAIL L. TUBERA

Printed Name of Notary

CHAR-LMD

# 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 agency 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. The State must also make certifications and determinations required by 23 USC 108 (c) (2) (C) and (D) and obtain concurrence from the Environmental Protection Agency (EPA) in accordance with the NEPA process.

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).
- 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 on their written request and/or prevent imminent development and increased project costs and limit choice of a highway alignment.
- Does not apply to 49 USC, 1653 (f), aka 4 (f) or 16 USC 470 (f).[1]

**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, 23 CFR 710.313.

**Certificate of Search (Title Search)**

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

[1] 23 CFR 710.501 and 503 Protective buying and hardship acquisition.

Requests for Certificates of Search: Requests for Certificates of Search are made to the Abstracting Section (HWY-RA) of HWY-R by email, together with Form DOT 4-128 (HWY-RL 8/95) 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 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 affects 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 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, including some federal agencies.

Request for appraisals shall be submitted to the Appraisal Section (HWY-RP) on Form DOT 4-316 (HWY-RL 7/01) or as amended, (see page 2.5-B) or electronically.

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**

Upon acceptance of offer by the property owner(s), or upon conclusion of the condemnation proceedings by the issuance of Final Order of Condemnation (FOC) by the Circuit Court, the ROW Agent shall give notice of subdivision approval to the pertinent Planning Department of the County where the registered property is located.

The 2008 State Legislature approved a Bill for an Act Relating to Highways ( Act 12, House Bill 2428). Under Act 12, Section 264-43, Hawaii Revised Statutes was amended as follows:

- §264-43 Responsibility; The department of transportation shall acquire, subdivide, consolidate, construct, maintain, and administer all highways comprising the state highway system in accordance with all state federal laws and exempt from county subdivision ordinances.

Pursuant to §264-43, a courtesy subdivision notification shall be made to the appropriate county agency on behalf of the property owner, whenever there is to be partial and/or easement acquisition. The request should include, but not 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) or Environmental Assessment (EA) has been approved;
- A negative declaration for an EIS or EA 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, EAs, or under the Categorical Exclusion List.

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 can be made at the time of actual negotiations, but every attempt will be made to inspect the affected properties prior to initial meeting with owners/tenants;

- 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, designated representatives or agents 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 Office of Information Practices first before proceeding. [2] Information provided may include, but not 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).
- Provide owner with acquisition brochure and 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.

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

### 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 Uniform Act 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 Section 08-02-14.

DOT 4-128
(HWY-RL 8/95)

HWY-RL 3.96899

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:

We are proceeding with condemnation and need a Continuation of Search.

Please call Gary Gaspar at (808) 692-7333 or email gary.p.gaspar@hawaii.gov should you have any questions.

Thank you.

_____ _____

Date FAWN Y. YAMADA
Right-of-Way Manager

REQAPPR
DOT 4-316
(HWY-RL 7/2020)

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

July 22, 2020

TO: Cyrus Chen, Appraisal Section Head

FROM: Fawn Y. Yamada, Right-of-Way Manager

SUBJECT: Request for Appraisal

Project Name _____

_____

Project No. FAP No. BR-0190(13)

Parcel(s) _____

_____

Charge Code / Function _____

Status of Title Search _____

HWY-RA Abstractor _____

HWY-RL Agent _____

HWY-DC Surveyor _____

Project Manager _____

Suspense Date _____

Remark(s):

_____
Fawn Y. Yamada
Right-of-Way Manager

2.5-B

DOT 4-147
(HWY-RL 7/01)

# REQUEST TO CADASTRAL ENGINEERING SECTION

Project _____

_____

Section _____

Parcel(s) _____

_____

Tax Map Key Number(s) _____

Owner(s) _____

| PLEASE FURNISH: | | No. Required |
|---|---|---|
| Land Court Map | ( ) | _____ |
| Description check | ( ) | _____ |
| Parcel Print | ( ) | _____ |
| Metes and Bounds Description | ( ) | _____ |
| Map for Subdivision | ( ) | _____ |
| Tracing | ( ) | _____ |
| Duplicate Tracing | ( ) | _____ |
| Tax Map _____ (Tax Key No(s)) | ( ) | _____ |
| Schedule of Owners | ( ) | _____ |
| Please Stake Boundary | ( ) | _____ |

REMARKS: _____

_____

_____

_____ _____

Date Name

# 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 an appraisal waiver is warranted. 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 has designated a representative, negotiations may be carried out with that representative. A written statement verifying the relationship between the owner and the authorized representative shall be filed with the HWY-R.

2. Where the owner(s) are an Estate or Corporation, the negotiations shall be conducted with said Estate or Corporation through their authorized staff(s).

3. Where the lands are leased, the lessee(s) are informed of their share(s) of the consideration. The tenant(s) are given the opportunity to join in with the owner/lessor in the acceptance or rejection of the State's offer. In typical cases, the offer is made to both parties where the distribution of just compensation is left to the various parties to allocate, unless so otherwise stipulated. Most leases have a Condemnation Clause that spells out the terms and conditions of such condemnation action.

4. Where an Agreement of Sale is in effect, negotiations are conducted jointly with the vendor/vendee, unless instructed otherwise by the parties concerned. Title usually does not pass to the vendee until the agreements is satisfied. Again, careful due diligence must be exercised to carefully review all documents involved.

5. Tenants at will of either the owner or lessee are not to be contacted or interfered with in their quiet possession of the premises until the property is purchased, possession obtained through condemnation proceedings, by way of voluntary rights-of-entry or with the owner/lessor's prior approval. This provision may be modified on a project basis as directed by the Administrator, Highways Division due to urgency or unusual circumstances of the project.

**Offers to Purchase**

After completion of the pre-acquisition work and NEPA requirements such as environmental assessments, environmental impact statements , or a categorical exclusion, the acquisition process shall commence with the initial submittal of the Offer to Purchase to the property owner for the purchase of the property.

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

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

A. Minimum Requirements.

- Property identification by Parcel number, Tax Map Key number or a combination of both.
- Area of the taking and the amount of the offer including a statement on whether it includes a taking of access rights, severance damages, if any, and improvements when applicable.
- Statement as to whether conveyance is to be by Quitclaim deed or Warranty deed, free and clear of all encumbrances.
- By reference and/or enclosure:

  i. Statement of Just Compensation, Appraisal Summary Statement and Negotiation Policies and Payments Statement (see page 2.6-A).

  ii. Right-of-Way map with parcels, easements and boundaries highlighted and/or outlined.

  iii. A statement in the acceptance and return of the offer letter to the effect that the property owner(s) agrees to allow HDOT to subdivide the property on their behalf.

B. Where improvements are affected.[1]

- The owner of the improvements shall be given the option of retaining his improvement at a retention value pre-determined by the Property Management Section (HWY-RM) or by the Appraisal Section (HWY-RP).

[1] 49 CFR 24.105 Acquisition of Tenant Owned Improvements

- If the retention value is not available at the time of the offer, the option may be offered subsequently within a reasonable period of time after the owner expresses an interest in the retention concept. He must, however, remove the improvements from the right-of-way by a date to be established by the State. This option is not given where the relocation of the building(s) would not be consistent with planned urban development.

- If the tenant is the owner of the improvements, offer for the purchase of said improvements shall be made to him. Payments, however, shall not be made unless the owner of the land waives and disclaims all interest in the improvements.

C. Where property or utility adjustment work is required.

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

- Enclosed plan of the proposed property or utility adjustment.

- Request owner's approval by having him attest his signature to the plan.

- Request interim right-of-entry to enter upon owner's property to perform the work.

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

- Provide for the transmittal of the copy of the letter of offer to HWY-RM. The letter of offer should indicate that an Agent from our HWY-RM will contact the Owner-Occupant or Tenant-Occupant to explain the Relocation Assistance Program to them.

- The Relocation Assistance Brochure and Displacement Certificate will be issued to the Owner-Occupant or Tenant-Occupant at the time that the Agent from our HWY-RM contacts them. The owner is generally given 30 days to reply to the offer signed by the ROW Agent.

**Approval of Offers to Purchase**

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

A. The offer package is reviewed by the Principal ROW Agent and routed to the ROW Branch Head if it is in order.

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

**Revised Offers**

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

A. Extent of taking is revised.

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

**Negotiation Contacts (Personal Contact)**

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

A. The ROW Agent shall explain the offer and the full effect of the taking, including all enclosures submitted with the offer.

B. If the owner needs additional time to study the offer, a later meeting is arranged. A concerted effort is made by the ROW Agent to obtain an acceptance during the period of negotiations and all possible means are exhausted within the scope of his authority to reach a satisfactory settlement.

C. If the offer is accepted, the negotiator completes and files the Statement of the Negotiator, (see page 2.6-F), DOT 4-300, certifying the successful negotiation. He then follows up with closing procedures.

D. If the offer is rejected or negotiations appear stalemated, the offer is withdrawn and the owner notified that the State will file condemnation proceedings to complete the acquisition. The Agent follows up with the condemnation request to Legal Counsel.

E. If personal contact cannot be made to resident-owner, documentation shall be made in the parcel file to show that reasonable efforts have been made to achieve this contact and explanation of the circumstances and actions taken. In such cases written offers shall be sent by mail.

F. Offers to purchase to owners residing out-of-state shall be made by certified mail. There shall be no disparity in the conduct in the negotiations between minority and non-minorities. All owners shall be equally apprised of their benefits, rights and options in connection with the negotiations and possible condemnation process.

G. In every case, a complete Negotiation Diary, (see page 2.6-G), DOT 4-238 shall be kept and maintained by the negotiating ROW Agent during the period of negotiations. The negotiator shall enter in writing, immediately after each contact with the property owner or his representative information such as, but not limited to the date and place of contact, persons present, offers made (dollar amount), counter-offers, reasons settlement could not be reached and any other pertinent data. The diary shall be signed and dated by the negotiator and filed in the project parcel file.

**Negotiation Contact (Contact by Mail)**

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

A. Under the first offer by mail approach, the Negotiating ROW Agent may initially mail the letter of offer to the owner. There should then be a follow-up telephone call to the owner. Any questions can be answered or, at the owner's election, an appointment for a personal contact can be made. If personal contact is required, negotiations will follow the normal negotiation process. The owner, however, can still sign the acceptance section of the letter of offer and return it to the State by mail.

B. This process may not be utilized on parcels where relocation is involved, and will be applied on a project or parcel-by-parcel basis, dependent on the project construction schedule and lead time.

**Notification to Property Management Section**

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

A. The name of the owner, address, Parcel number, Tax Map Key number, purchase price, date of purchase, allocation of purchase price as to land and improvements and any other information that may be of assistance to HWY-RM.

B. That the acquisition was completed by negotiated settlement, with concessions related to rent free occupancy and rent proration. Rent free occupancy is permitted, but should not be regarded as usual and customary.

- Rent free occupancy – While the owner-occupants and immediate members of the family are in search of replacement housing, or being assisted by the State in search of said replacement housing they will be permitted to occupy the premises on a rent-free basis for a period not to exceed 90 calendar days. The 30 calendar days shall be computed from the date payment is made for the property.

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

C. Notification is not required where the property is vacant. No concessions are made where properties are to be acquired under condemnation proceedings. Concessions in these instances may be made by the Deputy Attorney General handling the proceedings as part of the condemnation settlement.

**Negotiation Impasse**

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

A. The property owner is informed in writing that the State will deposit in court the amount of just compensation and that acquisition will be by condemnation proceedings. He is also informed of the steps he may take because of the condemnation action being taken.

B. The request for condemnation to Legal Counsel is prepared and submitted on Form DOT 4-11 (HWY-RL 8/70), Request for Eminent Domain Proceedings, Attachment G. It shall include the Project Title and number, Parcel number(s), the Date of Possession Desired and other pertinent data covered in said form. It shall also include but not limited to the following exhibits:

- 25 prints each of the appropriate right-of-way maps and descriptions.
- Certificate of Search
- Appraisal Report. The report may be submitted by separate cover by HWY-RP.
- Letter of Offer.
- Negotiation Diary.
- Written communications between owner and State.
- Any other attachments or communications that may be of assistance to Legal Counsel in the condemnation case.

C. The Request for Eminent Domain Proceedings is reviewed by the Principal ROW Agent and with his concurrence, forwarded to the ROW Branch Head for his approval.

D. The Request for Eminent Domain Proceedings is submitted to Legal Counsel upon approval by the ROW Branch Head.

E. The ROW Agent shall assist Legal Counsel in the proceedings upon request.

**Donations**

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

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

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

[2] HRS 171-30 State Donations
[3] 49 CFR 24.108 Federal Aid Donations

# STATEMENT OF JUST COMPENSATION

**PROJECT:** HAKALAU STREAM BRIDGE REHABILITATION LEAD REMEDIATION, PHASE 2 F.A.P. PROJECT NO. BR-019-2(092) AT KAMAEE, NORTH HILO AND HAKALAU-NUI, SOUTH HILO, ISLAND OF HAWAII, HAWAII

**TAX MAP KEY:** (3) 2-9-002-025 (Portion)

**SUBJECT:** Construction Parcel C8 – 41,704 sq. ft.

**OWNERS:**

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

The Hawaii State Constitution, Article I, Section 20, states: "Private property shall not be taken or damaged for public use without just compensation."

The State of Hawaii has utilized a compensation estimate in arriving at an estimate of market rent. Consideration is given to those items which are compensable under State of Hawaii law and those items which are considered as non-compensable are excluded.

The amount established as just compensation is not less than the State of Hawaii's compensation estimate of the market rent of the property being acquired. Any decrease or increase in market rent of this real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that this property would be acquired for such improvement, has been disregarded in determining the compensation for this property.

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

The amount established as just compensation does not include items of personal property such as household furnishings, clothing and appliances.

**JUST COMPENSATION**: Amount established as Just Compensation for Construction Parcel C8 as of April 7, 2025 is:

**ONE HUNDRED TWENTY ONE DOLLARS PER MONTH**
**($121/month)**

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**The above amount is allocated as follows:**

| | |
|---|---|
| Construction Parcel C8: | $121/month |
| Damages to remainder, if any, less benefits, if any: | 0 |
| Established Amount: | $121/month |

## APPRAISAL SUMMARY STATEMENT

| | |
|---|---|
| PROJECT: | Kaumualii Highway Widening, Lihue to West of Maluhia Road Phase 1, Lihue to West of Kipu Road , Federal Aid Project No. STP-050-1(26), at Lihue, Kauai, Hawaii |
| SUBJECT: | Easement 21 (for slope purposes) |
| LAND AREA OF EASEMENT: | 4,183 square feet |
| TAX MAP KEY: | (4) 3-3-06-01 (Portion) |
| PROPERTY ACQUIRED: | All: ____ Part: X__ |
| OWNER/LESSOR: | Grove Farm Land Corp. |
| LESSOR: | New Zealand Partners |
| SUBLESSEE: | Kazi Restaurants of Hawaii, Inc. |
| ZONED: | CG General Commercial |
| PRESENT USE: | Commercial |
| HIGHEST & BEST USE: | Commercial |
| PURPOSE: | Easement 21 (for slope purposes) is needed for subject project. |

The Market Value of the Required Easement Is:

| | |
|---|---|
| Easement 21 (for slope purposes) | $ 27,200.00 |
| Improvements, consisting of: | $ 0.00* |
| Other: | $ 0.00 |
| TOTAL: | $ 27,200.00 |

Full and careful consideration has been given to the highest and best use for development of the property and to all features inherent in your property in order that the highest valuation possible can be made.

**The Estimated Fair Market Value that represents the full amount established as Just Compensation of Easement 21 (for slope purposes) is:**

**$ 27,200.00**

The value estimates were developed and reported in conformity with Federal and State statutes, as well as with Right-of-Way Branch policies.

* Improvements, if any, shall be relocated and/or replaced by state's contractor.

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

# NEGOTIATION POLICIES AND PAYMENTS

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

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

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

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

## II. PAYMENTS FOR EXPENSES INCIDENTAL TO TRANSFER OF PROPERTY.

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

1. Recording fees, transfer taxes and similar expenses incidental to conveyance of such property;

2. Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the property; and

3. The pro-rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the State of Hawaii, or the effective date of possession by the State, whichever is earlier.

III. UNECONOMIC REMNANT.

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

IV. REJECTION OF STATE'S OFFER.

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

1. Obtain an appraisal by a qualified appraiser, and then confer with the Deputy Attorney General assigned to your case. If you prefer, you may engage an attorney to represent you from the outset. Once you retain an attorney, all negotiations will be carried out by the attorney.

2. If an out of court settlement is reached, the conveyance will be made by a Stipulated Judgment and Final Order of Condemnation.

3. If no settlement can be made, the case will be litigated and a Decision, Judgment and Final Order of Condemnation will be issued by the court.

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

# STATEMENT OF NEGOTIATOR

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

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

_____

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

_____

# Negotiation Diary

**Project:**

**District of:** **Island: Oahu** **Parcel:**

**Owner(s):** **Contact:**

**Contact:**

**Tenant(s) or Other:** **Contact:**

**Contact:**

**Attorney:** **Contact:**

**Mailing Address:**

**Physical Address:**

**Offering Price:** None **Offer Accepted:** **TMK:**

**Settlement:** **Date Approved:** Agent:

| Date | Remarks |
|---|---|
| | |
| | |
| | |

# NEGOTIATIONS – ADMINISTRATIVE SETTLEMENTS

**PURPOSE:** To describe procedures relating to settlement of acquisitions, which are in excess of the State's approved estimate of just compensation.

**POLICY:** To acquire right-of-way through administrative process prior to condemnation if conditions warrant settlement.

**RESPONSIBILITY:** The Right-of-Way (ROW) Agent/Negotiator is responsible for recommendation of administrative settlements. The ROW Manager (Branch Head) is responsible for the final decisions and approvals.

**SCOPE:** This section applies to all negotiating ROW Agents.

**PROCEDURES:** Prior to filing the request for condemnation, if the ROW Agent cannot obtain an acceptance from the property owner through normal negotiation procedures, he may submit his recommendations to settle the acquisition administratively.

**Basis for an Administrative Settlement**

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

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

the inexact nature of the process by which just compensation is determined.

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

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

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

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

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

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

Recommendations shall first be submitted to the Principal ROW Agent for review and concurrence prior to forwarding it to the ROW Manager (Branch Head) for final approval. The parcel file should be reviewed and the recommendations be based by

giving full consideration of all pertinent information including but not limited to:

A. All available appraisals, including owner's appraisal. Where two acceptable appraisals were obtained, and the offer was based on the lower appraisal, consideration should be given to settling up to the supported part of the higher appraisal if an honest difference of opinion exists.

B. State's approved estimate of just compensation.

C. Recent court awards for similar type of property, showing the percentage increase over the fair market value for cases that went to trial.

D. The negotiator's recorded information.

E. The opinion of the State's Legal Counsel, regarding:

1. Valuation problems, including the probable range of testimony as to fair market value by both sides should the case go to trial.

2. The estimate of trial cost.

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

**Authorization for Administrative Settlement [1]**

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

A. If the recommended settlement is approved and authorized, the ROW Agent shall complete negotiations on the approved settlement amount. The file shall indicate that the approved amount was established prior to an agreement with the owner.

B. If the recommended settlement is disapproved, the ROW Agent shall so inform the owner. Acquisition shall then be by condemnation proceedings, unless the owner reconsiders and accepts the original offer.

C. ROW Manager may request FHWA's prior concurrence to an administrative settlement, particularly in cases involving substantial differences in amounts of money, complex valuations, or where legal considerations are involved. FHWA approval is not required for administrative settlements. However, good communications with the local FHWA Division Office is advised.

D. There is no limit for an administrative settlement. However, great caution should be given for large differentials without a second opinion appraisal, market evidence of just compensation and/or other justification for the recommendation for administrative settlements.

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

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
**MEMORANDUM**

TO: HWY-R

DATE: MAY 1 6 2001

THRU: HWY-RL

FROM: HWY-RLA (M. Auerbach)

SUBJECT: MAMALAHOA HIGHWAY, EMERGENCY REPLACEMENT OF KAALAALA STREAM BRIDGE, FAP NO. ER-12(2), AT KEAUWA, DISTRICT OF KAU, COUNTY AND ISLAND OF HAWAII, STATE OF HAWAII
RE: PARCEL 1, TAX MAP KEY NO. (3) 9-6-13-04 (PORTION)
OWNER - IASCO

---

Counter-Offer and Recommended Settlement for Parcel 1:

By letter HWY-RL 3.7787I dated March 19, 2001, we submitted an offer to IASCO for the purchase of Parcel No. 1 for the consideration of $1,500.00, Parcel No. 2 for the consideration of $2,000.00, and the rental and temporary use of Construction Parcels C-6, C-7 and C-8 for the total amount of $1,500.00 per year.

By letter dated April 10, 2001, IASCO transmitted their concerns regarding only the proposed acquisition of Parcel 1 which is located downstream, on the Makai side of Mamalahoa Highway. Prior to the November flooding, IASCO had an irrigation waterline running parallel to the highway and within Parcel 1. Their proposal was to have the State acquire Parcel 1 and IASCO would retain an easement so that they could reconstruct the waterline that would run in the same location. Another alternative they offered was to have the waterline attached to and running the length of the reconstructed Kaalaala Stream Bridge.

On April 25, 2001, Howard Haymore (HWY-[illegible]-H) and subsequently IASCO's farming contractor representative, Randy Cabral, met at the site to discuss possible [illegible] on IASCO's two options, as discussed above, were ruled out. They did tentatively agree by the possibility of routing the new waterline outside of the new right-of-way boundary created by the acquisition of Parcel 1. With this proposal, the waterline would be set in a four-foot deep by two-foot wide trench and backfilled with concrete. The total estimated cost for this alternative was $19,200.00.

HWY-R
Page 2
MAY 1 0 2001

By letter dated April 30, 2001, we transmitted this option to IASCO with the offer that they would compensate the State in the amount of $3,600.00 towards the total cost of $19,200.00. The $5,600.00 figure represents IASCO's estimate to reconstruct the waterline without the State's acquisition of Parcel 1. The State's cost would have been calculated as follows:

State's Proposal
$19,200.00 - State's Cost
-5,600.00 - IASCO Payment
$13,600.00 - Adjusted State's Cost

By Fax dated May 8, 2001 (copy attached), IASCO responded with a counter-offer to move their waterline outside Parcel 1 and within their property. The new line would run above stream and would be constructed by IASCO. They proposed that the State pay IASCO for the additional cost of $4,319.00 that would be incurred by them to re-route the new waterline.

We feel IASCO's counter-offer is fair, reasonable and is a justifiable cost-to-cure due to their need to re-route their waterline as a result of the State's acquisition of Parcel 1. To date, negotiations with IASCO have been lengthy and any further delay would impact project construction schedules.

Based on the foregoing, we recommend approval to administratively settle the partial acquisition by increasing the consideration for the taking of Parcel 1 by $4,319.00, from $1,500.00 to $5,819.00. IASCO has indicated they have no objection to our offer of $2,000.00 for the acquisition of Parcel 2. The total compensation to IASCO for the purchase of Parcel Nos. 1 and 2, would be $7,819.00.

Attachment

APPROVED/DISAPPROVED:

for THOMAS N. TOYAMA
Right-of-Way Manager

5/10/01
Date

2.7-A

F-072-1(39), East Kalanianaole Street to Kaahole Street Honolulu, City and County of Honolulu, State of Hawaii (hereinafter referred to as the "Project"); and

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

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

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

1. Public Use. The public use to be served by the acquisition of the Property is the construction, preservation, and protection of the Project, which is a public highway.

2. Acquisition required. The aforesaid public use requires the acquisition of the Property by the State in fee

SETTLEMENT AGREEMENT

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

WITNESSETH THAT:

WHEREAS, the Owner owns certain property situated at 5995 Kalanianaole Highway, designated as Tax Map Key No. 3-8-02:27, consisting of approximately 12,441 square feet, being all of Lot 3-7-3-1-R-1, as shown on Map 227 of Land Court Application No. 578, and noted on Transfer Certificate of Title No. 393,736, all as filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the "Property"); and

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

(2) Receipt by the State of the following:

(a) Fully executed original of this Settlement Agreement;

(b) Fully completed and executed originals of Form N-289 (Rev. 1993) pursuant to which the Owner represents that they are resident persons of the State of Hawaii for purposes of qualifying for an exemption from the withholding tax required under Chapter 235, Hawaii Revised Statutes; and

(c) Tax clearances showing that Owner does not owe and is not delinquent with the payment of any taxes, fees or charges to the State or the City and County of Honolulu.

b. Owner's right to payment. The Owner acknowledges that the payment of the Settlement Amount cannot be accelerated, deferred, increased or decreased by the Owner; nor shall the Owner have the power to sell or mortgage, encumber, or anticipate the payment of the Settlement Amount, or any part thereof, by assignment or otherwise.

c. Owner's beneficiaries. If either of the persons constituting the Owner dies or becomes legally incapacitated

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

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

4. Payment.

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

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

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

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

6. Release and Discharge.

a. Complete release. In consideration of the payment of the Settlement Amount pursuant to paragraphs 3 and 4 herein, the Owner hereby completely releases and forever discharges the State from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Owner now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of the Property, the Project or the effect of the Project on the Property, including, without limitation, any and all known or unknown claims for bodily and personal injuries to the Owner, or any future claims of the Owner's representatives or heirs which have resulted or may result from or are related to the Property, the Project and/or the effect of the Project on the Property.

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

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

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

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

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

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

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

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

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

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

10. Reimbursement. If it is ever adjudged that any person or persons other than the Owner is entitled to all or any portion of the Settlement Amount to be paid to the Owner pursuant to paragraphs 3 and 4 of this Agreement, the Owner, their successors and assigns, jointly and severally, do hereby agree to reimburse and pay to the State so much of the Settlement Amount paid to the Owner as may be adjudged to be due and owing to such other person or persons, together with interest at the rate of five percent (5%) simple interest per year from the date payment of the Settlement Amount is made hereunder to the Owner until the date of such adjudication or judgment, but not to exceed five (5) years worth of interest. Furthermore, additional interest at the rate of five percent (5%) simple interest per year shall be assessed from the date of such adjudication or judgment until said adjudicated or judgment amount is paid by the Owner to the State, unless full payment is received by the State within thirty (30) days of when the Owner is notified by the State of such adjudication or judgment.

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

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

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

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

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

14. Additional Documents. All parties agree to fully cooperate and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

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

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

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

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

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

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

**REMAINDER PARCEL 75**

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

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

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
Highways Division

By _____
Chief Engineer

Honolulu, Hawaii
April 21, 1995

Tax Map Key: 3-8-02:27

(Calc. Folder 557, Page 2, P4G11

Description Checked
_____
Controller Engineer
Date 21-APR-95

**EXHIBIT A**

EXHIBIT B

The "Property", as defined in that certain Settlement Agreement dated APR 2 8 1995, 1995, between Albert K. and Georgina C. Serikaku, as "Owner", and the State of Hawaii which describes the State's acquisition of the "Property", is subject to the following:

1. Deed covenants. The covenants contained in that certain Deed dated June 6, 1944, between Embye-Lee Johnson Lamb, as Grantor, and John Hollis Moulton, Jr., as Grantee, filed with the Assistant Registrar of the Land Court of the State of Hawaii (hereinafter the "Land Court") as Document No. 73402, which set forth certain building and racial restrictions.

2. Party wall agreement. The Party Wall Agreement dated November 9, 1989 between Rikno Corporation (the owner of the property adjacent to Remainder Parcel 75) and Edward J. Stanley, as Trustee for the L. Dow Halverson (Halversen) Estate (predecessor in interest to the Serikakus), filed with the Land Court as Document No. 1710168.

3. Deed condition. The following condition set forth in that certain Warranty Deed dated June 10, 1992, between Lee Halverson, as Grantor, and Albert Kanji Serikaku and Georgina Chun Serikaku (by Albert Kanji Serikaku as her attorney-in-fact), as Grantee, filed with the Land Court as Document No. 1923050, as noted on Transfer Certificate of Title No. 392,736:

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

14401

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

OWNER:

ALBERT K. SERIKAKU
Date: APR 24 1995

GEORGINA C. SERIKAKU
Date: APR 24 1995

STATE OF HAWAII

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

Approved as to Form:

Deputy Attorney General

14401

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

On this 24th day of April, 1995

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

Notary Public, 1st Judicial Circuit, State of Hawaii

My commission expires: Oct. 8, 1998

14401

# NEGOTIATIONS CLOSING

**PURPOSE:** To describe the closing procedures for the acquisition process accomplished through negotiations.

**POLICY:** To facilitate the closing process for early payment to property owners and recording of conveyance documents.

**RESPONSIBILITY:** The Land Acquisition Units of the Land Acquisition Section (HWY-RL) are responsible for the coordination and completion of the closing process.

**SCOPE:** This section extends to the Land Acquisition and Abstracting Sections of the Right-of-Way Branch, Cadastral Engineering Section of the Highway Design Branch, Legal Counsel and Fiscal Staff.

**PROCEDURES:** The closing process of all negotiated acquisition shall commence immediately upon receipt of the owner's acceptance of the State's offer for the purchase of the parcel. The closing process involves the preparation, execution, recording and distribution of documents and payments to property owners for purchase of their parcels; including the reporting of the real estate purchase to the Internal Revenue Service (IRS) and/or State Department of Taxation (DOTAX) as required.

**Preparation of Documents**

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

A. Where documents are to be prepared by Legal Counsel, the following are provided:

1. Metes and bounds description of the parcel if land is unregistered; Land Court description if land is registered.

2. Right-of-Way or parcel map if land is unregistered; Land Court map if land is registered.

3. Updated Certificate of Search, if more than six months from the last continuation or original search.

4. Copy of owner's acceptance of the State's offer.

The Request for Documents is submitted on Form DOT 4-122 (HWY-RL1/97) or as amended, (see page 2.8-A).

A. Any pertinent information that may assist Legal Counsel in preparing the document shall be included in this form. Where the acquisition involved partial takings, easements or access rights affecting registered lands, request for the appropriate Land Court Petitions shall be included. All documents in final form shall be returned by Legal Counsel to HWY-RL with their "Approval as to form".

B. Where documents are prepared in draft or final forms by the ROW Agents, the documents shall be transmitted to Legal Counsel together with a copy of the Certificate of Search. Legal Counsel:

1. Reviews final forms and "Approve as to Form" if they are in order or revise document in final form if revisions required.

2. Reviews drafts and prepares documents in final form.

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

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

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

**Execution of Documents**

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

A. All documents shall be executed and acknowledged by a notary public.

B. Acknowledgment may be taken by the U.S. Counsel or an authorized official in his office in foreign countries where no notaries public are available.

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

**Expenses Incidental to Transfer of Property**

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

A. Recording fees, transfer taxes and similar expenses incidental to conveying real property;

B. Penalty costs for pre-payment of any pre-existing recorded mortgage loans entered into in good faith and encumbering such real property, processing fee to a lending institution; and

C. The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the State, or the effective date of possession of such real property by the State whichever is the earlier.

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

**Payments**

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

A. Request for Payment to the owner shall be processed through Fiscal Staff (HWY-SF) by Form DOT 4-100 (8/04) or as amended (see page 2.8-B), properly coded, with the attachments indicated on the form.

B. Payment can be made directly to the owner/mortgagee by the Department of Accounting and General Services and the information returned to HWY-SF, when the payment does not exceed $600 and need not be reported to the IRS.

C. When payment must be reported to the IRS, the ROW Agent should request that HWY-SF send the warrant for payment to the Right-of-Way Branch (HWY-R). The warrant is then mailed to the owner/mortgagee by the ROW Agent with a recorded copy of the deed.

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

**Recordation of Documents**

Upon the final execution of the last signatory party, all conveyance documents shall be transmitted to Abstracting Section (HWY-RA) for recording with the Bureau of Conveyances.

A. The original and duplicate document with recordation information is returned by HWY-RA on unregistered lands.

B. Two duplicate originals are returned by HWY-RA on registered lands.

**Distribution of Recorded Documents**

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

A. Original copy for unregistered lands and duplicate original for registered lands are filed with the Project File.

B. Duplicate originals go to the owner.

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

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

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

A. To comply with the reporting requirement, transmit IRS Form W-9, Request for Taxpayer Identification Number and Certification, (see page 2.8-D), to the owner when the conveyance documents are transmitted for execution. The owner should be instructed to fill in the information requested on the form and return it to the State together with the conveyance documents.

B. After the fully executed conveyance document is recorded and returned to the ROW Agent from HWY-RA and the warrant for payment is received from HWY-SF as requested, the ROW Agent should process Form 1099-S by filling in the required information then distributing the form as indicated.

1. Transmit to the IRS with the standard cover letter, Form 1096 – Annual Summary and Transmittal of U.S. Information Returns, (see page 2.8-E); Form 1099-S – Real Estate Transaction, Copy A; and a Description of Parcel.

2. Transmit to the Owner with the standard form cover letter recorded copy of the Warranty Deed and Form 1099-S, Copy B.

3. File recorded copy of the Warranty Deed, Form W-9 and Form 1099-S, Copy C.

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

Section 235-68 of the HRS requires the withholding of 5% from the proceeds of the consideration paid for land purchased from a non-resident owner of property in Hawaii for submittal to the State Department of Taxation (DOTAX). The amount of withholding is determined by the DOTAX based on information provided on Form N-288B. To comply with the requirement of the law, Form N-289 and Form N-288B should be submitted to the owner when the conveyance documents are transmitted for execution to close the purchase of a parcel. The owner should be instructed to fill-out the form that is applicable to him and return both forms together with the conveyance documents for processing.

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

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

a. Exemption – the total sales price is exempt from withholding on the basis of no gain from the transaction.

b. Partial Exemption of the Sales proceeds – which requires that the appropriate amount of taxes must be withheld and submitted to DOTAX.

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

(DOT 4-122)
(HWY-RL 1/97)
HWY-RL 3.98

DEPARTMENT OF TRANSPORTATION
Right-of-Way Branch

_____
Date

SUBJECT: Request for Documents

TO: Dept. of the Attorney General, Transportation Division

PROJECT TITLE:_____
_____

PLEASE APPROVE: SUSPENSE DATE: Two weeks

( ) Deed (Quitclaim)
( ) Deed (Warranty)
( ) Petition for Land Court Subdivision
( ) Right-of-Entry and Rental Agreement
( ) Utility Agreement 2301
( ) Release of Mortgage

ENCLOSURES:
1. _____ . . . . . (XX)
2. Hawaii Information Service search . . . . . ()
3. Right-of-Way Maps . . . . . ()
4. Sample of a previously approved agreement . . . . . ()
5. ESA Phase 1 recommendation. . . . . ()

FOR:
Tax Map Key or Parcel Number _____ Consideration $ Various
_____ $_____
_____

| Party | Interest | Spouse | Address |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

(Please use a separate sheet if necessary.)

REMARKS:

If you have any questions, please contact of our Highways Right-of-Way, Land Acquisition Section at (808)692-7341 or email . Thank you.

_____
Fawn Y. Yamada
Right-of-Way Manager

Enclosure

STATE OF HAWAII
Department of Transportation
Right-of-Way Branch

HWY-RL 3.9xxxx

**May xx, 2025**

TO: HWY-SF

THROUGH: HWY-R

FROM: Land Acquisition Section – HWY-RL

SUBJECT: **Request for Payment**

PROJECT: Kuhio Highway, Emergency Flood Repairs and Cleanup
Project No. ER-19 (002)
at Wainiha, Hanalei, Island of Kauai, Hawaii

PARCEL:

ISSUE WARRANT TO: Kamehameha Schools
PO Box 30680
Honolulu, Hawaii 96820
(Payee)

AMOUNT: **$67,500.00**

SEND CHECK TO: HWY-R (K. Simon)

FOR: Settlement in lieu of condemnation (Easement 5)

REMARKS:

| | |
|---|---|
| 220-S-15-410-D-7501-444-1135-1V77A | $13,500.00 (20%) |
| 220-S-15-627-D-7501-444-1135-1V77B | $54,000.00 (80%) |

"EXEMPT FROM CHAPTER 103D, HRS PURSUANT TO SECTION 103D-102 (B), (2), (C), HRS"

FAWN Y. YAMADA
Right-of-Way Manager

ATTACHMENT(S):
( ✓ ) Invoice
( ✓ ) Job Authorization updated December 6, 2024
( ✓ ) Grant of Non-Exclusive Easement dated March 14, 2025

7575 ☐ VOID ☐ CORRECTED

| FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number | 1 Date of closing | OMB No. 1545-0997<br>Form **1099-S**<br>(Rev. April 2025)<br>For calendar year ____ | **Proceeds From Real Estate Transactions** |
|---|---|---|---|
| | 2 Gross proceeds<br>$ | | |

| FILER'S TIN | TRANSFEROR'S TIN | 3 Address (including city. state, and ZIP code) or legal description | **Copy A**<br>**For Internal Revenue Service Center** |
|---|---|---|---|
| TRANSFEROR'S name | | | |
| Street address (including apt. no.) | | 4 Check here if the transferor received or will receive property or services as part of the consideration . ☐ | For filing information, Privacy Act, and Paperwork Reduction Act Notice, see the **General Instructions for Certain Information Returns.** |
| City or town, state or province, country, and ZIP or foreign postal code | | 5 Check here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) . . . . . ☐ | |
| Account number (see instructions) | | 6 Buyer's part of real estate tax<br>$ | *www.irs.gov/Form1099* |

Form **1099-S** (Rev. 4-2025) Cat. No. 64292E www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service

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

**2.8-C**

Form **W-9**
(Rev. March 2024)
Department of the Treasury
Internal Revenue Service

# Request for Taxpayer Identification Number and Certification

**Go to *www.irs.gov/FormW9* for instructions and the latest information.**

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

**Before you begin.** For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

**Print or type.** See ***Specific Instructions*** on page 3.

**1** Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)

**2** Business name/disregarded entity name, if different from above.

**3a** Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor ☐ C corporation ☐ S corporation ☐ Partnership ☐ Trust/estate

☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) . . . . _____

**Note:** Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) _____

**4** Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____

*(Applies to accounts maintained outside the United States.)*

**3b** If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions . . . . . ☐

**5** Address (number, street, and apt. or suite no.). See instructions.

Requester's name and address (optional)

**6** City, state, and ZIP code

**7** List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

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

**Note:** If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

**Social security number**

| | | | – | | – | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

**or**

**Employer identification number**

| | | – | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

## Part II Certification

Under penalties of perjury, I certify that:

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

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

| **Sign Here** | **Signature of U.S. person** | **Date** |
|---|---|---|

# General Instructions

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

**Future developments**. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

## What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

Do Not Staple 6969

| Form **1096** Department of the Treasury Internal Revenue Service | **Annual Summary and Transmittal of U.S. Information Returns** | OMB No. 1545-0108 **2025** |
|---|---|---|

FILER'S name

Street address (including room or suite number)

City or town, state or province. country, and ZIP or foreign postal code

**For Official Use Only**

| Name of person to contact | Telephone number |
|---|---|
| Email address | Fax number |

| 1 Employer identification number | 2 Social security number | 3 Total number of forms | 4 Federal income tax withheld | 5 Total amount reported with this Form 1096 |
|---|---|---|---|---|
| | | | $ | $ |

6 Enter an "X" in only one box below to indicate the type of form being filed.

| W-2G 32 | 1097-BTC 50 | 1098 81 | 1098-C 78 | 1098-E 84 | 1098-F 03 | 1098-Q 74 | 1098-T 83 | 1099-A 80 | 1099-B 79 | 1099-C 85 | 1099-CAP 73 | 1099-DA 7A | 1099-DIV 91 | 1099-G 86 | 1099-INT 92 | 1099-K 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| 1099-LS 16 | 1099-LTC 93 | 1099-MISC 95 | 1099-NEC 71 | 1099-OID 96 | 1099-PATR 97 | 1099-Q 31 | 1099-QA 1A | 1099-R 98 | 1099-S 75 | 1099-SA 94 | 1099-SB 43 | 3921 25 | 3922 26 | 5498 28 | 5498-ESA 72 | 5498-QA 2A |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

| 5498-SA 27 |
|---|
| ☐ |

**Return this entire page to the Internal Revenue Service. Photocopies are not acceptable.**
**Send this form, with the copies of the form checked in box 6, to the IRS in a flat mailer (not folded).**

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

**Signature** **Title** **Date**

## Instructions

**Future developments.** For the latest information about developments related to Form 1096, such as legislation enacted after it was published, go to *www.irs.gov/Form1096*.

**Caution:** You may be required to electronically file (e-file) information returns as the e-file threshold is 10 (calculated by aggregating all information returns), effective for information returns required to be filed on or after January 1, 2024. Go to *www.irs.gov/InfoReturn* for e-file options. Also, see part F in the current General Instructions for Certain Information Returns.

**Purpose of form.** Use this form to transmit paper Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G to the IRS.

**Who must file.** Any person or entity who files any form checked in box 6 above must file Form 1096 to transmit those forms to the IRS.

**Caution:** Your name and taxpayer identification number (TIN) (employer identification number (EIN) or social security number (SSN)) must match the name and TIN used on your 94X series tax return(s) or you may be subject to information return penalties. Do not use the name and/or TIN of your paying agent or service bureau.

Enter the filer's name, address (including room, suite, or other unit number), and TIN in the spaces provided on the form. The name, address, and TIN of the filer on this form must be the same as those you enter in the upper left area of Form 1097, 1098, 1099, 3921, 3922, 5498, or W-2G.

**When to file.** If any date shown falls on a Saturday, Sunday, or legal holiday in the District of Columbia or where the return is to be filed, the due date is the next business day. File Form 1096 in the calendar year following the year for which the information is being reported, as follows.

- With Forms 1097, 1098, 1099, 3921, 3922, or W-2G, file by February 28.*
- With Forms 1099-NEC, file by January 31.
- With Forms 5498, file by May 31.

* Leap years do not impact the due date. See Announcement 91-179, 1991-49 I.R.B. 78, for more information.

### Where To File

Send all information returns filed on paper with Form 1096 to the following.

| If your principal business, office or agency, or legal residence in the case of an individual, is located in: | Use the following address: |
|---|---|
| Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Kentucky, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Texas, Vermont, Virginia | Internal Revenue Service<br>P.O. Box 149213<br>Austin, TX 78714-9213 |
| Alaska, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, Wisconsin, Wyoming | Internal Revenue Service Center<br>P.O. Box 219256<br>Kansas City, MO 64121-9256 |

**FORM N-289**
(REV. 2019)

STATE OF HAWAII — DEPARTMENT OF TAXATION

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

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

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

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

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

_____

_____

_____

_____

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

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

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

A. Brief description of the transfer:

_____

_____

_____

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

_____

_____

_____

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

_____ (name of transferor/seller) understands that this certification may be disclosed to the State of Hawaii, Department of Taxation by the transferee/buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

I declare, under the penalties set forth in section 231-36, HRS, that this certification has been examined by me, and to the best of my knowledge and belief, it is true, correct, and complete. In the case of corporations, partnerships, trusts, or estates, I further declare that I have authority to sign this document on behalf of _____ (name of transferor/seller).

Signed: _____ Print Name: _____

Title: _____ Date: _____

INSTRUCTION
**FORM N-289**
**(REV. 2019)**

STATE OF HAWAII — DEPARTMENT OF TAXATION

# Instructions for Form N-289

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

**(NOTE: References to "married" and "spouse" are also references to "in a civil union" and "civil union partner," respectively.)**

## GENERAL INSTRUCTIONS

### Purpose of Form

Use Form N-289 to inform the transferee/buyer that the withholding of tax is not required upon the disposition of Hawaii real property if (1) the transferor/seller is a resident person, (2) by reason of a nonrecognition provision of the Internal Revenue Code as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer, or (3) for the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and that the amount realized for the property does not exceed $300,000.

### Who Can Complete Form N-289

The transferor/seller can complete Form N-289.

### Where to Send Form N-289

Form N-289 must be completed by the transferor/seller and given to the transferee/buyer. The transferor/seller should NOT file Form N-289 with the Department of Taxation for approval. The transferee/buyer is to retain Form N-289 and NOT forward it to the Department of Taxation if ALL the transferor/sellers have provided a certification of exemption on Form N-289 to the transferee/buyer. If one or more, but not all of the transferor/sellers has provided a certification of exemption on Form N-289 to the transferee/buyer, the transferee/buyer shall attach a copy of the Form N-289 to Forms N-288 and N-288A, which must still be filed with the Department of Taxation.

## SPECIFIC INSTRUCTIONS

At the top of Form N-289, enter the transferor/seller's name, identification number (last 4 numbers of the social security number, individual identification number or federal I.D. number), and address. The Internal Revenue Service (IRS) issues Individual Taxpayer Identification Numbers (ITINs) to certain aliens who are required to have a U. S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number. The ITIN issued by the IRS must be used as the individual's identification number. If the individual has applied for an ITIN but the IRS has not yet issued the ITIN, write "Applied For."

Check the applicable box to indicate the reason the withholding of tax is not required upon the disposition of Hawaii real property.

**Box number 1.** Check box number 1 if the transferor/seller is a resident person as defined in section 235-68, HRS.

**Box number 2.** Check box number 2 if by reason of a nonrecognition provision of the Internal Revenue Code as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer. Complete sections A and B requesting a brief description of the transfer and a brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.

**Box number 3.** Check box number 3 if for the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and the amount realized for the property does not exceed $300,000. The "amount realized" means the sum of the cash paid, or to be paid (not including interest or original issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee/buyer or to which the Hawaii real property interest is subject to immediately before and after the transfer. Generally, the amount realized, for purposes of this withholding, is the sales or contract price.

**NOTE:** *Although the withholding of tax may not be required upon the disposition of Hawaii real property, the transferor/seller is required under section 235-92, HRS, to file an income tax return to report the sale or other disposition.*

### Signature

Form N-289 must be signed by an individual, a responsible corporate officer, a member or general partner of a partnership, or a trustee, executor, or other fiduciary of a trust or estate. In addition, Form N-289 may be signed by an authorized agent with a power of attorney.

### Where to Get Information

Information is available on the Department's website at **tax.hawaii.gov** or you may contact a customer service representative at:

Voice: 808-587-4242
1-800-222-3229 (Toll-Free)

Telephone for the Hearing Impaired:
808-587-1418
1-800-887-8974 (Toll-Free)

Fax: 808-587-1488

Mail: Taxpayer Services Branch
P.O. Box 259
Honolulu, HI 96809-0259

**FORM N-288B**
(REV. 2019)

STATE OF HAWAII — DEPARTMENT OF TAXATION

# Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interest

**Copy B - To be returned to Transferor/seller**

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

1 Name of applicant (Transferor/seller)

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

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

2 Names of all transferors/sellers (Attach additional sheets if more than one transferor/seller.)

Address (number and street)

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

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

Address (number and street)

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

4 Description of Hawaii real property transaction:

**a** Date of transfer (month, day, year). _____ **DO NOT** file Form N-288B if the transfer of property has already taken place. The Department of Taxation will not approve Form N-288B after the date of transfer has passed.

**b** Location and general description of property (Include tax map key number) _____

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

☐ **a** The transferor/seller will not realize any gain with respect to the transfer. (Complete **5a** on the back of Copy A.)

☐ **b** There will be insufficient proceeds to pay the withholding required under section 235-68(b), Hawaii Revised Statutes, after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property. (Complete **5b** on the back of Copy A.)

6 **Was the property used at anytime as a rental?** ..... **Yes** ☐ **No** ☐

**If yes, enter your Hawaii Tax I.D. Number.**

**Hawaii Tax I.D. Number**
GE __ __ __ - __ __ __ - __ __ __ __ - __ __

**Please Sign Here**

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

➤ _____ Signature | _____ Title (If applicable) | _____ Date

➤ _____ Spouse's signature (If applicable) | _____ Title (If applicable) | _____ Date

## FOR OFFICIAL USE ONLY:

Approved: _____ Month Day Year

Disapproved: _____ Month Day Year

Amount required to be withheld $_____

Signature _____

**FORM N-288B**
(REV. 2019)

**5a.** Calculation and written justification showing that the transferor/seller will not realize any gain with respect to the transfer. Attach a copy of a tentative statement from your escrow company for this transaction showing the gross sales price. Also attach a copy of your closing escrow statement from your purchase or acquisition of this property. (**Note**: You must provide documentation for all items in the calculation. Do NOT include any carryforward, net operating or suspended passive activity losses on line 2b.)

1. Sales Price $ _____

2a. Purchase price of property _____

2b. Add: Improvements (attach schedule) _____

Selling expenses _____

Other (attach list and schedule) _____

2c. Less: Depreciation (attach schedule) _____

Other (attach list and schedule) _____

3. Adjusted basis of property. (Line 2a plus line 2b, minus line 2c) $ _____

4. Line 1 minus line 3. If greater than zero, you **DO NOT** qualify for a waiver of the withholding. Do not file this form with the State of Hawaii, Department of Taxation. ***Exception:*** If this property was used as your main home and you may qualify to exclude the **entire** gain, use Form N-103 as a worksheet and attach Form N-103 to this Form N-288B. $ _____

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

1a. Sales price $ _____

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

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

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

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

2c. Other (list):

_____ _____

_____ _____

_____ _____

3. Add lines 2a through 2c $ _____

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

INSTRUCTION
**FORM N-288B**
(REV. 2019)

STATE OF HAWAII — DEPARTMENT OF TAXATION

# Instructions for Form N-288B

## Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interest

***NOTE: References to "married" and "spouse" are also references to "in a civil union" and "civil union partner," respectively.)***

## General Instructions

### Purpose of Form

Use Form N-288B to apply for a withholding certificate to waive or adjust withholding on dispositions by nonresident persons of Hawaii real property interest. Use this form only for applications based on (1) a claim that the transferor/seller will not realize any gain with respect to the transfer, or (2) a claim that there will be insufficient proceeds to pay the withholding required under section 235-68(b), Hawaii Revised Statutes (HRS), after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property. If a nonresident transferor/seller transfers two or more Hawaii real property interests, one Form N-288B should be filed for each property transferred.

### Who Can Apply for a Withholding Certificate

The transferor/seller can file Form N-288B. If two or more nonresident transferors/sellers jointly transfer a Hawaii real property interest, a separate Form N-288B should be filed for each nonresident transferor/seller applying for a withholding certificate. One Form N-288B should be filed for a taxpayer and spouse if they will be filing a joint return for the year in which they transferred their Hawaii real property interest.

### Withholding Certificate

Upon receipt of Form N-288B, the State of Hawaii, Department of Taxation (Department) shall determine whether the transferor/seller has realized or will realize any gain with respect to the transfer, or whether there will be insufficient proceeds to pay the withholding. After the form has been approved or disapproved, a copy of the form will be returned to the transferor/seller, who shall thereafter transmit the form to the transferee/buyer.

If the Department is satisfied that no gain will be realized, the Department will waive the withholding requirement and the transferee/buyer is not required to withhold any tax. The transferee/buyer shall attach a copy of the Form N-288B to Forms N-288 and N-288A, which must still be filed with the Department.

If the Department is satisfied that there will be insufficient proceeds to pay the withholding, the Department will adjust the amount required to be withheld and the transferee/buyer shall withhold the adjusted amount and submit the payment, Form N-288, Form N-288A, and Form N-288B to the Department.

### When to File Form N-288B

Form N-288B must be filed with the Department no later than 10 working days prior to the date of transfer. **Forms N-288B filed later than 10 working days prior to the date of transfer will not be accepted and will be returned to the transferor/seller. The Department will not approve Forms N-288B after the date of transfer reported on line 4a has passed.** Timely mailing of Form N-288B by U.S. mail or any delivery service designated for purposes of section 7502 of the federal Internal Revenue Code will be treated as timely filed. See Tax Information Release No. 97-3 for more information.

### Where to Send Form N-288B

**Copies A and B** of Form N-288B must be mailed or hand delivered to the taxation district office listed below which is located in the county where the closing of the sale is taking place, or the county in which the property is located. After the form has been approved or disapproved, copy B of Form N-288B will be returned to the transferor/seller at the address specified on line 1. If copy B of Form N-288B is not submitted, a copy of the form will not be returned to the transferor/seller. We do not fax confidential information concerning Form N-288B, nor do we accept Form N-288B through fax.

## Specific Instructions

**Line 2.** Enter "Same as line 1" unless you are entering another address. If you entered a mailing address on line 1 that is not your actual address, enter your actual address on line 2. If there are multiple transferor/sellers, attach additional sheets giving the required information about each one, indicating ownership percentage and residency status.

**Line 3.** Enter the name, address, and identification number (last 4 numbers of the SSN or FEIN), if any, of the transferee/buyer. The Internal Revenue Service (IRS) issues Individual Taxpayer Identification Numbers (ITINs) to certain aliens who are required to have a U. S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number. The last 4 numbers of the ITIN issued by the IRS must be used as the individual's identification number. If the individual has applied for an ITIN but the IRS has not yet issued the ITIN, write "Applied For." If there are multiple transferee/buyers, attach additional sheets giving the required information about each one.

**Line 4.** Enter the appropriate information. In 4b, enter the address and description of the property. Include the tax map key number.

**Line 5.** If 5a is checked, 5a on the back of Copy A must be completed. If 5b is checked, 5b on the back of Copy A must be completed.

**NOTE:** The transferor/seller is required under section 235-92, HRS, to file an income tax return whether or not the person derives a taxable gain.

**Line 6.** If the property was used as a rental property at anytime by the transferor/seller(s), check the box marked "yes" and fill in the appropriate Hawaii Tax I.D. Number. If not, check the box marked "no."

### Back of Copy A

**Line 5a(1).** Enter the gross sales price from the sale. Attach a copy of a tentative statement from your escrow company for this transaction showing the gross sales price, the transferor(s)/seller(s), and the transferee(s)/buyer(s).

**Line 5a(2a).** Purchase price of property (attach tentative statement).

**Line 5a(2b).** Improvements: Attach schedule of improvements with contracts, invoices, receipts and any supporting documents. Selling expenses: List selling expenses such as commissions, state transfer taxes, etc. Other: Attach list and schedule any evidence supporting your claim.

**Line 5a(4).** Line 1 minus line 3. If greater than zero, you **DO NOT** qualify for a waiver of withholding. Do not submit Form N-288B. **Exception:** If the sale of the property was your main home and you qualify to exclude the **entire** gain, use Form N-103 as a worksheet and attach Form N-103 to Form N-288B.

**Line 5b(1a).** Enter the gross sales price from the sale. Attach a copy of a tentative statement from your escrow company for this transaction showing the distribution of funds received, the transferor(s)/seller(s), and the transferee(s)/buyer(s).

**Line 5b(1b).** Enter the amount of sales proceeds to be received in forms other than cash, such as an agreement of sale or purchase money mortgage.

**Line 5b(2a).** Enter any expense of sale, such as commissions and state transfer taxes.

**Line 5b(2c).** Enter any other cost associated with the sale of the property, such as liens secured by the property.

### Signature

Form N-288B must be signed by an individual, a responsible corporate officer, a member or general partner of a partnership, or a trustee, executor, or other fiduciary of a trust or estate. If Form N-288B is being filed by a taxpayer and spouse, both must sign the form. In addition, Form N-288B may be signed by an authorized agent with a power of attorney.

## MAILING ADDRESSES

OAHU DISTRICT OFFICE
OFFICE AUDIT BRANCH - N-288B
P. O. BOX 259
HONOLULU, HAWAII 96809-0259
(830 PUNCHBOWL STREET, #228)
808-587-1644

MAUI DISTRICT OFFICE
RE: N-288B
54 S. HIGH STREET, #208
WAILUKU, HAWAII 96793-2198
808-984-8500

HAWAII DISTRICT OFFICE
RE: N-288B
75 AUPUNI STREET, #101
HILO, HAWAII 96720-4245
808-974-6321

KAUAI DISTRICT OFFICE
RE: N-288B
3060 EIWA STREET, #105
LIHUE, HAWAII 96766-1889
808-274-3456

# CONDEMNATION – LEGAL SECTION

**PURPOSE:** To describe the procedures in condemnation proceedings by the Legal Section, Department of Transportation.

**POLICY:** Condemnation proceedings shall be initiated whenever an impasse is reached in acquiring right-of-way for public purpose by negotiations or whenever there is a title defect in the parcel(s) to be acquired. [1]

**RESPONSIBILITY:** The Right-of-Way Branch (HWY-R), through the Director of Transportation, [2] shall be responsible for initiating the request for condemnation and maintaining the case file after condemnation is completed. Legal Section (LEG) shall be responsible for filing condemnation proceedings and conclusions either by stipulated judgments or court trials.

**SCOPE:** The provisions of this section apply to HWY-R and LEG, Department of Transportation.

**PROCEDURES:** Condemnation proceedings are initiated whenever an impasse is reached in acquiring right-of-way by negotiations or whenever there is a title defect in the parcel to be acquired. The proceedings are instituted upon receipt of the request from HWY-R. All further contact with the owners is handled by LEG.

**Case Assignments**

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

A. File the condemnation proceedings and conclude the proceedings by court trial or stipulated judgment;

B. Where settlement by stipulated judgment is possible, submit his recommendations for the settlement for approval by the Right-of-Way Manager (Branch Head);

[1] 101-2 HRS Taking private property for public use, disposal of excess property, 101-6 What property may be taken, 101-7 Superior public use, 101-9 Actions, priority, 101-10 Circuit Courts have jurisdiction, 101-11 Procedures as in civil actions, 101-12 Evidence,
[2] 101-14 HRS Plaintiff.

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

**Filing of the Complaint [3]**

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

A. Statement of the use to which the land sought to be condemned is to be put.

B. Description of the property to be taken. The description is generally attached to the Complaint and designated as Exhibit A. [4]

C. Map or maps showing the property and its location. The map is attached to the Complaint and designated as Exhibit B. Where more than one map is used, the first is designated as Exhibit B-1, the second Exhibit B-2, etc.[4]

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

[3] 101-15 HRS Complaint, defendants
[4] 101-6 HRS Complaint; additional contents; map [4] Ibid
[5] 101-20 HRS Notice

**Order of Possession [6]**

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

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

A. The reasons for requiring an immediate occupation of land sought to be condemned.

B. The sum of money estimated by the plaintiff to be the Just Compensation or damages for the taking of the land.

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

**Court Deposit [8]**

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

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

A. Legal Section shall submit the Request for Payment, (see page 2.9-A), for the court deposit to the Fiscal staff (HWY-SF) through HWY-R properly coded.

B. HWY-R shall verify the coding and allocation of costs on a parcel basis. The verified request is then forwarded to HWY-SF.

C. HWY-SF prepares and submits a warrant voucher to the Department of Accounting and General Services (DAGS) for issuance of a State warrant.

D. Upon receipt of the Sate warrant from the DAGS, LEG shall:

1. Deposit the Warrant with the Circuit Court where the complaint is filed.

2. Obtain a Receipt of Deposit, (see page 2.9-B), for the deposit from the Court Clerk.

   a. File the Receipt of Deposit with the pleading of the condemnation case file.

   b. Forward a copy of the Receipt of Deposit to HWY-R.

3. Certifies the fact of the deposit and date of possession to the Director of Taxation.

4. Submits a copy of the Certificate of Deposit and Possession, (see page 2.9-D), to HWY-R.

[6] 101-26 HRS Final order of condemnation
[7] 101 HRS Interveners, 101 HRS Possession pending action; immediate occupation by plaintiff.
[8] 101-31 Payment of estimated compensation; effect thereof.

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

**Withdrawal of Court Deposit**

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

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

B. Where the owner's title is not clear, the owner will have to move for withdrawal (Section 101-31, Hawaii Revised Statutes). The owner must satisfy the Court that he or she is the owner and thereby entitled to the money.

C. The owner shall obtain a tax clearance before he or she is allowed to withdraw any portion of the deposit. (Sections 101-36 and 101-37, Hawaii Revised Statutes.)

D. Whenever the owner withdraws all or any portion of the court deposit, he or she abandons all defenses except for his claim to additional compensation.[9]

**Condemnation Settlements**

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

A The attorney submits his recommendation to the Right-of-Way Manager (Branch Head) for concurrence through the Senior Deputy Attorney General. The request shall be in writing and contain his reasons for settlement with supporting date.

B. HWY-R approves or disapproves the recommendation for settlement. He or she may forward the recommendation to the Review Appraiser for preliminary review and recommendations.

C. Concurrence by the Federal Highway Administration (FHWA) may be obtained for settlement substantially in excess of the Review Appraiser's determination of value.

D. The Right-of-Way Manager (Branch Head) shall inform the attorney through LEG the approval or disapproval of the recommendation for settlement.

1. If settlement is approved, the case is concluded by a Stipulated Judgment.

2. If settlement is disapproved, then the case is concluded by court trial

**Trial by Court**

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

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

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

A. Selection of the jury which panel consists of 12 members.

B. Opening statement by Plaintiff briefly explaining what he or she intends to prove.

C. Presentation of evidence by Plaintiff.

D. Opening statement by Defendant and presentation of Defendant's case.

E. Opening argument by Plaintiff.

F. Answering argument by Defendant.

G. Closing argument by Plaintiff.

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

**Interests** [10]

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

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

B. Statutory blight. Interest rate of 5% is computed on the differences of the total award less the amount deposited. (Section 101-33, Hawaii Revised Statutes.)

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

**Trial Report**

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

A. The report shall be signed by the trial attorney and contain but not be limited to, the following information concerning the proceedings:

1. Caption of the case.

2. Approved estimate of value and date.

3. Appraisal valuations and dates.

4. Date, place and length of trial.

5. A brief factual report of the trial, including range of value testimony by the parties, etc.

6. A statement of the major issues involved and the development thereof.

7. A description of the major differences, if any, in approaches to value among the State's witnesses and those of the landowner.

8. An explanation of any substantial variance between the review appraiser's estimate of value and the State's high testimony.

9. Comments on possible legal error in the record and explanation of the State's action regarding motions, objections, etc. and the court's rulings relative thereto.

[10] 101-33 HRS Allowance of interest, etc., 101-25 Payment of judgment, penalties.

B. The Trial Report shall be filed in the owner's file by HWY-R.

**Appeals**

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

A. The recommendation is reviewed by the Senior Deputy Attorney General who is in charge of the legal staff.

B. Final approval is made by the Right-of-Way Manager. Any additional information desired by the Right-of-Way Manager for final determination shall be furnished by LEG upon request.

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

**Special Counsel**

Special Counsel may be employed on a case-by-case basis. The counsel is selected by the Senior Deputy Attorney General. It is subject to the prior approval by the FHWA and shall show that:

A. The employment of special counsel is in the public interest;

B. That the fee is reasonable; and

C. That the fee is not a percentage basis.

The request for approval of Special Counsel shall be made through the Right-of-Way Manager. The employment is based on a signed contract.

**Petition for Subdivision**

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

A. LEG shall request the Cadastral Engineering Section (HWY-DC) to furnish HWY-RL with the Land Court Subdivision maps and descriptions.

B. Upon receipt of the maps and descriptions from HWY-DC, HWY-RL shall:

1. Obtain subdivision approval from the Planning Department of the County where the registered land is located or Department of Land Utilization when the land is located in the City and County of Honolulu.

2. Furnish LEG with a print of the Land Court Subdivision map with the Planning or Land Utilization Department's stamp of approval together with the descriptions and Land Court Subdivision tracing for filing with the Land Court.

C. The attorney handling the condemnation case shall prepare and file the Petition for Subdivision with land Court.

**Condemnation Case File**

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

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

**Inverse Condemnation**

The right of filing an inverse condemnation is a common law remedy which any property owner has. Under Article I, Section 18 of the State's Constitution, as amended by Constitutional Convention in 1968, the words "or damaged" were added so that private property shall not be taken or damaged for public use without just compensation.

A. A property owner may file inverse condemnation action where his property is being damaged although there may not be any taking.

B. Whether the owner is successful or not in an inverse condemnation suit, he or she is not entitled to attorney, appraisal, engineering or other costs involved in the litigation of an action. This is qualified, however, in that engineering costs which are incurred for the development of a property may be considered where it enhances the value of said land. State v. Chang, 50 Haw. 195 (1967) and State v. Trustees of Campbell Estate Supreme Court Nos. 5124 to 5127, decided July 20, 1972.

C. Section 113-4, Hawaii Revised Statutes, however, provides for the reimbursement for reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred where the owner is successful in any inverse condemnation suit in any program or project in which Federal or Federal-Aid funds are used.

**Property Not Acquired; Reimbursement of Owner**

A. Section 101-27, Hawaii Revised Statutes, allows property owners certain damages upon abandonment or dismissal of proceedings. It provides that the owner shall be awarded his cost of court, a reasonable amount to cover his attorney's fee paid by him and other reasonable expenses. Said section appears to be broad enough to cover all costs. It would also apply where the final court judgment is that the property cannot be acquired by condemnation.

B. Section 113-3, Hawaii Revised Statutes is similar to Section 101-27 except that it applies to any project or program in which Federal or Federal-Aid funds are used.

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

STATE OF HAWAII
Department of Transportation
Right-of-Way Branch

HWY-RL 3.9xxxx

**May xx, 2025**

TO: HWY-SF

THROUGH: HWY-R

FROM: Land Acquisition Section – HWY-RL

SUBJECT: **Request for Payment**

PROJECT: Kuhio Highway, Emergency Flood Repairs and Cleanup
Project No. ER-19 (002)
at Wainiha, Hanalei, Island of Kauai, Hawaii

PARCEL:

ISSUE WARRANT TO: Kamehameha Schools
PO Box 30680
Honolulu, Hawaii 96820
(Payee)

AMOUNT: **$67,500.00**

SEND CHECK TO: HWY-R (K. Simon)

FOR: Settlement in lieu of condemnation (Easement 5)

REMARKS:

| | |
|---|---|
| 220-S-15-410-D-7501-444-1135-1V77A | $13,500.00 (20%) |
| 220-S-15-627-D-7501-444-1135-1V77B | $54,000.00 (80%) |

"EXEMPT FROM CHAPTER 103D, HRS PURSUANT TO SECTION 103D-102 (B), (2), (C), HRS"

FAWN Y. YAMADA
Right-of-Way Manager

ATTACHMENT(S):
( ✓ ) Invoice
( ✓ ) Job Authorization updated December 6, 2024
( ✓ ) Grant of Non-Exclusive Easement dated March 14, 2025

FILED

2003 SEP -9 AM 9:07

C. CASIL, CLERK
SECOND JUDICIAL CIRCUIT
STATE OF HAWAII

MARK J. BENNETT 2672
Attorney General of Hawaii

LANE T. ISHIDA 3691
Deputy Attorney General
Department of the Attorney
General, State of Hawaii
300 Kekuanao'a Building
465 South King Street
Honolulu, Hawaii 96813
Phone: (808) 587-2981

Attorneys for Plaintiff
State of Hawaii

2003 SEP 15 A 10:47

LAND/TRANS. DIV.
DEPARTMENT OF
ATTORNEY GENERAL

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

| | |
|---|---|
| STATE OF HAWAII, by its Attorney General, | CIVIL NO. 03-1-0364 (1) (Condemnation) |
| Plaintiff, | RECEIPT OF DEPOSIT |
| vs. | |
| ALEXANDER & BALDWIN, INC., a Hawaii corporation; AMERON, INC., a California corporation; MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation; BANK OF HAWAII, INC., a Hawaii corporation, fka Hawaiian Trust Company, Limited, a Hawaii corporation, as Trustee for Verizon Hawaii, Inc., fka GTE Hawaiian Telephone Company; and VERIZON HAWAII, INC., a Hawaii corporation; BOARD OF WATER SUPPLY, COUNTY OF MAUI; and WDCI, INC., fka WAILEA DEVELOPMENT COMPANY, | |
| Defendants. | |

2.9-B

# RECEIPT OF DEPOSIT

The following State warrant was deposited to the account of the above-entitled matter this 9th day of September 2003:

| | |
|---|---|
| Number: | S0006873 |
| Dated: | July 25, 2003 |
| Amount: | $71,500.00 |
| For: | Parcel 13, together with any and all improvements thereon and appurtenances thereunto belonging, and all abutter's rights of vehicular access, in fee simple absolute, free and clear of all liens and encumbrances. |
| Project: | Mokulele Highway, Puunene Avenue to Piilani Highway, Phases 1A (portion), 1B and 1C, FAP No. NH-0900(59), at Pulehunui, Wailuku, Maui, Hawaii. |

DATED: Kahului, Hawaii, SEP - 9 2003.

/sgd/C. CASIL (seal)

Clerk of the Court

LAND/TRANS. DIV.
DEPARTMENT OF
ATTORNEY GENERAL

2003 SEP 15 A 10:47

THE JUDICIARY
CIRCUIT COURT OF THE SECOND CIRCUIT
FISCAL
RECEIPT NO: CR 080088

ASE NO: FI-CC-0003-1-000364-0000 09/09/2003 09:04 A.M
ECEIVED FROM:
STATE OF HAWAII

HE SUM OF: 71,500.00

REDIT TO:
ALEXANDER & BALDWIN, INC. VS. STATE OF HAWAII, BY ITS ATTY.GEN.

ESCRIPTION: EX PARTE MOTION FILED 9/9/03;C.03-1-364

] CASH [X] CHECK S0006873 (000331) [ ] TRANSFER
T/R CASE DEPOSITS 71,500.00

TOTAL 71,500.00

CLERK - 15

GENERAL LEDGER INFO

ASE NO: FI-CC-0003-1-000364-0000 09/09/2003 09:04 A.M

EBIT AMOUNT
320 FIRST HAWN BK CHK 71,500.00

EDIT AMOUNT
311 T/R CASE DEPOSITS 71,500.00

FILED

2003 NOV -4 PM 1:54

C. CASIL, CLERK
SECOND JUDICIAL CIRCUIT
STATE OF HAWAII

MARK J. BENNETT 2672
Attorney General of Hawaii

LANE T. ISHIDA 3691
Deputy Attorney General
Department of the Attorney
General, State of Hawaii
465 South King Street, Room 300
Honolulu, Hawaii 96813
Telephone: (808) 587-2981

Attorney for PLAINTIFF
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

| | |
|---|---|
| STATE OF HAWAII, by its Attorney General,<br><br>Plaintiff,<br><br>vs.<br><br>ALEXANDER & BALDWIN, INC., a Hawaii corporation; AMERON, INC., a California corporation; MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation; BANK OF HAWAII, INC., a Hawaii corporation, fka Hawaiian Trust Company, Limited, a Hawaii corporation, as Trustee for VERIZON HAWAII, INC., fka GTE Hawaiian Telephone Company; VERIZON HAWAII, INC., a Hawaii corporation; BOARD OF WATER SUPPLY, COUNTY OF MAUI; and WDCI, INC., fka WAILEA DEVELOPMENT COMPANY,<br><br>Defendants. | CIVIL NO. 03-1-0364(1)<br>(Condemnation)<br><br>CERTIFICATE OF DEPOSIT AND POSSESSION |

# CERTIFICATE OF DEPOSIT AND POSSESSION

TO: DIRECTOR OF FINANCE, COUNTY OF MAUI

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

Estimated just compensation deposited with Court: $71,500.00

Date of Deposit: September 9, 2003

For: Mokulele Highway, Puunene Avenue to Piilani Highway, FAP No. NH-0900(59) at Pulehunui, Wailuku, Maui, Hawaii, Parcel 13, TMK No. (2) 3-4-04:023 (por.)

Date of Possession: October 12, 2003.

DATED: Honolulu, Hawaii, NOV - 3 2003.

LANE T. ISHIDA
Deputy Attorney General

Attorney for Plaintiff
STATE OF HAWAII

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Certificate of Deposit and Possession was duly served by U.S. mail, postage prepaid, addressed to the following persons on NOV - 3 2003:

Director of Finance
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Real Property Tax Division
County of Maui
70 E. Kaahumanu Avenue
Suite A16
Kahului, Hawaii 96732-2196

LANE T. ISHIDA
Deputy Attorney General

Attorney for Plaintiff
STATE OF HAWAII

CONDEMNATION CHECKLIST FOR SECRETARY'S USE

(To be used with Eminent Domain Proceedings)

CIVIL No. 03-1-0304(1)

Apr. 2004

| | | |
|---|---|---|
| **1. COMPLAINT:** | | |
| √ | **Sent to:** | **Date Completed** |
| | Director of Finance (of county involved) (see attached Addresses) | |
| | Real Property Assessment Division (of county involved) (see attached Addresses) | |
| | Land Division (for DLNR cases) | |
| | | |
| **2. NOTICE OF PENDENCY OF ACTION:** | | |
| √ | **Completed:** | **Date Completed** |
| | Notice of Pendency of Action Filed | |
| | Notice of Pendency of Action Recorded at the Bureau of Conveyances | |
| DOT Cases: record Notice through Abstracting Section | | |
| DLNR Cases: record Notice through Land Division | | |
| | | |
| **3. TITLE SEARCH** brought up to date of Notice of Pendency of Action (check with your deputy) | | |
| | | |
| **4. RECEIPT OF DEPOSIT:** | | |
| √ | **Sent to:** | **Date Completed** |
| | Right-of-Way Branch for DOT cases | |
| | Land Division for DLNR cases | |
| | | |
| **5. SERVICE OF SUMMONS:** | | |
| | **Completed:** | **Date Completed** |
| | Personal Service | |
| | Certified Mail Return Receipt Requested | |
| | Publication in newspaper | |
| | Posting of Summons on the property | |
| | | |
| **6. CERTIFICATE OF DEPOSIT AND POSSESSION:** | | |
| √ | **Sent to:** | **Date Completed** |
| | Director of Finance (of county involved) | |
| | Real Property Assessment Division (of county involved) | |
| | Right-of-Way Branch (for DOT cases) | |
| | Land Division (for DLNR cases) | |
| | | |
| **7. FINAL ORDER OF CONDEMNATION:** | | |
| √ | **Sent to:** | **Date Completed** |
| ✓ | Right-of-Way Branch for recordation (without parcel map) (for DOT cases) | 2/26/07 |
| | Land Division for recordation (with parcel map) (for DLNR cases) | — |
| √ | **Send with parcel map (with or without possession) to:** | **Date Completed** |
| ✓ | Director of Finance (of county involved) | 2/26/07 |
| ✓ | Real Property Assessment Division (of county involved) | 2/26/07 |
| | | |
| **8. NOTICE OF ADDITIONAL DEPOSIT** (subsequent to Judgment): | | |
| √ | **Sent to:** | **Date Completed** |
| | Defendants | |
| | Attorneys of record | — |
| | | — |
| **9. For Land Court Property Only:** | | |
| √ | **Taking Entire Lot of Land Court Property:** | **Date Completed** |
| | Update title search within 90 days of filing Final Order w/Land Court | N/A |
| | Recordation copy of Final Order of Condemnation filed in case file | N/A |
| √ | **Taking a Portion of Land Court Lot:** | **Date Completed** |
| | Update title search within 90 days of filing Final Order w/Land Court | N/A |
| | Recordation copy of Final Order of Condemnation filed in case file | |
| | Petition for Subdivision filed w/Land Court (incl. Designation of Restriction of Access Rights, if applicable) | N/A |
| | Land Court Order approving and authorizing subdivision filed in case file | N/A |

Attachment

DOT 4-111
(HWY-RL 7/01)

RW-2

HWY-RL 3.9xxxx

4-xx-2025
Date

SUBJECT: Request for Eminent Domain Proceedings

TO: Dept. of the Attorney General, Land/Transportation Division

PROJECT TITLE: _____

_____

Please file condemnation proceedings on the following parcel(s):

_____

DATE POSSESSION DESIRED: ASAP

Funds (are) (are not) immediately available for deposit.

(See Attachment for particulars)

1. Appraisal Report and Review
2. Maps - ROW Maps (Tax Map Overlay forthcoming if necessary)
3. Descriptions
4. Letter of Offer
5. Negotiation Diary
6. Correspondence with owner – see negotiation diary
7. Title Search
8. Phase 1 Environmental Site Assessment Documentation

220-B-22-480-D-7501-497-2135-2489E For Deposit
220-B-22-480-D-7103-497-2135-2489E For Service of Warrant

APPROVED:

_____
Right-of-Way Manager

ATTACHMENT TO RW-2

PARCEL NO.
Parcels

1. REASON FOR REQUEST: Include property owner's demands.

   Kamehameha Schools (KS) attorney Dennis Chong Kee confirmed via email on 10/30/24 that KS has obtained the necessary internal approvals to move forward with the acquisitions in HDOT's offer HWY-RL 3.98574 dated March 18, 2024 with one condition. The condition is that HDOT and KS agree to a mutually acceptable form of deed for the transfer of the parcels opposed to eminent domain proceedings. However, Mr. Dennis Chong Kee recently instructed HDOT to proceed with "friendly" condemnation to acquire the parcels due to HDOT's subdivision exemption. Per Dennis, although HDOT is exempt from county subdivision ordinances, KS is not and an FOC would be a cleaner title exchange.

2. MAPS:

   a. _____prints of parcel map attached.

   b. One copy of Tax Map attached with:

      ( ) Parcels identified

      ( ) Larger parcel delineated

      ( ) Comparable sales of surrounding property marked

      ( ) Zoning of vicinity delineated

   c. ( ) Construction plans attached (only if pertinent)

3. DESCRIPTION:

   a. ( ) Surveyor's description attached. (If it does not coincide with abstractor's description and area, cite discrepancies.)

4. SEARCH OF TITLE:

   a. ( ) Abstractor's Report brought up to date and attached.

   b. ( ) _____ is date of last search.

5. PERSONS IN POSSESSION:

| Possessor | Interest | Street Address |
|---|---|---|

6. CLAIMANTS: (Those who should be listed as defendants to obtain clear title)

Recorded Interests:

| Claimant* (If minor, so state) | Interest | Street Address | Attorney or Agent |
|---|---|---|---|
| The United States of America | Easement Holder | Joint Base Pearl Harbor-Hickam<br>850 South Ticonderoga Street<br>JBPHH, HI 96860-51012 | |

*Recommended taking subject to. No existing utilities. Easement shall be deemed abandoned and rights shall cease and determine per grant. Utility installation not feasible within parcels due to no other utility rights in adjacent lands HDOT is acquiring for project.

| Claimant* (If minor, so state) | Interest | Street Address | Attorney or Agent |
|---|---|---|---|
| Dole Food Company, Inc. | Encumbrance Holder | 1116 Whitmore Avenue<br>Wahiawa, HI 96786 | |

*Recommended taking subject to. Reservation access rights serve no purpose, since parcels will become a public road. Encumbrance holder does not own any surrounding lands or reservations to exercise.

Unrecorded interests and Adverse Possessors:

| Claimant* (If minor, so state) | Interest | Street Address | Attorney or Agent |
|---|---|---|---|
| None known | | | |

Remarks and Other Information on Claimants:

None

*Include owners, purchasers, lessees, sublessees, assigns, mortgagees, licensees, tenants other than month to month residents, etc.

7. VALUATION:

| Total Area | Value Land | Value Improvements | Severance Damage | Special Benefits | Total Value for Deposit |
|---|---|---|---|---|---|
| Right of Way Parcel 1<br>23,241 sq ft | $15,100.00 | $12,828.00 | none | none | $27,928.00 |
| Right of Way Parcel 2<br>28,365 sq ft | $18,400.00 | $10,096.00 | none | none | $28,496.00 |
| Right of Way Parcel 6 (Rev. 1)<br>16,666 sq ft | $10,800.00 | $5,165.00 | none | none | $15,965.00 |
| Right of Way Parcel 7<br>9,192 sq ft | $6,000.00 | none | none | none | $ 6,000.00 |
| | | | | | $78,389.00 |

8. APPRAISAL:

a. Name(s) of appraiser(s) who will substantiate values for deposit:

Cyrus Chen

b. March 13, 2024 is date of Appraisal.

c. ( x ) Approved by Staff Appraiser.
(Cyrus Chen, Appraisal Section Head)

d. Present and actual use of parcel Agricultural

e. Appraiser's opinion of highest and best use: A use consistent with its zoning

f. Special instructions given appraisers: None

g. Basis for severance damages: None

h. Special benefits: None

Basis:

( ) New road
( X ) Widening or realignment of existing road

i. ( ) Mass Appraisal ( X ) Concentrated appraisal

j. Strength and weakness of appraisal:

k. New evidence and other information affecting value: None

9. HISTORY OF NEGOTIATIONS:

| Date | Action |
|---|---|
| | See Negotiation Diary |

10. LAND:

a. ( ) Registered ( X ) Unregistered

b. Evidence of probable change in zoning: None

c. ( X ) Partial taking (Parcels 1,2,7) ( X ) Total taking (Parcel 6 Rev. 1)

d. ( ) Excess taking Parcel No. _____

e. ( ) Open access ( ) Limited access

e. Other pertinent information on topography, accessibility, drainage, restrictive covenants, etc.

11. IMPROVEMENTS:

a. Number, kind, use, age and general condition of existing improvements:

Landscaping (28 Milo trees)

b. If partial taking, describe project as it relates to remainder property.

Project will not impact remainder properties.

12. COMMITMENTS TO OWNER:

a. As to the land, improvements, payment, litigation, holding over, etc.: None.

13. MISCELLANEOUS INFORMATION: None.

# Negotiation Diary

**Project:**

**District of:** **Island: Oahu** **Parcel:**

**Owner(s):** **Contact:**

**Contact:**

**Tenant(s) or Other:** **Contact:**

**Contact:**

**Attorney:** **Contact:**

**Mailing Address:**

**Physical Address:**

**Offering Price:** None **Offer Accepted:** **TMK:**

**Settlement:** **Date Approved:** Agent:

| Date | Remarks |
|---|---|
| | |
| | |
| | |

# ACQUISITION OF STATE LANDS

**PURPOSE:** To describe procedures in the transfer of State lands or interest in lands under the jurisdiction of the Board of Land and Natural Resources or other State agencies for highway or highway-related purposes.

**POLICY:** To have State lands transferred for highway or highway-related purposes at no cost unless specified by the Board of Land and Natural Resources (BLNR) or the Highways Division.

**RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) is responsible for the coordination and completion of land transfers or use of State lands for highway or highway-related purposes.

**SCOPE:** This section applies to the Right-of-Way Branch (HWY-R) and the Cadastral Engineering Section (HWY-DC) of the Design Branch.

**PROCEDURES:** The Acquisition Unit or the Project Agent for the assigned project initiates and completes action for the proper transfer or use of State lands for highway or highway-related purposes. All communications are addressed to the Chairman, BLNR and signed by the Director, Department of Transportation (DOT) or as otherwise designated. [1]

**Appraisals**

Generally, appraisals are not required for State lands as these are made available to the Highways Division at no cost by BLNR. Appraisals, however, shall be required in event Highways Division (1) pursues functional replacement pursuant to the provisions of 23 CFR, Part 712, Sub-part F, or (2) payment is specifically specified by the BLNR and/or the State Highways Division.

[1] 171-2 HRS Definition of public lands; 171-3 Department of Land and Natural Resources; 171-11 Public purposes, lands set aside by the Governor; management. The Governor may, with prior approval of the Board of Land and Natural Resources, set aside public lands to any department or agency of the State... for public use or purpose. Lands while so set aside for such use or purpose or when acquired for roads and streets shall be managed by the department, agency, etc, having jurisdiction thereof, unless otherwise prohibited by law.

**Land Board Submittal**

Every effort shall be made by the Acquisition Units to submit the Department of Transportation's request to BLNR at the earliest possible date to assure early action for inclusion in the Land Board's agenda.

A. Requests for land transfers shall contain, but not be limited to the following:

1. Map delineating area required for highway and highway-related purposes such as construction parcels, borrow pit or waste disposal sites.

2. Appropriate descriptions for the right-of-way parcels. If descriptions are not available at the time of request, these may be furnished at a later date as soon as they are completed. Descriptions needs not be submitted for areas to be used for temporary purposes unless required by the BLNR.

3. Amount of Just Compensation for the right-of-way parcel(s) if payment is to be made for the land transfer.

4. Interim right-of-entry request pending transfer of required parcels or areas.

B. Requests for right-of-entry only for surveying, test borings, archaeological survey, etc. shall contain but not limited to the following:

1. Surveying. Map delineating area of entry for surveying purposes.

2. Test Borings. Map delineating area of entry and approximate locations of the boring sites.

C. Where land has been set aside by Governor's Executive Order to another governmental agency, the carbon copy of the request shall be transmitted to the agency having jurisdiction over the affected land. Subsequent communications may be made directly with the agency having jurisdiction over the property if so directed.

D. Where land is encumbered by a lease, the Land Board shall be so informed so that this matter is cleared up by and between said Land Board and Lessee before the land is made available to DOT.

The land acquisition units shall contact the staff of the Department of Land and Natural Resources (DLNR) from time to time and follow up on the DOT's request until such time that the request has been fulfilled. Any special conditions incorporated in the transfer or grant of right-of-entry shall be forwarded to the appropriate agency within the Highways Division for their information and/or action.

**Land Exchange**

The Right-of-Way (ROW) Agent shall not make any commitment during negotiations with the private owner to exchange right-of-way parcels for State owned lands. All owners shall be informed that land exchanges are under the jurisdiction of BLNR and that their requests should be so directed. However, if the owner is insistent on a land exchange, as a means of transferring his parcels for the right-of-way, the following guidelines should be applied:

A. Inform owner that we have no objection to this procedure; however, condemnation proceedings will be filed so that the State may have legal possession of the parcel to proceed with the construction and also set the date of valuation. The State, however, shall:

1. Withhold obtaining the Final Order of Condemnation in order to provide the owner sufficient time to negotiate a land exchange with the BLNR.

2. If the land exchange is approved, our Legal Counsel will be requested to take appropriate action necessary so that owner may consummate the exchange with the BLNR.

3. If the land exchange is disapproved, we will immediately request our Legal Counsel to complete the acquisition of the parcel by condemnation proceedings.

B. Inform owner we have no objection to owner's attempt for land exchange providing he or she grants the State an interim right-of-entry for construction purposes under the following conditions:

1. The right-of-entry agreement sets the date of valuation as of the date of said right-of-entry.

2. The owner will be granted a specified time period in which to negotiate the land exchange with BLNR.

3. If the land exchange is approved, the right-of-way acquisition will be by said land exchange prepared by BLNR.

4. If the land exchange is disapproved, acquisition will be by voluntary conveyance or condemnation proceedings based on the established date of valuation.

The ROW Agent may arrange preliminary meetings with the owner and representatives of the BLNR for discussions on land exchange if this is desirable and acceptable with all concerned.

**Public Land Trust [2]**

All funds derived from the sale or lease or other disposition of public lands shall be appropriated by the laws of the State;

All proceeds and income from sale, lease or other disposition of lands, retained by the US under section 5(c) and 5(d) of the Act and later conveyed to the State under section 5(e) shall be held as public trust for:

1. The support of the public schools and other public educational institutions;

[2] 171-18 Public Land Trust,
[3] Hawaiian Homes Commission Act of July 9, 1921, www.hawaii-nation.org/hhca.html Section 205

2. The betterment of the condition of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920, as amended;[3]

3. The development of farm and home ownership on as widespread a basis as possible;

4. The making of public improvements;

5. The provision of lands for public use.

Land Conveyance by the Department of Hawaiian Home Lands (DHHL) follow typical acquisition policies, but differ by conveyance with a License instead of Deeds, as stipulated in their Hawaii Administrative Rules 10-4-21 and 22. [4]

Negotiations are common and compensation for License(s) are often settled by Administrative Settlement.

Although not in every case, Licenses are not typically granted until the improvements are complete. An executed right-of-entry from the DHHL Commission allows entry, construction and other allowable activities within the Right-of-Way and supports the Right-of -Way Certification 2 to be approved, as needed.

**Other State Lands under "Public Property"**

HRS 101-51 Definitions. As used herein: "Public property" means real property (1) owned by a political subdivision of the State or (2) owned by the State in its own right and not owned by the United States. "Public property" shall not be deemed to include public lands, defined to be such by section 171-2. [L 1949, c 377, pt of 1; RL 1955, 8-52; HRS 101-53]

[4] HAR 10-4 HAR Department of Hawaiian Home Lands, Management of Hawaiian Home Lands.

Special Proceedings Relating to Public Property

HRS 101-52 Proceedings Authorized. [2004 amendment repealed June 30, 2010. L 2006, c 94 1.] Any officer authorized to bring eminent domain proceedings under part I, and any county when thereunto authorized in the manner provided by section 10113, which is made applicable to this part, may file or cause to be filed a special proceeding for the acquisition by the State or county, as the case may be, of public property required for public uses which are under the officer's or county's jurisdiction and control. The circuit courts may try and determine the proceedings without a jury, subject only to an appeal in accordance with chapter 602, in the manner provided for civil appeals from the circuit courts. The circuit court, on its own motion or on motion of any party, may try and determine any issue in the condemning authority for the condemnation of any public property taken under this chapter. [L 1949, c 377, pt of 1; RL 1955, 8-51; am L 1957, c 160, 1; HRS 101-52; am L 1973, c 30, pt of 5; am L 2004, c 202, 12]

HRS 101-53 Property already appropriated to a public purpose. Whenever the public property sought to be acquired has already been appropriated to some public purpose, in order that the property be acquired by the petitioner it must appear that the use to which the property is sought to be put is more necessary than the purpose to which it has already been appropriated. [L 1949, c 377, pt of 1; RL 1955, 8-52, HRS 101-53]

# ACQUISITION OF COUNTY LANDS

**PURPOSE:** To describe procedures in negotiations for lands or interests in lands owned by the various county governments.

**POLICY:** To facilitate negotiations through communications with proper county agencies.

**RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) is responsible for the coordination and completion of right-of-way negotiations with the various county governments.

**SCOPE:** This section applies to all sections of the Right-of-Way Branch (HWY-R).

**PROCEDURES:** Unless provided by statutes, negotiations for acquisition of lands or interests in lands owned by the county are similar to that of private interests, except that communications are made with staff members of the various agencies responsible for the activity.

**Right-of-Way Purchases**

The procedures for negotiating acquisition of County lands shall be dependent on the use and agency jurisdiction of the parcels or interests to be acquired.

A. Existing County Highways: Section 262-2, Hawaii Revised Statutes, provides for the transfer of existing County Highways to the State for State Highway purposes without compensation.

   1. Communications for the land transfer shall be addressed to the Department of Budget and Fiscal Services (DBFS, aka Finance) Director's Office for the City and County of Honolulu and to the Mayor with respect to the other County governments.

2. The County shall be informed of the State's proposed project and the necessity to acquire the County road parcel. Reference shall be made to Section 262-2, HRS, advising the County that the State will prepare the transfer document for execution. In the interim, a right-of-entry for construction purposes is requested pending the land transfer.

3. Completed transfer documents shall be transmitted to the County and upon execution; the recordation and distribution procedures shall be followed in accordance with procedures affecting private interests.

B. Fee County lands except those under the jurisdiction of the Board of Water Supply (BWS).

1. Offer shall be made through the DBFS Director's office in the case of the City and County of Honolulu and to the Mayor for all other Counties.

2. The offer shall be signed by the Director of Transportation and based on the just compensation established by the Review Appraiser.

3. Where no improvements are involved, an interim right-of-entry for construction purposes is requested.

4. Where improvements are involved, an interim right-of-entry is requested pending satisfactory arrangement for the removal or replacement of said improvements.

5. Once the offer has been submitted, the Right-of-Way (ROW) Agent shall from time to time contact staff members of the appropriate County agency with regard to the status of the offer. Written follow-up communications shall be signed by the Director of Transportation. If acceptance and/or right-of-entry are not received within a reasonable time, the County shall be informed that condemnation proceedings will be filed for the acquisition.

6. Transfer documents for execution shall be prepared and submitted immediately upon County's acceptance of the State's offer.

7. Payment, recordation, and distribution of the transfer document shall be processed similar to that of private interests.

C. Boards of Water Supply (BWS). The right-of-way purchase and closing procedures for Fee County lands shall be followed except that the offer and communications with BWS shall be made directly to the BWS of the respective County.

**Right-of-Entry**

Request for right-of-entry for surveying, test borings, archaeological surveys, driveway adjustments and similar purposes where no acquisition are involved shall be made through the Administrator, Highways Division to:

A. Chief Engineer of the respective County for lands under its jurisdiction.

B. BWS of the respective County for lands under its jurisdiction.

The ROW Agent shall from time to time follow up on the requests for right-of-entry with staff members of the appropriate agencies.

**Right-of-Way Adjustments**

Negotiations for right-of-way adjustments due to extenuating circumstances shall be made through the Administrator, Highways Division to the Chief Engineer or BWS of the respective County. The process for request and approval of right-of-way adjustments shall follow that of private interests as stated in the sections of this chapter.

**Examples of Right-of-Way Adjustments**

In one instance, the County of Maui negotiated a partial taking for the Haleakala Widening project (37B-03-94), the Country required, a final, executed and approved as to form, Warranty Deed that was submitted for full Council vote.

In another instance, Honoapiilani Highway Realignment, Phase 1A, Lahainaluna Road to Keawe Street Extension (NH-030-1(35), the County of Maui, could not deliver clear title to their roads. Adjustments were made to the land title.

In such instances, of unusual circumstances, the agent is required to work with the Attorney General's office and the Branch's Abstract Section to find a solution of transferring County lands to the State.

The State – County Road Agreements are not legal transference of title. Roads will have to be surveyed, properly described and legally documented and recorded with the State Bureau of Conveyance.

# ACQUISITION OF FEDERAL LANDS

**PURPOSE:** To describe procedures relating to the acquisition of lands or interests in lands owned by the United States for highway purposes.

**POLICY:** To request transfer of lands or interests in lands through the Federal Highway Administration (FHWA) and/or a Federal Agency with independent authority to transfer lands.

**RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) is responsible for coordinating and processing requests for federal lands.

**SCOPE:** This section applies to HWY-RL of the Right-of-Way Branch (HWY-R).

**PROCEDURES:** Whenever lands owned by the United States (federal lands) are affected and required for Federal-Aid or federally assisted projects, applications for said lands or interests in land shall be made through the FHWA.

The exception to this process is when such lands or interests therein are managed or controlled by an Agency with independent transfer authority such as the Army, Air Force, Navy, Coast Guard or Veterans Administration (Military or VA). Transfer applications for said lands are made directly to the Agencies or their land acquisition agent.

**Authority for Federal Land Transfers**

The following paragraphs provide for the acquisition by the States, of lands or interests in lands owned by the Federal government for highway purposes, generally in Hawaii.

A. Section 317 of Title 23, United States Code. This section authorizes the transfer upon the determination by the Federal Highway Administration Hawaii Division Realty Specialist that such lands or interests in lands are reasonably necessary for (1) right-of-way for any highway; (2) as a source of materials for the construction or maintenance of such highway; (3) for maintenance and

stockpile sites; or (4) for roadside and landscape development.

B. Section 107(d) of Title 23, United States Code. This section authorizes the Secretary of Transportation to make necessary arrangements with the Federal agency having jurisdiction over the lands when right-of-way including control of access are required for the Interstate System.

Reference is made to other paragraphs and laws which provide for acquisition of lands or interest in lands owned by the United States as covered under 23 CFR 710.601. . Where the law is not clear as to which law will take precedence, reference to said law may be omitted in requesting Federal Highway Administration's assistance in the Federal land transfers. Proper and adequate enclosures for final transfers, however, shall be provided to the FHWA in order that they may submit the State's application to the proper agency.

**Application**

The application for transfer of land or interests in land owned by the United States shall be in fee simple and contain the following:

A. Statement as to the purpose for which lands or interests in lands are to be used;

B. Indicate the Federal Agency that has control of the property requested;

C. Specify that the State of Hawaii agrees that the acquisition, if approved, will be subject to the terms and conditions of the applicable regulations of any agency making the grant;

D. Statement that the State shall commit itself to construction of the highway and/or the removal of material from the right-of-way requested for transfer within a period not exceeding ten years following the transfer of the lands to the State;

E. Each application shall be accompanied by:

1. Seven prints of approved Right-of-Way and/or Land Court Maps with subject parcel(s) outlined in colors;

2. Original, one duplicate original and five copies of the metes and bounds and/or Land Court descriptions.

F. When transfer applications are made directly to the Military or VA, it shall be accompanied by:

1. Eight prints of approved Right-of-Way and/or Land Court Maps with subject parcel(s) outlined in colors;

2. Original, one duplicate original and six copies of the metes and bounds and/or Land Court description. Where land under the Land Court System is involved, a request shall be made for the loan of the Owner's Transfer Certificate of Title. If acquisition is to involve only a portion of the property, easement or access right, the appropriate Land Court Petition shall be included for execution;

G. In all cases, request for interim right-of-entry for construction purposes pending final transfer of the land or interests in land shall be included.

**Processing Transfer of Documents**

Generally the Federal Agency having jurisdiction of the land of the United States affected by the right-of-way prepares the transfer document in final form for acceptance by the State. Where the State is requested to prepare documents, drafts of the documents are first prepared and submitted to the Federal agency through the FHWA for review and approval. When the land is controlled by the Military or VA drafts of conveyance documents should be sent directly to the affected Agency for review.

A. Final documents received by the State shall be referred to Legal Counsel for review and "Approval as to Form".

B. Documents approved by Legal Counsel shall be executed by the Director of Transportation and routed to Abstracting Section (HWY-RA) for recording. The process for recordation is the same as other documents.

C. A copy of the filed documents with recordation noted thereon shall be returned to the Federal agency for their information and files.

D. Where lands under the Land Court System involve partial takings, easements, etc., a Land Court Petition is prepared by the State and submitted to the Federal agency for execution. After full execution and filing of the petition, a copy of the filed petition is returned to the Federal agency for their preparation of the transfer document.

**Improvements**

Where improvements are affected, the relocation, replacement or demolition of improvements shall be negotiated with the Federal agency through the FHWA. When the improvements are located on land controlled by the Military or VA, all work on the improvements will be negotiated directly with the affected Agency.

Where the Federal agency is to perform work to replace the facilities requiring advancement of funds:

A. Request Federal agency to submit replacement cost estimates of facilities to be replaced.

B. Have Appraisal Section (HWY-RP) review estimates and submit comments, if any.

C. After cost estimates are resolved, prepare drafts of Agreement for replacement of facilities and Escrow Agreement.

D. Have Fiscal Officer review drafts for comments before submitting to Legal Counsel for preliminary approval of drafts.

E. Transmit drafts to Federal agency for their review and comments and submittal of exhibits showing facilities being replaced for attachment to Agreement.

F. After resolving of issues on drafts, type agreements into final form and transmit for execution.

G. Distribute copies of fully executed Agreements to Federal and State agencies.

H. Fiscal Staff (HWY-SF) process Escrow Agreement.

I. If actual bid prices for replacement facilities exceed estimates in agreement and escrow account, revise Detailed Cost Estimate to reflect change for amendment of the Project Agreement with the FHWA and also for additional deposit to the Escrow Account by HWY-SF.

J. An Appraisal determines the cost upon completion of the replacement facilities provided that the State certifies as to the availability of funds.

Where the State is to perform the work, concurrence of the work in writing by letter or agreement shall be entered into with the Federal agency.

**Right-of-Entry (No Acquisition)**

Whenever it is necessary to enter upon Federal land to conduct test borings, surveying, archaeological surveys, etc., the request for right-of-entry is made directly to the Federal agency on their respective agency's form. The request shall be accompanied with:

A. Appropriate maps delineating areas upon which entry is required;

B. Reasons entry is required;

C. Approximate duration of entry; and

D. Any other information as needed to clarify request.

A copy of the request shall be furnished to the FHWA for their information.

# LANDSCAPING AND SCENIC ENHANCEMENTS

**PURPOSE:** To describe procedures in acquiring right-of-way for landscaping and scenic enhancement projects.

**POLICY:** Where feasible, it is the policy to provide owners with options to convey right-of-way in fee or by way of easements.

**RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) of the Right-of-Way Branch (HWY-R) is responsible to process and acquire the required right-of-way.

**SCOPE:** This section applies to HWY-R and the Landscape Design Section (HWY-DL).

**PROCEDURES:** Landscaping and scenic enhancement projects are generally programmed and undertaken in conjunction with highway projects so as to produce the greatest efficiency and economy of operations consonant with the requirement of each program.

The right-of-way requirement of the highway project sets the guidelines as to whether the landscaping or scenic enhancement parcel is to be acquired in fee or whether the owner is to be given an option of a fee or easement acquisition.

Where landscaping issues are involved and requires the taking of right-of-way, coordination should be made with HWY-DL. Landscaping has become an important part of the highway improvement and discussions with HWY-DL can assist in the visualization of the final outcome of the project. The agents can utilize the information to better explain the project and reassure the owners that the end product may be a safer and more beautiful environment.

**Project Agreements**

Similar to a highway project, the Acquisition Unit shall prepare right-of-way cost estimates for submittal to the Project Management Staff (HWY-SM) to enter into project agreement with the Federal Highway Administration (FHWA).

**Certificate of Search and Appraisals**

The same procedure shall be followed as in a highway project for Certificate of Searches. Requests for appraisals, however, shall include additional valuations for easement takings wherever applicable.

**Subdivision Approval and Variances**

A. Upon receipt of approved right-of-way maps, the maps long with applicable tax maps shall be submitted to the County Planning Department (or City Department of Land Utilization) in which the project is located for subdivision approval. Where appropriate, a location map (title sheet of construction plans) should also be included;

B. Submit Land Court maps to the Planning Department or Land Utilization for subdivision approval also if the parcels are registered lands;

C. Submit variance applications with the Planning Department for remainder lots which will become substandard after the taking but which are still economically adequate;

D. Submit Conservation District Use Application, together with the items listed in the Application, with the Department of Land and Natural Resources (DLNR) for parcels which are within Conservation District;

E. Submit request for boundary change to DLNR whenever forest reserve lands are involved.

**Federal Highway Administration's Information and Approvals**

The following procedures are applicable on all beautification projects:

A. Where parcels are to be acquired in fee, the reason fee acquisition is necessary shall be provided;

B. Where owners are to be given options to convey in fee or grant of easements for the beautification parcels, Federal Highway Administration's approval shall be obtained;

C. Where easements are to be acquired, a copy of the scenic easement document to be used for acquisition shall be submitted to the FHWA for approval. Additional approvals for this easement document is not required, if used for other beautification projects of similar scope and use.

A statement included in the approval request package sent to the FHWA indicating that the same document will be used shall suffice.

**Preliminary Information to Property Owners**

Prior to the submittal of the offers to purchase, an informational letter shall be mailed to the affected property owners. The informational letter shall contain a map delineating the property affected and explain the purpose of the beautification project and the type of acquisition involved.

**Negotiations**

Upon receipt of the Report of Reviewer establishing the just compensation, the offer to purchase shall be made to the property owner for the acquisition.

A. Where feasible, the offer shall include both an offer for the purchase in fee and an easement;

1. The owner shall be given the option of the method of conveyance;

2. A sample of the easement document shall be enclosed where an option is given;

B. Dwellings or related improvements may be acquired in limited situations through negotiations.

1. In no event shall dwellings and related improvements be acquired by condemnations.

2. Any displacements of occupants as a result of the negotiated acquisition shall be provided relocation assistance and payments in accordance with Federal requirements.

**Closing**

Closing procedures for acquisition and payments shall be the same as in projects.

# UTILITY AGREEMENTS

**PURPOSE:** To describe procedures in processing utility agreements.

**POLICY:** To provide for the relocation, adjustment, installation or accommodation of utility facilities by written agreements and in compliance with applicable State and Federal requirements.

**RESPONSIBILITY:** The Land Acquisition Section (HWY-RL) of the Right-of-Way Branch (HWY-R) is responsible for preparing and processing utility agreements.

**SCOPE:** This section applies to all branches of the Highways Division involved in utility work.

**PROCEDURES:** Utility agreements are prepared and processed immediately upon receipt of the cost estimates and color-coded relocation plans from the Design Branch (HWY-D). The agreements shall be in accordance with current State and/or Federal requirements.

**Utility Agreement Requirements**

Utility agreements are entered into by and between the State and the Company/County on a project basis as to their separate responsibilities in financing and accomplishing the utility work. The agreement shall incorporate each relocation of utility work encountered as follows:

A. The basis of the State's authority, obligation, or liability to pay for the relocation.

B. The scope, description and location of the work to be undertaken.

C. The method to be used by the utility for developing relocation costs.

D. The methods to be used for performing the relocation work, either by the utility's forces or by contract.

E. That the facilities to be relocated to a position within the highway right-of-way will be accommodated in accordance with applicable Federal and/or State requirements.

F. Prior rights of an utility will be established to determine reimbursement eligibility for Federal-aid funds.

G. Buy America provision will apply to utility relocation.

**Utility Relocation Cost Estimates**

The cost estimates for relocation, adjustment and installation of affected utility facilities are the responsibility of the Highway Design Engineer. The Right-of-Way (ROW) Agent, however, shall assist the Design Engineer to verify cost sharing of the net costs in the work to be performed when requested. For the purposes of verifying cost sharing using the State's standards, (Chapter 264-33), Hawaii Revised Statues) the following guidelines are used:

A. Private Utility Facility Providing Public Utility Services.

1. Where facilities legally occupying highway right-of-way are relocated and the net cost of relocation is less than $10,000, the company pays entire cost of relocation.

2. Where facilities legally occupying highway right-of-way are relocated and the net cost of relocation exceeds $10,000, the cost over $10,000 is shared equally between the company and the State.

3. Where facilities legally occupying private easements are relocated to another private easement area outside the ROW, generally the entire cost less betterment is borne by the State. Where the utility facilities are to be incorporated within the ROW, the existing easement document should be checked on a case-by-case basis for special conditions which may affect relocation cost payments. In these cases the utility company must relinquish their easement as consideration for the new utility use and occupancy agreement.

B. County Facilities. Except for betterment, the State generally bears all costs for relocation.

C. Federal Agencies. Except for betterment, the State generally bears all costs for relocation.

All questionable cost sharing situations shall be referred to Legal Counsel for final determination.

**Utility Agreement Forms**

The following forms and/or revised versions shall be used for utility agreements where applicable:

A. Private Utility Facility occupying highway right-of-way:

1. Form DOT HWY-RL 2/07 when net utility relocation costs exceeds $250,000 (see page 2.14-A).

2. Project Manager (PM) will initiate a Memorandum of Understanding (MOU) when net utility relocation costs do not exceed $ 250,000 (see page 2.14-G). MOU prepared and provided by HWY-D to HWY-RL.

3. [1]Use and Occupancy Agreement for accommodation of facilities occupying highway right-of-way.

4. Grant of Easement for facilities located on private property.

Printed Form “Basis of Payments, Records and Accounts – Exhibit A (Company)” (see page 2.14-M) properly filled together with printed Form “Exhibit B (Revised)” (see page 2.14-O) and relocation cost estimates (Refer to Procedure No. 7-05-06, Utility, and Form DOT 4-232, “Utility Payment Standards Comparison”) (see page 2.14-R) shall be attached and made part of the utility agreement when applicable.

B. Private Utility Facility legally occupying private easements. Form DOT 4-2014-F (HWY-RL 5/90) where State pays 100% (see 2.14-K).

C. County Facilities:

1. Form DOT 4-204-C (HWY-RL 7/07) used whenever County facilities are affected (see page 2.14-S).

2. Form DOT 4-204-D (HWY-RL 5/90) used for accommodation of existing facilities; no utility work involved (see page 2.14-V)

Printed Form "Basis of Payments, Records and Accounts – Exhibit A (County)" and cost estimates (Refer to Procedure No. 7-05-06, Utility) shall be attached and made part of the utility agreement. Utility agreement forms may be revised in accordance with special conditions or stipulations agreed upon by both parties for relocation, installation, or accommodations of the utilities under Sections 5.3(A) and (B) The final document will be submitted to legal for review and approval.

D. U.S. Government Facilities. An agreement shall be initiated between the Federal agency and the State by the project manager (PM), utilizing a Facilities Relocation Agreement (FRA) in accordance with their project development manual, allowing basically the format of the printed form.

**Assignment of Utility Agreement Number**

All agreements for relocation, adjustment, installation and/or accommodation of utilities shall be identified by a number. The number to be assigned for the agreement is obtained from the PSS Utility Log, using the next available unassigned number. The Project Manager (PM) shall post in the Utility Agreement Log:

A. The Agreement Number;

B. Name of the Company;

C. Project Title and Number;

D. Requestor and date requested;

E. Title Sheet if available.

**Other Concerns:**

Utility Agreements (UA) with Federal Highway oversight (over $1 million) shall notify Federal Highways Administration (FHWA). All other agreements with DOT oversight (under $1 million) may be transmitted to the requesting Branch.

County UA's are to be routed to the administering project manager and then routed to HWY-R for further processing.

Pipeline Policy, effective September 24, 2002, prohibits the abandonment of pipelines and utility facilities on all Department of Transportation (DOT) properties, including highway right-of-way. The policy is to address the increasing problem of unidentified,

abandoned pipelines and the heightened awareness of environmental concerns related to an arising from abandoned pipelines. Notification of this policy should be given to any company, agency or user regarding lines within the right-of-way. The users must agree and are responsible for all costs of removing pipelines and must agree to be liable for any cleanup costs, if any related to the abandoned pipelines, prior use of any pipelines or removal of pipelines. Unauthorized uses and activities must be immediately terminated or a direct agreement with DOT must be reached for their continued use.

Accommodations Policy, under HAR, Title 19, Subtitle 4, Ch. 105, allows utilities in the state highway right-of-way provided that the permitted use and occupancy does not interfere with the free and safe flow of traffic or otherwise impair the highway or its visual quality and does not conflict with the provisions of Federal, State or local laws or regulations.

The Federal regulations identify the State's responsibility for maintaining the right-of-way. Following is the relevant language from the Code of Federal Regulations, 23 CFR Subchapter A:

Section 1.23 – Right-of-Way.
(b) *Use for highway purposes.* Except as provided under paragraph (c) of this section, all real property including air space within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes; and (3) for informational sites established and maintained in accordance with 23 CFR 1.35 of the regulations in this part.

New guidelines may be developed to speed up project delivery. Language for a Master UA is currently being worked on.

**Preparation of Utility Agreement**

The ROW Agent shall prepare the agreement on the basis of information provided by the Design Engineer.

A. Where printed forms are used, the agreement shall be prepared in final form and submitted to the utility company first, then to Legal Counsel for approval.

B. Where a “Facility Relocation Agreement” or an agreement is revised to incorporate special conditions or stipulations, a draft shall be prepared and submitted to Legal Counsel for review. Legal Counsel shall then make any corrections, if necessary, and prepare the agreement in final form.

C. All agreements shall be “Approved as to Form” by Legal Counsel.

**Execution of Utility Agreements**

The original and two copies of the approved agreement shall be transmitted for execution.

A. Utility agreements involving private companies shall be transmitted directly to said company.

B. Utility agreements affecting County facilities shall be transmitted to the Chief Engineer of the respective County, except for the following:

1. Agreements affecting the Board of Water Supply (BWS) shall be transmitted directly to said BWS of the respective County.

2. Agreements affecting the Division of Wastewater Management for the City and County of Honolulu shall be transmitted directly to said Division of Wastewater Management.

C. Agreements affecting non-Federal-Aid projects and Federal-Aid secondary road projects shall be transmitted directly to the FHWA.

D. If the utility agreement includes work by the State or its Contractor, the HWY-D shall revise the “Utility Payment Standards Comparison” (Refer to Procedure No. 7-05-06, Utility) and supporting documents to reflect the Contractor’s bid price after bid opening. HWY-R will correct all applicable areas of the executed utility agreement and the amended utility agreement will be approved by the State and Utility Company. Distribution will be as indicated in procedures.

**Approval of Agreements (Federal Highway Administration)**

Federal Highway Administration's approval shall be obtained for all agreements affecting federally assisted projects.

A. One duplicate copy of the fully executed agreement together with a set of the color-coded relocation plan shall be transmitted for approval.

B. If the submittal meets with their approval, the FHWA retains the agreement and relocation plans and notifies the State of said approval.

C. If the submittal is disapproved, it is returned for appropriate revisions. The revisions are then returned to the FHWA for approval. The process is repeated until final approval is received in writing.

Where private utility facilities being relocated occupy Federal lands, the certification of real property interest shall be included with the request for utility agreement approval.

**Distribution**

Additional copies shall be made and distributed upon Federal Highway Administration's approval of the utility agreements as follows:

A. Original copy of agreement filed in project file of HWY-R.

B. One signed copy of the agreement to Utility Company/County with color-coded plan.

C. Two copies of the agreement and two set of the color-coded relocation plans to the respective District Office.

D. One copy to Fiscal Staff (HWY-SF)

E. One copy to Design Branch (HWY-D)

On Federal-Aid secondary projects and non-Federal-Aid project, distribution shall be made upon full execution by the Utility Company/County and the State. All subsequent material or information related to the agreement such as notice of the commencing and completion of utility work, requests to comply with the submittal of the Final Statement of Costs, Change Orders etc., shall be filed with the Utility Relocation File on a project-by-project basis.

**Utility Agreement Log**

A. Utility Agreement Log is maintained in PSS Log for all agreements covering:

B. Agreement number, date of agreement, identification of utility company and the project title and number.

The ROW Agents shall be responsible for posting date of agreement. All information received from the FHWA, District Office and HWY-SF is routed to the ROW Agents for information and filing with the project file for utility.

The clearance of utility issues within a project and the processing of utility agreements are essential in completing the final ROW Certifications to FHWA in Federal-Aid projects. The certification is part of the Plans, Specifications and Estimates (PS&E) package submitted to FHWA to begin receiving bids for the construction of a project.

**Relocation of Utility Facilities[1]**

As part of the negotiations and completion of the ROW Certification, it is important to understand any future impact on the utility companies that results from work of construction, reconstruction or maintenance of any state highway, or any Federal-Aid highway, requirements for the removal, relocation, replacement or reconstruction of any utility facility and the expense of removal, relocation, replacement or reconstruction is governed by this section. Essentially, it requires the utility company to pay one-half of all of the described costs above $10,000, provided that all the expense of removal, relocation, replacement of publicly owned utility facilities shall be a charge against the State or County funds.

When utilities cross or otherwise occupy the right-of-way of an active or completed state highway, the state and the utility shall agree in writing as to the terms of such use and occupancy.[2,3]

[1] HRS 264-33 Relocation of Utility Facilities
[2] 23 CFR 645.205(d)
[3] HAR Sec 19-105-19(b)

DOT 4-204-C
(HWY-RL 7/2007)

UTILITY AGREEMENT NO._____

THIS AGREEMENT, made this_____ day of _____, 20___, by and between the STATE OF HAWAII, hereinafter called the "STATE", and _____

_____,

hereinafter called the "COUNTY",

WITNESSETH THAT:

WHEREAS, the STATE has scheduled the construction of the

_____

_____,

hereinafter referred to as the "Highway Project", and

WHEREAS, the Highway Project will affect the facilities of the COUNTY which will necessitate the removal and relocation of said facilities and/or the installation of new facilities,

NOW, THEREFORE, in consideration of the foregoing premises, it is mutually agreed by the parties hereto that the removal and relocation of the existing facilities and/or the installation of new facilities as a result of the Highway Project shall be paid for by the STATE and performed in accordance with the following terms and conditions:

1. The COUNTY shall comply with the provisions of Exhibit A (Revised), which is attached hereto and made a part hereof, regarding the basis of payment, work procedures, retention of records, etc.

2. The scope of work and the total estimated cost for the removal and relocation of the existing facilities and/or

installation of new facilities is the sum of $_____, which scope and estimate, consisting of _____ page(s), are attached hereto as Utility Cost Estimate No. _____and made a part hereof.

3. Based on the estimated cost of $_____, the STATE's share is estimated to be $_____. The actual amount of the STATE's share in the cost of removal and relocation of the existing facilities and/or installation of new facilities will be determined in accordance with the procedures set forth on page _____ of said Utility Cost Estimate and will be based on the actual costs incurred by the parties hereto in removing and relocating the existing facilities and/or installing new facilities of the COUNTY. Reimbursement, if any, by the appropriate party, shall be based on said actual costs.

4. The removal and relocation of the existing facilities and/or installation of new facilities shall be in accordance with those certain plans and drawings dated _____, 20___, prepared by the STATE and approved by the COUNTY which are on file in the Highways Division, Department of Transportation, State of Hawaii.

5. The STATE shall perform or cause to be performed all of the work involved in the relocation of the facilities, except as provided for in said Utility Cost Estimate.

6. The COUNTY shall service and maintain and bear all costs of servicing and maintaining its facilities and further agrees not to perform such work from:

(a) the through traffic lanes and ramps of freeways;

(b) the through traffic lanes and ramps on other highways during peak traffic hours;

(c) the through traffic lanes and ramps of other highways during high volume hours, and

(d) the traffic lanes and ramps mentioned in (a), (b) and (c) above, except in emergencies and then only under the condition that such work shall be performed most expeditiously and with least possible interference with free flow of traffic and safe operation of highway facilities.

7. The cost of any future removal, relocation, replacement, reconstruction or adjustment of the utility facilities of the COUNTY, due to construction, reconstruction or maintenance of the highway, shall be borne by the parties hereto in accordance with Section 264-33, Hawaii Revised Statutes, but only to the extent applicable.

8. The COUNTY and the STATE shall not be responsible nor liable for any injury, death or damage arising or growing out of the acts or omissions of the other party in their performance of the work covered by this Agreement.

9. Any facilities of the COUNTY not affected or relocated under this Agreement but which are situated within the aforementioned project and shown on the aforementioned plans may remain in place upon the express condition, however, that paragraphs 6 and 7, above, shall also be applicable to said facilities.

10. When applicable, at its own expense, the COUNTY will be required to remove any of its underground facilities which it constructs, in the event the utility abandons the use of the facilities, unless the STATE consents in writing to allow abandonment in place. Notwithstanding any such consent by the STATE for abandonment in place, the COUNTY agrees to be responsible for the removal costs and any costs of clean-up and remediation for any pollution or contamination caused by the facilities, if such action becomes necessary in the future. The

COUNTY further agrees to indemnify and hold harmless, the STATE, from any and all liabilities which may arise from the COUNTY'S acts or omissions relating to such pipelines or facilities.

11. Pursuant to regulations and requirements of the Federal Highway Administration (FHWA) and Hawaii state law, the COUNTY is prohibited from assigning or subleasing any facilities that are allowed to be abandoned in place in the highway right-of-way without the express permission of, and arrangements with the STATE or unless such assignment or sublease is required by law. The COUNTY shall give the STATE ten (10) days prior written notice of any use by third parties of the COUNTY'S facilities that the COUNTY is required by law to allow. Any unauthorized use of the COUNTY's facilities by any other utility or third party is strictly prohibited.

12. This Agreement shall be binding upon the parties hereto, their successors and assigns, and expired service life _____ applicable to the work to be performed hereunder because _____

_____

_____.

BASIS OF PAYMENTS, RECORDS AND ACCOUNTS

EXHIBIT A (REVISED)

1. The cost of the relocation shall be based on the prevailing rates and/or unit prices for labor, equipment and material, plus a fixed percentage of such costs for indirect costs and overhead, at the time the relocation is commenced and in lieu of the rates indicated in the cost estimate. Such rates, unit prices and percentages shall be subject to the prior approval of the State, and shall be based on actual cost incurred by the County for the relocation of its facilities.

2. The State shall give the County _____working days notice to proceed with its portion of the work. The County shall coordinate its work with the State's contractor and shall not unreasonably interfere with or delay the State's highway project. The County will also notify the State's project engineer _____ day(s) prior to the commencement of the relocation of said facilities by the County. The County estimates that it will complete its portion of the work within_____working days.

3. A final statement of cost shall be submitted by the County in the same general form as the cost estimate within 90 days _____ _____.

4. The records and accounts of the County and its contractor, pertaining to the work performed under the terms of this Agreement, shall be retained for a period of not less than three (3) years from the date of the final payment of Federal funds to the State for said project and shall be available for inspection and audit by representatives of the Department of Transportation, State of Hawaii, and the United States Federal Highway Administration at the respective offices of the County and the contractor in Honolulu.

5. Where applicable, the terms of this Agreement, including the final statement of cost and payment thereof, shall be subject to the amended provisions of the Code of Federal Regulations 23 CFR 140, 23 CFR 645 and Section 264-33 of the Hawaii Revised Statutes, which are incorporated herein by reference and made a part of this agreement.

6. Notwithstanding any reference to said provision of the Code of Federal Regulations 23 CFR 140 and 23 CFR 645 it is expressly agreed that the State shall bear the entire cost of relocating said facilities.

7. The County's existing facilities shall remain in place until the proposed site is ready and available for installation of the new facilities.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

STATE OF HAWAII

By_____
Its Director of Transportation

APPROVED AS TO FORM:

_____
Deputy Attorney General
State of Hawaii

By_____
Print Name_____
Its_____

By_____
Print Name_____
Its_____

APPROVED AS TO FORM AND LEGALITY:

_____
Attorney for COUNTY

UTILITY AGREEMENT NO._____

THIS AGREEMENT, made this _____ day of _____, 20____, by and between the STATE OF HAWAII, hereinafter called the "STATE", and_____, hereinafter called the "COMPANY",

W I T N E S S E T H  T H A T:

WHEREAS, the STATE has scheduled_____

_____

_____

hereinafter referred to as the "Highway Project"; and

WHEREAS, the Highway Project will affect existing surface and subsurface utilities, utility facilities, and/or utility poles which belong to the COMPANY (collectively referred to as the "Utility Facilities"), which will necessitate the removal and relocation of said Utility Facilities and/or the installation of new Utility Facilities (such removal, relocation, and installation, including all labor, materials, equipment, and services, are hereinafter referred to as the "Work"); and

WHEREAS, for purposes of this Agreement, including Exhibits A (Revised) and B (Revised) attached hereto, "STATE" shall herein mean and refer to the State of Hawaii, its officers, employees, agents, representatives, successors, assigns, and any contractor employed by the STATE on the Highway Project, unless otherwise specifically provided;

NOW, THEREFORE, in consideration of the foregoing premises and of the promises each to the other made by the parties hereto, it is agreed that the Work shall be performed and paid for in accordance with the following terms and conditions:

1. Performance of the Work: The COMPANY and its contractor or subcontractor shall perform or cause to be performed all of the Work, as provided for in Utility Cost Estimate No._____, attached hereto and made a part hereof.

2. Compliance With Provisions: The COMPANY shall comply with the provisions of Exhibits A (Revised) and B (Revised), which are attached hereto and made parts hereof. The STATE may withhold payments to the COMPANY or cancel, terminate or suspend the Agreement if the COMPANY unreasonably fails to comply with any of its obligations under this Agreement, including, without limitation, Exhibit B (Revised) attached hereto.

3. Scope and Estimated Cost of Work: The Scope of Work and the total estimated cost for the Work is the sum of $_____. The Scope of Work and Estimate, consisting of _____ page(s), are attached hereto as Utility Cost Estimate No._____ and made a part hereof.

4. Cost Sharing: Based on the total estimated cost of $_____, the STATE's share is estimated to be $_____. The actual cost to the STATE for the Work will be determined in accordance with the procedures set forth on page _____ of said Utility Cost Estimate and will be based on the actual costs incurred by the parties hereto in performing the Work. Reimbursement, if any, by the appropriate party, shall be

based on said actual costs. However, the COMPANY shall not be liable or responsible for actual costs of any services, labor, or materials performed or supplied by any party arising or growing out of the wrongful acts or omissions of the STATE, or parties outside of the COMPANY's direction and control, unless agreed to in writing by the COMPANY, including change orders, addenda, or other appropriate documentation.

5. Participation in Dispute Resolution: In the event a suit, action or claim is made against the STATE for actual costs of items covered for which the STATE intends to hold the COMPANY liable or responsible, whether in whole or in part, the STATE shall give reasonable and timely written notice to the COMPANY of such intent, and shall, to the maximum extent possible, provide the COMPANY with the opportunity to appear, defend, contest or otherwise participate in any litigation, arbitration, or other dispute resolution procedure then in effect, with respect to such suit, action, or claim. The COMPANY's opportunity to appear, defend, contest or otherwise participate in any litigation, arbitration, or other dispute resolution procedure, shall not include the right to select the arbitrators, mediators or other dispute resolution adjudicators. Should the STATE fail to provide such written notice to the COMPANY, or fail to allow the COMPANY to participate in such proceedings, then the STATE shall be deemed to have unequivocally waived its right to have the COMPANY share in paying for any actual costs in excess of the total estimated cost. Should the COMPANY become a signatory to the construction contract bid documents, then the COMPANY will

have the right and opportunity to fully participate in all aspects of any litigation, arbitration, or other dispute resolution procedure, including the right to participate in the selection of the arbitrator(s), mediator(s), or other dispute resolution adjudicators.

6. Plans and Drawings: The Work shall be in accordance with those certain plans and drawings pertaining to the Highway Project which are on file in the Highways Division, Department of Transportation, State of Hawaii, or which shall be specifically identified by an Addendum to said Utility Cost Estimate signed by the parties hereto.

7. Compliance with Regulations: It is not the COMPANY's responsibility to ascertain that the Contract Documents or other documents associated with or covered by this Agreement are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the COMPANY observes that portions of such documents are at variance therewith, the COMPANY shall promptly notify the STATE.

8. Completion of Work and Waiver of Claims: Upon completion of the Work covered by this Agreement and payment by the STATE of its share of the cost of the Work, as determined pursuant to Paragraph 4, above, the COMPANY shall hold the STATE harmless from and waive any and all further claims for expenses incurred by the COMPANY in performing the Work in connection with the Highway Project, provided that such further claims for expenses incurred by the COMPANY are not caused by or attributed to the fault of the STATE.

9. Notice of Injury or Damage: If either party to the Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, the injured or damaged party to the Agreement shall provide written notice of such injury or damage, whether or not insured, to the other party to the Agreement within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the responsible party to investigate the matter. If a claim for additional cost or time related to this injury or damage is to be asserted, it shall be made as provided in Paragraph 16 (Notice of Claims) below.

10. Indemnity by COMPANY: The COMPANY shall save and hold harmless, indemnify, and defend the STATE, and all other governmental agencies from and against any and all suits, actions, claims of every nature and kind which may be brought for or on account of any injury, death, or damage, to persons or property, arising or growing out of the acts or omissions of the COMPANY, its officers, employees or agents and any contractor employed by it in connection with the Work covered by this Agreement, or the subsequent occupancy and use of the right of way by the COMPANY, provided, however, that the COMPANY's obligations hereunder shall not be effective, or enforceable, to the extent such injury, death, or damage to persons or property is caused in whole or in part by the STATE.

11. 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 only, 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.

12. Unaffected Utility Facilities: Any Utility Facilities not affected by or relocated under this Agreement but which are situated within the Highway Project and shown on the Contract Documents may remain in place upon the express condition that the maintenance, removal, relocation, etc., of said unaffected Utility Facilities or any activity of the COMPANY affecting said unaffected Utility Facilities shall also be subject to the terms and conditions contained in the attached Exhibit B (Revised).

13. Hazardous Materials and Pollutants: In the event the COMPANY encounters material on the site reasonably believed to be hazardous which has not been rendered harmless, or material on the site reasonably believed to be a pollutant as defined by state or federal law, the COMPANY shall immediately stop Work in the area affected and report the condition to the STATE. The Work in the affected area should not be resumed except by written agreement of the STATE and the COMPANY if in fact the material is hazardous and has not been rendered harmless, or if it is in fact a pollutant. The Work in the affected area shall be resumed in the absence of hazardous materials or pollutants, or when such

hazardous material has been rendered harmless or pollutant has been remediated, by written agreement of the STATE and the COMPANY, or by mediation if agreed upon by the STATE and the COMPANY.

14. Work Relating to Hazardous Materials or Pollutants: The COMPANY shall not be required to perform, without its consent, any work relating to hazardous materials or pollutants, unless the hazardous materials or pollutants are present due to the sole acts or omissions of the COMPANY, in which event the COMPANY shall bear all the costs of handling, removing, or remediation of such hazardous materials or pollutants. In the event that the acts or omissions of the COMPANY are partially responsible for the presence of hazardous materials or pollutants, it shall bear the cost to remove the hazardous materials or pollutants in an amount proportional to its degree of responsibility for the presence of the hazardous materials or pollutants.

15. Hazardous Material Indemnification: If the COMPANY is responsible for the presence of the hazardous material or pollutant, the COMPANY shall defend, indemnify and hold harmless the STATE, its officers, employees, agents and any contractor employed in connection with the Work covered by this Agreement, from and against claims, damages, losses, and expenses arising out of or resulting from performance of the Work in the affected area if in fact hazardous material therein has not been rendered harmless or a pollutant not properly remediated, provided that such claim, damage, loss or expense is attributable to bodily

injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by acts or omissions of the COMPANY, its officers, agents, representatives, successors and assigns, any contractor employed by the COMPANY, or anyone for whose acts the COMPANY may be responsible, even when such claim, damage, loss or expense is caused in part by the STATE, the intent of this provision being that each party shall be responsible for its own acts or omissions to the extent permitted by law. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 15.

16. Notice of Claims: Claims, change order requests or proposals, or other demands ("Claim") by either party, relating to arising out of, or connected with, increases in the cost of the Work or for extensions of the completion deadline, if any, must be made within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice, and shall include, to the fullest extent possible, an estimate of the cost and schedule impact of the condition giving rise to the Claim. Claims not made within the time frame provided for herein, and in the manner provided for herein, are forever waived and barred from being asserted without the prior mutual consent of the parties hereto in writing. In the case of

a continuing cost impact or delay, only one Claim is necessary. The submission of a Claim in compliance with this Paragraph 16 shall not be construed to entitle the submitting party to automatically recover the amounts claimed, proposed, or demanded, without determination or resolution of such Claim as may be provided in this Agreement, or by applicable law.

17. Unknown/Changed Conditions: If conditions are encountered at the Highway Project site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the plans, drawings, specifications, or other Highway Project documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement, then written notice by the observing party shall be given to the other party promptly before further work is performed.

18. Claims by the COMPANY: If the COMPANY wishes to make a claim for an increase in its cost to perform the Work due to (1) an order by the STATE to stop the Work where the COMPANY was not at fault, or (2) other reasonable grounds, written notice as provided herein shall be given before proceeding to perform the Work. Prior notice is not required for claims relating to an emergency endangering life or property.

19. Non-Waiver of Claims: Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed as a waiver by the COMPANY or the STATE of any claim each may have

against the other or the other's contractors or consultants for damages resulting to the Utility Facilities or the Highway Project or any highway structures, facilities, equipment or appurtenances.

20. Merger; Interpretation: The STATE and the COMPANY have made no agreements or promises regarding the Highway Project not mentioned in this Agreement or the Utility Cost Estimate. The term "Agreement" shall include all exhibits attached hereto and the Utility Cost Estimate unless the context clearly indicates otherwise. The terms of this Agreement are contractual and not mere recital. In the event of any dispute or litigation, the STATE and the COMPANY agree that all matters at issue and all questions concerning the interpretation of this Agreement shall be decided and construed in accordance with Hawaii law. The parties hereto further agree that for the purposes of interpretation, no party shall be deemed to be the drafter of the Agreement.

21. Amendments: This Agreement shall not be altered, amended, modified or otherwise changed, in any respect or particular whatsoever, except by a writing duly executed by the STATE and the COMPANY. The STATE and the COMPANY hereby acknowledge and agree that they will make no claim at any time that this Agreement has been orally altered or modified in any respect whatsoever. This Agreement contains the entire agreement between the STATE and the COMPANY and supersedes all prior oral and written agreements, representations, negotiations and correspondence concerning the Highway Project.

22. Headings; Gender; Number: The headings included herein are for convenience only and do not in any way limit, alter, or affect the matters contained in this Agreement or the paragraphs which they encaption. The use of any gender in this Agreement shall include all genders and the singular shall include the plural and the plural the singular as the case may be.

23. Binding Agreement: This Agreement shall be binding upon the parties hereto and their representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

STATE OF HAWAII

By_____
Its Director of Transportation

APPROVED AS TO FORM

_____
Deputy Attorney General
State of Hawaii

By_____
Print Name_____
Its_____

By_____
Print Name_____
Its_____

BASIS OF PAYMENTS, RECORDS AND ACCOUNTS

EXHIBIT A (REVISED)

1. The costs of the Work shall be based on the prevailing rates and/or unit prices for labor, equipment and materials, plus a fixed percentage of such costs for indirect costs and overhead, at the time the Work is commenced if the prevailing rates and/or unit prices are different from those indicated in the cost estimate. Such rates, unit prices and percentages shall be subject to the prior approval of the STATE, and shall be based on actual costs incurred by the COMPANY for the Work. The STATE expressly agrees that it will not unreasonably withhold such approval.

2. If a portion of the Work is covered up or buried contrary to the COMPANY's request or contrary to written requirements in the Contract Documents, and prior to the COMPANY performing any necessary or required inspections, procedures, or tests, that portion of the Work must, if required in writing by the COMPANY, be uncovered for the COMPANY's inspection, procedures, or tests, and recovered at the expense of the STATE or its Contractor.

3. If a portion of the Work has been covered which the COMPANY has not specifically requested to observe, or for which no inspection or testing is required, prior to its being covered, the COMPANY may request to see such Work and it shall be uncovered by the STATE. If such Work is in conformity with this Agreement and the applicable standards and specifications (see Exhibit B, paragraph 1.a.), the cost of uncovering and recovering shall, by appropriate change order, be charged to the COMPANY. If such Work is not in conformity with this Agreement and the applicable standards and specifications (see Exhibit B, paragraph 1.a.), the STATE shall pay such costs unless the condition was caused by the COMPANY, in which event the COMPANY shall be responsible for payment of such costs. Nothing herein shall prevent or limit the STATE's right, if any, to recover such costs from its contractor or other responsible parties.

4. The STATE shall give the COMPANY _____ working days notice to proceed with its portion of the Work. The COMPANY shall coordinate its Work with the STATE's contractor and shall not unreasonably interfere with or delay the STATE's Highway Project. Any damages as a result of the COMPANY's unreasonable interference or delay in completing said Work shall be paid immediately by the COMPANY to the STATE upon written demand. The COMPANY estimates that the Work will require approximately_____ working days. This estimate is for planning and coordination

purposes only. The STATE and the COMPANY understand and agree that such working days will not necessarily be consecutive.

5. The Agreement to which this exhibit is attached shall be construed as allowing for a reasonable time for the completion of the Work as determined by the STATE and as subject to paragraph 6 immediately following.

6. If the COMPANY is delayed at any time in progress of the Work by any act of the STATE, its officers, agents, representatives, successors and assigns, or of a contractor employed by the STATE, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, emergency power outages within the COMPANY's service area, life-threatening and/or property-threatening situations within the COMPANY's service area, or other causes beyond the COMPANY's control, or by other causes which may justify delay, then the COMPANY's completion deadline, if any, shall be extended by change order for such reasonable time as the parties hereto may determine.

7. If the COMPANY wants to proceed with its portion of the Work prior to receiving notice to proceed from the STATE, the COMPANY shall give the STATE's Project Engineer _____ working days notice; provided that no Work shall be done by the COMPANY without the written consent of the STATE.

8. Reimbursement to the COMPANY, if any, shall be on a monthly basis if the COMPANY submits a detailed statement of actual costs incurred, less the applicable deductions for depreciation, salvage value, betterment and expired service life, on or before the fifteenth (15th) day of the month. The reimbursement shall be limited to ninety percent (90%) of the net estimated reimbursable amount. The balance shall be withheld by the STATE until such time as the Final Statement of Costs is submitted by the COMPANY and accepted by the STATE. Within one hundred twenty (120) days after the Work has been completed, the STATE shall provide to the COMPANY a detailed unit-cost breakdown of all work performed by the STATE and/or its contractor(s). Within ninety days (90) days after receipt of the detailing unit-cost breakdown of all work performed by the STATE and/or its contractor(s), the Final Statement of Costs shall be submitted by the COMPANY in the same general form as the monthly statement of actual costs incurred. The STATE shall make full and final payment of all amounts due and owing to the COMPANY as reflected in the Final Statement of Costs within a reasonable time in accordance with §103-10 of the Hawaii Revised Statutes, as amended. Interest shall accrue on all amounts reflected as due and owing to the COMPANY in the Final Statement of Costs at a rate of twelve percent (12%) simple interest per annum, unless otherwise prescribed by law, beginning two hundred forty (240)

days after completion of the Work, or thirty (30) days after the Final Statement of Costs is submitted by the COMPANY, whichever is earlier, unless delay is justified as provided in §103-10 of the Hawaii Revised Statutes, as amended. The COMPANY shall immediately inform the STATE in writing of any substantial change in the estimated cost known to the COMPANY. Any request for extension of the foregoing deadlines shall not be unreasonably withheld.

9. The records and accounts of the COMPANY and its contractor(s), if any, pertaining to the Work performed under the terms of this Agreement shall be retained for a period of not less than three (3) years from the date of the final payment of Federal funds to the STATE for said project and shall be available for reasonable inspection and audit by representatives of the Department of Transportation, State of Hawaii, and the Federal Highway Administration at the respective offices of the COMPANY and its contractor(s) in Honolulu.

10. Where applicable, the terms of this Agreement, including the Final Statement of Costs and payment thereof, shall be subject to Code of Federal Regulations 23 CFR 140, 23 CFR 645 and Section 264-33 of the Hawaii Revised Statutes, as amended, which are incorporated herein by reference and made a part of this Agreement.

11. The COMPANY's existing Utility Facilities shall remain in place until the proposed site is ready and available for installation of the new Utility Facilities and/or the removal and relocation of existing Utility Facilities.

EXHIBIT B (REVISED)

RESPONSIBILITIES OF THE COMPANY

1. The COMPANY shall:

a. Perform all Work under this Agreement in a neat, workmanlike manner and in conformity with the following:

(1) The latest revision of "Specifications for Installation of Miscellaneous Improvements within State Highways", issued by the Highways Division, Department of Transportation, State of Hawaii as of the date of the contract to which this exhibit is attached;

(2) Applicable sections of the STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, Highways Division, State of Hawaii in effect as of the date of the contract to which this exhibit is attached; and

(3) Applicable statutes and ordinances and orders of the State Director of Transportation or his authorized representative. The documents referred to in subparagraphs 1.a.(1) through 1.a.(3) of this exhibit shall be collectively referred to as the "Specifications".

b. Perform or pay to have performed, for a period of one year after the satisfactory completion of the Work performed under this Agreement, any repairs to highway facilities caused or necessitated by such Work, provided that such repairs are not caused by or attributed to the fault of the STATE.

c. Pay the actual cost of any repairs, performed by or on behalf of the State Department of Transportation, to roadway prisms, base course, pavement and any other structure when such repairs are necessitated by the Work performed under this Agreement within one year from the satisfactory completion of such Work, provided that such repairs are not caused by or attributed to the fault of the STATE.

d. Remove, relocate, replace, reconstruct or adjust any of its Utility Facilities that may be situated, under this

Agreement, on or under highway rights of way belonging to the STATE, as may be reasonably required by the State Director of Transportation or his authorized representative in connection with any construction, reconstruction, repair or maintenance of the highway by the STATE. The cost of relocation of Utility Facilities shall be borne as provided by Section 264-33, Hawaii Revised Statutes.

e. Take reasonable actions as necessary to keep all Utility Facilities installed under this Agreement in good repair so that their presence on or under the highway will not impair the use or usefulness of any highway improvement, which may now exist or hereafter come into existence.

f. Make all repairs as may be required by Chapter 264, Hawaii Revised Statutes.

g. The COMPANY shall save and hold harmless, indemnify, and defend the STATE, and all other governmental agencies from and against any and all suits, actions, claims of every nature and kind which may be brought for or on account of any injury, death, or damage, to persons or property, arising or growing out of the acts or omissions of the COMPANY, its officers, employees or agents and any contractor employed by it in connection with the Work covered by this Agreement, or the subsequent occupancy and use of the right of way by the COMPANY, provided, however, that the COMPANY's obligations hereunder shall not be effective, or enforceable, to the extent such injury, death, or damage to persons or property is caused in whole or in part by the STATE.

h. Obtain any applicable right of way for introduction, storage, and installation of the COMPANY's overhead or underground facilities, both for purposes of planning and for performance of the Work, or both, if existing STATE right of way for either overhead or underground facilities are provided or made available to the COMPANY, but the COMPANY does not wish to utilize such existing STATE right of way, PROVIDED, however, that in no event shall the COMPANY be responsible for any delays, disruptions or resequencing of Work, that could not have been reasonably foreseen by either party, related to or associated with the COMPANY's efforts to obtain the right of way.

2. In addition, the COMPANY shall comply with all Federal, State and local laws and ordinances applicable to the Work to be done under this Agreement. Without limiting the generality of the foregoing, the COMPANY shall comply with the following:

a. Compliance with Regulations: Regulations of the Department of Transportation of the United States of America relative to nondiscrimination in federally assisted programs of said Department of Transportation (Title 15, Code of Federal Regulations, Part 8, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: Nondiscrimination with regard to the Work performed by it after award and prior to completion of the contract Work, on the ground of race, creed, color, sex, national origin, or disability, as defined in The Americans with Disabilities Act of 1990, in the selection and retention of subcontractors, including procurements of materials and leases of equipment; and nonparticipation, either directly or indirectly, in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix A-11 of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the COMPANY for work to be performed pursuant to any subcontract hereunder, including procurements of materials or equipment, notification to each potential subcontractor or supplier by the COMPANY of the COMPANY's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color or national origin, or disability as defined in the Americans with Disabilities Act of 1990.

d. Information and Reports: Providing all information and reports required by the Regulations, or orders and instructions issued pursuant thereto referred to in subparagraph 2.a, and permitting access to its books, records, accounts, other sources of information, and its Utility Facilities as may reasonably be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Certifying to the STATE or the Federal Highway Administration as appropriate setting forth what efforts it has made to obtain the information where any information required of the COMPANY is in the exclusive possession of another who fails or refuses to furnish this information.

e. Incorporation of Provisions: Include the provisions of subparagraphs 2.a through 2.d in any contract or subcontract hereunder, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto referred to in subparagraph

2.a, and take such action with respect to any contract, subcontract, or procurement as the STATE or the Federal Highway Administration may reasonably direct as a means of enforcing such provisions including sanctions for noncompliance; provided, that, in the event the COMPANY becomes involved in, or is threatened with, litigation against a contractor, subcontractor, or supplier as a result of such direction, the COMPANY may request the STATE to enter into such litigation to protect the interest of the STATE, and, in addition, the COMPANY may request the United States to enter into such litigation to protect the interest of the United States.

In the event the COMPANY fails to comply with the nondiscrimination provisions of this Agreement, the STATE shall impose such sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,

(1) withholding payments to the COMPANY under the Agreement until the COMPANY complies and/or

(2) cancellation, termination or suspension of the Agreement, in whole or in part.

3. The COMPANY shall not, except with the prior approval of the State Director of Transportation, or in the event of an emergency, perform Work on its Utility Facilities from:

a. The through traffic lanes or ramps of a freeway; or

b. The through traffic lanes or ramps of all other highways on weekdays, during the hours of 6:00 to 9:00 a.m. and 3:00 to 6:30 p.m.

The COMPANY shall, however, perform such Work in a reasonable and expeditious manner, with as little interference as may be reasonably possible with the free flow of traffic and the safe operation of highway facilities.

4. When applicable, at its own expense, the COMPANY will be required to remove any of its underground facilities which it constructs, in the event the utility abandons the use of the facilities, unless the STATE consents in writing to allow abandonment in place. Notwithstanding any such consent by the STATE for abandonment in place, the COMPANY agrees to be responsible for the removal costs and any costs of clean-up and remediation for any pollution or contamination caused by the facilities, if such action becomes necessary in the future. The COMPANY further agrees to indemnify and hold harmless, the STATE,

from any and all liabilities which may arise from the COMPANY'S acts or omissions relating to such pipelines or facilities.

5. Pursuant to regulations and requirements of the Federal Highway Administration (FHWA) and Hawaii state law, the COMPANY is prohibited from assigning or subleasing any facilities that are allowed to be abandoned in place in the highway right-of-way without the express permission of, and arrangements with the STATE or unless such assignment or sublease is required by law. The COMPANY shall give the STATE ten (10) days prior written notice of any use by third parties of the COMPANY'S facilities that the COMPANY is required by law to allow. Any unauthorized use of the COMPANY's facilities by any other utility or third party is strictly prohibited.

6. The foregoing responsibilities of the COMPANY are in addition to, and not by way of limitation of, any other responsibilities contained in the Agreement to which this exhibit is attached, as well as any other exhibits and attachments thereto.

RESPONSIBILITIES OF THE STATE

1. The STATE shall:

a. Obtain, or control, and provide reasonable and timely access, rights of way, and opportunity for introduction, storage, and installation of the COMPANY's overhead and/or underground facilities, both for purposes of planning and for performance of the Work, to the extent such actions are within the power of the STATE to grant without having to exercise its power of eminent domain. If such reasonable and timely access, rights of way, and opportunity for introduction, storage, and installation of overhead and/or underground facilities are not provided or made available to the COMPANY, and the COMPANY is unable to proceed with its planning or the Work as a result thereof, the lack of timely access, rights of way, and opportunity for introduction, storage, and installation of the COMPANY's materials and equipment shall constitute impossibility of performance and the COMPANY shall not be required to continue the planning or performance of the Work under the Agreement. Nothing contained in this paragraph 1.a. shall be construed as obligating the COMPANY to exercise its right of

condemnation, if any, to plan or perform the Work under the Agreement.

b. Provide for coordination of the activities of the STATE and its contractors with the COMPANY in preparing for and performing the Work, in such a manner as to provide a logical, systematic, sequential, and efficient flow of work and eliminate unnecessary interference with the Work.

c. Avoid any unnecessary interference by the STATE and its contractors with the COMPANY's preparations for the performance of the Work. In the event of any such interference, the COMPANY shall not be responsible for any resulting schedule or cost impacts.

2. The foregoing responsibilities of the STATE are in addition to, and not by way of limitation of, any other responsibilities contained in the Agreement to which this exhibit is attached, as well as any other exhibits and attachments thereto.

DAVID Y. IGE
GOVERNOR

HIGHWAY DESIGN BRANCH, ROOM 688A
BRIDGE DESIGN SECTION, ROOM 611
CADASTRAL DESIGN SECTION, ROOM 600
ENVIRONMENTAL DESIGN SECTION, ROOM 688A
HIGHWAY DESIGN SECTION, ROOM 609
HYDRAULIC DESIGN SECTION, ROOM 636
TECHNICAL DESIGN SECTION, ROOM 688

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MAGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

IN REPLY REFER TO:
HWY-DD 2.6551

January 4, 2022

**VIA EMAIL**: roger.babcock@honolulu.gov

Roger Babcock, Jr., Ph.D., P.E., Director Designate
Department of Environmental Services
1000 Uluohia Street, Suite 308
Kapolei, Hawaii 96797

Dear Dr. Babcock, Jr.:

Subject: Memorandum of Understanding No. 2398 for
Likelike Highway Rehabilitation and Safety Improvements
Emmeline Place to Kahekili Highway
Federal-Aid Project No. NH-063-1(025)

Please endorse this Memorandum of Understanding No. 2398 for the subject project and return a copy for our files. The improvements of this project require the adjustment of approximately two manhole frames and covers at an estimated cost of $1000. The frames and covers shall be adjusted flush to the new roadway elevation at no cost to the Department of Environmental Services. Furthermore, if the Department of Environmental Services provides inspection services for the aforementioned work, the cost of such services shall be borne by the State.

This letter of endorsement covers the above-mentioned work only. Other relocation/adjustment work that may occur will require additional plans, estimate and agreement acceptable to all parties concerned.

Enclosed is a set of plans for the adjustment work to be incorporated as part of our contract documents. If the above requirements and the enclosed Exhibit A are acceptable, your approval is requested.

Your prompt attention to this matter will be greatly appreciated since this project is scheduled to be constructed in July 2022.

In response to this request, please reply to the attention of Lawrence Laus, Highway Design Section, Design Branch, Highways Division and reference letter number HWY-DD 2.6551 as noted above. Should you have any questions, please call Lawrence Laus at (808) 692-7575 or email at lawrence.m.laus@hawaii.gov.

Sincerely,

Karen Chun

KAREN CHUN
Engineering Program Manager
Design Branch, Highways Division

APPROVED:

_____ _____
Dr. Roger Babcock, Jr. Date
Department of Environmental Services

Enclosure

EXHIBIT A

1. Any facilities of the DEPARTMENT OF ENVIRONMENTAL SERVICES not affected or relocated under this Memorandum of Understanding No. 2398 but which are situated within the right-of-way of this project may continue to remain in place upon the express condition, however, that the provisions of paragraphs 2 and 3 below, shall be applicable to said facilities.

2. The DEPARTMENT OF ENVIRONMENTAL SERVICES shall bear all costs of servicing and maintaining its facilities and shall not perform such work from the through traffic lanes during peak traffic and high volume hours, except in emergencies and then only under the condition that such work shall be performed most expeditiously and with least possible interference with free flow of traffic and safe operation of highway facilities.

3. The cost of any future removal, relocation, replacement, reconstruction or adjustment of the utility facilities of the DEPARTMENT OF ENVIRONMENTAL SERVICES, due to construction, reconstruction or maintenance of the highway, shall be borne by the DEPARTMENT OF ENVIRONMENTAL SERVICES/or the STATE in accordance with the provisions of Section 264-33, Hawaii Revised Statutes.

4. The DEPARTMENT OF ENVIRONMENTAL SERVICES and the STATE shall not be responsible nor liable for any injury, death or damage arising or growing out of the acts or omissions of the other party in their performance of work covered by this Memorandum of Understanding No. 2398.

5. Construction notes for DEPARTMENT OF ENVIRONMENTAL SERVICES shall be included in the contract plans.

6. Approval of this Memorandum of Understanding No. 2398 shall be valid for a period of one year from the date of notification of approval. In the event construction does not commence within this one year period, the STATE will be required to resubmit construction plans and another Memorandum of Understanding for the DEPARTMENT OF ENVIRONMENTAL SERVICES' review and approval.

7. When applicable, at its own expense, the DEPARTMENT OF ENVIRONMENTAL SERVICES will be required to remove any of its underground facilities which it constructs, in the event the utility abandons the use of the facilities, unless the STATE consents in writing to allow abandonment in place. Notwithstanding any such consent by the STATE for abandonment in place, the DEPARTMENT OF ENVIRONMENTAL SERVICES agrees to be responsible for the removal costs and any costs of clean-up and remediation for any pollution or contamination caused by the facilities, if such action becomes necessary in the future. The DEPARTMENT OF ENVIRONMENTAL SERVICES further agrees to indemnify and hold harmless, the STATE, from any and all liabilities which may arise from DEPARTMENT OF ENVIRONMENTAL SERVICES acts or omissions relating to such pipelines or facilities.

8. Pursuant to regulations and requirements of the Federal Highway Administration (FHWA) and Hawaii state law, the DEPARTMENT OF ENVIRONMENTAL SERVICES is prohibited from assigning or subleasing any facilities that are allowed to be abandoned in place in the highway right-of-way without the express permission of, and arrangements with the STATE or unless such assignment or sublease is required by law. The DEPARTMENT OF ENVIRONMENTAL SERVICES shall give the STATE ten (10) days prior written notice of any use by third parties of DEPARTMENT OF ENVIRONMENTAL SERVICES facilities that DEPARTMENT OF ENVIRONMENTAL SERVICES is required by law to allow. Any unauthorized use of DEPARTMENT OF ENVIRONMENTAL SERVICES' facilities by any other utility or third party is strictly prohibited.

9. The reference/file number for this endorsement shall be Memorandum of Understanding No. 2398.

# CERTIFICATION OF RIGHT-OF-WAY CLEARANCE

**PURPOSE:** To describe procedures in submitting the Certification of Right-of-Way Clearance (ROW) on Federal-Aid Projects for authorization to advertise the physical construction for bids.

**POLICY:** To submit the Certification of ROW Clearance as soon as the right-of-way is cleared for construction or together with the PS&E submittal when requested by the Highway Design Branch (HWY-D), in accordance with 23 CFR 635.309 (see page 2.15-A).

**RESPONSIBILITY:** The Acquisition Unit is responsible to prepare the certification for the Highway Administrator's signature for submittal to the Federal Highways Administration (FHWA).

**SCOPE:** This section applies to the Land Acquisition (HWY-RL) and Property Management (HWY-RM) Sections of the Right-of-Way Branch (HWY-R) and Legal Counsel.

**PROCEDURES:** The Acquisition Unit shall submit the ROW Clearance Certification for authorization to advertise the physical construction for bids for assigned projects. The certification shall be prepared as soon as the right-of-way has been cleared or when requested by the Highway Design Engineer with their PS&E submittal or DOT Form 4-561, HWY-DD Rev. 5/1/07 (see page 2.15-A).

**Verification of Right-of-Way Clearance Status**

Prior to submitting the Certification of ROW Clearance, the ROW Agent shall review and check the status on all right-of-way activities which are needed to be cleared for authorization to advertise the physical construction for bids.

A. Review parcel files to verify possession of right-of-way parcels either by deeds, easements,Court Order of Possession by condemnation, or other forms of documentation.

B. Consult with Legal Counsel or its staff as to the status of condemnations where orders of possession are still pending. The status shall be checked as to:

   1. Civil number and date condemnation proceedings were filed and anticipated date of the Order of Possession.

2. Where condemnation proceedings have not yet been filed, obtain the estimated date Legal Counsel intends to file the proceedings and also the estimated date when the Order of Possession is anticipated.

C. Review files and/or consult with Design Project Engineer as to the status on all Utility Agreements.

D. Consult with HWY-RM whenever the project involves the displacements of any individual, families, businesses, farms or non-profit organizations and requires removal by sale or demolition, improvements vacated.

1. Have HWY-RM verify as to whether all individuals and families have been relocated to decent, safe and sanitary housing or that the State has made available to relocatees adequate replacement housing in accordance with the provisions of the current FHWA directives covering the administration of the Uniform Act.

2. Verify whether (a) improvements have been removed from the right-of-way by public sales and/or demolition contract or (b) whether improvements remaining is to be demolished under the prime road contract.

**Certification of Right-of-Way Clearance**

Upon verification of the ROW clearance status, the appropriate certification shall be made to the FHWA. The certification shall contain the following statements:

A. Status of the completion of or arrangements to be undertaken on utility work for proper coordination with the physical construction schedules.

B. Status of acquisition of all necessary right-of-way including control of access right when pertinent.

C. Where displacements are involved, a certification that the displacees have been relocated in accordance with the current FHWA directives covering the administration of the Uniform Act.

D. Where no displaces are involved, a statement that the relocations provisions are not applicable.

E. Statement that the right-of-way has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of right-of-way is not required.

F. Where right-of-way acquired is in limited vertical dimension, a statement that the rights acquired is sufficient to encumber the unacquired realty with provisions which will ensure full use and safety of the highway facility to be constructed.

The certification shall be in accordance with conditions set forth in this chapter. If all rights have not been fully acquired by the time an authorization to advertise the physical construction for bids are needed. FHWA approval will be required prior to project obligation for construction phase. Conditional Certifications with FHWA approval will require updates to the ROW Certification for right-of-way items are still pending until such time Notice to Proceed is given to the construction contractor. Updates to the ROW Certification shall continue until all rights have been acquired for the project.

DOT 4-561
(HWY-DD r8/16/16)

May 30, 2024 FZ

May 30, 2024 DY

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

SUBJECT: REQUEST FOR RIGHT-OF-WAY CERTIFICATION

TO: HWY-R
FROM: HWY-D HK

DATE: May 28, 2024

Please prepare and execute a right-of-way certification for the project listed and described below.

Project Title: Likelike Highway, Wilson Tunnel Structural Repairs

Island, District: Oahu, Kona (Honolulu)
Project Number: BR-063-1(026)

1. Description of Work (new construction, reconstruction, etc.):
The project consists of replacing stainless steel hanger rods along the full length of the tunnel plenum (ceiling utility crawlspace), installing corrosion protection, and repairing 3 crossover (contraflow access) gates on Likelike Highway.

2. Utility Agreements (or Memo of Understanding):
☒ None
☐ Utility work involves (include Agreement/Letter No.): _____

3. Land Acquisition (check applicable items):

☒ None
☐ Involves: _____

4. Request for advertising:
☒ Will be made with the PS&E submittal
☐ Shall be made by HWY-R in conjunction with right-of-way certification

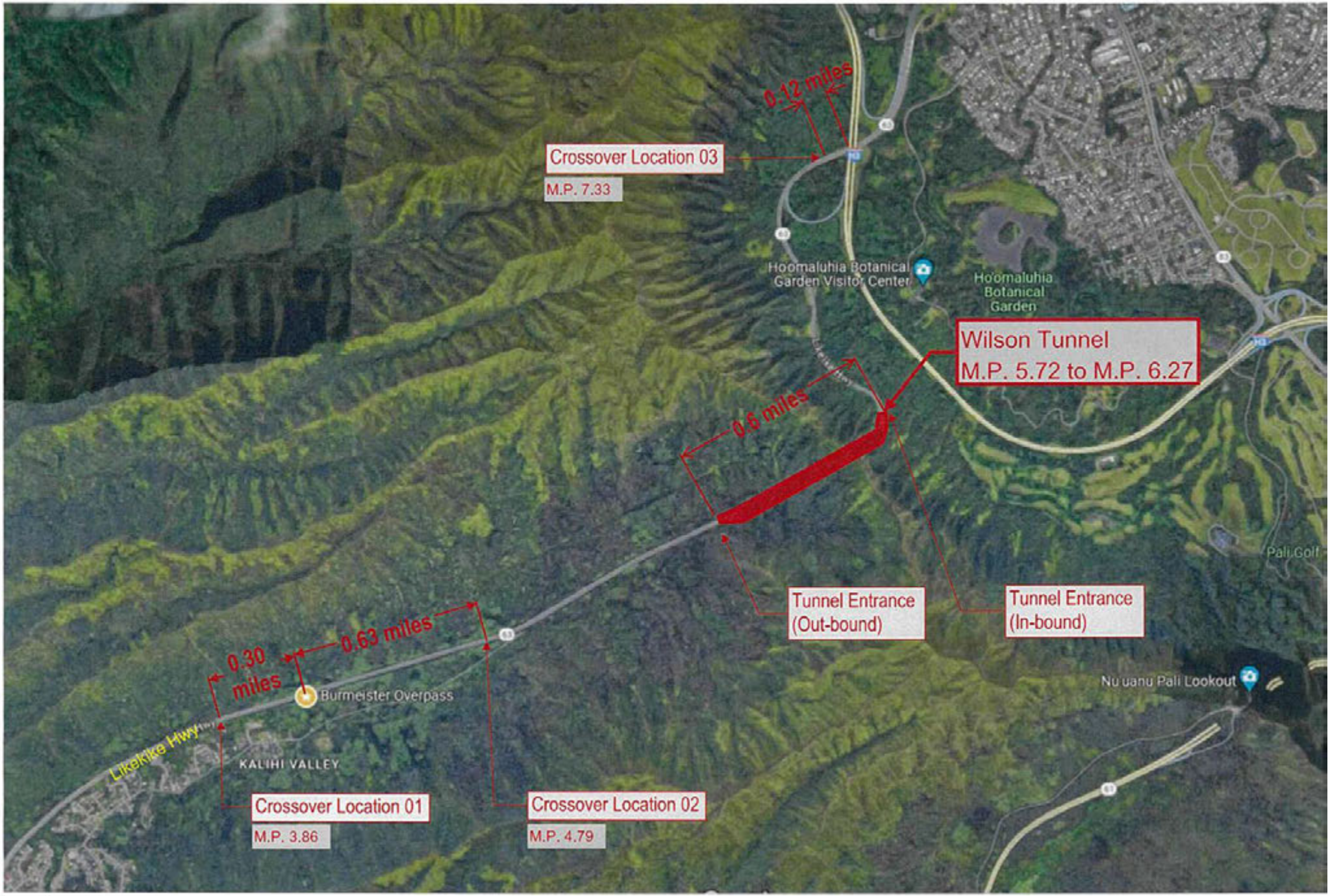
5. Certification should be addressed to:
☐ Federal Highway Administration (For projects with FHWA oversight)
☒ HWY-D (For projects with DOT oversight)

Design Engineer: Robert Loo
Charge Code: 1E21E
Function Code: 1122

Telephone Ext: (808) 692-8438

Henry Kennedy
Branch Head or District Engineer

cc: Li Nah Okita (HWY-DD)
Attachments:




| LIKELIKE HIGHWAY, WILSON TUNNEL STRUCTURAL REPAIRS<br>Location Map | M.P. 3.86, M.P. 4.79,<br>M.P. 5.72 to M.P. 6.27, M.P. 7.33 |
|---|---|

# RIGHT-OF-WAY CERTIFICATION GUIDELINES

## RIGHT-OF-WAY CERTIFICATION

CODE OF FEDERAL REGULATIONS (CFR)
**Title 23**
[Highways]
**Chapter I**
[Federal Highway Administration,
Department of Transportation]
**Subchapter G**
[Engineering and Traffic Operations]
**Part 635**
[Construction and Maintenance]
**Subpart C**
[Physical Construction Authorization]
**Section 635.309**
[Authorization]

**23 CFR Section:**

635.309: "Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:..."

635.309(b): "A statement is received from the State, either separately or combined with the information required by Sec. 635.309(c), that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility and railroad work which is to be underway concurrently with the highway construction."

635.309(c): "A statement is received from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to relocates adequate replacement housing in accordance with the provisions of the current

Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:

(1) All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land. **[Type 1 Certification (Cert 1)]**

(2) Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements. **[Type 2 Certification (Cert 2)]**

(3) The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. The State may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then also proceed, but the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. When the State requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons

therefore including identification of each such parcel will be set forth in the State's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained." **[Type 3 Certification (Cert 3)]**

635.309(g): "A statement has been received that right-of-way has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of right-of-way is not required."

635.309(h): "A statement has been received that the steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the administration of the Highway Relocation Assistance Program have been taken, or that they are not required."

635.309(k): "Where utility facilities are to use and occupy the right-of-way, the State has demonstrated to the satisfaction of the FHWA Division Administrator that the provisions of 23 CFR 645.119(b) have been fulfilled."

635.309(l): "The FHWA Division Administrator has verified the fact that adequate replacement housing is in place and has been made available to all affected persons."

**RIGHT-OF-WAY MANUAL**
**Volume 8**
**[Right-of-Way]**
**Part I**
**Chapter 2**
**[Land Acquisition]**
**Procedure No. 8-02-15**
**[Certification of Right-of-Way Clearance]**
**Paragraph 5.2**
**[Certification of Right-of-Way Clearance]**

Upon verification of the right-of-way clearance status, the appropriate certification shall be made to the FHWA. The certification shall contain the following statements:

A. Status of the completion of or arrangements to be undertaken on utility work for proper coordination with the physical construction.
B. Status of acquisition of all necessary right-of-way including control of access right when pertinent.
C. Where displacements are involved, a certification that the displaces have been relocated in accordance with the current FHWA directives covering the administration of the Highway Relocation Assistance Program.
D. Where no displaces are involved, a statement that the relocations provisions are not applicable.
E. Statement that the right-of-way has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of right-of-way is not required.
F. Where right-of-way acquired is in limited vertical dimension, a statement that the rights acquired is sufficient to encumber the unacquired realty with provisions which will ensure full use and safety of the highway facility to be constructed.

The certification shall be in accordance with conditions set forth in the FHWA procedures for authorization to advertise the physical construction for bids. Certifications made where right-of-way items are still pending shall be followed up until full clearance.

[Reference/Source: Volume 8 of Right-of-Way Manual, effective date undated, submitted to FHWA on January 1, 2001 pursuant to 23 CFR Section 710.201(c)(1) wherein, "The STD shall prepare and submit for approval by FHWA an up-to-date Right-of-Way Operations Manual by no later than January 1, 2001."]

## EXEMPTION FROM FHWA REVIEW FOR PROJECTS LESS THAN $1.0 MILLION

The Hawaii Department of Transportation (HDOT) requests acceptance from the Federal Highway Administration (FHWA) that HDOT be exempt from FHWA project review for certain activities on Federal-aid projects as provided in Section 106(b)(1)(2) of Title 23 USC, as amended by the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.

This exemption from review is requested for the following activities on new construction, reconstruction and 3R Federal-aid highway projects on the National Highway System

(including the Interstate System, except for Interstate Completion) and all projects funded with Surface Transportation (STP) Funds which have an estimated construction cost less than $1,000,000:

- Preconstruction Related
  - Design approval, design exceptions, PS&E approval, and concurrence in award.
- Construction Related
  - Contract Change Order approval

We request that FHWA continue construction project inspections per the FHWA Division office Construction Monitoring Program until notified otherwise by HDOT. ...

Environmental documents and project authorization will continue to be reviewed and approved by FHWA on a project-by-project basis.

[Reference/Source: All Projects Less Than $1.0 Million Letter of Agreement Between The Federal Highway Administration And The Hawaii Department of Transportation, approved and signed by William Lake of/for Federal Highway Administration on January 21, 1993 and T. Harano for Rex D. Johnson, Director, of/for Hawaii Department of Transportation on February 24, 1993.]

[NOTE: Per typewritten note from HWY-RL/Cary, "New procedure for Right of Way Certification: For Right of Way Certification under $1,000,000 send memo to HWY-D only, no approval from HWY needed. Date and keep a copy of the memo for our files."]

## PR-1240 AUTHORIZATIONS

### PRELIMINARY RIGHT-OF-WAY ACTIVITIES

In accordance with 23 CFR Section 712.204(c)(2), all preliminary right-of-way activities are authorized to proceed, including property appraisals, up to but not including negotiations with the condition that appraisals of partial takings will not be made until adequate right-of-way maps have been prepared.

* * *

This authorization includes preliminary right-of-way work to this project. Total estimated cost for the preliminary right-of-way phase is $120,000.00; Federal share (80%) and obligation of Appropriation 118 funds is $70,400.00.

Please note that appraisal and acquisition of partial takes shall not be made until adequate right-of-way maps have been prepared [23CFR712.204(c)(2)]

## APPRAISALS

Authorization to proceed with acquisition of right-of-way is granted with the condition that appraisals of partial takings will not be made until the HDOT has prepared right-of-way plans.

* * *

All right-of-way activities are authorized to proceed, with the condition that appraisals of partial takings will not be made until adequate right-of-way maps have been prepared.

## CERTIFICATION REQUIREMENTS

The right of way certification procedure for federally-assisted highway projects essentially identifies the acquisition status of necessary ROW for the purpose of advancing a project to construction (**PS&E stage**). It also addresses the status of any required relocation activities necessary on the project. The specific requirements for this action are found at 23 CFR Section 635.309. Key elements of this status report include:

1) **acquisition of ROW in accordance with laws and requirements** (so prospective contracts will not be stopped by related litigation);
2) **relocation of people** (so that the contractor may enter upon the properties);
3) **identification of encroachments and acquired structures with the ROW**, and an explanation of who will remove them; and
4) **hazardous waste** identification that may be present at the site, with information on contractor's responsibility for safe disposal.

**Key Points.** Prior to FHWA authorization to advertise for physical construction, the acquiring agency **shall** submit a statement that:

- all ROW is clear, or if not, appropriate notification has been included in bid proposals of any work concurrent with highway construction;
- all people relocated to DSS housing, and one of the following applies:
  1) all needed ROW acquired, all occupants have moved; **or**
  2) not all needed ROW acquired, but right of entry obtained on all parcels, and all occupants have moved; **or**
  3) acquisition of ROW **not** complete, and occupants still on the project (**rare exceptions only, and only if in the public interest!**) - requires full explanation, notices in bid proposals, and special assurances about occupant protection.
- Advise that ROW acquired in accord with FHWA directives; **and**
- Advises that relocation assistance and payments rules followed, if required.

**Summary.** The acquiring agency must be able to certify to FHWA that all right-of-way is clear, that all residential occupants have been relocated to DS&S housing, and that the right-of-way was acquired in accordance with applicable FHWA directives, and that the relocation assistance and payments rules were followed, if required.

[Reference/Source: Right-of-Way Project Development Guide, September 1992, FHWA-PD-92-020, USDOT/FHWA/Office of Right-of-Way

* * *

You were recently provided copies of revised PPM 21-12 dated January 18, 1973. The revision of PPM 21-12 does not require a change in your existing procedures for the authorization of right-of-way clearance work performed separately from the physical construction contract.

The revision of this PPM, however, will necessitate the modification of paragraph references in all future right-

of-way certifications issued. The right-of-way certification format remains essentially unchanged from the requirements of PPM 21-12 dated April 13, 1973. Future certifications should properly relate to paragraphs 5c and 5g of PPM 21-12, as appropriate, in the following manner:

A. Reference will be made to paragraph 5c(1) where legal possession for all properties has been obtained and only trial or appeal cases remain pending. This certification can only be made under this paragraph when:

   (1) All occupants have vacated lands and improvements, and

   (2) The State has physical possession and the right to remove, salvage, or demolish the improvements.

B. Paragraph 5c(2) will be referred to in the right-of-way certification when the same situation as described in "A" above exists, except that the State has possession of certain parcels by virtue of a right-of-entry.

C. Certification under paragraph 5c(3) concerns situations where the State does not have legal possession of certain parcels or where the occupants of residentially-improved properties or businesses remain to be relocated.

Please continue the procedure of notifying this office of contemplated right-of-way clearances in accordance with your Right-of-Way Procedure No. 8-04-02, Sec. 5.3. This notice should be provided to our office for all projects involving residential and/or business relocations prior to the advertising of the public sale of improvements, demolition, or physical construction contracts.

In such instances a notification in the form of a statement indicating the method of clearance and including a statement relative to relocation assistance and availability of right-of-way in accordance with paragraphs 5c and 5g of PPM 21-12 will suffice. This procedure will facilitate the required verification of replacement housing by FHWA in accordance with 14a of PPM 81-1.

[Reference/Source: FHWA letter 930-50.7 dated February 13, 1973 from FHWA Division Engineer Ralph T. Segawa), by Division Right-of-Way Officer R.W. Moeller, to Highways Division Chief Tetsuo Harano, Subject: Certification for Right-of-Way Clearance for Physical Construction]

* * *

In accordance with 23 CFR Section 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 allows 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 used but is 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 possess of the land. The HDOT should only begin construction when it has 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 project with ROE will be reviewed on a case by case basis and is the exception to the rule and not routine practice. In

hardship circumstance, 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.

[Reference/Source: FHWA letter HEC-HI dated October 5, 2000 to DIR (Kazu Hayashida, Attn: Roy Nagasako, HWY-SM), Subject: Right-of-Entry vs. Right-of-Way Certification.]

* * *

The Federal Highway Administration (FHWA) is informing the Hawaii Department of Transportation (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 Section 635.309, and if required, we will approve PS&E for the subject projects provided that the right-of-entry (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 FHWAS will expect these activities to be completed in the required time.

[Reference/Source: FHWA letter HEC-HI dated January 29, 2001 to DIR (Brian Minaai, Attention: Tom Toyama, HWY-R), cc Sean Hiraoka/HWY-DD, Ross Hironaka/HWY-DD, Ken Tatsuguchi/HWY-DD and Christine Yamasaki/HWY-DD, Subject: Right-of-Entry vs. Right-of-Way Certification for Emergency Projects, Islands of Hawaii, Maui, and Molokai.]

* * *

This following concern was brought up on Kupapaulua, but it applies to all projects that are in FHWA's office for obligation where the r/w certification is outstanding. The cert was due on August 15 with the PS&E package.

We are not able to obligate the project without the updated R/W certification. As previously discussed, the r/w certification must include the following:

1) The HDOT must start condemnation proceeding or acquisition negotiations prior to August 15.

2) A schedule stating when the property will be condemned or acquired must be submitted to FHWA. Include current progress of negotiations and major milestones achieved.
3) The HDOT must have legal and physical possession prior to advertisement.
4) The HDOT must advertise the project within 3 months of the effective authorization date.
5) The request for exception to the right-of-way certification requirements must be submitted with the request for the right-of-way certification.

The following statement will be added to the PR-1240: "This authorization is given with the understanding that the HDOT will advertise for receipt of bids within 90 days from the date of this PR-1240. The project will be deobligated if not advertise for receipt of bids within the 90-day period."

The r/w certification must be in my office by September 17, or else we will not be able to obligate this project. We will accept faxes with the Director or Administrator's signature pending.

Please submit ASAP. We would like to obligate these projects as early as possible. We are greatly impacting our fiscal staff's ability to obligate the projects by the end of the fiscal year by waiting until September 17, to get the information that was due on August 15. If it comes in any later, we may not meet our deadlines. Therefore, Hawaii will lose the funding.

[Reference/Source: Richelle (Suzuki) Tamura's September 5, 2001 to Emilio Barroga/HWY-DS, Jeff Fujimoto/HWY-DS, Julius Fronda/HWY-DD and Thomas Toyama/HWY-R, cc to Abraham Wong, etal., Subject: Kupapaulua Bridge.]

* * *

During my participation in the "Government-to-Government" breakout session at the Freight Conference on October 8, 2001, a question was raised by a local agency representative regarding the flexibility of the right-of-way certification process and the availability of streamlining options to facilitate obtaining certification approval. To assist you in addressing any similar questions, which may be posed by local agencies, we have

prepared the following synopsis of the right-of-way certification process and identified some streamlining opportunities which should help achieve successful certification approval.

Federal regulations require a right-of-way certification prior to advertising for bids. As 23 CFR 635.309 states: "Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, **but not until**, all of the following conditions have been met...". There are 15 conditions, identified as subsections (a) through (o), under 635.309; condition (a) is that there be an approved PS&E, and condition (c) is the requirement for a right-of-way certification.

Subsection (c) requires a statement that "all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to relocates adequate replacement housing". This subsection further requires one of three types of certifications, identified in sub-sections (1) through (3) and commonly known as "cert 1", cert 2" and "cert 3".

1. A cert 1 is appropriate when all rights-of-way, including access rights, have been acquired and the State has both legal and physical possession of the property. There may be some improvements remaining, but all occupants have vacated the property.
2. A cert 2 is appropriate when not all rights-of-way have been acquired, but the State has a legal right to occupy and use the right-of-way (usually by right of entry or the legal process of "possession and use"). Again, there may be some improvements remaining, but all occupants have vacated the right-of-way.
3. A cert 3 is appropriate when not all rights-of-way have been acquired **and** there are still occupants remaining on the right-of-way. However, the regulation specifically states: "The State may request authorization on this basis only in very unusual circumstances. This exception must never become the rule." The regulation goes on to state that if construction proceeds under a cert 3, "the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are

protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature." The regulation includes requirements for the State to provide a full and detailed explanation for each parcel that has not been obtained, the reasons why, and a realistic date when physical occupancy and use can be expected.

The WSDOT's Right-of-Way manual (Chap. 1-15.1.2) contains procedures which mirror 23 CFR 635.309 on right-of-way certification. We have a verbal understanding with WSDOT's Real Estate Services section that a project can proceed to advertising, letting and construction with a cert 1 or 2. We also have worked closely with them on the use of cert 3s and there have been a few instances where we have approved a cert 3 for purposes of advertising a project, but with the condition that it be upgraded to a cert 1 or 2 prior to bid opening.

With regard to local agencies, these same procedures apply. Consequently, a local agency project can be advertised with a cert 1 or 2. In "unusual circumstances", we (WSDOT and the Division Office) will consider a cert 3 for advertising, with the understanding that it will be upgraded to a cert 1 or 2 before bid opening. Very often, the "unusual circumstances" presented to us are simply that the local agency needs to meet a predetermined (or politically desirable) advertising and/or letting date - that is not a true "unusual circumstance". One "unusual circumstance" that has enabled us to approve a cert 3 is the need to make a "fish window" (e.g., to be able to construct at a time other than when salmon are spawning).

Regarding the local agencies' desire for more flexibility with the certification process, the Washington Division Office has allowed the maximum flexibility that the regulations provide. As quoted above, the regulations limit cert 3s to "unusual circumstances" and state that "this exception must never become the rule." We have, in fact, approved some cert 3s for local agencies, so we have exercised the latitude that the regulations allow to accommodate valid "unusual circumstances".

It is commonplace for agencies to try to make up for time that is added to the project development process by trying to pick it up in the right-of-way phase. There are some ways this can be done. The agency can buy as much right-

of-way as they want prior to NEPA clearance using their own funds; although they do not get reimbursed, they can use the purchase price as part of their project match. They can buy a limited number of parcels under the provisions of 23 CFR 710.503 and preserve Federal reimbursement.

In addition to advance acquisition, the agency can begin the right-of-way process earlier and tighten up the design to eliminate later design changes which necessitate major changes to the right-of-way (e.g., adding new parcels or expanding or reducing the area of taking from existing parcels, which necessitate new appraisals). Additionally, we can (and have) authorized appraisal and title work prior to NEPA clearance.

In summary, the right-of-way certification process affords the State and local agencies some flexibility while, at the same time, affording the protections to property owners and displaces provided in Federal law (the Uniform Act). Both Federal law (TEA-21) and regulations (23 CFR 710.501, 503 and 771.117) provide early acquisition opportunities to States and local agencies. Finally, early coordination between the agency's planning, environment, design and right-of-way staffs can help reduce or eliminate design changes which can both delay the right-of-way process and add significantly to the cost of a project. We cannot overemphasize the importance of early coordination with Right-of-Way staff. Very often, potential barriers to acquiring rights-of-way and moving displaces in a timely manner can be identified early enough in the project development phase to enable project decision-makers to resolve them and move more expeditiously through the right-of-way phase.

I hope this information will contribute to your continuing efforts to improve the delivery of transportation products and services in a timely and efficient manner. The opportunities which early coordination and advance acquisition offer can help you achieve those goals.

[Reference/Source: Washington Division FHWA letter HDA-WA/410.5 dated October 22, 2001 from Division Administrator Daniel M. Mathis, P.E., to Secretary of Transportation Douglas B. MacDonald, Department of Transportation, Olympia, Washington, Attention Paula J. Hammond, Subject: **Flexibility in the Right-of-Way Process**.]

* * *

Listed below are the Highways Division's understanding of the Federal Highway Administration (FHWA) obligation requirements for the Federal FY 2002. These requirements were established in a meeting held on April 24, 2002, with Abraham Wong, Federal Highway Administrator and members from the FHWA, and Glenn Yasui, State Highway Administrator and members from the Highways Division.

1. The administratively determined Federal deadline for Hawaii Department of Transportation (HDOT) submittal of ready-to-obligate construction project PS&E is August 15, 2002. Projects must be advertised for receipt of bids within 90 calendar days from the date of FHWA authorization and obligation of Federal funds. This date should be not later than close of business, September 30, 2002, which marks the end of the Federal fiscal year.

2. Right-of-Way (R/W) Certification

   a. Projects that have not obtained legal possession of all required R/W or have pending R/W issues at the time of obligation must include a schedule with target dates noted in the conditional R/W Certificate. All R/W issues should be completed prior to advertisement for construction. Exceptions will be considered on a project-by-project basis.
   b. A Type 3 Certification "Cert 3" is issued for projects with pending R/W issues or utility agreements. The Cert 3 is acceptable for obligation on a project-by-project basis. The Project Managers must work with HWY-R to ensure all Cert 3 requirements are met.
   c. Projects with pending utility agreements at the time of the obligation deadline must include a schedule indicating when all utility agreements will be executed. All utility agreements should be executed prior to advertisement for construction. Exceptions will be considered on a project-by-project basis.

3. Environment Permits

a. Projects with pending environmental permits at the time of obligation must include a schedule indicating when the permits will be obtained. All permits must be obtained prior to issuing the NTP for construction unless applicable laws/regulations require the permit(s) prior to FHWA PS&E approval and authorization to advertise.

b. The Department of Health (DOH) requires Contractor's BMPs to issue the Water Quality Certification (Section 401). If the DOT submits an acceptable Section 401 application, the DOH will issue a letter of determination. The letter of determination will be conditional upon DOH's receipt of the Contractor's BMPs. FHWA will accept the letter of determination at the time of obligation. (The Section 401 has expired. The DOH and Army Corps of Engineers are developing the new Section 401. The DOH expects to complete the new Section 401 within 60 to 90 days.)

c. NPDES General permits will expire on September 21, 2002. Projects requiring NPDES General permits, whether in design or construction, must apply/reapply for the permits after September 21, 2002. FHWA will obligate projects requiring NPDES General permits with the understanding that these projects will obtain NPDES permits after September 21, 2002, as soon as the new NPDES General permit application becomes available.

d. The final project design shall not begin until the environmental process is completed. Design funds can be obligated but FHWA will issue a statement that the final design shall not commence until environmental clearance is obtained.

[Reference/Source: HWY Memorandum HWY-DS 2.7023 dated June 21, 2002 from HWY (by Jeffrey Fujimoto/HWY-DS) to Highway Staff Offices, Branches and District Engineers, cc to FHWA, HWY, HWY-TD, HWY-DB, HWY-DC, HWY-DD, HWY-DH and HWY-DS, Subject: FHWA Obligation Requirements for Federal Fiscal Year 2002.]

* * *

Before a construction project can be advertised, the Right of Way Branch must certify that the right of way has been acquired. All project require certification, even if no new right of way is involved.

**Types of Certification.** The three types of right of way certification are defined below. A project can be advertised with a Certification No. 3, but it must be upgraded to a No. 1 or No. 2 three weeks prior to bid opening.

- No. 1 Certification indicates that all property has been acquired.
- No. 2 Certification indicates that all property has been acquired or that Orders of Possession have been obtained.
- No. 3 or No. 3 Workaround Certification indicates that the right of way process is in order, but acquisition or Orders of Possession will not be completed until a certain date.

[Reference/Source: Article 3 - Right of Way Certification, Chapter 14 - Preparation of Project Plans, of California State Department of Transportation's Project Development Procedures Manual.]

# SUMMARY

## CERT 1

### ALL RIGHT-OF-WAY ACQUIRED

All individuals and families have been relocated to decent safe, and sanitary housing or the State of Alaska has made available to displaced persons adequate replacement housing in accordance with the provisions of the current FHWA directives and the following applies:

All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession. There are ____ parcels in condemnation.

[Reference/Source: Alaska Department of Transportation and Public Facilities' Right-of-Way Certification and Relocation Program Assurances, 25A-R205 (Rev 06/01/02).]

* * *

Legal and physical possession has been obtained but trial or appeal of cases may be pending. All occupants have vacated the right-of-way and the agency has the right to remove any remaining improvements.

[Reference/Source: Section 1-15.1.2, Procedures, of Section 1-15 (Right of Way Certification) of Washington State Department of Transportation's Right of Way Manual, March 2002.]

### SAMPLE CERT 1 CERTIFICATION
### ALL RIGHT-OF-WAY ACQUIRED

I hereby certify that all necessary rights-of-way, including control of access rights (when pertinent), have been acquired including legal and physical possession.

AND

(select *(a)* or *(b)*)

*(a)* There are no improvements to be removed or demolished for the above cited project.

*OR*

*(b)* All occupants have vacated the lands and improvements and the agency has physical possession and the right to remove, salvage, or demolish these improvements and enter upon all lands.

AND

(select *(a)* or *(b)*)

*(a)* I further certify that there were no individuals or families displaced by the above cited project. Therefore, the provisions of current FHWA directives covering the relocation of displaces to DS&S housing and availability of adequate replacement housing are not applicable to this project.

*OR*

*(b)* I further certify that our previously submitted assurances of an adequate relocation assistance program and real property acquisition policies have been fully implemented. All eligible persons and occupants of the right-of-way within this project have been relocated to decent, safe and sanitary housing or have been offered decent, safe and sanitary housing.

[Reference/Source: Appendix 25.149, Certification #1 (Sample), All Right-of-Way Acquired, of Washington State Department of Transportation's Local Agency Guidelines, July 1999.]

## CERT 2

### RIGHT TO OCCUPY ALL RIGHT-OF-WAY ACQUIRED (SOME POSSESSION AND USES OR RIGHTS OF ENTRY)

All individuals and families have been relocated to decent safe, and sanitary housing or the State of Alaska has made available to displaced persons adequate replacement housing in accordance with the provisions of the current FHWA directive(s) and the following applies:

Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired.

[Reference/Source: Alaska Department of Transportation and Public Facilities' Right-of-Way Certification and Relocation Program Assurances, 25A-R205 (Rev 06/01/02).]

* * *

Trial or appeal of some parcels may be pending and some parcels may have right of entry or possession and use only. All occupants have vacated the right-of-way and the agency has the right to remove any remaining improvements.

[Reference/Source: Section 1-15.1.2, Procedures, of Section 1-15 (Right of Way Certification) of Washington State Department of Transportation's Right of Way Manual, March 2002.]

**SAMPLE CERT 2 CERTIFICATION**
**RIGHT TO OCCUPY ALL RIGHT-OF-WAY**
**(SOME POSSESSION AND USES OR RIGHTS OF ENTRY)**

I hereby certify that although all necessary rights-of-way have not been acquired, the right to occupy and use all rights-of-way required for the proper execution of the project have been acquired.

AND

(select *(a)* or *(b)*)

*(a)* There are no improvements to be removed or demolished for the above cited project.

*OR*

*(b)* All occupants have vacated the lands and improvements and the agency has physical possession and the right to remove, salvage, or demolish these improvements and enter upon all lands.

AND

(select *(a)* or *(b)*)

*(a)* I further certify that there were no individuals or families displaced by the above cited project. Therefore, the provisions of current FHWA directives covering the relocation of displaces to DS&S housing

and availability of adequate replacement housing are not applicable to this project.

*OR*

*(b)* I further certify that our previously submitted assurances of an adequate relocation assistance program and real property acquisition policies have been fully implemented. All eligible persons and occupants of the right-of-way within this project have been relocated to decent, safe and sanitary housing or have been offered decent, safe and sanitary housing.

Project Description:

Total parcels required for project: _____
a. Parcel(s) acquired: _____
b. Parcel(s) with possession and use only: _____

| P&U Parcel # | Owner | Effective Date |
|---|---|---|
| 1. | | |
| 2. | | |

c. Parcels covered by right(s) of entry: _____
List:

| R/E Parcel # | Owner | Effective Date | Termination Date |
|---|---|---|---|
| 1. | | | |
| 2. | | | |

d. Temporary construction permit(s) acquired: _____
e. Parcel(s) with Relocation: _____

[Reference/Source: Appendix 25.150, Certification #2 (Sample), Right to Occupy All Right-of-Way Acquired (Some Possession and Uses or Rights of Entry), of Washington State Department of Transportation's Local Agency Guidelines, July 1999.]

## CERT 3
## ALL RIGHT-OF-WAY NOT ACQUIRED
## (USE ONLY IN VERY UNUSUAL CIRCUMSTANCES)

All individuals and families have been relocated to decent safe, and sanitary housing or the State of Alaska has made available to displaced persons adequate replacement housing in accordance with the provisions of the current FHWA directives and the following applies:

The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 C.F.F. 24.204. A listing of these parcels with their anticipated acquisition date is shown on the attached sheet.

[Reference/Source: Alaska Department of Transportation and Public Facilities' Right-of-Way Certification and Relocation Program Assurances, 25A-R205 (Rev 06/01/02).]

* * *

This certification is to be used only in very unusual circumstances.

Acquisition of a few remaining parcels is not complete. All occupants of residences have had replacement housing made available to them in accordance with 49 CFR 24.204 (Availability of comparable replacement dwelling before displacement). The agency must adequately explain why construction of the project before acquisition is complete, is in the public good. The agency will ensure that occupants of residences, businesses, farms or nonprofit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience or coercive action. All unacquired parcels will be identified and a realistic date given for completion of acquisition and relocation. An explanation of why the properties are not acquired and how they will be acquired by the given date is also required. Appropriate notification will be provided in the bid proposals identifying all locations where acquisitions is not complete.

Certifications with exception must be followed by a certification without exception when possession of all parcels is obtained.

[Reference/Source: Section 1-15.1.2, Procedures, of Section 1-15 (Right of Way Certification) of Washington State Department of Transportation's Right of Way Manual, March 2002.]

## SAMPLE CERT 3 CERTIFICATION
## ALL RIGHT-OF-WAY NOT ACQUIRED
## (USE ONLY IN VERY UNUSUAL CIRCUMSTANCES)

I hereby certify that the acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204.

AND

(select *(a)*, *(b)* or *(c)*)

*(a)* There are no improvements to be removed or demolished for the above cited project.

*OR*

*(b)* All occupants have vacated the lands and improvements and the agency has physical possession and the right to remove, salvage, or demolish these improvements and enter upon all lands.

*OR*

*(c)* Occupants remain to be vacated and the agency ensures that occupants who remain in the right-of-way will be protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

AND

(select *(a)*, *(b)* or *(c)*)

*(a)* I further certify that there were no individuals or families displaced by the above cited project. Therefore, the provisions of current FHWA directives covering the relocation of displaces to DS&S housing and availability of adequate replacement housing are not applicable to this project.

*OR*

*(b)* I further certify that our previously submitted assurances of an adequate relocation assistance program and real property acquisition policies have been fully implemented. All eligible persons and occupants of the

right-of-way within this project have been relocated to decent, safe and sanitary housing or have been offered decent, safe and sanitary housing.

*OR*

*(c)* I further certify that our previously submitted assurances of an adequate relocation assistance program and real property acquisition policies have been fully implemented **except** for a few remaining parcels as explained in the exception section.

Project Description:

Total parcels required for project: _____
a. Parcel(s) acquired: _____
b. Parcel(s) with possession and use only: _____

| P&U Parcel # | Owner | Effective Date |
|---|---|---|
| 1. | | |
| 2. | | |

c. Parcels covered by right(s) of entry: _____
List:

| R/E Parcel # | Owner | Effective Date | Termination Date |
|---|---|---|---|
| 1. | | | |
| 2. | | | |

d. Temporary construction permit(s) acquired: _____
e. Parcel(s) with Relocation: _____

Exceptions:

(List all exceptions by parcel number. A realistic date of occupancy of the parcel and of completion of relocation must be given with an explanation of why those dates are realistic. Explain also, why it is in the public interest that the project be advertised without acquisition being completed.)

I further certify that appropriate notification will be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

[Reference/Source: Appendix 25.151, Certification #3 (Sample), All Right-of-Way Not Acquired (Use Only in Very Unusual Circumstances), of Washington State Department of Transportation's Local Agency Guidelines, July 1999.]

Prepared: September 12, 2003/DKS; Revised, September 15, 2003.

**STATE OF HAWAII**
**DEPARTMENT OF TRANSPORTATION**
**MEMORANDUM**

HWY-RL 3.98723

**TO:** HENRY KENNEDY, HWY-D **DATE:** May 31, 2024

**FROM:** FAWN Y. YAMADA, HWY-R

**SUBJECT:** REQUEST FOR RIGHT-OF-WAY CERTIFICATION
LIKELIKE HIGHWAY, WILSON TUNNEL STRUCTURAL REPAIRS
DISTRICT OF KONA (HONOLULU), ISLAND OF OAHU,
STATE OF HAWAII, PROJECT NO. BR-063-1(026)

We certify that all conditions and requirements of the following Sections of 23 Code of Federal Regulations 635.309 are in compliance.

Section 635.309 (b). All necessary arrangements have been made for all right-of-way clearance and utility work to be undertaken and completed as required for proper coordination with the physical construction schedules.

Section 635.309 (c) (1). Legal and physical possession of all necessary rights-of-way has been obtained. There will be no displaced persons from the highway project and no relocations will be required.

Section 635.309 (g). This section is not applicable since acquisition is not required for this project.

Section 635.309 (h). This section is not applicable since relocation will not be required for this project.

Section 635.309 (k). This section is not applicable since there will be no utility work required for this project.

The scope of work for this project consists of replacing stainless steel hanger rods along the full length of the tunnel plenum (ceiling utility crawlspace), installing corrosion protection, and repairing three crossover (contraflow access) gates on Likelike Highway.

The request for approval to advertise the project for bids will be made with the Plans, Specifications, and Estimates submittal.

Should you have any questions, please call Mr. James Itoh at (808) 692-7321 or by email to james.g.itoh@hawaii.gov.

c: HWY-DD (Li Nah Okita)

2.15 AB

# HIGHWAY-RL REPORTS

**PURPOSE:** To describe procedures for preparing and submitting various reports on right-of-way activities in compliance with Federal and State policies.

**POLICY:** To submit reports on right-of-way activities for informational and project status reporting.

**RESPONSIBILITY:** The Supervising Right-of-Way Agent (ROW) of each Acquisition Unit is responsible for submitting reports for their assigned projects.

**SCOPE:** This section applies to all units in the Land Acquisition Section (HWY-RL).

**PROCEDURES:** Each Acquisition Unit shall compile and provide records and/or status of right-of-way acquisition activities periodically as required.

**Annual Report on Real Property Acquisitions:**

For each fiscal year ending September 30th, an annual report of the State's acquisitions for Federal and Federally assisted highway programs shall be submitted to the local Federal Highway Administration's (FHWA) office no later than one week prior to November. The report shall consist of statistical data and where applicable, narrative comments.

A. Statistics.

The statistical portion shall be by FHWA Form RCS-HRW-10-07, Real Property Acquisition Statistics (see page 2.16A) or as amended and pursuant to the instruction sheet. Acquisitions undertaken with only State or other funding shall not be reported.

1. Each Acquisition Unit and all sub-recipients shall prepare and submit the statistics for their assigned projects in draft form to the Principal ROW Agent not later than seven days after the end of each fiscal year ending September 30th.

2. The Principal ROW Agent shall review and verify the statistics and incorporate all information to a final single form before sending the form to the FHWA.

B. Narration.

This portion of the report shall be optional depending on the circumstances and prepared by the Principal ROW Agent. Comments on the following items should be made when appropriate or when significant actions have been accomplished, are underway or are contemplated.

1. A description of the actions taken by the State to establish uniform and equitable land acquisition policies for federally assisted highway programs or projects.

2. The positive action plans, such as the preparation and promulgation of implementing rules and regulations, undertaken by the State to achieve uniform and equitable treatment for all persons having real property acquired for federally assisted highway programs or projects.

3. The staffing and training performed and projections of staffing requirements and training programs required for the continuous administration of consistent, uniform and equitable treatment of owners from whom real property is acquired for federally assisted highway programs or projects at the State, County and City levels, as appropriate.

4. The provisions adopted by the State for coordination with Federal, other State and local acquisition agencies.

5. The progress of the State in implementing the provisions of 42 U.S.C. 4651-4655 (Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), including its success, its problems, and adverse effects, if any, on acquisition programs it conducts or administers.

6. The recommendations of the State for further improvement in land acquisition programs, policies and implementing laws and regulations including any proposals for amendments or revisions to:

a. Office of Management and Budget guidelines;

b. Other agencies' regulations;

c. Federal legislation;

d. State legislation.

Four copies of the complete statistical report including the narration portion when applicable shall be submitted to the FHWA.

**Project Status Report**

Each Acquisition Unit shall submit a brief report on the status of their assigned projects to the ROW Branch Head through the Principal ROW Agent (see page 2.16-B). The report shall be submitted bi-weekly each Thursday, unless instructed otherwise by the ROW Branch Head, and contain but not limited to the following:

A. Right-of-Way acquisition status;

B. Status on utility agreements;

C. Status on any other items which needs to be completed to clear right-of-way for construction.

Each report shall be reviewed by the Principal ROW Agent. Any revisions required in the report shall be resolved with the Supervising ROW Agent of the Acquisition Unit prior to the submission to the ROW Branch Head.

As a substitute to this requirement, the agents are expected to update the Project Status System (PSS) program installed on each agent's computer. Instructions and data to be updated are incorporated herein.

**Project Activity Report (PAR)**

This report is limited to those activities and those projects listed in the Highways Division's approved production schedule. Each Acquisition Unit shall submit the Project Activity Report (PAR), DOT 4-368 (HWY O-4/70), for each assigned project where applicable (see page 2.16-C). The report shall be prepared only under the following conditions:

A. The project activity being reported has been completed; or

B. The project activity being reported will not be completed until after the scheduled target date.

Project activities incomplete but estimated to be completed on or before the production schedule target date, shall not be reported.

**Pre-Construction Activity Report**

A report on the right-of-way work completed based on percentages shall be submitted to the Highway Design Section (HWY-DD), on or before the 25th day of each month (see page 2.16-B). The percent of work completed includes total percentages "to date" and also for "this month" (reporting period) and shall be as of the 15th day of each month. The report shall be submitted in form shown on Attachment B.

A. Each Acquisition Unit shall complete the form as provided by the Principal ROW Agent.

B. The Principal ROW Agent shall review reports submitted by the Acquisition Units and compile all information into a final form.

C. The completed final form shall be forwarded to HWY-DD for review and submittal to Project Management Staff.

**Annual Title VI Accomplishments and Goals Report**

Pursuant to 23 Code of Federal Regulations Part 200.9 (b) (10), as recipients of Federal financial assistance, a yearly report of Title VI Accomplishments and Goals are required.

The accomplishments are for the federal fiscal year October 1st to September 30th of the following year. The report must be submitted to the Office of Civil Rights (OCR), Civil Rights Coordinator, by December 15th, of that fiscal year and then to FHWA by February of the following fiscal year.

The Annual Report shall contain the following information:

I. Policy Statement;
II. Organization, Staffing and Structures;
III. Title VI Monitoring and Review Process;
IV. Complaints;
V. Accomplishment Report for Each Program Area.

Right-of-Way is responsible for:

1. Receiving any civil rights complaints in any Right-of - Way function areas;

2. Informing how many minority and women appraisers were utilized; and if representation was low, what efforts were made to increase representation;

3. Informing how many negotiations were made in the reporting period; and whether the negotiator's log reflected any disparity in the conduct of negotiations between minorities and non-minorities;

4. If any concerns were raised by minorities or women concerning their options in the negotiations phase;

5. The number of relocations during the reporting phase;

6. And if there were any claims raised by minorities or women on replacement housing, referral housing, etc:

The Land Acquisition Section is responsible for items numbered 1, 3 and 4. Other reports can be generated by the Right-of-Way Branch Secretary.

**Annual Report to the Auditor**

A report is needed for all real property acquisitions for the end of each fiscal year. An external Auditor (usually an outside private accounting firm) reviews and checks for compliance of random projects to see if the Branch is in compliance with Federal and State regulations. A report is generated at the end of the audit to see where the Branch can improve.

**Miscellaneous Reports**

Miscellaneous statistical reports on a project-by-project basis shall be provided as requested. Submission of these minor reports shall be administered by the Principal ROW Agent and the Property Management Section Head. Reports may include, but not limited to:

1. Adequate Staffing Reports;
2. Project Delivery System Review Reports;
3. Quarterly Project Status Reports;
4. Over the Shoulder Reports;
5. Context Sensitive Solution Design Reports;
6. Value Engineering Reports;

7. Utility Reports;
8. Project Scoping Reports;
9. Out of State Completed Conference Travel Reports;
10. Employee Purchase Card Reports (Pcard);
11. Monthly Acquisition Reports.
12. Reports to the Highway Administrator when required.
13. Reports to the Legislature, as requested.
14. Reports to the Right-of-Way Branch Manager as Requested.
15. Vacancy Reports.
16. Organization Function and Re-organization Reports.
17. Staffing requirement reports.
18. Revocable Permit Program reports
19. Travel and Budget reports.
20. P-Card reports

# ORGANIZATION AND FUNCTIONS



## INTRODUCTION:

This section describes the basis, organization and functions of the Appraisal Section.

The US Constitution protect Right of Way (property rights). The Fifth amendment states ‘’…nor shall private property be taken for public use without just compensation’’, and the Fourteenth Amendment provides that “…nor shall any State deprive any person or life, liberty, or property, without due process of law…’’ The Hawaii Revised Statutes Title 9, Public Property, Purchasing and Contracting, Chapter 101, Eminent Domain provides for the “taking private property for public use, provided that just compensation is given to the property owner”.

Title Ill of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P,L. 91-646) (Uniform Act) basically expands on the Fifth and Fourteenth Amendments and applies these amendments to all Federally funded real property acquisitions. The Uniform Act further requires that the acquiring agency shall, on any real property being acquired for public purposes determine what they believe to be just compensation prior to negotiations. The Hawaii Revised Statutes Chapter 113-5(3) mirrors Title III and provides that “in no event shall such amount (just compensation) be less than the approved appraisal of the fair market value of such property”. The Final rule, published on May 3, 2024, amends the Uniform Act and is effective June 3, 2024. The revisions were prompted by the enactment of the Moving Ahead for Progress in the 21st Century Act (MAP-21), which increased statutory relocation benefits and reduced length of occupancy requirements. This final rule updates existing regulations on the use of those provisions.

## PURPOSE:

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

23 CFR 200.9 (State Highway Agency Procedures),
23 CFR 635.309 (Authorization/Right-Of-Way Certification),
23 CFR 710.201 (State Responsibilities),
23 CFR 710.203 (Funding and Reimbursement),
23 CFR 710.309 (Acquisition),
23 CFR 710.313 (Design-Build Projects),
49 CFR 24.101 to 104 (Applicability of Acquisition Requirements, Basic Acquisition Policies, Criteria for Appraisals, Review of Appraisals),23 USC 324 (Title VI of the Civil Rights Act of 1964),
42 USC Chapter 21 (Civil Rights), Sec. 2000d,
42 USC Chapter 61 (Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs),

State Specifications:
HRS 101 (Eminent Domain),
HRS 171-30 (State Lands),
HRS 264 (Highways),

Federal Specifications:
U.S. Constitution,
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title IV, as amended,
Federal-Aid Highway Act of 1987,
49 CFR 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs, as amended,
Uniform Appraisal Standards for Federal Land Acquisitions (Yellowbook).

## BRANCH AND APPRAISAL POLICIES:

A. The Hawaii Department of Transportation's Right of Way Branch (ROW) will adhere to the appraisal standards as published in the Uniform Appraisal Standards for Federal Land Acquisitions and in the Uniform Standards of Professional Appraisal Practice.

B. Internal changes to, or departures from approved appraisal policies and procedures may only be made by memorandum to staff appraisers, or by letter to fee appraisers, and only upon receipt by the Appraisal Section Head of such approval from the Branch Manager and FHWA.

## MARKET VALUE DEFINITIONS:

Market Value Definition (USPAP 2024 Edition)

A type of value, stated as an opinion, that presumes the transfer of a property (e.g. a right of ownership or a bundle of rights), as of a certain date, under specific conditions set forth in the value definition of the term that is identified by the appraiser as applicable in an appraisal.

Other definitions, as applicable and provided by court decisions, the Appraisal Institute and the Hawaii Revised Statutes may be considered equivalent and acceptable.

## ORGANIZATION:

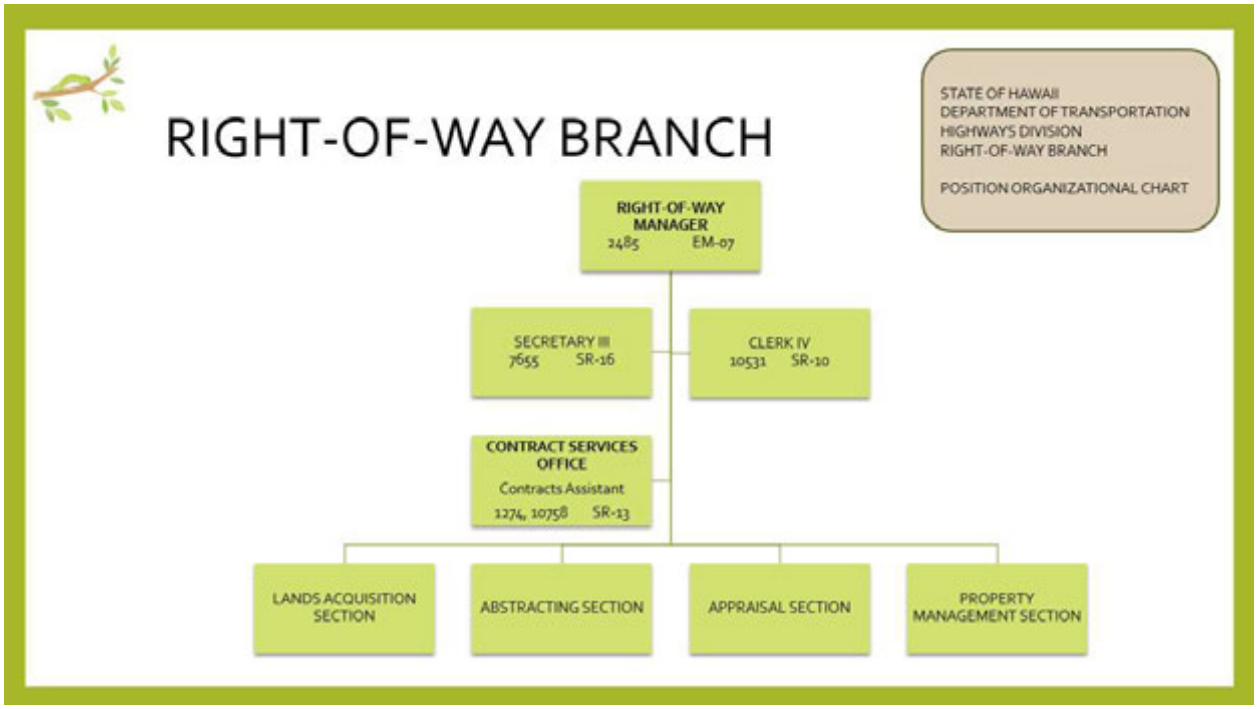
The Appraisal Section is comprised of two Appraisal/Review Units and is one of four (4) Sections within the ROW Branch. Its organization and function are as follows:

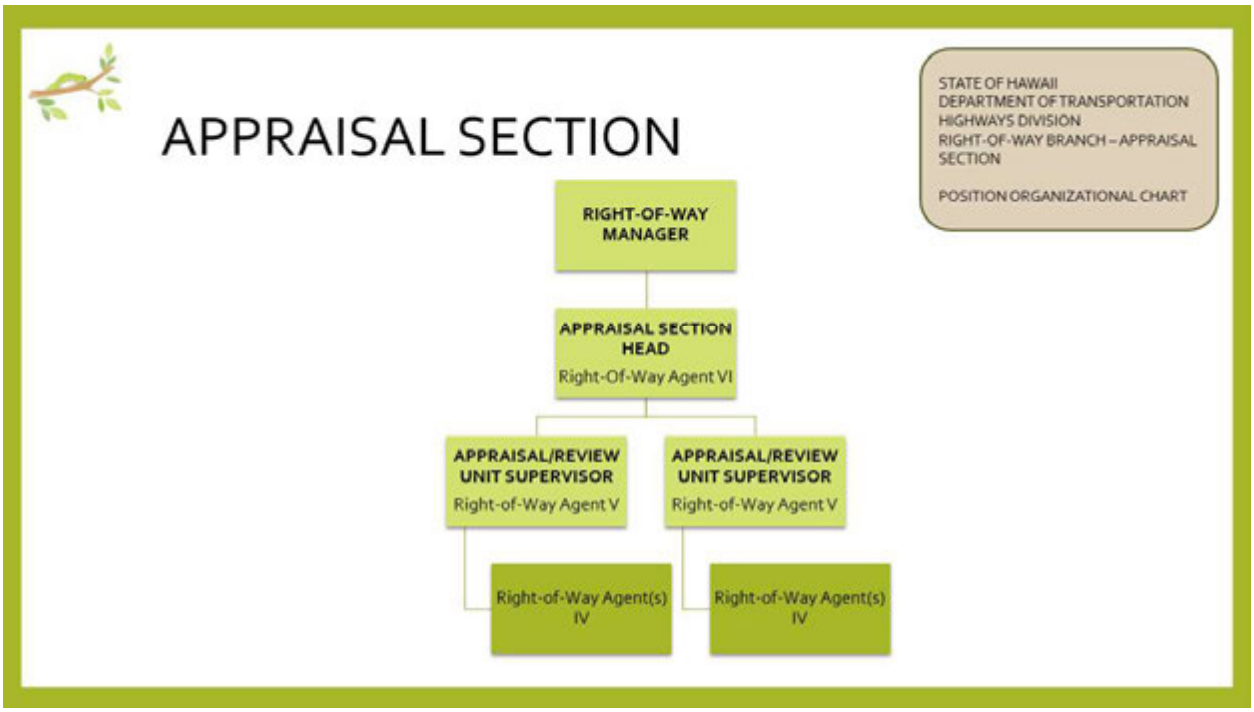
A. Under the general supervision of the ROW Manager, the Right-of-Way Agent VI is the Appraisal Section Head.

B. Under the Right-of-Way Agent VI, there are two Right-of-Way Agent Vs, Appraisal/Review Unit supervisors. The ROW Vs are accountable to the Right-of-Way Agent VI.

C. The Right-of-Way Agent V may assign work to a subordinate Right-of-Way Agent IV or lower agents assigned to unit.

The organization chart of the Appraisal Section is shown below.


RIGHT-OF-WAY BRANCH
STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
RIGHT-OF-WAY BRANCH
POSITION ORGANIZATIONAL CHART
RIGHT-OF-WAY MANAGER
2485 EM-07
SECRETARY III
7655 SR-16
CLERK IV
10531 SR-10
CONTRACT SERVICES OFFICE
Contracts Assistant
1274, 10758 SR-13
LANDS ACQUISITION SECTION
ABSTRACTING SECTION
APPRAISAL SECTION
PROPERTY MANAGEMENT SECTION


APPRAISAL SECTION
STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
RIGHT-OF-WAY BRANCH – APPRAISAL SECTION
POSITION ORGANIZATIONAL CHART
RIGHT-OF-WAY MANAGER
APPRAISAL SECTION HEAD
Right-Of-Way Agent VI
APPRAISAL/REVIEW UNIT SUPERVISOR
Right-of-Way Agent V
APPRAISAL/REVIEW UNIT SUPERVISOR
Right-of-Way Agent V
Right-of-Way Agent(s) IV
Right-of-Way Agent(s) IV

## FUNCTIONS:

It is the function of the Appraisal Section to provide all appraisal, review, other valuation and related work for the ROW Branch. These functions include, but are not limited to, the following:

A. Preliminary field reconnaissance;

B. The preparation of right-of-way cost estimates;

C. The procurement of professional services;

D. The preparation of staff appraisals;

E. The reviewing of appraisal reports and the preparation of the Report of the Review Appraiser;

F. Assisting the State Attorney General in condemnation trials;

G. Attending public hearings;

H. Maintaining records of appraisals, reviews, cost estimates, work file folders, correspondence, etc.

I. Monitoring and assisting LPA (counties) for Federal/State compliance in appraisal, review and appraisal contracting requirements;

J. Maintaining the level of competency by providing staff with training of new standards and other appraisal related matters. Training also includes: safety, health, Title VI and other federally mandated programs.

## RESPONSIBILITY:

A. The Appraisal Section Head is responsible for the establishment of all appraisal policies and procedures and for maintaining a well-organized and functional appraisal staff which can carry out the function required of the Appraisal Section.

B. The Supervisory Right-of-Way Agent V directs and supervises the activities of Right-of-Way Agents IV (and lower) to perform appraisals, reviews and cost estimate assignments. The Appraisal Section Head may assign the Supervisory Right-of-Way Agent V to procure professional services from fee or specialty appraisers in accordance with Highways Division procedures and the State Procurement Office. The Supervisory Right-of-Way Agent V monitors subordinate competence to perform all staff

appraisals, review and procurement of professional services. Also review assignments as required.

**QUALIFICATIONS OF RIGHT-OF-WAY AGENTS**:

The qualification requirements of the ROW Agent in the various classifications are as described in the specific position descriptions referenced in personnel files.

These qualifications align as stipulated in Part II of the DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT STATE OF HAWAII approved on 3/27/2012 and which is an amendment to the one that was approved on September 7, 1982.

**Agent Knowledge and Ability:**

- A thorough knowledge of the principles and practices of appraisal, negotiation and/or management of real property;
- Laws pertaining to the acquisition of right-of-way, source of appraisal data;
- Principles of report writing;
- Arithmetic; mathematical problem solving;
- Legal instruments affecting real property; pertinent laws, precedent decisions, and agency instruction;
- Condemnation laws:
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.
- Perform all categories of real property appraisal, negotiation and/or property management work;
- Gather, organize, and analyze data on sales, leases and other factors;
- Make sound conclusions and estimates based on facts;
- Prepare reports and compile data, maps, sketches and other materials;

- Make arithmetic computations;
- Meet and deal effectively with property owners, fee appraisers and others;
- Serve as expert witness in condemnation proceedings;
- Assign, review and correlate the work of other agents as assigned.

# GENERAL POLICIES AND PROCEDURES

## INTRODUCTION:

This section describes general policies and procedures relating to appraisals for Federal-Aid participation and non-participation. The Appraisal Section (HWY-RP) provides all appraisal and review services to the Right-of-Way Branch (HWY-R) and receives general direction from the Right-of-Way Branch (ROW) Manager, through the Appraisal Section Head. All requests for appraisals will be processed through the ROW Branch Manager. All appraisal matters are forwarded to the Appraisal Section Head for appropriate attention and action.

## DEFINITION OF AN APPRAISAL:

The Hawaii Department of Transportation (DOT) has adopted the definition of an appraisal as stated in The Uniform Standards of Professional Appraisal Practice, 2024, which is as follows:

The act or process of developing an opinion of value; an opinion of value. (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services. This definition emphasizes that an appraisal involves both the systematic process of evaluating a property's worth and the resulting opinion or conclusion about its value.

## APPRAISER RESPONSIBILITIES:

Appraisers (ROW Agents I to IV), under the supervision of the ROW Agent V may be assigned as either appraisers or review appraisers. Before negotiations, all parcels, easements, access rights, and construction parcels to be taken shall be appraised and the fair market value established by the Review Appraiser assigned to the project by the Appraisal Section Head. After compliance with Federal/State requirements is verified, the Appraisal Section Head approves the Report of the Review Appraiser.

## OWNER'S RIGHT TO ACCOMPANY APPRAISER:

The owner and/or his designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the subject property. This right also applies to all lessees who own an interest in any improvement, structure, or building deemed to be a part of the real property to be acquired. However, this right is not required under the appraisal waiver and conflict of interest limit of $35,000.00 or less.

## APPRAISAL WAIVER POLICY:

- Waiver Valuation- "The valuation process used and the product produced when the Agency determines that an appraisal is not required, pursuant to 24.102 (c) (2) appraisal waiver provisions." (49CFR24.2- Definitions and Acronyms)

- Intent- For non-appraisers to derive an offer and free appraisers to do more complex assignments. Help reduce the amount of time it takes to complete offers for "simple" takings. Waiver valuations completed by agents are not appraisals and should not be construed as such. Also in this case, a review of the waiver valuation is not required.

- When to use a Waiver Valuation- Allowed when parcel (s), easement (s), etc. are expected to have a value less than $35,000 and is expected to be uncomplicated in analysis. If there is doubt whether of these requirements can be met, the Appraisal Waiver shall not be used and a complete appraisal report shall be completed. Estimated values between $35,001 and $50,000 would require an appraisal waiver request in writing to the Federal Highway Administration by the agency. The Landowner must be given the option of getting an appraisal. If Landowner opts to have an appraisal done, a waiver valuation will no longer be applicable. In this case the agency would obtain an appraisal and appraisal review.

- Who can complete a Waiver Valuation- Completion of a Waiver Valuation is limited to persons within a state or LPA agency, having sufficient knowledge of the local real estate market and able to do a proper analysis for the offer.

  When the Appraisal Section receives a request for an appraisal, the Appraisal Section Head will determine if an Appraisal Waiver will be used. Once assigned, the agent completing the waiver analysis shall provide a due diligence check of those real property interests to determine if an Appraisal Waiver is appropriate. At

any point in the investigation, if the agent believes the interest to be considered is greater than allowed, the agent will notify the Appraisal Section Head that the real property interest will **not** be valued using the Waiver Valuation and a full appraisal analysis will then be completed.

- Minimum analysis- The agent completing an Appraisal Waiver must, at a minimum, show sales or listings which appear to generally approximate what would be considered comparable to the subject property being considered. Sales prices (minus any improvement estimates if the interest considered is for land or land base considerations only) should be divided by the size of the property to establish an unadjusted unit sales price. The agent will use spread sheet table type formats to show the sales in a side by side comparison. Data, considerations and explanations regarding the final unit value choice must be explained and placed in the agent's work file.

- Nominal Value Offers- Should the agent conclude that a nominal offer is appropriate because of the type of parcel being taken (unusable land area, zoning, nominal highest and best use for land, etc.) then an explanation without a table comparison is acceptable. An explanation regarding the thought and logic for the use of the nominal consideration conclusion still must be shown in both the work file and report.

- Reporting format- For Waiver Valuations, agents shall use the HWY-RP Compensation Estimate reporting form format, as amended.

- Approval- The Appraisal Section Head will determine the acceptability of the completed Compensation Estimate and its suitability for use in negotiations.

The analysis and reporting requirements are two separate functions. The analysis will be placed in the work file, while the conclusions and brief discussions will be reported on the Compensation Estimate form. The agent is responsible for answering any questions regarding the appraisal waiver conclusions.

**APPRAISAL WAIVER AND CONFLICT OF INTEREST:**

The $10,000.00 limit for an Appraisal Waiver found in 49 CFR 24.102(c) was set in 2005 by the Federal Highway Administration (FHWA) for valuations that were determined to be uncomplicated based on the review of available data. The $10,000.00 limit was raised to $15,000.00 via final rule in 2024 which constitutes the first tier. For value estimates between $15,001 and $35,000, which constitutes the second tier, the landowner

must be given the option to get an appraisal by the agency. An Appraisal Waiver shall be applied to each Tax Map Key (TMK) parcel and the offer of all takings (fee, easement and construction rental, etc.) from each TMK parcel must not exceed $35,000.00. For value estimates under $15,000, the Appraisal Waiver can be invoked without approval from the Landowner. When said taking is not expected to exceed $15,000.00, the Appraisal Section Head signs and dates a memorandum stating that the value is not expected to exceed $15,000.00 and transmits the memorandum to the Acquisition Section Head for concurrence. This process is termed an “Appraisal Waiver”.

A. When the appraisal waiver provision for TMK parcels that are not expected to exceed $35,000.00 is utilized, it is not necessary to afford the property owner the opportunity to accompany the appraiser on the property inspection;

B. When anticipated value is greater than $15,001 but less than $35,000 and acquisition is uncomplicated, the owner shall be offered the option of having the State appraise the property. The agency may then request approval from the Federal Highway Administration on a yearly basis to use a waiver valuation. If owner chooses to have property appraised, then waiver will no longer be applicable, and the owner must be afforded the opportunity to accompany the appraiser on the property inspection.

C. Approval for using a waiver valuation of more than $35,001, but up to $50,000 may only be requested on a project-by-project basis and the request for doing so shall be made in writing to the Federal Highway Administration setting forth the anticipated benefits of, and reasons for, raising the waiver valuation ceiling above $35,000.

D. Within 6 months of completion of acquisition activities a report close-out measuring cost/time benefits, condemnation rate, settlement rate, and any other relevant metric which the Federal Highway Administration requires to adequately document both the administrative savings and accuracy and efficacy of the waiver valuations of more than $35,000, but up to $50,000 shall be submitted to the funding Agency.

E. If the parcel cannot be negotiated based on the Appraisal Waiver, the Acquisition Section Head shall provide notification to the Appraisal Section Head that an appraisal report and review are required for condemnation purposes;

F. Based on determination that an assignment is not complex and does not require detailed analysis, the Waiver Valuation format may be used. The Appraisal Waiver format is considered a Jurisdictional Exception to the requirements of USPAP.

G. The ROW agent completing the Appraisal Waiver or the ROW agent making the offer (if not the same), shall determine the just compensation amount for the parcel after analyzing all relevant, available market data. The ROW agent shall make a Statement of Just Compensation and Compensation Estimate Summary Statement (see pages 3.2-A and B) for not less than the amount stated in the Statement of Just Compensation. The Compensation Estimate is addressed to the ROW Branch Manager for approval and signed and dated as recommended for approval by the Appraisal Section Head indicating concurrence with the offer conclusion.

**FORMAT OF APPRAISAL REPORTS:**

True copies of all written reports must be kept in the workfile for record keeping purposes. A true copy is a replica of the report transmitted to the client. A photocopy or an electronic copy of the entire report transmitted to the client satisfies the requirement of a true copy.

**NUMBER OF APPRAISAL REPORTS REQUIRED:**

A. At minimum, one appraisal per parcel. Number of pdf copies will be offered as requested. Typically three copies are produced where one copy goes to the agent, one to the appraiser, and another is the FHWA or file copy.

B. Additional appraisals may be desirable when the appraisal problem is complex, valuation is considerable, there is a wide divergence of values between two appraisals or the additional report will aid in the acquisition of the parcel. The ROW reviewer with concurrence of the Appraisal Section Head and approval of the ROW Branch Manager may order the additional appraisal.

**MINIMUM PAYMENT:**

The minimum payment for parcel and/or easement acquisition shall not be less than $1,000.00. The minimum payment for rentals shall be as determined on an annual basis, as appropriate.

**PARTIAL ACQUISITIONS:**

When a portion of a TMK parcel is required for highway purposes, the fair market value of the part taken and severance damages, if any, to the remainder parcel shall be established by the appraisal/review process. In the construction of a new highway, special benefits may offset severance damages and the value of the part taken. Refer to Hawaii Revised Statues Chapter 101.

**EXCESS ACQUISITIONS:**

When only a portion of a property is required for highway right-of-way or highway related needs and the State elects to acquire the larger parcel or whole property, Federal participation will be limited to the fair market value of the portion taken for the highway project plus, damages, if any, to the remainder parcel.

**UNECONOMIC REMNANT:**

Uneconomic remnant is defined as the remaining part of a larger parcel, after a partial acquisition has severed a larger parcel, having little or no utility or little value to the abutting owner. The State must offer to acquire uneconomic remnants. It is the responsibility of the Review Appraiser to confer with the Appraisal Section Head to determine if the remnant should be incorporated as part of the right-of-way as a whole taking or left outside the right-of-way as excess acquisition and establish damages, if any, to the remainder remnant, should the abutting owner request this. The Report of Review Appraiser shall reflect the fair market value depending on the option selected.

**ACCESS RIGHTS:**

Federal funds may participate in payments for access control where the highway is on a new location.

**ADMINISTRATIVE AND LEGAL SETTLEMENTS:**

ROW personnel may be used to assist the ROW Manager or legal counsel on making administrative or legal settlements, and/or preparation and conduct for a contested value eminent domain trial.

## STATUS REPORTS:

Supervisory ROW Agent V will prepare status reports involving projects assigned to them.

## PROJECT ENHANCEMENT OR DIMINUTION:

Advanced knowledge of an impending highway project can often affect the values of the properties within and outside the right-of-way. This can either have a positive or negative effect on the parcels to be acquired. This effect is called “project enhancement” and must be avoided in the estimate of just compensation.

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvements for which such property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the just compensation for the property.

## APPRAISAL OF DONATED RIGHT-OF-WAY:

A. Department policy allows for the donation of right-of-way for public projects. In these instances, an appraisal of the property is still required unless the donor releases the Department from such obligation, and the property owner is informed of their right to compensation and/or an appraisal;

B. If the property owner intends to seek a credit against his/her Federal Income Tax and the donation is estimated to be valued at $5,000.00 or more, the Internal Revenue Service (IRS) requires that the property be appraised by a fee appraiser.

C. The selection of the appraiser may be with the consultation of the property owner and complete an appraisal and reviewed by the Department. The qualified appraiser shall be selected from the Department’s approved list of real estate appraisers. Exceptions may be made on case by case basis, considering circumstance and situation.

D. The appraisal may or may not be submitted through the review process. The appraisal report completed product is expected to be completed in accordance with USPAP and the Department’s appraisal report requirements.

## COMPENSABLE AND NON-COMPENSABLE DAMAGES:

In determining the compensability of damages, the appraiser must have knowledge of what is considered compensable and non-compensable by the courts. When administrating a Federal-Aid project the following damages are considered non-compensable:

- Loss of business;
- Expense incurred for moving personal property;
- Loss of good will;
- Raising or lowering the grade of the highway;
- Damages resulting from the owner's inability to obtain an acceptable new location;
- Loss of profit;
- Increased noise and fumes from increased traffic;
- Circuitry of travel;
- Diversion or reroute of traffic and;
- Damage to potential improvements or for items highly speculative in nature.

## BENEFIT:

Beneficial factors that properties experience which are attributable to the proposed project. The two types of benefits are: general and special.

A. General Benefits

General benefits are defined as the benefits which accrue to the community at large, to the area adjacent to the improvement, or to other property similarly situated. The Hawaii DOT does not deduct from the just compensation for general benefits to the remainder parcel.

## STATE SHARE OF PROJECT COST:

Real property owned by the State and local governments incorporated within a federally funded project may be used as a credit toward the matching share of total cost (also known as a soft match). The value of the real property is determined at either historical acquisition cost or current fair market value, whichever is greater, supported with documentation that justifies the amount of the credit and certification that the acquisition satisfied the conditions in 23 CFR 710.501(b). Appraisal standards are identical as if private owners were involved, and appropriate sections of this manual would apply.

**STATE OF HAWAII**
**DEPARTMENT OF TRANSPORTATION**
**MEMORANDUM**

**TO:** **DATE:** XXXXXX

**FROM:**

**SUBJECT**:

After reviewing the available information, it was determined that the Fair Market Value for XXXXXXXXX is less than the maximum threshold amount, therefore, the Appraisal Waiver provision has been invoked and a Compensation Estimate is being used to report the results.

Attached are the Compensation Estimate, the Compensation Estimate Summary Statement, and the Statement of Just Compensation.

If you have questions, please call me at XXXXXXX or by email at XXXXXXXXXX.

Attachments

# COMPENSATION ESTIMATE

PREPARED FOR STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAY'S DIVISION/RIGHT OF WAY BRANCH

PROJECT:

PARCEL: _____

PARCEL AREA : _____

TAX MAP KEY NO: _____

OWNER(S):

SITE ADDRESS:

ESTIMATED FAIR MARKET VALUE OF XXXXXXX: XXXXXXXXXXXXXXXXXXXXX

This "Compensation Estimate" (Waiver Valuation) is not to be considered an appraisal under the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Foundation and adopted by the Appraisal Board. The Jurisdictional Exception rule of USPAP was invoked for this Compensation Estimate and prepared under a waiver of appraisal provisions authorized by Federal Highway Administration regulations, 49 CFR 24.102 (C) (2).

We hereby certify:

XXXXXXX has made an analysis of the information relied upon in making said Compensation Estimate, including subject property information and sales.

There are no damages to the remainder area.

That to the best of our knowledge and belief, the statements contained in the compensation estimate herein set forth are true and the information upon which the opinions expressed therein are based is correct with the Fair Market Value of XXXXXXX for emergency slope stabilization to be performed by the State of Hawaii with the assistance of Federal-aid highway funds or other Federal funds.

That neither our employment nor our compensation for making this estimate and report are in any way contingent upon the value reported herein.

That we have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property herein.

That we have not revealed the findings and results of such estimates to anyone other than the proper officials of the acquiring agency or officials of the Federal Highway Administration and we will not do so until so authorized by said officials or until we are required to do so by due process of law, or until we are released from this obligation by having publicly testified as to such findings and these findings are for right-of-way branch internal use only.

That effective XXXXXXXX, our opinion of the total Compensation Estimate for XXXXXXXXXXX It is based upon our independent analysis and the exercise of our professional judgment.

_____ _____
Date Signed Analyst

_____ _____
Date Signed Approved, Appraisal Section Head

# STATEMENT OF JUST COMPENSATION

**PROJECT:**

**TAX MAP KEY:**

**SUBJECT:**

**OWNERS:**

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

The Hawaii State Constitution, Article I, Section 20, states: "Private property shall not be taken or damaged for public use without just compensation."

The State of Hawaii has utilized a compensation estimate in arriving at an estimate of fair market value. Consideration is given to those items which are compensable under State of Hawaii law and those items which are considered as non-compensable are excluded.

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

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

The amount established as just compensation does not include items of personal property such as household furnishings, clothing and appliances.

**JUST COMPENSATION**: Amount established as Just Compensation for XXXXXX, effective XXXXXXXX is:

**XXXXXXXXXXXXXXXXXXXXXX**
**XXXXX**

---

**The above amount is allocated as follows:**

| | |
|---|---|
| XXXXXXXXX | XXXX |
| Damages to remainder, if any, less benefits, if any: | 0 |
| Established Amount: | XXXX |

DOT 4-444
(HWY-RP 01/08)

# COMPENSATION ESTIMATE SUMMARY STATEMENT

**PROJECT:**

**TAX MAP KEY:**

**SUBJECT:**

**PROPERTY ACQUIRED:** **All:** _____ **Part:** X

**OWNER:**

**SITE ADDRESS:**

**PRESENT USE:**

**HIGHEST & BEST USE:**

**INTENDED USE:** This Compensation Estimate Summary Statement is to determine the Fair Market Value of XXXXXXX.

---

The Compensation Estimate is:

| | |
|---|---|
| XXXXXXXXXX | $XXXX |
| Damages to remainder, if any, less benefits, if any: | 0 |
| Established Amount: | $XXXX |

The value of the property being acquired is based upon a compensation estimate prepared in accordance with accepted compensation estimate procedures. Full and careful consideration has been given to the highest and best use for development of the property and to all features inherent in your property in order that the highest valuation possible can be made.

The compensation estimate was developed and reported in conformity with Federal and State statutes, as well as with Right-of-Way Branch policies.

# PRELIMINARY RIGHT-OF-WAY ACTIVITIES



**PURPOSE:** This section describes and establishes procedures relating to preliminary right-of-way cost estimating.

**POLICY:** It is the policy of the Right-of-Way (ROW) Branch to prepare preliminary right-of-way cost estimates. The cost estimates are required for budgetary reasons. They are for internal use only and are not considered appraisals of the potential properties to be acquired.

**RESPONSIBILITY:** The Appraisal Section (HWY-RP) has the responsibility to estimate preliminary right-of-way costs of lands and improvements including severance damages, if anticipated, appraisal fees, costs to be expended by State forces, under jurisdiction of the ROW Branch for a particular project and to compile such data with the estimated relocation assistance costs, if any, as determined by the Property Management Section (HWY-RM) of the ROW Branch for submittal to the requesting Branch.

**SCOPE:** The provisions of this section extend to HWY-RP.

**PROCEDURE:** All requests for right-of-way cost estimates are processed through the ROW Manager for assignment to an appropriate Section Head for action.

## RIGHT-OF-WAY COST ESTIMATING:

The Appraisal Section Head, after receiving a cost estimate assignment from the ROW Manager, selects a Supervisory ROW Agent V in the HWY-RP Section to complete the assignment. Depending on the complexity of the assignment, the Supervisory ROW Agent V may in turn assign the work or portions thereof to a subordinate under his supervision. All requests and accompanying materials are carefully examined by the member assigned to perform the work so that discrepancies or questionable areas, if any, may be clarified with the requesting Branch before work plans and obtains the necessary data to complete the assignment.

All data gathered are analyzed and the costs of lands and improvements including severance damages, if any, legal cost estimates, appraisal fees and State forces costs are compiled along with the estimated relocation costs, as determined by HWY-RM, on a form entitled “Request for Right-of-Way Cost Data,” DOT 4-149. The completed form with right-of-way cost data, if found acceptable by the Appraisal Section Head, approved by the ROW Manager, is then submitted to the requesting Branch.

# QUALIFICATIONS OF STAFF APPRAISERS



**PURPOSE:** This section describes the minimum qualifications required of staff Appraisers.

**POLICY:** Use qualified staff Appraisers whenever possible or feasible for the appraisal of real property rights required for Federal-Aid and State funded highway projects. Staff Appraiser availability for in house valuation will be largely dependent on workload.

**RESPONSIBILITY:** It is the responsibility of the Appraisal Section Head, to select a qualified member of the Section for use as a Staff Appraiser and/or a Review Appraiser when appropriate to establish fair market values for highway projects.

**SCOPE:** The provisions of this section extend to the Appraisal Section (HWY-RP) of the Right-of-Way Branch (HWY-R).

**PROCEDURE:** The education and experience qualifications required for employment of staff appraisers are contained in the specifications for the classes, Right-of-Way Agent I, II, III, IV, V and VI, as determined by the State's Department of Human Resources Development and qualifications retained in the office file of the Right-of-Way (ROW) Branch. Qualifications for staff appraisers shall follow applicable State and Federal laws, and laws and procedures of the Department of Commerce and Consumer Affairs (HRS 466K).

A continual evaluation of the performance of Staff Appraisers is accomplished in the employee performance appraisal HDR 326(7/01) prepared by supervisors.

# STAFF APPRAISALS



**PURPOSE:** This section describes procedures relating to appraisals by Staff Appraisers.

**POLICY:** It is the policy of the Right-of-Way Branch (HWY-R) to use qualified Staff Appraisers whenever possible or feasible. Contract appraisers may be used when there is insufficient staffing or the section is unable to meet assignment deadlines due to workload. Staff Appraisers may be consulted to assist with appraisal of properties needed for long-term lease, e.g., air space or air rights.

**RESPONSIBILITY:** All appraisal functions are under the general supervision of the Appraisal Section Head.

**SCOPE:** The provisions of this section extend to the Appraisal Section (HWY-RP) of the Right-of-Way (ROW) Branch.

**PROCEDURE:** The appraisal assignment request is made to the Appraisal Section Head via the Branch Manager. The Appraisal Section Head delegates the assignment to a Supervisory ROW Agent V. The requested appraisals for acquisition purposes shall be addressed to the Director of Transportation, State of Hawaii, unless otherwise noted and routed through the ROW Manager. All other types of appraisals, e.g., for disposition, cost estimates, access rights, air space, revocable permits, Use and Occupancy Agreements, and others may be addressed to the ROW Manager.

Staff Appraisers may be used for the appraisal of property for rental of construction parcels and other temporary uses, partial takings, whole takings, easements, improvements, cost to cure mitigation, short term leases or revocable permits of remnants and/or air space, access rights, remnant disposition, preliminary cost estimates, subdivision analysis, and other appraisal or review assignments as directed and applicable. The use of Staff Appraisers to appraise parcels to be acquired will not be assigned to negotiate or review the same.

**APPRAISAL REPORTS:** Upon completion of the inspection, data gathering, investigation and studies, the Staff Appraiser shall prepare applicable types of appraisal reports as covered in Section 3.2. Collection and exchange of market data, and the working with or in association with other Staff Appraisers is permissible. The inspection of the comparable sales, the subject property and the valuation of the subject property, must be the sole and independent opinion of the assigned Staff Appraiser.

**CONTRACT APPRAISER:** Contract appraisers may be procured to assist Staff Appraisers for special appraisal problems as covered in Section 3.7. If necessary, the Staff Appraiser and/or the contractor may appear as expert witnesses in court to defend the valuation opinion.

**INSPECTIONS:** Including the required inspections for appraisal purposes, Staff Appraisers shall make sufficient field inspections, investigations and other studies as necessary to fulfill the need of the requesting Branch in preparing land acquisition cost estimates for purposes of route selection, budgeting, project agreements and other requests.

# QUALIFICATIONS OF FEE APPRAISERS



**PURPOSE:** This section describes the minimum qualifications required of Fee Appraisers.

**POLICY:** It is the policy of the Right-of-Way Branch (HWY-R) that all Fee Appraisers desiring to be considered for appraisal assignments meet the application requirements as indicated in the Notice to Providers of Professional Services. All applicants will be equally considered for employment in compliance with Title VI of the Civil Rights Act and that reasonable efforts are made to encourage potentially interested and qualified Fee Appraisers to apply and keep the Department's Approved List of Real Estate Appraisers viable.

**RESPONSIBILITY:** The Review Committee shall review and evaluate all applications, submissions and other pertinent information, including references and appraisal reports of all Fee Appraisers responding to the public advertisement and prepare the Approved List of Real Estate Appraisers. The Review Committee is composed of people knowledgeable of the appraisal process and procedures and/or knowledge of the projects. All Fee Appraisers are required to be a certified or licensed to perform appraisals in the State of Hawaii.

**SCOPE:** The provisions of this section extend to the Appraisal Section and independent Fee Appraisers. Appraisers within the Appraisal Section or independent Fee Appraisers need to meet the minimum qualifications as indicated in this chapter.

**PROCEDURES:** A Notice to Providers of Professional Services for the Department of Transportation shall be advertised annually by the Department and placed on the State Procurement Office website and/or the DOT website, inviting all Fee Appraisers to submit letters of interest, resumes and a copy of a current State certification or license for consideration of placement on the list.

To be eligible for placement on the list, the Fee Appraiser must submit a resume to the Review Committee and meet the following minimum qualifications:

A. Knowledge of the theories and principles of real estate valuation and land utilization, and steps, procedures and problems involved in the appraisal process;

B. Submit proof of current insurance as required by the Notice to Providers of Professional Services;

C. Submit a current appraiser certification or license with the State.

A continual evaluation of the Appraiser's qualifications and performance will be based on review of actual assignments and qualifications submitted in appraisal reports annually.

# SELECTION AND PROCUREMENT OF FEE APPRAISERS



**PURPOSE:** This section describes procedures relating to the selection and procurement of independent Fee Appraisers and Specialists to Appraisers.

**POLICY:** It is the policy of the Right-of-Way Branch (HWY-R) to hire the best qualified appraiser for a particular assignment and to distribute fee appraisal assignments as equitably as possible among all qualified appraisers on the Department's list. Qualified appraisers without regard to race, color, religion, gender, national origin, political affiliation, age or handicap shall be given an equal opportunity to appraise all types of property.

**RESPONSIBILITY:** The Review Committee shall pre-qualify Fee Appraisers for placement on the Approved List of Real Estate Appraisers. IDIQ contracts are prepared by HWY-DS using the approved list of real estate appraisers. As new assignments are received, they are evaluated to determine whether they can be completed in-house or should be outsourced, based on the complexity of the assignment and the current workload of the staff. The Appraisal Section (HWY-RP) is responsible to prepare the necessary documentation relative to an appraisal assignment and provide the appraiser with the necessary instructions, ROW Maps, and other pertinent information necessary to complete an assignment or assign a Staff Review Appraiser to accomplish the same. The Appraisal Section Head or assigned Review Appraiser or Procurement Person shall maintain liaison with Fee Appraisers during the execution of an assignment and maintain quality controls for the procured appraisal reports.

**SCOPE:** The provisions of this section extend to HWY-RP, independent Fee Appraisers and the Department of Transportation (DOT).

**PROCEDURES:**

Appraisals and other professional service needs are obtained through two primary contracting methods: Indefinite Delivery, Indefinite Quantity (IDIQ) contracts and Professional Services Contracts (PSCs). IDIQ contracts are utilized when there is a recurring need for services over a defined period but the specific scope and timing of individual assignments are not known in advance. These contracts allow the department to issue task orders as projects arise, enabling timely and efficient procurement.

Alternatively, PSCs are used for standalone assignments with a clearly defined scope and schedule, typically when the work does not fall under an existing IDIQ agreement or when specialized expertise is required. The selection between these two methods is based on project characteristics, anticipated workload, and procurement guidelines to ensure compliance, transparency, and value to the public.

The request for appraisal is received by the ROW Manager, who assigns the appraisal work to the Appraisal Section Head. The Appraisal Section Head will function as the Review Appraiser or may assign that role to a Supervisory ROW Agent V.

A. Appraisal Selection and Agreement for Professional Services for Federal Funded Projects.

The Appraisal Section Head determines the need for Independent Fee Appraisals based on the Section's workload and the project completion period. A cost estimate range is made as to the Appraisal Fees, completion period and hourly consultation fees. The appraisal assignment scope is written before the assignment a request for proposal is sent.

The Selection Committee evaluates the Approved List of Real Estate Appraisers from the Review Committee and ranks the appraisers based on the following selection criteria:

1. Experience and professional qualifications of the appraiser to be assigned to the appraisal problem;
2. Past performance on appraisals of similar scope for public agencies or private industry; and
3. Capacity to accomplish the work in the required time.
4. Other criteria deemed pertinent by the Selection Committee.

B. Request for Proposal

Upon completion of the rankings of the appraisal firms from the Selection Committee, the rankings are approved by the director of DOT, then a Request for Proposal is sent which may include the following:

1. Project identification and number;
2. Tax Map Key parcels affected, parcel number, area of taking;
3. Purpose of the appraisal;
4. Property interest to be acquired;
5. Right-of-Way maps, data to be furnished by the Department;
6. Instructions to the Appraiser;
7. Request letter for fee, completion period, consultation fees, court fees, etc.

If the top ranked appraiser is not able to perform, or their compensation is not considered reasonable, the Selection Committee evaluates and nominates the second ranked fee appraiser**.** If the second ranked fee appraiser is not acceptable, then negotiations commence with the third ranked appraiser. Each selection must be approved by the Director of Transportation, so that the negotiation can begin. The selected firm is sent a selection letter.

If the appraisal assignment falls under an IDIQ contract, the Appraisal Section Head will review the fee proposal to confirm its reasonableness. Once approved, the Section Head signs the Project Assignment Order (PAO). The procurement staff then sends a fee acceptance letter and the PAO to the contractor for signature. When the project is ready to proceed, a Notice to Proceed (NTP) is issued along with the fully executed PAO, authorizing the contractor to begin work.

If it is an individual PSC, once an acceptable fee proposal is received from the Fee Appraiser, the Appraisal Section Head or, or Procurement Person prepares a memorandum to the Director for the approval of the fee of the appraisal firm which may include the following information:

1. The scope of the appraisal assignment;
2. Estimated appraisal fee, consultation fee, completion period, court fees, consultant fees, etc.;

Following the Director's approval of the appraisal fee, an acceptance of fee letter is sent to the appraisal firm subject to procurement posting requirements, and a fully executed contract.

In both contracting methods the appraisal firm does not start the assignment until the Notice of Proceed is given by the Department of Transportation.

C. Contract for Professional Services

The Procurement Person prepares the Contract for Professional Services describing the scope of work, payment schedule, completion period and special conditions. The appraiser is responsible to provide Federal and State tax clearances (Agreements over $25,000.00) and a corporate resolution authorizing the appraiser to act on behalf of the corporation to sign the Agreement and complete the assignment. After the Fee Appraiser has executed the Agreement, the Procurement Person forwards the original Agreement to the appropriate parties to complete the contract process.

**PROCESSING THE APPRAISER'S FEE FOR PAYMENT:**

Upon receipt of the completed appraisal report, the Review Appraiser checks the report for compliance with the Agreement and State and Federal requirements. After the Review Appraiser approves the acceptable appraisal report as fair market value, the Fee Appraiser is notified to send in the invoice for the contracted fee amount. The Procurement Person signs the goods and services received stamped on the invoice and the prepared request for payment form. After acceptance by the Appraisal Section Head and appropriate approvals by the ROW Manager, the documents are submitted to the Fiscal office (HWY-SF) for payment.

# APPRAISAL REVIEW



**PURPOSE:** This section describes procedures in the Appraisal Review process.

**POLICY:** All appraisal reports for acquisition of real property rights shall be reviewed by a qualified Review Appraiser and fair market value established by the Review Appraiser prior to negotiations or hearings in condemnation proceedings.

**RESPONSIBILITY:** Review Appraisers are responsible for reviewing all appraisal reports related to acquisition and for establishing fair market value of real property and/or partial interests. Journeyman Level Right-of-Way Agent IV and above may be assigned as review appraisers. Lower level appraisers may perform reviews, if qualified, under the supervision and direction of Journeyman level agents and above. Review appraisers can provide consulting and advisory services to the agency and therefore should be involved early in the process.

**SCOPE:** The provisions of this section extend to the Appraisal Section (HWY-RP).

**PROCEDURE:** Upon receipt of appraisals, whether prepared by staff or Fee Appraisers, the Review Appraiser assigned by the Appraisal Section Head, will make necessary investigations, inspections of subject properties and comparable sales, studies and other pertinent steps to insure that the report(s) comply with Federal and State requirements. The appraisals are verified to be properly supported and documented to determine an estimate of just compensation. In the Report of Review Appraiser, form DOT 4-182 (see page 3.8-A), or any other approved report format, the Review Appraiser shall perform all necessary steps to insure that uniform standards are used in the appraisal and the review of properties involving minority, non-minority groups, Title VI assurances and other federal guidelines are strictly followed.

The value so estimated shall govern the negotiations and be a starting point to make an offer to the owner(s)/lessee(s) affected. Review Appraisers shall have the responsibility to estimate just compensation provided that the estimate of value is adequately supported and documented and is in accordance with this and other procedures.

The Review Appraiser, on the basis of additional supported and documented value information, may at any time prior to settlement, adjust the final value estimate of just compensation subject to the approval of the Right-of-Way (ROW) Manager. The Review Appraiser shall document the file with the reasons for any change made, including the data used for the change in the estimate. All value estimates and calculations made by the Review Appraiser shall be retained as part of the project files.

The review appraiser must discuss with the appraiser any discrepancies, errors, omissions, etc. and give an opportunity to respond in writing. The Review Appraiser shall initial and date the corrections or supplements in the original or "Office Copy" of the appraisal report.

The Review Appraiser will maintain liaison with the Fee or Staff Appraisers during progress of the assignment for purposes of maintaining quality controls over the appraisal product and monitoring the agreement for professional services on behalf of the Appraisal Section Head and the ROW Manager.

**FIELD INSPECTION:** The Review Appraiser shall, if possible, make an inspection of the property appraised and the comparable sales relied upon. If a field inspection cannot be made, or is not necessary, the file shall reflect the reasons and justification.

**REVIEW PROCESS:** The Review Appraiser shall examine the appraisal report(s) (see page 3.8-C) to determine that the appraisal has:

A. Been completed in accordance with the procedures, standards, and methods set forth in the State's appraisal specifications;

B. All the information and documentation necessary to substantiate the conclusions and estimates of value contained therein;

C. Included considerations of all compensable items and benefits and do not Include compensation for items that are non-compensable under State law;

D. A breakdown or a separate statement showing a reasonable allocation of land, improvements, damages and benefits, if any;

E. A statement indicating that the owner (and lessee) or his representative was afforded the opportunity to accompany

the appraiser on inspection of the property, if necessary.

The ROW Manager, or assigns, may procure a Specialist for a separate valuation of landscaping, crop damage, machinery, equipment or other specialty items for incorporation in appraisal reports. Fee or Staff Appraiser shall summarize findings of the Specialist's report, ie. Landscaping, engineering, etc.

The value of such specialty items shall not be arbitrarily added to the valuation of the other realty, but shall be considered to the extent of their contributory value in establishing the value of the whole property or partial taking.

## CORRECTIONS AND REVISIONS OF APPRAISAL REPORTS:

Prior to making his estimate of just compensation, the Review Appraiser shall request corrections or revisions of the appraisal reports which do not meet the requirements set forth in the ROW Branch's instructions to appraisers. These shall be documented in the Branch files

The Review Appraiser may document the review to correct minor mathematical errors in an appraisal that does not affect the final value conclusion. The Review Appraiser may also supplement the appraisal report where the following factual data have been omitted: project and parcel number, owner's name, parties to transaction, sale verification, date of purchase financial considerations, deed book, reference on sale of subject property, statement that there were no sales of subject in past five years, subject's location, zoning, and present use, and zoning of comparable sales.

The Review Appraiser shall initial and date the corrections or supplements in all of the appraisal reports.

## RETENTION OF APPRAISALS:

A copy of all appraisals and reviews shall be retained by the Appraisal Section and the "original" report will be stamped "Office Copy". Where corrections or revisions are necessary, the Staff or Fee Appraiser shall furnish corrected, revised or supplemental pages or portions of the report for attachment to the Office Copy. Any request for substantive corrections or revisions of an appraisal report shall be documented in the Appraisal Section's files.

## REPORT OF REVIEW APPRAISER:

The Report of Review Appraiser shall be prepared on an acceptable format approved by the Appraisal Section Head. Journeyman, supervisory and Appraisal Section Head (ROW Agents IV, V and VI) are authorized to function as review appraisers. Reports prepared by ROW Agent IV (journeyman) should have the initials of the immediate supervisor next to his signature.

The review report shall contain a breakdown of land, improvements, severance damages, special benefits, non-compensable items, etc., if applicable. This information is necessary for negotiations, property management, relocation, the Attorney General and others who use it.

## BASIS OF OFFER FORMS:

The Review Appraiser shall prepare the appropriate basis of offer forms, Report of the Review Appraiser, DOT 4-182, (see page 3.8-A), Review Certification, DOT 4-182c, (see page 3.8-B), Statement of Just Compensation, DOT 4-443 (see page 3.8-C), and Appraisal Summary Statement, DOT 4-444 (see page 3.8-D).

## APPROVAL OF REPORT OF REVIEW APPRAISER:

The person preparing the Report of Review Appraiser shall sign the report which must be approved by the Appraisal Section Head and accepted by the ROW Manager. The report can be returned for re-review by either the Appraisal Section Head or the ROW Manager when new value information is presented, for further clarification or supported factual errors found. Under no circumstances will an approved Report of Review Appraiser be discarded.

## DISTRIBUTION OF REPORT OF REVIEW APPRAISER:

A copy of the approved Report of Review Appraiser is delivered to the Land Acquisition Section Head or to the Property Management Section Head for negotiation purposes, whichever the case may be.

## REVIEW OF REAPPRAISALS OR PROPERTY OWNER'S APPRAISAL REPORTS:

The Review Appraiser will use standard procedures in reviewing re-appraisals or property owner's appraisals if such reports are assigned to him. Any change in value from the original Report of Review Appraiser should be documented in the files along with a brief explanation or reasoning for the change in value.

## COURT TESTIMONY:

If necessary, the Review Appraiser may testify in court as an expert witness and assist the Attorney General's office with any condemnation proceedings.

# REPORT OF THE REVIEW APPRAISER

TO:
THROUGH:
FROM:

APPRAISAL REPORT NUMBER:

APPRAISER:

PROJECT:

REPORT VALUATION DATE:

PARCEL:

TAX MAP KEY:

LAND AREA OF TAKING:

AREA OF LARGER PARCEL:

IMPROVEMENTS TAKEN:

DAMAGES/BENEFITS:

COUNTY ZONING:

STATE LAND USE:

OWNER:

PROPERTY INSPECTION:

PURPOSE & INTENDED USE:

PURPOSE OF THE REVIEW: The purpose of the review is to determine if the appraisal report is essentially in compliance with the most recent versions of the most recent versions of the Uniform Standards of federal land Acquisition (USFLA) and the Uniform Standards of Professional Appraisal Practice (USPAP), Hawaii Department of Transportation Appraisal Policies, as well as applicable government statutes, ordinances and admin. rules.

SCOPE OF THE REVIEW: This review entailed reading the report, inspecting the subject property and the comparables, and analyzing the valuation in order to form an opinion as to:

- the completeness of the report;
- the adequacy and relevance of the data presented;
- the reasonableness of any of the adjustments made by the appraiser to the comparable data;
- the appropriateness of the appraisal methods and techniques used; and
- the adequacy and reasonableness of the analysis, opinions, and conclusions contained in the appraisal report.

APPRAISER'S VALUE:

REVIEWER'S VALUE:

COMMENTS: I inspected the subject on . Being an easement over an existing roadway, Appraiser valued .

The appraiser's concluded value of $ is fair and reasonable

**Therefore, effective . , the fee simple market value of is: a**

Date:

_____

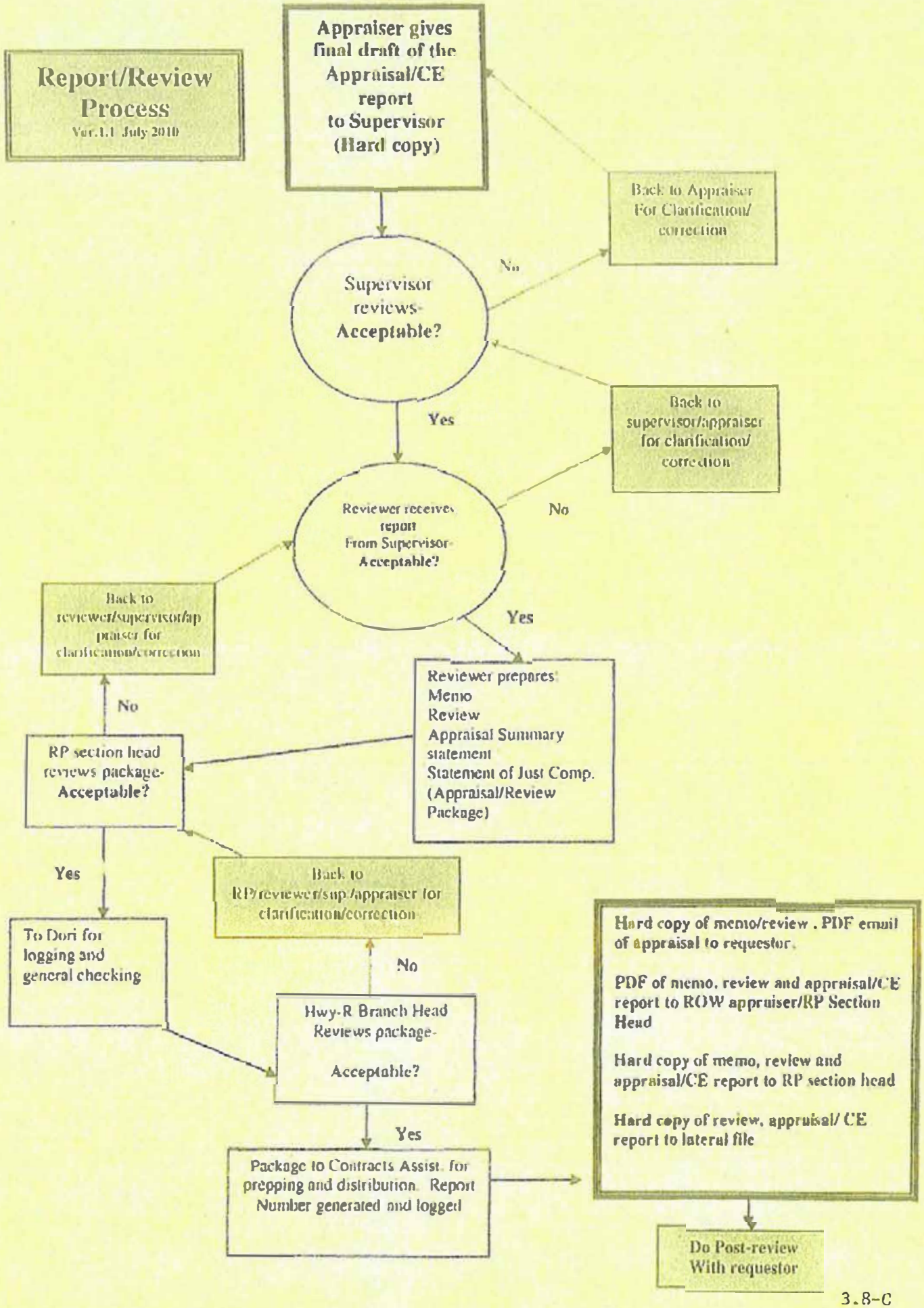
, Review Appraiser
Certified General Appraiser, CGA
Expiration Date:

# Review Certification

- The statements of fact contained in the review report are true and correct;
- The reported analyses, opinions, and conclusions in the review report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, unbiased professional analyses, opinions and conclusions;
- The review appraiser has no present or prospective interest in the property that is the subject of this review report and no personal interest or bias with respect to the parties involved;
- The compensation received by the review appraiser for the review is not contingent on the analyses, opinions, or conclusions reached or reported;
- The appraisal review was made and the review report prepared in conformity with the **Uniform Appraisal Standards For Federal Land Acquisitions;**
- The appraisal review was made and the review report prepared in conformity with the Appraisal Foundation's **Uniform Standards of Professional Appraisal Practice (USPAP)**, except to the extent that the **Uniform Appraisal Standards For Federal Land Acquisitions** required invocation of USPAP's Jurisdictional Exception Rule, as described in Section D-1 of the **Uniform Appraisal Standards For Federal Land Acquisitions.**
- The review appraiser has made a personal inspection of the property that was the subject of the appraisal report reviewed; has made a personal inspection of the market comparables cited in the appraisal report under review; has verified the factual data presented in the appraisal report reviewed; and
- No one provided significant professional assistance to the review appraiser. (If professional assistance was provided to the review appraiser, the names of the individual (s) providing such assistance must be stated. This requirement includes both professional appraisal review assistance and providers of subsidiary assistance, e.g., planning or permitting consultants, engineers, cost estimators, timber experts, mineral experts.)

Signed,

Name of reviewer
Certified General Appraiser, CGA-
Expires 12/31/


Report/Review Process
Ver. 1.1 July 2010
Appraiser gives final draft of the Appraisal/CE report to Supervisor (Hard copy)
Back to Appraiser For Clarification/ correction
No
Supervisor reviews- Acceptable?
Yes
Back to supervisor/appraiser for clarification/ correction
No
Reviewer receives report From Supervisor- Acceptable?
Back to reviewer/supervisor/appraiser for clarification/correction
No
Yes
Reviewer prepares:
Memo
Review
Appraisal Summary statement
Statement of Just Comp.
(Appraisal/Review Package)
RP section head reviews package- Acceptable?
Yes
Back to RP/reviewer/sup./appraiser for clarification/correction
No
To Dori for logging and general checking
Hwy-R Branch Head Reviews package-
Acceptable?
Yes
Package to Contracts Assist. for prepping and distribution. Report Number generated and logged
Hard copy of memo/review . PDF email of appraisal to requestor.
PDF of memo, review and appraisal/CE report to ROW appraiser/RP Section Head
Hard copy of memo, review and appraisal/CE report to RP section head
Hard copy of review, appraisal/ CE report to lateral file
Do Post-review With requestor

DOT 4-443
(HWY-RP 10/05)

## STATEMENT OF JUST COMPENSATION

**PROJECT:** Project Name,
Valuation of Permanent Easement and Construction Parcels,
Project No. _____
Koloa, Kauai, Hawaii

**SUBJECT:** Easement __
Construction Parcels _____

**TAX MAP KEY:** 4/0-0-000:000 (Dominant Tenement or Larger Parcel)

**OWNER:** _____

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

The Hawaii State Constitution, Article I, Section 20, states: "Private property shall not be taken or damaged for public use without just compensation."

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

The amount established as just compensation is not less than the State of Hawaii's approved appraisal of the fair market value of the property being acquired. Any decrease or increase in fair market value of this real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that this property would be acquired for such improvement, other than due to physical deterioration within reasonable control of the owner, has been disregarded in

determining the compensation for this property

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

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

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

**JUST COMPENSATION:** The Estimated Fair Market Value that represents the full amount of just compensation for the subject Easement __, with an area of ____ square foot as of _____, 2016, was determined to be $_____. The annual fair market rent for Construction Parcels_____, with areas of _____ and _____ square feet, respectively, was determined to be a total of $____ per annum.

DOT 4-444
(HWY-RP 10/05)

## APPRAISAL SUMMARY STATEMENT

**PROJECT:** Project Name,
Valuation of Permanent Easement and Construction Parcels
Project No. _____
Koloa, Kauai, Hawaii

**SUBJECT:** Easement ____ (_____ sq. ft.)
Construction Parcel ____ (_____ sq. ft.)
Construction Parcel ____ (_____ sq. ft.)

**TAX MAP KEY:** 4/0-0-000:000 (Dominant Tenement or Larger Parcel)

**PROPERTY ACQUIRED:** All: _____ Part: __X__

**OWNER:** _____

**ZONING:** Open District

**PRESENT USE:** Vacant

**HIGHEST & BEST USE:** A use consistent with its zoning

**INTENDED USE:** Bridge replacement

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The Market Value Estimate is as follows:

| | |
|---|---|
| Easement ____ | $____ |
| Damages to remainder less benefits, if any | ____0 |
| Just compensation for Easement __ | $____ |
| Rent for Construction Parcels _____ | $____ per annum |

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

# NON-FEDERAL-AID PROJECTS



**PURPOSE:** This section describes appraisal and appraisal review procedures to be used in non-Federal-Aid projects.

**POLICY:** Appraisals and appraisal reviews for non-Federal-Aid projects shall adhere closely to the procedures established for Federal-Aid projects.

**RESPONSIBILITY:** The Appraisal Section (HWY-RP) is responsible for providing all appraisal and appraisal review services for the Right-of-Way Branch relating to the acquisition of real property for the Hawaii Department of Transportation (DOT).

**SCOPE:** The provisions of this section extend to the Appraisal Section.

**PROCEDURE:** The Right-of-Way (ROW) Manager assigns appraisal work required for non-Federal-Aid projects to the Appraisal Section Head.

The Department of Transportation maintains an Approved List of Real Estate Appraisers on an annual basis by the Review Committee. The consultant selection process for real estate appraisals shall be in compliance with the State of Hawaii Procurement Laws and Procurement Code of Ethics.

For uniformity of operations, procedures relating to appraisers and appraisal review shall be applicable for this section.

# ACQUISITION OF GOVERNMENT LANDS



**PURPOSE:** This section describes appraisal and appraisal review procedures used in the acquisition of Federal, State or County property.

**POLICY:** Appraisal standards shall be uniform with those used for the acquisition of property.

**RESPONSIBILITY:** The Appraisal Section (HWY-RP) is responsible to provide appraisals, reviews, or special appraisal studies to be used in the acquisition of government lands.

**SCOPE:** The provisions of this section extend to the Appraisal Section.

**PROCEDURE:** The Right-of-Way (ROW) Manager assigns appraisal work involving government lands, with special instructions, if any, to the Appraisal Section Head.

The Federal Highways Administration (FHWA) will be requested to assist in the acquisition of Federal lands when necessary. Appraisal personnel may assist Acquisition personnel by reviewing the Federal agency's replacement plans and cost breakdown to assure that the proposed replacement facilities are reasonably equivalent to that which is being acquired, and to identify non-compensable betterments, if any. Where military lands are involved, the current Department of Defense criteria manual must be consulted when an obsolete facility will be replaced with a functionally equivalent facility.

The acquisition of State lands under jurisdiction of the Highways Division is non-Federal participating. When City, County or other State lands are involved, the Appraisal Section may be assigned to estimate the fair market value for land or buildings or both.

# ADMINISTRATIVE SETTLEMENTS



**PURPOSE:** To describe procedures in the review of the Attorney General's recommendation for legal settlement and Administrative Settlements allowed by law.

**POLICY:** It is the policy to use appraisal personnel to assist the Right-of-Way (ROW) Manager in the approval of legal and Administrative Settlements.

**RESPONSIBILITY:** The Attorney General is responsible for the recommendation of legal settlements. The Appraisal Section (HWY-RP) is responsible to provide their expertise in the review and recommendation of the Attorney General's proposal to the ROW Manager. All other negotiated settlements may be made by the Branch Manager with written detailed staff study support and recommendations.

**SCOPE:** The provisions of this section extend to the Appraisal Section of the Right-of-Way Branch and the Land Transportation Division of the Department of the Attorney General.

**PROCEDURES:** Two types of Settlements exist, ie Administrative and Legal

An Administrative Settlement is when an amount in excess of the approved appraisal is paid to the property owner to settle a parcel. This settlement refers to an agreement outside of a traditional court setting usually reached between owners and the agency involved. The agency is required to approve such agreements. A Written justification is to be prepared in cases where Federal funds are used to pay for or participate in the acquisition costs. This justification must include supporting documentation, e.g. trial risks, etc

A Legal Settlement is any settlement in excess of the Review Appraiser's approved estimate made by Deputy Attorney General after responsibility for a parcel acquisition has been transferred to the agent for acquisition by condemnation proceedings. No settlement, however, shall be made by Deputy Attorney General without the prior written approval of the ROW Manager.

**REQUEST FOR LEGAL SETTLEMENT:**

Recommendation for legal settlement is prepared by the Deputy Attorney General and submitted to the ROW Manager for approval. The ROW Manager shall review the recommendation and take appropriate actions as necessary.

A. Where recommendation for settlement meets with the ROW Manager's approval, the Deputy Attorney General shall be informed in writing.

    1. The Appraisal Section's expertise may be solicited for further review and comments prior to final approval.

    2. Where an amount above the appraised fair market value is involved, prior Federal Highways Administration (FHWA) concurrence to the recommendation for settlement may be solicited.

B. Where additional justification is required, the Deputy Attorney General shall be requested to submit same before formal approval or disapproval is made.

**FHWA's Concurrence to Legal Settlement**

Where FHWA's prior concurrence to the proposed legal settlement is desired, the Appraisal Section Head shall prepare the transmittal letter over the signature of the Highways Division Administrator. The letter shall include:

A. The Deputy Attorney General's memorandum which requests and supports the proposed settlement endorsed by the Appraisal Section Head and the ROW Manager;

B. A copy of the updated appraisal report(s), if applicable;

C. Other pertinent document(s) and data.

The letter may also summarize and emphasize the prime points or reasons for approval. Non-compensable items, if any, should be noted.

Upon receipt of the concurrence or non-concurrence from the FHWA, the Deputy Attorney General shall be notified by memorandum signed by the ROW Manager with the FHWA letter attached.

# CONDEMNATIONS

**PURPOSE:** To describe the Appraisal Section's (HWY-RP) role and functions in condemnation proceedings.

**POLICY:** It is the policy to provide the Deputy Attorney General with appraisal expertise as requested in all condemnation proceedings.

**RESPONSIBILITY:** The Deputy Attorney General is responsible for the submittal of requests for appraisal assistance. The Appraisal Section is responsible for providing appraisal assistance as required.

**SCOPE:** The provisions of this section extend to the Appraisal Section and the Deputy Attorney General of the Department of the Attorney General.

**PROCEDURES:** Condemnation is a legal process to invoke eminent domain and is conducted in a judicial venue. This process is only invoked by Governments as a last resort.

When necessary, the Deputy Attorney General may request for personnel assistance from the Appraisal Section to assist him in settlement of a civil case and/or through a condemnation trial in court.

**ASSIGNMENT TO THE DEPUTY ATTORNEY GENERAL:**

Request for personnel assistance in condemnation proceedings shall be made by the Deputy Attorney General to the Right-of-Way (ROW) Manager. Generally, the Review Appraiser who estimated the just compensation for the condemned parcel(s) is assigned to assist the Deputy Attorney General. The Appraisal Section Head, however, may assign an alternate Review Appraiser, if necessary. Once assigned, the Review Appraiser shall report directly to the Deputy Attorney General until completion of the assignment.

**PRE-TRIAL CONFERENCE:**

The Review Appraiser shall assist the Deputy Attorney General by providing expertise in appraisal matters during pre-trial conferences individually and also together with the Fee Appraiser who is scheduled to testify in court for the State. The Review Appraiser shall review and obtain, where possible, any additional information desired by the Deputy Attorney General in support of the State's case pertaining to valuation for the scheduled trial.

**COURT TRIAL;**

Should all attempts for legal settlement fail, a court trial is held to determine the just compensation due the property owner for the State's acquisition.

A. Preparation for Trial

The Review Appraiser shall assist the Deputy Attorney General in preparing and procuring exhibits required for court trial and any other assignments as required by the Deputy Attorney General.

B. During Trial

The Review Appraiser, upon request of the Deputy Attorney General, shall sit in during court trials. The Review Appraiser shall assist the Deputy Attorney General in the trial by taking notes which may be pertinent to the case and also as a standby to gather additional information for the trial as it progresses. The Review Appraiser may be called to testify.

# DEFINITIONS

**PURPOSE:** To provide definition of terms typically used in the Appraisal Section.

## APPRAISAL DEFINITIONS

**Appraisal**[1]: (noun) the act of developing an opinion of value; an opinion of value. (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

**Appraisal Practice**[1]: Valuation services performed by an individual acting as an appraiser, including but not limited to appraisal and appraisal review.

**Appraisal Review**[1]: The act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal and appraisal review.

**Appraiser**[1]: One who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.

**Appraiser's Peers**[1]: Other appraisers who have expertise and competency in a similar type of assignment.

**Assignment**[1]: 1) An agreement between an appraiser and a client to provide a valuation service; 2) the valuation service that is provided as a consequence of such an agreement.

**Assignment Results**[1]: An appraiser's opinions and conclusions developed specific to an assignment.

**Assumption**[1]: that which is taken to be true.

**Bias**[1]: A preference or inclination that precludes an appraiser's impartiality, independence, or objectivity in an assignment.

**Business Enterprise**[1]: An entity pursing economic activity.

**Business Equity**[1]: The interests, benefits, and rights inherent in the ownership of a business enterprise or a part thereof in any form (including, but not necessarily limited to capital stock, partnership interests, cooperatives, sole proprietorships, options, and warrants).

**Client**[1]**:** The party or parties who engage, by employment or contract, an appraiser in a specific assignment.

[1] Uniform Standards of Professional Appraisal Practice (USPAP) 2024 Edition, The Appraisal Foundation, Pages 1 to 5.

**Confidential Information**[1]: Information that is either: identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or classified as confidential or private by applicable law or regulation[2]

**Cost**[1]: The amount required to create, produce, or obtain a property.

**Credible**[1]: Worthy of belief.

**Exposure Time**[1]: The estimated length of time that a property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal.

**Extraordinary Assumption**[1]: An assumption directly related to a specific assignment, as of the effective date of the assignment results, which if found to be false, could alter the appraiser's opinions or conclusions.

**Feasibility Analysis**[1]: A study of the cost-benefit relationship of an economic endeavor.

**Hypothetical Condition**[1]: A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.

**Intangible Property**[1]: Nonphysical assets, including but not limited to franchises, trademarks, patents, copyrights, goodwill, equities, securities, and contracts as distinguished from physical assets such as facilities and equipment.

**Intended Use**[1]: The use or uses of an appraiser's reported appraisal, appraisal review assignment opinions and conclusions, as identified by the appraiser based on communication with the client at the time of the assignment.

**Intended Users**[1]: The client and any other party as identified, by name or type as users of the appraisal, appraisal review, or appraisal consulting report by the appraiser on the basis of communication with the client at the time of the assignment).

**Jurisdictional Exception**[1]: An assignment condition established by applicable law or regulation, which precludes an appraiser from complying with part of USPAP.
**Larger Parcel**[3]: That tract, or those tracts, of land, which possess a unity of ownership and have the same, or an integrated, highest and best use. Elements of consideration by the Appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.

[2] Notice: For example, pursuant to the passage of the Gramm-Leach –Biley Act in November 1999, some public agencies have adopted privacy regulations that affect appraisers. As a result, the Federal Trade Commission issued a rule focused on the protection of "non-public personal information" provided by consumers to those involved in financial activities "found to be closely related to banking or usual in connection with the transaction of banking." These activities have been deemed to include "appraising real or personal property." (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information; Final Rule, 16 CFR part 313)

[3] The interagency Land Acquisition Conference, Uniform Appraisal Standards of Federal Land Acquisitions, 5th Ed. (Chicago: Appraisal Institute, 2000).

In condemnation, the tract or tracts of land that are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use: Elements of consideration by the Appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use. In condemnation, the portion of a property that has unity of ownership, contiguity, and unity of use, three conditions that establish the larger parcel for the consideration of severance damages in most states. In Federal and some state cases, however, contiguity is sometimes subordinated to unitary use.

**Fee Simple Estate**[4]: Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and excheat.

**Leased Fee Estate**[5]: An ownership interest held by a landlord with rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.

**Leasehold Estate**[5]: The interest held by the lessee (the tenant or renter) through a lease conveying the rights or use and occupancy for a stated term under certain conditions.

**Market Value USPAP**[1]: A type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal.

Comment: Forming an opinion of market value is the purpose of many real property appraisal assignments, particularly when the client's intended use includes more than one intended user. The conditions included in market value definitions establish market perspectives for development of the opinion. These conditions may vary from definition to definition but generally fall into three categories: 1) the relationship, knowledge, and motivation of the parties (i.e., seller and buyer); 2) the terms of the sale (e.g., cash, cash equivalent, or other terms); and 3) the conditions of sale (e.g., exposure in a competitive market for a reasonable time prior to sale).

**Market Value UASFLA**[5]: The amount in cash or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably

[4] The Dictionary of Real Estate Appraisal, Fifth Edition, Appraisal Institute

[5] Uniform Appraisal Standards of Interagency Land Acquisition Conference, Uniform Appraisal Standards of Federal Land Acquisitions, 5th ed. (Chicago: Appraisal Institute, 2000).

[6] State Housing Authority vs. Rodrigues, 43 Hawaii 195 (1959) State Supreme Court definition

[7] 12 C.F.R. Part 34.42(g); 55 Federal Register 34696, August 224, 1990, as amended at 57 Federal Register 12202, April 9, 1992; 59 Federal Register 29499, June 7, 1994.

[8] Regulations published by federal regulatory agencies pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 between July 5, 1990, and August 24, 1990, by the Federal Reserve System (FRS), National Credit Union Administration (NCUA), Federal Deposit Insurance Corporation (FDIC), the office of Thrift Supervision (OTS), and the office of Comptroller of Currency (OCC).

knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

**Fair Market Value State of Hawaii**[6]: The amount of money which a purchaser willing but not obliged to buy the property would pay an owner willing but not obliged to sell it, taking into consideration all uses to which the land was adapted and might in reason by applied.

**Market value FIRREA**[8]**:**means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(a) Buyer and seller are typically motivated;
(b) Both parties are well informed or well advised, and acting in what they consider their best interests;
(c) A reasonable time is allowed for exposure in the open market;
(d) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
(e) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

**Fair Market Rent**[7]: The most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the property to be leased under the terms and conditions of the lease, should rent for its highest and best use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the lessor and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

**Market Rent**[4]: Market rent is an important concept in real property appraisal engagements. The following current definition is used: The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options, and tenant improvements; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions:

1) Lessee and lessor are typically motivated
2) Both parties are well informed or well advised, in acting in what they consider their best interests;
3) A reasonable time is allowed for exposure in the open market;
4) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract;
5) The rental amount represents the normal consideration for the property leased unaffected by the special fees or concessions granted by anyone associated with the transaction.

**Mass Appraisal**[1]: The process of valuing a universe of properties as of a given date using standard methodology; employing common data, and allowing for statistical testing.

**Mass Appraisal Model**[1]: A mathematical expression of how supply and demand factors interact in a market.

**Personal Property**[1]: Identifiable tangible objects that are considered by the general public as being "personal" – for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all tangible property that is not classified as real estate.

**Price**[1]**:** The amount asked, offered, or paid for a property. Comment: Once stated, price is a fact, whether it is publicly disclosed or retained in private. Because of the financial capabilities, motivations, or special interests of a given buyer or seller, the price paid for a property may or may not have any relation to the value that might be ascribed to that property by others.

**Prospective Value**[4]**:** A value opinion effective as of a specified future date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specified future date. An opinion of value as of a prospective date is frequently sought in connection with projects that are proposed, under construction, or under conversion to a new use, or that have not yet achieved sellout or a stabilized level of long-term occupancy

**Real Estate**[1]**:** An identified parcel or tract of land, including improvements, if any.
Real Property[1]: The interests, benefits, and rights in the ownership of real estate. Comment: In some jurisdictions, the terms real estate and real property have the same legal meaning. The separate definitions recognize the traditional distinction between the two concepts in appraisal theory.

**Report**[1]: Any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client upon completion of an assignment. Comment: Most reports are written and most clients mandate written reports. Oral requirements are included to cover court testimony and other oral communications of an appraisal, appraisal review, or appraisal consulting service.

**Retrospective Value**[4]: A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion."

**Scope of Work**[1]: They type and extend of research and analyses in an assignment.

**Signature**: Personalized evidence indicating authentication of the work performed by the appraiser and acceptance of the responsibility for content, analyses, and conclusions in the report.

**Valuation Services**[1]: Services pertaining to aspects of property value. Comment: Valuation services pertain to all aspects of property value and include services performed both by appraisers and by others.

**Value**[1]: The monetary relationship between properties and those who buy, sell, or use those properties. Comment: Value expresses an economic concept. As such it is never a fact but always an opinion of the work of a property at a given time in accordance with a specific definition of value. In appraisal practice, value must always be qualified – for example, market value, liquidation value, or investment value.

**Workfile**[1]: Documentation necessary to support an appraiser's analyses, opinions, and conclusions.

Definitions Related to Partial Acquisitions:

**Benefits**[6]: Benefits are an in increase in value to the remainder property as a result of a partial acquisition. General benefits are benefits from a public improvement accruing to a community as a whole, applying to all properties similarly situated. Special benefits are benefits from a public improvement accruing to one property. Examples include a change to a higher and better use, improved location (e.g., at an interchange), increased frontage, improved topography, improved drainage, increased visibility and site prominence, lower development costs, improved accessibility and/or access, better accessibility to utilities.

**Damages**[7]: Damages are a loss in value to the remainder property as a result of a partial acquisition. Compensable damages are damages, which a condemnor is legally required to pay as a result of either an entire or partial acquisition under applicable state or federal law. Non compensable damages are damages, which a property may suffer but that the condemnor is not legally required to pay.

**Easement**[8]: An easement is a non-possessory interest one has in the property of another for a specific purpose. An easement appurtenant is for the benefit of another real estate parcel. This type of easement, once granted, attaches to the land and binds subsequent owners who cannot interfere with the exercise of the easement. This type of easement "runs with the land." An easement appurtenant has both a dominant estate and a servient estate. Easement in gross benefits a person or company, rather than benefiting another real estate parcel. An easement in gross may be a personal easement in gross or a commercial easement in gross. A personal easement in gross is similar to a license and it is in favor of a person and that person only. It is not transferable. A commercial easement in gross does not attach to another specific property. It may be transferable, divisible and allow for joint use. There is a servient estate but no dominant estate. Typically public utility easements are commercial easements in gross. Easements can be permanent or temporary. A permanent easement lasts forever. A temporary easement is for a limited duration.

[6] The Valuation of Partial Acquisitions, International Right of Way Association, 2010, Page 51
[7] The Valuation of Partial Acquisitions, International Right of Way Association, 2010, Page 48
[8] The Valuation of Partial Acquisitions, International Right of Way Association, 2010, Page 53

**Subsurface Easement**[9]: The rights to use the underground portion of a property. A sub-surface easement may involve some incidental surface rights. Examples of include utilities, pipelines, drainage, transportation, mining.

**Surface Easement:** The rights to use the surface of the property only. A surface easement may involve some incidental aerial rights. Examples of surface easements include right of ways, flowage, sight distance, conservation.

**Overhead Easement**: The rights to use the space, at a designated distance, above the property's surface. An overhead easement may involve some incidental surface rights. Examples of overhead easements include utilities, avigation, transportation (elevated).

[9] The Valuation of Partial Acquisitions, International Right of Way Association, 2010, Page 62

# ORGANIZATION AND FUNCTIONS

**PURPOSE:**

To describe the organization and functions of the Property Management Section (HWY-RM) of the Right-of-Way Branch (HWY-R), Highways Division. HWY-RM is directed and guided by, but not limited to, the following: Code of Federal Regulations (CFR), United States Code (USC), Hawaii Revised Statutes (HRS) Hawaii Administrative Rules (HAR) and other State and Federal property management policies listed below:

23 CFR 645.213, Utility Use and Occupancy Permits

23 CFR 710.401- 409, Real Property Management

49 CFR Part 24, Uniform Relocation Assistance

HRS 171, Public Lands, Management and Disposition of

HRS 264, Highways

HRS 343- Environmental Compliance

HAR Section 19-105-19 (b), Use and Occupancy Agreements

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

**OBJECTIVE:**

The Property Management section is set to provide:

A. Relocation assistance services for the Division's projects and the Department;

B. Management and disposition of lands and improvements under Highways jurisdiction or ownership;

C. Property Management Services in general for all of the various branches and sections of the Division that are not part of an unfinished highway project.

**ADMINISTRATION:** The Property Management section is headed by the Right-of-Way (ROW) Agent VI (Supervising Right-of-Way Agent), who carries the title of Section Head. He is responsible for the functions and activities of his section and operates under the general supervision of the ROW Manager.

**ORGANIZATION:** The Property Management section is comprised of two units. The organizational chart of HWY-RM is shown on page 5.1-A.

**FUNCTIONS:** The Section Head is assisted by an office assistant and two ROW Agent V's (Supervising Right-of-Way Agent) separated under Unit A and Unit B. Unit A and Unit B consists of one supervisor with three ROW Agents that carry out assignments and/or projects assigned to them. The section:

A. Prepares Conceptual Relocation Program Plans for route selection proposed during the planning stage of the highway and final relocation plans for Federal Highways Administration (FHWA) review and approval for job authorization for right-of-way acquisition in design stage if required;

B. Provides relocation advisory assistance services and payments to individuals, families, businesses including farm operations and non-profit organizations displaced by highway projects;

C. Computes replacement housing payments in accordance with Federal and State laws and updates relocation brochures whenever Federal or State laws governing relocation assistance are amended;

D. Processes all claims for relocation assistance payments;

E. Administers the rental of real properties acquired as right-of-way for highway projects when it is determined practicable to do so on an interim basis; administers the rental of airspace under highway viaducts and excess properties acquired in connection with the highway project;

F. Disposes of improvements in connection with the clearing of right-of-way by public auction sale when County approval can be obtained to relocate buildings or by requesting demolition if approval cannot be obtained or disposal by sale is deemed impractical;

G. Determines as to whether or not rodent control measures are necessary prior to sale or demolition improvements for each project and makes arrangements for control measures by either the Board of Health or a private firm as required;

H. Prepares request to the Board of Land and Natural Resources (BLNR) for disposition of remnants that fall under HRS 171 and that are surplus to highway needs, then with BLNR's approval, disposes of the remnants. If these remnants have a Federal interest the funds are to be utilized on Title 23 eligible activities;

I. Processes request to purchase or use portions of the ROW under HRS 264 that is determined excess to highways needs, including subdivision and consolidation within abutting parcels owned by private entities.

J. Maintains records as supporting documentation and files reports on relocation activities as required by FHWA;

K. Maintains inventory of remnants, airspace and rentals;

L. Prepares annual reports of the Relocation Assistance Program and Property Management activities.

**Qualifications of Right-of-Way Agents:**

The minimum qualification requirements of the ROW Agent in the various classifications are as follows:

**A. Right-of-Way Agent VI (Section Head)**

**ROW VI Section Head Experience and Training:**

- Graduation from an accredited college or university;
- Four and one half years of progressively responsible work experience in the appraisal of real property, disposition of real property and right-of-way;
- Interim property management, of which at least one year of experience must have been comparable to that of the next lower level in this series, or any equivalent combination of training and experience;
- Possession of a valid driver's license.

**ROW VI Section Head Knowledge:**

- A thorough knowledge of principles and practices of appraising, negotiation and/or managing real property of all categories for disposition purposes;
- Laws pertaining to the disposition of right-of-way, disposition of Public Land and Highways, laws pertaining to relocation assistance, sources of appraisal data, pertinent laws, precedent decisions, and agency instructions;
- Legal instruments affecting real property;
- Condemnation laws;
- Principles and practices of supervision;
- Public relations;
- Principles of report writing;
- Arithmetic, mathematical problem solving;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW VI Section Head Ability:**

- Plan, schedule, assign, review and evaluate the work of others;
- Review and analyze appraisal, negotiation and relocation reports;
- Serve as expert witness in condemnation proceedings;
- Conduct orientation and training activities;
- Make conclusions and derive estimates based on facts;
- Meet and deal effectively with property owners and others;
- Speak and write effectively;
- Maintain effective public relations.

## B. Right-of-Way Agent V (Supervising Right-of-Way Agent)

**ROW V Supervisor Experience and Training:**

- Graduation from an accredited college or university;
- Three and one half years of progressively responsible work experience in the appraisal of real property, property management, disposition of real property and right-of-way and relocation advisory assistance work;
- Interim property management, of which as least one year of experience must have been comparable to that of the next lower level in this series; or any equivalent combination of training and experience;
- Possession of a valid driver's license.

**ROW V Supervisor Knowledge:**

- A thorough knowledge of principles and practices of appraising, negotiation, and managing real properties of all categories;
- Laws pertaining to the disposition of right-of-way, disposition of Public Land & Highway, laws pertaining to relocation assistance, sources of appraisal data, pertinent laws, precedent decisions, and agency instruction;
- Legal instruments affecting real property;
- Condemnation laws;
- Principles and practices of supervision;
- Public relations;
- Principles of report writing;
- Arithmetic; mathematical problem solving;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW V Supervisor Ability:**

- Plan, schedule, assign, review and evaluate the work of others;
- Review and analyze appraisal, negotiation and relocation reports;
- Serve as expert witness in condemnation proceedings;
- Conduct orientation and training activities;
- Make conclusions and derive estimates based on facts; Meet and deal effectively with property owners and others;
- Speak and write effectively;
- Maintain effective public relations.

**C. Right-of-Way Agent IV (Journeyman Level)**

**ROW IV Agent Experience and Training:**

- Graduation from an accredited college or university;
- Two and one half years of progressively responsible work experience in the appraisal of real property, property management, disposition of real property and right-of-way and relocation advisory assistance work;
- Possession of valid driver's license.

**ROW IV Agent Knowledge:**

- A thorough knowledge of the principles and practices of appraising, negotiation and/or managing of real property of all categories for disposition purposes.
- Laws pertaining to the disposition of right-of-way, disposition of Public Land and Highways, laws pertaining to relocation assistance, sources of appraisal data, pertinent laws, precedent decisions, and agency instruction;
- Legal instruments affecting real property;
- Condemnation laws;
- Principles and practices of supervision;
- Public relations;
- Principles of report writing;

- Arithmetic, mathematical problem solving;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW IV Agent Ability:**

- Perform all categories of real property appraisal, negotiation and/or property management work;
- Gather, organize, and analyze data on sales, leases and other factors;
- Make sound conclusions and estimates based on facts;
- Prepare reports and compile data, maps, sketches and other materials;
- Make arithmetic computations;
- Meet and deal effectively with property owners, tenants and others;
- Serve as expert witness in condemnation proceedings;

## D. Right-of-Way Agent III

**ROW III Agent Experience and Training:**

- Graduation from an accredited college or university;
- One and a half years of progressively responsible work experience in the appraisal of real property, property management, disposition of real property and right-of-way and relocation advisory assistance work;
- Possession of valid driver's license.

**ROW III Agent Knowledge:**

- Principles and practices of appraising, negotiation and/or managing real property of all categories for disposition purposes;
- Laws pertaining to the disposition of right-of-way, disposition of Public Land and Highways, laws pertaining to relocation assistance, sources of appraisal data, pertinent laws, precedent decisions, and agency instruction;

- Legal instruments affecting real property;
- Condemnation laws;
- Principles of report writing;
- Arithmetic, mathematical problem solving;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW III Agent Ability:**

- Perform all categories of real property appraisal, negotiation and/or property management work;
- Gather, organize, and analyze data on sales, leases and other factors;
- Make sound conclusions and estimates based on facts;
- Prepare reports and compile data, maps, sketches and other materials;
- Make arithmetic computations;
- Meet and deal effectively with property owners, tenants and others.

## E. Right-of-Way Agent II

**ROW II Agent Experience and Training:**

- Graduation from an accredited college or university;
- Six months of specialized experience (progressively responsible work experience) in the appraisal of real property, property management, disposition of real property and right-of-way and relocation advisory assistance work;
- Possession of valid driver's license.

**ROW II Agent Knowledge:**

- Basic methods of appraisal, disposition and/or management of real property;
- Laws pertaining to relocation assistance and disposition of Public Lands; source of appraisal data;
- Principles of report writing;
- Arithmetic; mathematical problem solving;
- Legal instruments affecting real property; pertinent laws and agency instruction;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW II Agent Ability:**

- Apply simple methods and techniques of real property appraisal, disposition and/or property management;
- Read maps and blueprints;
- Write clearly and concisely;
- Perform arithmetic computations accurately;
- Organize and present data in tabular and narrative form;
- Prepare reports and compile data, maps, sketches and other materials;
- Meet and deal effectively with property owners, tenants and others.

## F. Right-of-Way Agent I

**ROW I Agent Experience and Training:**

- Graduation from an accredited college or university;
- Possession of valid driver's license.

**ROW I Agent Knowledge:**

- Principles of report writing;
- Arithmetic; mathematical problem solving.

**ROW I Agent Ability:**

- Learn the purposes, methods and techniques of real property appraisal, disposition and/or property management;
- Write clearly and concisely;
- Perform arithmetic computations accurately;
- Organize and present data in tabular and narrative form;
- Meet and deal effectively with property owners, tenants and others.

## G. Office Assistant IV

**Office Assistant Experience and Training and Knowledge:**

- Six months of work experience which demonstrated knowledge of English grammar, spelling, and arithmetic;
- Two years of clerical work experience which involved the performance of a variety of clerical tasks and demonstrated knowledge of office practices and procedures;

**Office Assistant IV Abilities:**

- Ability to read and understand oral and written instructions,
- Ability to carry out procedures in clerical work systems and operate various kinds of office equipment and technologies.
- Write simply and directly and compare words and numbers quickly and accurately.
- Ability to use computers and word processing and other software applications,
- Keyboarding/typing skills at 40 words per minute.

# GENERAL RELOCATION REQUIREMENTS

**PURPOSE:**

To prescribe general requirements governing the provision of relocation payments and other relocation assistance.

To insure, to the greatest extent possible, the equitable and prompt relocation and reestablishment of persons, businesses, farmers and non-profit organizations displaced as a direct result of Federal-Aid highway projects. The procedures on relocation assistance are intended to establish a means of providing relocation services and of making moving cost payments so that a few individuals do not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole and to ensure that implementation of regulations are efficient and cost effective. [1]

**POLICY:**

To follow the rules, policies and procedures set forth herein so that every individual displaced because of a Federal-Aid highway project will have or will have been offered a comparable, decent, safe and sanitary dwelling to move into upon being required to vacate the dwelling acquired. It requires relocation services be furnished and payments be made to those who are required to relocate to compensate for, in whole or in part, costs incurred for moving, replacement housing and certain other expenses. It also provides for hearing and appeal procedures to encourage amicable resolution of controversies that may arise.

**RESPONSIBILITY:**

It is the responsibility of the Property Management Section (HWY-RM) of the Right-of-Way Branch to provide relocation assistance in accordance with Federal and State laws. These requirements apply to the relocation of any displaced person. Any person who qualifies as a displaced person must be fully informed of his rights and entitlements to relocation assistance and payments provided by the Uniform Act and this regulation. [2]

**SCOPE:**

The provisions of this section apply to HWY-RM of the Right-of-Way Branch, of the Highways Division and the Department of Transportation.

[1] 49 CFR 24.201
[2] 49 CFR 24.202 and Appendix A 24.202

**PROCEDURES:** Any individual, family, business, farm operation or nonprofit organization directly affected by a Federal-Aid project is entitled to relocation assistance services as prescribed by the law.

**DEFINITIONS:** The following terms are defined for the purpose of this procedure:

A. Person: Any individual, partnership, corporation or association.

B. Family: Two or more individuals, one of whom is the head of a household, plus all other individuals regardless of blood or legal ties who live with, are considered a part of the family unit. Where two or more individuals occupy the same dwelling with no identifiable head of a household, they shall be treated as one family for replacement housing payment purposes.

C. Displaced Person (General): [3]
(i) Generally, the term displaced person means, except as provided in paragraph (ii) of this section, any person who permanently moves from the real property or moves his personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described in 24.401 (a) and 24.402 (a)):

1. As a direct result of a written notice of intent to acquire, rehabilitate, and/or demolish (see Sec. 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

2. As a direct result of rehabilitation, demolition for a project: or

3. As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph (i)(c) applies only for purposes of obtaining relocation assistance advisory services under Sec. 24.205(c), and moving expenses under Sec. 24.301, Sec. 24.302 or Sec. 24.303.

[3] 49 CFR 24.2(a) (9)(i)

(ii) Persons required to move temporarily. A person who is required to move or moves his or her personal property from the real property as a direct result of the project but is not required to move permanently, for temporary moves under 12 months. Such determination shall be made by the agency in accordance with any requirement, policy, or guidance established by the Federal agency funding the project. (see appendix A to this part, section 24.2(a). All benefits for persons required to move on a temporary basis are described in 24.202(a).

(iii) Voluntary acquisitions. A tenant who moves as a direct result of a voluntary acquisition as described in 24.101(b) (1) through (3) is eligible for relocation assistance when there is a binding written agreement between the agency and the owner that obligates the agency, without further election, to purchase the real property. Federal Funding agencies should develop policies identifying the types of agreements used in its programs or projects which it considers to be binding and which would therefore trigger eligibility for tenants as displaced persons. Agreements such as options to purchase and conditional purchase and sale agreements are not considered a binding agreement within the meaning of this paragraph (iii) until all conditions to the agency's obligation to purchase the real property have been satisfied. Provided that, the agency may determine that a tenant who moves before there is a binding agreement is eligible for relocation assistance once a binding agreement exists allowing establishment of eligibility (see appendix A to this part, section 24.2(a)).

D. Persons not displaced: The following is a nonexclusive list of persons who do not qualify as displaced persons under this part:

1. A person who moves before the initiation of negotiations (see Sec. 24.403(d)), unless the agency determines that the person was displaced as a direct result of the program or project;

2. A person who initially enters into occupancy of the property after the date of its acquisition for the project;

3. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

4. An owner-occupant who moves as a result of an acquisition of real property as described in Sect. 24.101(a) (2) or 24.101(b)(1) or (2), or as a result of the rehabilitation or demolition of the real property. However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or Federally-Assisted project is subject to this part);

5. A person whom the agency determines is not displaced as a direct result of a partial acquisition;

6. A person who, after receiving a notice of relocation eligibility (described at Sec. 24.203(b)) is notified in writing that he will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and the agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

7. An owner-occupant who conveys his or her property, as described in Sec. 24.101(a)(2) or 24.101(b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;

8. A person who retains the right of use and occupancy of the real property for life following its acquisition by the agency;

9. An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Public Law 93-477, Appropriations for National Park System, or Public Law 93-303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;

10. A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in Sec. 24.206. However, advisory assistance may be provided to unlawful occupants at the option of the agency in order to facilitate the project;

11. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with Sec. 24.208; or

12. Temporary, daily, or emergency shelters occupants are in most cases not considered displaced persons. However, agencies may determine that a person occupying a shelter is a displaced person due to factors which could include reasonable expectations of a prolonged stay, or other extenuating circumstances. At a minimum, agencies shall provide advisory assistance to all occupants at initiation of negotiations (see appendix A to this part, section 24.2(a), definition of displaced persons.)

E. Initiation of Negotiations: Unless a different action is specified in applicable Federal Program regulations, means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal agency or a State agency, the term means the delivery of the initial written offer of just compensation by the agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of it's intent to acquire, rehabilitate, or demolish the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the term means the actual move of the person from the property.

(ii) Whenever the displacement is caused by rehabilitation, the demolition, or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the term means the notice to the person that he or she will be displaced by the project or , if there is no notice, the actual move of the person from the property.

(iii) In case of permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of1980 (Pub. L. 96-510, or Superfund), the term means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation of a tenant.

(iv) In the case of permanent relocation of a tenant as a result of a voluntary-acquisition for real property described in 24.101 (b)(1) the tenant is not eligible for relocation assistance under this part, until there is a binding written agreement between the agency and the owner that obligates the agency, without further election, to purchase the real property. (See appendix A to this part, section 24.2(a)) Agreements such as options to purchase and conditional purchase and sale agreements are not considered binding agreement with the meaning of this part unless the Federal agency providing the Federal assistance or until all conditions to the agency's obligation to purchase the real property have been satisfied.

F. Relocatee: Any person who meets the definition of a displaced person.

G. Dwelling [4] The place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house, a single-family unit in a two family, multi-family, or multi-purpose two family purpose property, a unit of a condominium or cooperative housing project, a mobile home, or any other residential unit.

H. Comparable Replacement Dwelling [5] A comparable replacement dwelling means a dwelling which is:

1. Decent, safe and sanitary [6]

The term decent, safe, and sanitary dwelling means a dwelling which meets the requirements of paragraphs (i) through (vii) of this definition or the most stringent of the local housing code, Federal agency regulations, or the agency's regulations or written policy. The DSS dwelling shall:

- Be structurally sound, weather tight, and in good repair; Many local housing and occupancy codes require the abatement of deteriorating paint, including lead based paint and lead based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored.

[4] 49 CFR 24.2 (10)
[5] 49 CFR 24.2 (6)
[6] 49 CFR 24.2 (a) (8)

- Contain a safe electrical wiring system adequate for lighting and other devices;

- Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;

- Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by the most stringent of the local housing code, Federal agency regulations or requirements, or, the agency's regulations or written policy. In addition, the Federal funding agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such agencies;

- There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. When required by local code standards for residential occupancy, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator (see appendix A to this part, section 24.2(a), definition of DSS);

- Contains unobstructed egress to safe, open space at ground level; and

- For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (See appendix A, Sec. 24.2(a), definition of DSS))

2. Functionally equivalent to the displacement dwelling[7] (means it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principle features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling must be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the agency may consider reasonable trade-offs for the specific features when the replacement unit is equal to or better than the displacement dwelling. (See appendix A of this part, Section 24.2(a) Comparable *replacement* dwelling):

   a. Number of Rooms;
   b. Adequate in size to accommodate the occupants.
   c. Type of Construction;
   d. Age;
   e. State of Repair;
   f. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site does not need to include special improvements such as outbuildings, swimming pools, greenhouses, ponds, views, and ocean and beach frontage, (See also 24.203(a) (2));
   g. Agency may consider reasonable trade-offs for specific features;
   h. Not subject to unreasonable adverse environmental conditions;
   i. Location not less desirable than the location of the displaced person's dwelling with respect to public utilities, and commercial and public facilities, and reasonably accessible to the person's place of employment;
   j. Currently available to the displaced person on the private market except as provided on paragraph (ix) of this definition (see appendix A to this part, Section 24.2(a), definition of comparable replacement dwelling), and
   k. Within the financial means of the displaced person:

[7] 49 CFR 24.2 (6) (ii)

(i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to the initiation of negotiations (90 day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in 24.201(c), all increased mortgage interest costs as described at 24.401(d) and all incidental expenses as described at 24.401 (f), plus any additional amount required to be paid under 24.404.

(ii) A replacement dwelling rented by a eligible displaced person is considered to be within his or her financial means, if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet the length of occupancy requirements comparable replacement rental housing is considered to be within the person's financial means if an agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in 24.402(b)(2). Such rental assistance must be paid under 24.404.

l. For a person receiving Government housing assistance before displacement, a dwelling that may reflect similar Government housing assistance. In such cases any requirements of the Government housing assistance program, including fair housing, civil rights, and those relating to the size of the replacement dwelling, shall apply. However, nothing in this part prohibits an agency from offering, or precludes a person from accepting assistance under a government housing program, even if the person did not receive similar assistance before displacement, subject to the eligibility requirements of the Government housing assistance program. An agency is obligated to inform the person of his or her options under this part and the implications of accepting a different form of assistance than the assistance that the person may currently be receiving. If a person accepts assistance under a Government housing assistance program, the rules of that program apply, and the rental assistance payment under

24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing and associated utilities after the applicable Government housing assistance has been applied. In determining comparability of housing under this part:

A. A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit.

B. A privately owned unit with a housing project – based rental subsidy (e.g. tied to the unit or building) may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing unit.

C. An offer for tenant-based rental assistance such as a HUD Section 8 Housing Choice Voucher, may be provided along with an offer of a comparable replacement dwelling to a person receiving a similar subsidy assistance or public housing unit before displacement. The displacing agency must confirm that the owner will accept tenant based rental assistance before offering the unit as comparable replacement housing. (see appendix A to this part, section 24.2(a), definition of comparable [OBJ] replacement dwelling)

3. Fair housing is open to all persons regardless of race, color, religion, gender, or national origin and consistent with the requirements of applicable law.

J. Business [8]

Any lawful activity, excepting a farm operation, conducted primarily:

1. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities or any other personal property.

2. For the sale of services to the public.

3. By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

[8] 49 CFR 24.2 (4)

4. Solely for the purpose of moving and related expenses under Part 8, Chapter 4, Section 3, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, or personal property.

K. Nonprofit Organization [9]

A corporation, partnership, individual or other public or private entity, engaged in a business, professional or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession or institutional activity on the premises, that is incorporated under the applicable laws of the State as a non-profit organization and exempt from paying Federal income taxes under Section 501 of the IRS code.

L. Farm Operation [10]

Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

The farm operation contributes at least one-third of the operator's income. However, in instances where such operations are obviously a farm operation, it need not contribute one-third to the operator's income for him to be eligible for relocation payments.

M. Federal agency

Any department, agency or instrumentality in the executive branch of the United States Government, any wholly owned U.S. Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal Law.

N. State [11]

Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands or any political subdivision under these jurisdictions.

[9] 49 CFR 24.2 (19)
[10] 49 CFR 24.2 (12)
[11] 49 CFR 24.2 (25)

O. State Agency

Any department, agency, or instrumentality of a state, or of a political subdivision of a state, or any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state(s) and any person who has the authority to acquire property by eminent domain under State Law.

P. Lead Agency [12]

The Department of Transportation acting through the Federal Highways Administration.

Q. Federal Financial Assistance [13]

A grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

R. Mortgage [14]

Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

S. Owner of a Dwelling [15]

Means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

1. Fee title, a life estate, a land contract, 99-year lease, or a lease including any option for extension with at least 50 years to run from the date of acquisition: or

2. An interest in a cooperative housing project which includes the right to occupy a dwelling: or

[12] 49 CFR 24.2 (16)
[13] 49 CFR 24.2 (13)
[14] 49 CFR 24.2 (18)
[15] 49 CFR 24.2 (20)

3. A contract to purchase any of the interests or estates described in this section: or

4. Any other interest, including a partial interest, which in the judgment of the agency warrants consideration as ownership.

T. Owner's or tenant's designated representative. Means a representative designated by a property owner or tenant to receive all required notifications and documents from the agency. The owner or tenant must provide the agency a written notification which states that they are designating a representative, provide that person's name and contact information and what if any notices or information, the representative is not authorized to receive.

U. Program or project. Means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

V. Recipient. Means a non-Federal entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The recipient is accountable to the Federal funding agency for the use of funds and for compliance with applicable Federal requirements. The term recipient does not include subrecipients.

W. Reverse mortgage (also known as a Home Equity Conversion Mortgage (HECM). Means a first mortgage which provides for future payments to the homeowner based upon accumulated equity and which a housing creditor is authorized to make under any Federal law or State constitution, law, or regulation. See 12 U.S.C. 1715z-20 for additional information. It is a class of lien generally available to persons 62 years of age or older. Reverse mortgages do not require a monthly mortgage payment and can also be used to access a home's equity. The reverse mortgage becomes due when none of the original borrower's lives in the home, if taxes or insurance becomes delinquent, or if the property falls into disrepair.

X. Salvage value. Means the probable sale price offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use or recycled when there is no reasonable prospect for sale except on this basis.

Y. Small Business. Means a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of 24.303 or 24.304.

Z. Subrecipient. Means a government agency or legal entity that enters into an agreement with a recipient to carry out part or all of the activity funded by Federal program grant funds. A subrecipient is accountable to the recipient for the use of the funds and for compliance with applicable Federal requirements.

Temporary, daily, or emergency shelter (shelter). Means any facility, the primary purpose of which is to provide a person with a temporary overnight shelter which does not allow prolonged or guaranteed occupancy. A shelter typically requires the occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and in most cases does not meet the definition of dwelling as used in this part.

Z.1 Alien not lawfully present in the United States. Means an alien who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the immigration and Nationality Act (8 U.S.C. 1101 et seq.) and whose stay in the United States has not been authorized by he U.S. Secretary of Homeland Security; and

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the U.S. Secretary of Homeland Security or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

Z,2 Mobile Home. The term “mobile home” will continue to be used to include those homes that are defined at 24 CFR part 3280 as a “manufactured home.” Regulations at 24 CFR 3280.2 defines “manufactured home” in 24 CFR part 3280 in 1979.

The following examples provide additional guidance on the types of mobile homes that can be found acceptable as replacement dwellings for persons displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met: the recreational vehicle is purchased and occupied as the "primary" place of residence; it is located on a purchased or leased site and connected to or has available all necessary utilities fore functioning as a housing unit on the date of the displacing agency's inspection; and, the dwelling, as sited, meets all local, State, and Federal requirements for a decent, safe, and sanitary dwelling. (The regulations of some local jurisdictions will not permit the consideration of these vehicles as DSS dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

**Written Notices:**

The following written notices shall be furnished to each displaced person so he is fully informed of the benefits and services available to him:

**Relocation Notices** [16]

(a) General information notice. As soon as feasible, a person who may be displaced or who may be required to move temporarily shall be furnished with a general written description of the agency's relocation program which at least the following:

(1) Informs the person that he may be displaced for the project (or, if appropriate, required to move temporarily form his or her unit) for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);

(2) Informs the displaced person (or person required to move temporarily from his or her unit, if appropriate) that he will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;

(3) Informs the displaced person (or person required to move temporarily from his or her dwelling when required by the Federal funding agency) that he will not be required to move without at least 90 days advance written notice

[16] 49 CFR 24.203

(see paragraph (c) of this section), and informs any person to be displaced from a dwelling, either permanently or temporarily (when required by the Federal funding agency), that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;

(4) Informs the displaced person that any person required to move temporarily that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, pursuant to §24.208(h); and

(5) Describes to the displaced person (or persons required to move temporarily) their right to appeal the agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) Notice of relocation eligibility. Eligibility for relocation assistance shall begin on the earliest of; the date of a notice of intent to acquire, rehabilitate, and/or demolish (described in paragraph §24.203(d)), the initiation of negotiations (defined in §24.2(a)), the date that an agreement for voluntary acquisition becomes binding (defined in 24.2(a): or actual acquisition. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) 90-day notice.

(1) General. No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) Timing of notice. The displacing Agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) Content of notice. The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See §24.204(a)),

(4) Urgent need. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

(d) Notice of intent to acquire, rehabilitate, and/or demolish. A notice of intent to acquire, rehabilitate, and/or demolish is a agency's written communication that is provided to a person to be displaced, including persons required to temporarily move, which clearly sets forth that the agency intends to acquire, rehabilitate, and/or demolish the property. A notice of intent to acquire, rehabilitate, and/or demolish establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance. *(See* §24.2(a).)

**Availability of Comparable Replacement Dwelling Before Displacement:** [17]

(a) General. No person to be permanently displaced shall be required to move from his dwelling unless at least one comparable replacement dwelling (defined at §24.2 (a) ) has been made available to the person. Information on comparable replacement dwellings that were used in the determination process must be provided to permanently displaced persons. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed in writing of its location;

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person s assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) Circumstances permitting waiver. The Federal Agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

[17] 49 CFR 24.204

(1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) Basic conditions of emergency move. Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall: (1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; (2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the emergency move; and (3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from their dwelling due to the emergency.)

**Relocation Planning, Advisory Services and Coordination:** [18]

(a) Relocation planning. During the early stages of development, an agency shall plan Federal and federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

[18] 49 CFR 24.205

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated rates of properties to be acquired, characteristics, and special impacts on minorities, the elderly, large families, and persons with disabilities when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households permanently or temporarily displaced. When an adequate supply of comparable housing is not expected to be available, the agency should consider housing of last resort actions.

(3) An estimate of the number, type and size of the businesses, farms, and non-profit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing or temporarily moving the businesses should be considered and addressed. Planning for permanently and temporarily displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the agency displacing a person and other cooperating agencies.

(b) Loans for planning and preliminary expenses. In the event that an agency elects to consider using the duplicative provision in section 4635 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

(c) Relocation assistance advisory services.

(1) General: The agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.),* Title VIII of the Civil Rights Act of 1968(42 U.S.C. 3601 *et seq.),* and Executive Order 11063 (3 CFR, 1959-1963 Comp., p.652), and offer the services described in 49 CFR Part 24.2059(c)(2). If the agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of

such acquisition, it may offer advisory services to such person. (2) Services to be provided. The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine, for nonresidential businesses, farms and nonprofit organizations displacements, the relocation needs and preferences of each business, farm and non-profit organization to be displaced or, when determined to be necessary by the funding agency, temporarily displaced and explain the relocation payments and other assistance for which the business, farm and nonprofit organization may be eligible, the related eligibility requirements and the procedures for obtaining such assistance. This shall include a personal interview with each business, farm and non-profit organization. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) Determination of the need for outside specialists in accordance with §24.301(g)(13) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve personalty/realty issues prior to, or at the time of, the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

(ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced or temporarily displaced when the funding agency determines it to be necessary, and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person and when the funding agency determines it to be necessary, each temporarily displaced person.

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in §24.204(a).

(B) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment *(see* §24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, comparable housing shall be inspected prior to being made available to assure that it meets applicable standards. *(See* §24.2(a).) If such an inspection is not made, the agency shall notify the person to be displaced in writing of the reason that an inspection of the comparable was not made and, that if the comparable purchased or rented by the displaced person, a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary. (See appendix A to this part, section 24.205(c)(2)(ii)(C.)

(D) Whenever possible, minority persons including those who have been temporarily displaced, shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This does not require an agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See appendix A, §24.205(c) (2) (ii) (D).)

(E) The Agency shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see §24.2(a) ), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(iii) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(d) Coordination of relocation activities. Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (See §24.6.)

(e) **Subsequent occupants.** Any person, who occupies property acquired by an agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the agency.

A. An inventory of the characteristics and needs of individuals and families to be displaced based on:

1. A complete occupancy survey; or

2. A sampling survey process which shall be representative of the characteristics and needs of the relocatees.

B. An estimate of currently available comparable replacement housing setting forth the type of buildings, state of repair, number of rooms, adequacy of such housing as related to the needs of the persons or families to be relocated, type of neighborhood, proximity of public transportation and commercial shopping area, and distance to any pertinent social institutions, such as churches, community facilities, etc.

B. Analysis and correlation of the needs of the individuals and families with the estimate of currently available comparable housing which will:

1. Outline the various relocation problems, if any;

2. Provide an analysis of current and future Federal, State and community programs currently in operation in the project areas, and nearby areas affecting the supply and demand for housing including detailed information on concurrent displacement and relocation by other governmental agencies or private concerns and coordinate the availability of replacement housing with other governmental agencies or private concerns currently in operation close to the project area;

3. Provide an analysis of the problems involved and the method of operation to resolve such problems and relocate the relocatees in order to provide maximum assistance;

4. Estimate the amount of lead time required and demonstrate its adequacy to carry out a timely, orderly and human relocation program; and

5. Furnish the names of the agency or agencies, if other than the Highways Division, which will provide the relocation assistance including the analysis of their present workload and ability to perform and the estimated number and job titles of relocation personnel servicing the project.

**Relocation Program at Construction Stage:**

A. Authorization for Construction

1. Adequate replacement housing shall mean a dwelling which is:

a. Decent, safe and sanitary;

b. Fair housing - open to all persons, regardless of race, color, religion, gender or national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968;

c. In areas not generally less desirable than the dwelling to be acquired in regard to:

1. Public utilities; and
2. Public and commercial facilities.

d. Within the financial means of the displaced family or individual;

a. Reasonably accessible to relocatee's place of employment, public services and commercial facilities; and

b. Adequate to accommodate the relocatee.

B. Available Replacement Housing. "Made Available" shall mean that the displacee has either by himself or herself obtained replacement housing and the State has offered him or her decent, safe and sanitary replacement housing which is available for immediate occupancy. The Highways Division will be in compliance with the "offer" requirement when it shows that it has:

1. Determined that decent, safe and sanitary housing that is in an area not less desirable in regard to public utilities and public and commercial facilities, in the same general area from which he is being displaced and reasonably accessible to the relocatee's place of employment and adequate to accommodate the relocatee, is available and has informed the relocatee of its availability and location.

2. Informed the relocatee of the amount, if any of supplemental payments available to him. In hardship cases, assured the relocatee that an advance of funds will be made should it become necessary.

3. Provided the relocatee sufficient time to negotiate for and obtain possession of the housing.

4. Determined that the available housing is within the financial means of the relocatee.

5. Determined that the replacement housing offer is fair housing - open to all persons regardless of race, color, religion, gender or national origin.

C. Verification of Adequate Replacement Housing

Highways Division shall make spot check field reviews on all City and County Federal-Aid highway projects to verify that adequate replacement housing is in place and has been made available.

**Records:**

A. Relocation Records - General. Relocation records shall be maintained showing:

1. State and Federal project and parcel identification.

2. Names of displaced persons, both their original and new addresses and telephone numbers (if available).

3. A log of personal contacts made with each relocated person, to include:

a. Date of notification of availability of relocation payments and services.

b. Name of the Agent offering or providing relocation assistance.

c. Whether relocation assistance in locating or obtaining replacement housing was declined or accepted and the name of the individual accepting or declining the offer.

d. Dates and substance of subsequent follow up contacts.

e. Date when the relocated person was required to move from the property acquired for the project.

f. Date on which the actual relocation occurred and whether the relocation was accomplished with the OBJ assistance of the State or without assistance. If without assistance, the approximate date for actual relocation.

4. For displacements from dwelling:

a. Number in family;

b. Type of property (single, detached, multi-family, etc.);

c. Value or monthly rent;

d. Number of rooms occupied.

5. For relocated businesses:

a. Type of business;

b. Whether continued or terminated;

c. If relocated, distance moved (estimate accepted).

6. For relocated farms:

a. Whether continued or terminated;

b. If relocated, distance moved (estimated accepted).

B. Moving Expense Records. The following information regarding moving expense payments records shall be maintained:

1. The date personal property was moved from property.

2. The location from which personal property was moved and to where it was moved.

3. If the personal property was stored temporarily, the location where it was stored, the duration of storage, and justification for the storage and storage charges.

4. Itemized statement of the costs incurred supported by receipted bills or other evidence of expense.

5. Amount of reimbursement claimed, amount allowed and an explanation of any differences.

6. Data supporting any determination that a business cannot be relocated without a substantial loss of patronage and that it is not part of a commercial enterprise having at least one other establishment not being acquired by the Highways Division.

7. Data showing how payment was computed for in lieu of payment claims.

8. When payments are made in accordance with a schedule, records showing the basis on which payment was made shall be maintained.

C. Replacement Housing Payment Records. The following information regarding replacement housing payments shall be maintained:

1. The date each application for replacement housing was received.

2. The date on which each payment was made or rejected.

3. Data supporting how the amount of the supplemental payment was calculated.

4. A copy of the closing statement to support the purchase or down payment, and incidental expenses when replacement housing is purchased.

5. A copy of the Truth in Lending Statement or other data including computations to support the increased interest payment.

6. A statement signed by the person responsible for approving the amount of the replacement housing payment shall be placed in the files setting forth:

a. The amount of the replacement housing payments;

b. His understanding that the determined amount is to be used in connection with a Federal-aid highway project;

c. That he or she has no direct or indirect present or contemplated personal interest in the transaction nor will he or she derive any benefit from the replacement housing payment.

7. A statement that the relocated person has relocated into adequate replacement housing.

D. Records Available for Inspection

The relocation records shall be available at reasonable hours for inspection by representatives of the Federal government who have an interest or responsibility in matters relative thereto.

**Reports:**

A. Annual Reports

An Annual Report, Form PR-1228, Relocation Assistance and Payment Statistics (RCA HOW--2--03), shall be submitted annually for the period ending September 30 (Fed Fiscal Yr) This report shall be furnished within 30 days after the end the fiscal year which the report cover the fiscal year which the report covers. A separate report for the rural and urban portion of each system shall be submitted.

The reports shall be forwarded to the Federal Highways Administration (FHWA).

**Relocation Program on Projects Affected by a Major Disaster:**

A. General. The policies and procedures on relocation assistance of the State Highways Division are applicable to relocation programs on projects in areas that are designated as major disaster areas by the President of the United States.

B. Tenure of Occupancy

1. Individuals and families whose homes have been damaged or destroyed by a major disaster and who have not been able to reoccupy their homes by the start of negotiations for the parcel may be considered to be in constructive occupancy and Federal funds may participate in relocation payments to such individuals and families; provided location approval for the project had been given by FHWA prior to the major disaster.

2. If location approval was not given prior to the major disaster, Federal funds may not participate in relocation payments to such individuals and families.

C. Computation of Replacement Housing Payment for 90-day homeowner-occupants.

1. Fair Market Value of Acquired Residence. The fair market value of damaged or destroyed residence will be as of the usual date of valuation for a highway project.

2. Computation. The replacement housing payment will be the amount, if any, which when added to the amount the Highways Division acquired the damaged or destroyed dwelling equals the lesser of:

a. The actual cost of decent, safe and sanitary dwelling the owner is required to pay; or

b. The amount determined by the Highways Division as necessary to purchase a comparable dwelling.

3. Payment in Excess of $41,200.00. If the replacement housing payment to which the displacee would be entitled will exceed $41,200.00 the utilization of last resort housing will become necessary.

4. Duplicate Payments. Any payments or proceeds received by the relocatee for damages to his residence as a result of the major disaster, from any source, such as flood insurance or cancellation of a portion of a Small Business Administration loan is to be deducted from the replacement housing payment for which he is eligible.

D. Requirement to Receive Replacement Housing Payment. A displaced person will be eligible to receive replacement housing payment provided he occupies a decent, safe and sanitary dwelling as provided for in this procedure; except that:

1. If the relocatee enters into a contract to purchase or construct a replacement dwelling; or

2. Under last resort housing procedures, the State enters into a contract to purchase or construct replacement housing for the displacee, the date of the contract is considered the occupancy date.

E. Relocation Services

1. Tenants. Within seven days after initiation of negotiation for the dwelling until they occupy or are considered to be in constructive occupancy of, the tenants shall be provided by personal contact or certified mail a written statement which includes:

a. The date of the initiation of negotiation for the parcel.

b. An explanation of the eligibility requirements to receive a rental replacement housing payment and the option to receive a down payment and incidental expenses for purchase of replacement housing including the matching requirements. He shall also be notified that eligibility is not complete until the property is acquired. The displacee shall be provided a subsequent notice when he is fully eligible and such notice shall be given prior to the 90-day notice to vacate.

c. A brochure which explains the services and payments available and where they may be available.

d. If the initial information is given by certified mail, personal contact shall be made within 30 days of the initiation of negotiation for the parcel to furnish any additional information. This shall be done prior to the notice to vacate.

F. Replacement Housing Payment to Tenant-Occupant for Not Less Than 90 Days

1. Time of Computation. The maximum replacement housing payment for which a displaced tenant is eligible shall be computed near or at the time of the offer, before he/she will be actively looking for replacement housing.

2. Notification as to Payment

a. The tenant will be informed in writing of the maximum amount of replacement housing payment for which he is eligible and the applicable requirements to receive such payment.

b. The above information is to be given to the tenant at such time as to allow him enough time to find replacement housing, but it must be given prior to the issuance of the 90-day notice to vacate.

c. If the information is requested by the tenant prior to it being provided him, said information shall be provided within a reasonable time after such request.

**Eviction for Cause:** [19]

Eviction for cause must conform to applicable State and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(1) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project. (See appendix A, §24.206.)

**General requirements—claims for relocation payments:** [20]

(a) Documentation. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) Expeditious payments. The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) Advanced payments. If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

[19] 49 CFR 24.206
[20] 49 CFR 24.207

(d) Time for filing. (1) All claims for a relocation payment shall be filed with the Agency no later than 18 months after: (i) For tenants, the date of displacement (ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later. (2) The Agency shall waive this time period for good cause.

(e) Notice of denial of claim. If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) A displacing Agency shall not propose or request that a displaced person waive his rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

(g) Expenditure of payments. Payments, provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

**Relocation payments not considered as income:** [21]

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been re-designated as the Internal Revenue Code of 1986 (Title 26, U.S. Code), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S. Code 301 et seq.) or any other Federal law, except for any Federal law providing low-income housing assistance.

[21] 49 CFR 24. 209

# RELOCATION ASSISTANCE ADVISORY SERVICES

**PURPOSE:** To describe and establish procedures in providing relocation services to individuals, families, businesses, farm operations and non-profit organizations displaced by Federal-Aid highway programs.

**POLICY:** To provide relocation services pursuant to the provisions of Act 166, Session Laws of Hawaii, 1970, and the current implementing regulation for the Uniform Act as Title 49 CFR Part 24. As revised from time to time.

**RESPONSIBILITY:** It is the responsibility of the Property Management Section (HWY-RM) of the Right-of-Way Branch (HWY-R) to provide relocation assistance advisory services in accordance with Federal and State laws.

**SCOPE:** The provisions of this section apply to HWY-R of the Highways Division, State Department of Transportation.

**PROCEDURES:** Any individual, family, business, farm operation or non-profit organization to be replaced by a Federal-Aid project is entitled to relocation assistance advisory services.

**Relocation Assistance Advisory Services**

1. ***General.*** The agency shall carry out a relocation assistance advisory services program which satisfies the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.),* title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.),* and Executive Order 11063 (3 CFR, 1959-1963 Comp.,p.652), and offer the services described in paragraph (c)(2) of this section. If the agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

2. *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

1. Determine, for nonresidential (businesses, farm, and nonprofit organization) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced or when determined to be necessary by the funding agency, temporarily displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to complete the move.

(B) Determination of the need for outside specialists in accordance with 24.301(g)(13) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For businesses, an identification and resolution of personalty and/or realty issues. Every effort must be made to identify and resolve personalty and/or realty issues prior to, or at the time of, the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and the agency's legal capacity to provide them.

2. Determine, for each residential displacements, the relocation needs and preferences of each person to be displaced, or temporarily displaced when the funding agency determines it to be necessary, and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person and, when the funding agency determines it to be necessary, each temporarily displaced person.

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in 24.204(a).

(B) As soon as feasible, the agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see 24.403(a) and (b) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) When feasible, comparable housing shall be inspected prior to being made available to assure that it meets applicable standards. (See 24.2(a).) If such an inspection is not made, the agency shall notify the person to be displaced in writing of the reason that an inspection of the comparable was not made and, that If the comparable purchased or rented by the displaced person, a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary. (See appendix A to this part, section 24.205(c)(2)(ii)(C).)

(D) Whenever possible, minority persons, including those temporarily displaced, shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This does not require an agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See appendix A to this part, section 24.405(c)(2)(ii)(D),)

(E) The agency shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person that may be eligible for Government housing assistance at the replacement dwelling shall be advised of any requirements of such Government housing assistance program that would limit the size of the replacement dwelling (see 24.2(a), as well as of the long-term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

3. Provide for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

4. Minimize hardships to persons in adjusting to relocation byproviding counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

5. Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

3. ***Coordination of Relocation Activities.*** Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (See 24.6)

4. ***Subsequent occupants.*** Any person who occupies property acquired by an agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the agency.

**Manner of notices.**

The following written notices shall be furnished to each displaced person so he is fully informed of the benefits and services available to the owner. The notice may be in various formats with the required contents included.

A. Relocation Notices [1]

1. General information notice. As soon as feasible, a person who may be displaced or required to move temporarily shall be furnished with a general written description of the agency's relocation program which does at least the following:

[1] 49 CFR 24.203 – See also Section 2, Pg. 8.4.2-10

2. Informs the person that he may be displaced (or, if appropriate, required to move temporarily from his or her unit) shall be furnished with a general written description for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);

3. Informs the displaced person (or person required to move temporarily from his or her unit, if appropriate) that he will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;

4. Informs the displaced person (or, person required to move temporarily from his or her dwelling when required by the Federal funding agency) that he will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling, either permanently or temporarily (when required by the Federal funding agency). that he or she cannot be required to move unless at least one comparable replacement dwelling has been made available;

5. Informs the displaced person or person required to move temporarily that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments under this part, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, pursuant to §24.208(h); and

6. Describes to the displaced person (or persons required to move temporarily) their right to appeal the agency's determination as to a person's application for assistance for which a person may be eligible under this part.

B. Notice of Relocation Eligibility. Eligibility for relocation assistance shall begin on the earliest of: the date of a notice of intent to acquire, rehabilitate, and/or demolish (described in paragraph (d), of this section),; the initiation of negotiations (defined in §24.2(a)), the date that an agreement for voluntary acquisition becomes binding (defined in 24.2(a)); or actual acquisition. When this occurs, the agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

C. Ninety-day notice. The construction of any Federal or Federal-Aid highway shall be scheduled so that the greatest extent practicable, no person lawfully occupying real property shall be required to move from his dwelling, or to move his business or farm without at least 90-day advance written notice move unless he has received at least 90 days advance written notice of the earliest date by which he may be required to move. Exceptions could be made in the case of very unusual conditions and with the concurrence of the Federal Highway Administration. (FHWA)

1. The 90-day notice may be given on or after the initiation of negotiations for the parcel and shall include a statement that the relocatee will not be required to move from his or her dwelling, or to move his or her business, non-profit or farm operation before 90 days from the date of such notice. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See 24.204(a).) The agency may issue the notice 90 days or earlier before it expects the person to be displaced.

2. The notice shall also inform the relocatee that a 30-day notice will be given to him or her specifying the date by which the property must be vacated. This 30-day notice shall not be given until the Highways Division has obtained control of the property. The 30-day notice cannot excellerate the 90-day requirement.

3. Notices are not required if an occupant moves on his or her own volition prior to the time of the notice given.

4. Urgent need. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the agency determines that a 90- day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the agency's determination shall be included in the applicable case file.

D. ***Notice of intent to acquire, rehabilitate, and/or demolish.*** A notice of intent to acquire, rehabilitate, and/or demolish is an agency's written communication that is provided to a person to be displaced, including persons required to temporarily move, which clearly sets forth that the agency intends to acquire, rehabilitate, and/or demolish the property. A notice of intent to acquire, rehabilitate, and/or demolish establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance to the activity. (See §24.2(a).)

1. This notice shall be given to owners and tenants together with the brochure prior to the initiation of negotiations for the parcel. This notice shall not be issued prior to receiving authorization for the institution of negotiations on the project or authorization of the acquisition of individual parcels solely for protective buying or because of hardship.

2. The notice shall include a statement of eligibility and any restrictions thereto, the anticipated date of initiation of negotiation for the property and where and how additional information on relocation assistance payments and services can be obtained.

3. If a notice of intent to acquire is furnished an owner, it must be furnished to his tenant within 7 to 14 days. When a tenant is furnished this notice, the owner must be simultaneously notified of such action.

E. Notice of Displacement

1. Owner-occupants of 90 Days or more. At the initiation of negotiations for the parcel, the owner shall be furnished:

   a. A written explanation of the relocation services available and where they may be obtained.

   b. The brochure which explains the eligibility requirements to receive payments for replacement housing, increased interest costs, incidental expenses, and of his option to rent replacement housing. In the case of an owner or less than 90 days of his option to receive down payment and incidental expenses to purchase replacement housing and the requirement therefore.

   2. Tenants. Within 7 to 14 days after the initiation of negotiations for the purchase of the dwelling unit occupied, the tenant shall be furnished a written statement either by certified mail or personal contact that states:

      a. The date of initiation of negotiations for the parcel.

      b. An explanation of the relocation services available and where they may be obtained. Eligibility is not complete until the property is acquired. Each tenant relocatee shall receive a subsequent notice when the Highways Division has control of the property so that he can be assured of his eligibility to receive relocation payments.

      c. The brochure explaining the eligibility requirements to receive rental replacement housing payments, the option to receive a

down payment for the purchase of replacement housing including incidental expenses and the matching funds requirement.

3. If the initial information is given by certified mail, a personal contact with the tenant must be made within 30 days to furnish any additional explanations. The contact shall be made prior to the 90 days notice to vacate.

4. Notice of Replacement Housing Payment Amounts.

   a. In order to provide the displacee with a positive understanding of the amount of the replacement housing payment to which he is entitled and the eligibility requirements, he shall be so advised in writing.

   b. The amount shall be computed in accordance with appropriate instructions and shall be for a comparable replacement dwelling unit from which he was displaced. If the displacee desires an optional housing or ownership tenancy status than that he had. the Highways Division shall make a reasonable effort to accede to such desire. If the optional housing is available, the replacement housing amount will be based on the specified option. The Maximum amount of such payment, however, will be limited to that amount based on a comparable replacement dwelling.

   c. The relocatee shall be informed by a written statement which specifies the amount which he is entitled to receive in replacement housing payments at a time which is appropriate and will accomplish the following:

      1. The housing units used to determine the replacement housing amount are to be selected close to the time the displacee will be looking for replacement housing;

      2. The amount is to be computed in a timely manner and given to the displacee within a reasonable time of his request, if any;

      3. The displacee shall be informed of the maximum amount to which he is entitled before the 90-day notice to vacate is issued.

F. Ninety (90) Day Notice to Vacate

I. The construction of any Federal or Federal-Aid highway shall be scheduled so that to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his dwelling, or to move his business or farm without at least a 90-day written notice of the intended vacation date from the State. Exceptions could be made in the case of very unusual conditions and with the concurrence of the Federal Highway Administration (FHWA).

a. The 90-day notice shall be given on or after the initiation of negotiations for the parcel and shall include a statement that the relocatee will not be required to move from his dwelling, or to move his business or farm operation before 90 days from the date of said notice.

b. The notice shall also inform the relocatee that a 30-day written notice will be given to him specifying that date by which the property must be vacated. This 30-day notice shall not be given until the Highways Division has obtained control of the property. The 30-day notice cannot excellerate the 90-day requirement.

c. Notices are not required if an occupant moves on his or her own volition prior to the time the notice is given.

## APPEALS [2]

1. Any displaced person aggrieved by a determination as to his eligibility for payment or the amount of payment as prescribed in this procedure may request in writing that his application be reviewed.

(a) General. The agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) Actions which may be appealed. Any aggrieved person may file a written appeal with the agency in any case in which the person believes that the agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under Sec. 24.106 or Sec. 24.107 or a relocation payment required under this part. The agency shall consider a written appeal regardless of form.

[2] 49 CFR 24.10

(c) Time limit for initiating appeal. The agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the agency's determination on the person's claim.

(d) Right to representation. A person has a right to be represented by legal counsel or other representative in connection with his appeal, but solely at the person's own expense.

(e) Review of files by person making appeal. The agency shall permit a person to inspect and copy all materials pertinent to his appeal, except materials which are classified as confidential by the agency. The agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) Scope of review of appeal. In deciding an appeal, the agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) Determination and notification after appeal. Promptly after receipt of all information submitted by a person in support of an appeal, the agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the agency shall inform the person that the determination is the agency's final decision and that the person may seek judicial review of the agency's determination.

(h) Agency official to review appeal. The agency official conducting the review of the appeal shall be either the head of the agency or his authorized designee. However, the official shall not have been directly involved in the action appealed.

2. The Right-of-Way Branch Manager shall review such a request and forward it with his or her recommendation to the Administrator of the Highways Division for his or her review and any person making an appeal shall be given a full opportunity to be heard. After his or her review, the Administrator of the Highways Division shall forward said request with his or her recommendations to the Deputy Director of Transportation or the Director of Transportation for his or her review and final decision.

A. The decision reached shall be supported by the necessary computations and rationale and documented in the parcel file. Any aggrieved applicant who is not satisfied with the decision of the Director of Transportation's may appeal the Director's determination to the Circuit Court of the Circuit in which he then resides.

# MOVING PAYMENTS

**PURPOSE:** To describe and establish procedures for payment of moving and related expenses to those relocated as a result of Federal-Aid highway programs.

**POLICY:** To provide payment for moving and related expenses to all eligible displacees.

**RESPONSIBILITY:** The Property Management Section (HWY-RM) of the Right-of-Way Branch (HWY-R) is responsible for coordinated the moving and related expenses payment activities to assure payment to all eligible displacees.

**SCOPE:** The provisions of this section apply to the Property Management Section of the Right-of-Way Branch, Highway Division.

**PROCEDURES:** Any individual, family, business, farm operator or a non-profit organization displaced by a Federal-Aid highway project is entitled to receive payments for reasonable moving and related expenses.

**Payment for Actual Reasonable Moving and Related Expenses**[1]

**(a) General** (1) Any owner-occupant or tenant who qualifies as a displaced person (defined at §24.2(a)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm, or non-profit organization is entitled to payment of his actual moving and related expenses, as the agency determines to be reasonable and necessary.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under this section to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at §24.502(a)(3), the homeowner-occupant is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

[1] 49 CFR 24.301

**(b) Moves from a dwelling.** A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the methods in paragraphs (b)(1) and (2) of this section (eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (7) of this section)

(1) **Commercial move***: - M*oves performed by a professional mover.

(2) **Self-move***: - M*oves that may be performed by the displaced person in one or a combination of the following methods:

i **Fixed Residential Moving Cost Schedule.** (The Fixed Residential Moving Cost Schedule described described in §24.302.)

ii **Actual cost move.** Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist.. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

Iii **A moving cost estimate.** Prepared by a qualified agency staff person, as developed from the agency's thorough review of the personal property to be moved and documented costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.

Iv **Commercial mover estimate.** Based on the lower of two bids from a commercial mover. Federal funding agencies may establish policies and procedures which require its grantees to calculate and subtract an estimated amount of overhead and profit from the moving cost bids to establish a reimbursement eligibility.

**(c) Moves from a mobile home.** Eligible expenses for moves from a mobile home include those expenses described in paragraphs (g) (1) through (7) of this section. In addition to the items in paragraph (a) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (g) (8) through (10) of this section. A displaced person's actual reasonable, and necessary moving expenses for moving personal property from a mobile home may be determined based upon the cost of one, or a combination of the following methods:

(1) **Commercial move:** - Moves performed by a professional mover.

(2) **Self-move***: - M*oves that may be performed by the displaced person in one or a combination of the following methods:

i **Fixed Residential Moving Cost Schedule.** The Fixed Residential Moving Cost Schedule described in §24.302.

ii **Actual cost move**.Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

Iii **A moving cost estimate.** Prepared by a qualified agency staff person, as developed from the agency's thorough review of the personal property to be moved, and documented estimated costs for materials, equipment and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based upon the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.

Iv **Commercial mover estimate.** Based on the lower of two bids from a commercial mover. Federal funding agencies may establish policies and procedures which require its grantees to calculate and subtract an estimated amount of overhead and profit from the moving cost bids to establish a reimbursement eligibility.

**(d) Moves from a business, farm or non-profit organization.** Personal property as determined by an inventory from a business, farm, or non-profit organization may be moved by one or a combination of the following methods: (Eligible expenses for moves from a business, farm, or non-profit organization include those expenses described in paragraphs (g) (1) through (7) and (11) through (18) of this section and 24.303. )

(1) Commercial move- based on the lower of two bids or estimates prepared by a commercial mover. At the agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) Self-move- a self-move payment may be based on one or a combination of the following:

i The lower of two bids or estimates prepared by a commercial mover or qualified agency staff person. At the agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

ii Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

iii A qualified agency staff person may develop a move cost finding by estimating and determining the cost of a small uncomplicated nonresidential personal property move of $5,000.00 or less, with the written consent of the person. This estimate may include only the cost of moving personal property which does not required disconnect and reconnect and/or special moving services necessary for activities including crating, lifting, transportation, and setting of the item in place.

**(e) Personal property only.** Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm, or non-profit organization include those expenses described in paragraphs (g) (1) through (7) and (18) of this section. (See appendix A to this part, section 24,301(e).

**(f) Advertising signs.** The amount of a payment for direct loss of an advertising sign, which is personal property, shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

**(g) Eligible actual moving expenses.**

(1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or non-profit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building. It also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(4) An agency may determine that the storage of personal property is a reasonable and necessary moving expense for a displaced person or person required to move temporarily under this part. Agencies may approve a payment for storage when the process of relocating from the acquired site to the replacement site is delayed for reasons beyond the control of the displaced person. Storage may not be longer than 12 months, starting at the date of the vacation from the acquired site and ending when the replacement site becomes available. Agencies may approve storage for more than 12 months in unusual instances as justified, documented, and approved by the agency.

(5) Insurance for the replacement value of the property in connection with the move and necessary storage.

(6) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(7) A displaced tenant is entitled to reasonable reimbursement, as determined by the agency, for actual expenses not to exceed $1,000, incurred for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

(8) Other moving-related expenses that are not listed as ineligible under paragraph (b) of this section, as the agency determines to be reasonable and necessary.

(9) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility “hookup” charges.

(10) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(11) The cost of a non-refundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced or temporarily moved from a mobile home park or the agency determines that payment of the fee is necessary to effect relocation.

(12) Any actual reasonable, or necessary costs of a license, permit, fee or certification required of the displaced person to operate a business, farm, or nonprofit at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees, or certification.

(13) Professional services as the agency determines to be actual, reasonable and necessary for:

i Planning the move of the personal property;

ii Moving the personal property; and

iii Installing the relocated personal property at the replacement location.

(14) Relettering signs, replacing stationery on hand at the time of displacement or temporary move, and making reasonable and necessary updates to other media that are made obsolete as a result of the move. (See appendix A to this part, section 24.301(g)(14).

(15) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of:

i If the item is currently in use, the lesser of:

(A) The estimated cost to move the item up to 50 miles and reinstall; or

(B) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. to be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the agency determines that such effort is not necessary.

ii. If the item is not currently in use: The estimated cost of moving the item 50 miles as is:

iii When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling prices. (See appendix A of this part, section 24.301 (g)(15))

(16) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(17) If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

i The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

ii The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(18) Searching for a replacement location.

(i) A business or farm operation is entitled to reimbursement for actual expenses, not to exceed $5,000, as the agency determines to be reasonable, which are incurred in searching for a replacement location, including:

i Transportation;
ii Meals and lodging away from home;
iii Time spent searching, based on reasonable salary or earnings;
Iv Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;
v Time spent in obtaining permits and attending zoning hearings; and
vi Expenses negotiating the purchase of a replacement site based on a reasonable salary or fee, including reasonable, and necessary attorney's fees..

(ii) The Federal funding agency may, on a program wide project basis, allow a one-time payment of $1,000 for search expenses with minimal or no documentation as an alternative payment method to paragraph (g)(18)(i) of this section. (See appendix A to this part, section 24.301(g)(18).)

(19) Low value/high bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the agency, the allowable moving cost payment shall not exceed the lesser of: the amount which would be received if the property were sold at the site; or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this paragraph (g)(19) include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the agency.

**(h) Ineligible Moving and Related Expenses.** The following is a nonexclusive listing of payments a displaced person is not entitled to:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under §24.401(c) (2) (iii);

(2) Interest on a loan to cover moving expenses;

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in §24.304(a) (6);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the agency;

(9) Expenses for searching for a temporary or replacement dwelling; which include costs for mileage, meals, lodging, time and professional real estate broker or attorney's fees.

(10) Physical changes to the real property at the temporary or replacement location of a business or farm operation except as provided in paragraph (g)(3) of this section and 24.304(a);

(11) Costs for storage of personal property on real property already owned or leased by the displaced person or person to be moved temporarily;

(12) Refundable security and utility deposits; and

(13) Cosmetic changes to a replacement or temporary dwelling, which are not required by State or local law, such as painting, draperies, or replacement carpet or flooring.

**i Notification and inspection (nonresidential).** The agency shall inform the displaced person and persons required to move temporarily, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in §24.203. To be eligible for payments under this section the person must: (1) Provide the agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the agency may waive this notice requirement after documenting its file accordingly. (2) Permit the agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

ii **Transfer of ownership (nonresidential).** Upon request and in accordance with applicable law, the claimant shall transfer to the agency ownership of any personal property that has not been moved, sold, or traded in.

**Fixed Payment for Moving Expenses—Residential Moves.**[2]

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under §24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule ~ approved by the FHWA and published in the Federal Register on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an agency at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule. In addition, an agency may approve storage for a displaced person's personal property for a period of up to 12 months as a reasonable, actual and necessary moving expense under 24.301 (g)(4).

(a) An agency may determine that the storage of personal property is a reasonable and necessary moving expense for a displaced person under this part. The determination shall be based on the needs of the displaced person, the nature of the move; the plans for permanent relocation; the amount of time available for the relocation process; and, whether storage will facilitate relocation. If the agency determines that storage is reasonable and necessary in conjunction with at fixed cost moving payment made under this section, the agency shall pay the actual, reasonable, and necessary storage expenses in accordance with 24.301 (g)(4). However, regardless of whether storage is approved, the Fixed Residential Move Cost Schedule provides a one-time payment for one move from the displacement dwelling to the replacement dwelling, or storage facility. Consequently, displaced persons must be fully informed that reimbursement of costs to move the personal property to storage and the cost of approved storage, if applicable, represent a full reimbursement of their eligibility for moving costs under this part. (See appendix A to this part, section 24.302)

[2] 49 CFR 24.302

(b) (Reserved)

(c) The Fixed Residential Moving Cost Schedule is available at the following URL: www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm

**Related Nonresidential Eligible Expenses.[3]**

The following expenses, in addition to those provided by §24.301 for moving personal property, shall be provided if the agency determines that they are actual, reasonable, and necessary:

(a) Connection to available utilities from the replacement site's property line to improvements at the replacement site. (See appendix A to this part, section 24.303(a).)

(b) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, or feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the agency a reasonable pre-approved hourly rate may be established. (See appendix A to this part, § section 24.303(b).)

(c) Impact fees and one-time assessments for anticipated heavy utility usage, as determined necessary by the agency. (See appendix A to this part, section 24.303(c).)

**Reestablishment Expenses – Nonresidential Moves [4]**

In addition to the payments available under Sec. 24.301 and 24.303, a small business, farm, or non-profit organization is entitled to receive a payment not to exceed $33,200, for expenses actually incurred in relocating and reestablishing such small business, farm, or non-profit organization at a replacement site.

[3] 49 CFR 23.303
[4] 49 CFR 23.304

**(a) Eligible Expenses.** Reestablishment expenses must be reasonable and necessary, as determined by the agency. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State, or Local Law, code, or ordinances.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business

(3) Construction and installation costs for exterior signing to advertise the business

(4) Redecoration or replacement of soiled or worn surfaces at replacement site, such as paint, paneling or carpeting.

(5) Advertisement of replacement location.

(6) Estimated increased costs of operation during first 2 years at replacement site for such items as:

(i) Lease or rental charges;
(ii) Personal or real property taxes,
(iii) Insurance premiums; and
(iv) Utility charges, excluding impact fees.

(7) Other items that the agency considers essential to the reestablishment of the business.

**(b) Ineligible expenses.** The following is a non-exclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible.

(1) Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures;

(2) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of business operation;

(3) Interest on money borrowed to make the move or purchase the replacement property;

(4) Payment to a part-time business in the home which does not contribute materially defined at 24.2(a), to the household income.

(5) Construction costs for a new building at the business replacement site, or costs to construct, reconstruct or rehabilitate an existing building. (See appendix A to this part, section 24.304(b)(5).)

**Fixed Payment for Moving Expenses-Nonresidential Moves** [5]

(a) Business. A displaced business may be eligible to choose a fixed payment in lieu of the payments for both actual moving and related expenses, as well as actual reasonable reestablishment expenses provided by §24.301, 24.303, and 24.304. Such fixed payment, except for payment to a non-profit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $53,200. The displaced business is eligible for the payment if the agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site;

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the agency determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the agency, and which are under the same ownership and engaged in the same or similar business activities;

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

[5] 49 CFR 24. 305

(6) The business contributed materially to the income of the displaced person during the two taxable years prior to displacement. (See §24.2(a).)

**(b) Determining the number of businesses.** In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control or manage the affairs of the entities.

**(c) Farm operation.** A displaced farm operation (defined at §24.2(a) ) may choose a fixed payment, in lieu of the payments for both actual moving as well as related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $53,200. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

**(d) Non-profit organization.** A displaced non-profit organization may choose a fixed payment of $1,000 to $53,200, in lieu of the payments for both actual moving as well as related expenses and actual reasonable reestablishment expenses, if the agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A non-profit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses. (See appendix A to this part, § section 24.305(d))

**(e) Average annual net earnings of a business or farm operation.** The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. (see appendix A to this part, section 24.305(e), for sample calculations). Average annual net earnings may be based upon a different period of time when the agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which the Agency determines is satisfactory. (See appendix A to this part, § section 24.305(e).)

## Discretionary Utility Relocation Payments [6]

(a) Whenever a program or project undertaken by an agency causes the relocation of a utility facility ( defined at 24.2(a) ) and the relocation of the facility creates extraordinary expenses for its owner, the agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

[6] 49 CFR 24.306

(1) The utility facility legally occupies State or local government

property or property over which the State or local government has an easement or right-of-way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the agency;

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a requirement for the payment of utility moving costs that is applicable to the agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the agency is in accordance with State law.

(b) For the purpose of this section, the term extraordinary expenses mean those expenses which, in the opinion of the agency, are not routine or predicable expenses relating to the utility's occupancy of right-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of work for reimbursement, the responsibility for financing and accomplishing the work, and the method of accumulating costs and making payment (See appendix A to this part, section 24.306)

# REPLACEMENT HOUSING PAYMENTS

**PURPOSE:** To describe and establish procedures in providing replacement housing payments to individuals and families displaced by Federal-Aid highway projects.

**POLICY:** To provide replacement housing payments pursuant to Federal and State laws.

**RESPONSIBILITY:** The Property Management Section (HWY-RM) of the Right-of-Way Branch (HWY-R) is responsible for coordinating the replacement housing payment activities to assure payment to all eligible displacees.

**SCOPE:** The procedures described herein apply to the Right-of-Way Branch of the Highways Division, State Department of Transportation.

**PROCEDURES:** Any individual, family, business, farm operation or a non-profit organization displaced by a Federal-Aid highway project is entitled to receive replacement housing payments provided they meet the requirements prescribed by the Uniform Act.

**Replacement Housing Payment for 90-day Homeowner-Occupant** [1]

(a) ***Eligibility.*** A displaced person is eligible for the replacement housing payment for a 90-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of the following dates (except that the agency may extend such 1 year period for good cause):

[1] 49 CFR 24.401

(i) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

(ii) The date the displacing Agency's obligation under §24.204 is met.

(b) ***Amount of payment.*** The replacement housing payment for an eligible 90-day homeowner-occupant may not exceed $41,200. (See also §24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within 1 year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section;

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) or (c) of this section, as applicable; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (f) of this section.

(c) ***Price differential-***

(1) ***Basic computation.*** The price differential to be paid under paragraph (b)(1) of 49 CFR Part 24.401 is the amount which must be added to the acquisition cost of the displacement dwelling and site *(see* §24.2(a)) to provide a total amount equal to the lesser of: (i) The reasonable cost of a comparable replacement dwelling as determined in accordance with §24.403(a); or (ii) The purchase price of the DSS replacement dwelling actually purchased and occupied by the displaced person.

(2) ***Owner retention of displacement dwelling.*** If the owner retains ownership of his dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(ii) The cost of making the unit a DSS replacement dwelling (defined at §24.2(a)); and

(iii) The current fair market value for residential use of the replacement dwelling site *(see* appendix A, to this part section 24.401 (c)(2)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost used when computing the replacement housing when computing the replacement housing payment.

(d) ***Increased mortgage interest costs.*** The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b) (2) of this section. Except as otherwise provided in paragraph (c) of this section, the payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 90 days prior to the initiation of negotiations. Paragraphs (d) (1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination, the payment will be prorated and reduced accordingly. (See appendix A to this part, section 24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which existed 90 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent: They are not paid as incidental expenses; (ii) They do not exceed rates normal to similar real estate transactions in the area (iii) The agency determines them to be necessary; and (iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage (s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) ***Reverse mortgages.*** The payment for replacing a reverse mortgage shall be the difference between the existing reverse mortgage balance and the minimum dollar amount necessary to purchase a replacement reverse mortgage which will provide the same or similar terms as that for the reverse mortgage on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on reverse mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (e)(1) through (4) of this section shall apply to the computation of the mortgage interest differential payment required under paragraph (d) of this section, which payment shall be contingent upon a new reverse mortgage being purchased for the replacement dwelling.

(1) The payment shall be based on the difference between the reverse mortgage balance and the minimum amount needed to qualify for a reverse mortgage with the similar terms as the reverse mortgage on the replacement dwelling; however, in the event the displaced person obtains a reverse mortgage with a smaller principal balance than the reverse mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (See appendix A to this part, section 24.401(e).) The reverse mortgage balance shall be that balance which existed 180 days prior to the initiation of negotiations or the reverse mortgage balance on the date of acquisition, whichever is less.

(2) The interest rate on the new reverse mortgage used in determining the amount of the eligibility shall not exceed the prevailing rate for reverse mortgages currently charged by mortgage lending institutions for owners with similar amounts of equity in their units in the area in which the replacement dwelling is located.

(3) Purchaser's points and loan origination, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the reverse mortgage balance on the displacement welling plus any amount necessary to purchase the new reverse mortgage.

(4) The displaced person or their representative shall be advised of the approximate amount of eligibility and the conditions that must be met to receive the reimbursement as soon as the facts relative to person's current reverse mortgage are known; the payment shall be made available at or near the time of closing on the replacement dwelling in order to purchase the new reverse mortgage as intended.

(f) ***Incidental expenses.*** The incidental expenses to be paid under paragraph (b)(3) of this section or §24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;

(2) Lender, Federal Home Administration (FHA), or Veteran's Administration (VA) application and appraisal fees;

(3) Loan origination or assumption fees that do not represent prepaid interest;

(4) Professional home inspection, certification of structural soundness, and termite inspection;

(5) Credit report;

(6) Owner's/mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling;

(7) Escrow agent's fee;

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling);

(9) Such other costs as the agency determines to be incidental to the purchase.

(g) *Rental assistance payment for 90-day homeowner.* A 90-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with §24.402 (b) (1), except that the limit of $9,570 does not apply, and is disbursed in accordance with §24.402(b) (3). Under no circumstances would the rental assistance payment exceed the amount that could have been received under paragraph (b) (1) of this section had the 90-day homeowner elected to purchase and occupy a comparable replacement dwelling. Payments allowed under 24.402(c) are not applicable.

**Replacement Housing Payment for 90-day tenants and certain others.** [2]

(a) Eligibility. A tenant or homeowner displaced from a dwelling is entitled to a payment not to exceed $9,570 for rental assistance, as computed in accordance with paragraph (b) of this section, or down payment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented or purchased and occupied a DSS replacement dwelling within 1 year (unless the agency extends this period for good cause) after the date he or she moves from the displacement dwelling.

(b) ***Rental assistance payment- (1) Amount of payment.*** An eligible displaced person under this paragraph (a) of this section who rents a replacement dwelling is entitled to a payment not to exceed $9,570 for rental assistance. (See §24,404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the

[2] 49 CFR 24.402

displacement dwelling from the lesser of: (i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or (ii) The monthly rent and estimated average monthly cost of utilities for the DSS replacement dwelling actually occupied by the displaced person.

***(2) Base monthly rental for displacement dwelling.*** The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the agency (for an owner-occupant, use the fair market rent for the displacement dwelling; for a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

(ii) Thirty percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development (HUD) in its most recently published Uniform Relocation Act Income Limits ("Survey"). The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the Survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

(iii) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

Note 1 to paragraph (b)(2): The Survey's income limits are updated annually and are available on FHWA's website at https://www.fhwa.dot.gov/real estate/low income calculations/index.cfm.

***(3) Manner of disbursement.*** A rental assistance payment may, at the agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by §24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's replacement housing.

(*c*) ***Down payment assistance payment- (1) Amount of payment.*** An eligible displaced person under paragraph (a) of this section who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the agency's discretion, a down payment assistance payment that is less than $9,570 may be increased to any amount not to exceed $9,570. However, the payment to a displaced person shall not exceed the amount the homeowner would receive under §24.401(b) if he or she met the 90-day occupancy requirement. If the agency elects to provide the maximum payment of $9,570 as a down payment, the agency shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 90-day owner-occupant under §24.401(a) is not eligible for this payment. (See appendix A to this part, section 24.402(c) for payments to less than 90-day occupants and for a discussion of those who fail to meet the 90-day occupancy requirements.)

***(2) Application of payment.*** The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

**Additional Rules Governing Replacement Housing Payments** [3]

***(a) Determining cost of comparable replacement dwelling.*** The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling. (Sec. 24.2 (a)).

(1) If available, at least three comparable replacement dwellings shall be considered and the payment computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling. (See appendix A to this part, section 24.403(a)(1).)

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the contributory value of such attribute as determined by the agency shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

[3] 49 CFR 24.403

(See appendix A to this part, section 24.403(a)(2).

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the agency determines that the remainder has economic value to the owner, the agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment. (See appendix A to this part, section 24.403(a)(3).

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) When there are multiple occupants of one displacement dwelling and if two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(6) An agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(7) For mixed-use and multifamily properties, if the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

***(b) Inspection of replacement dwelling.*** Before making a replacement housing payment or releasing the initial payment from escrow, the agency or its designated representative shall inspect the replacement dwelling and determine whether it is a DSS dwelling as defined at Sec. 24.2(a).

***(c) Purchase of replacement dwelling.*** A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling;

(2) Purchases and rehabilitates a substandard dwelling;

(3) Relocates a dwelling which he owns or purchases;

(4) Constructs a dwelling on a site he owns or purchases;

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site he owns or purchases;

(6) Currently owns a previously purchased dwelling and site,

valuation of which shall be on the basis of current fair market value.

***(d) Occupancy requirements for displacement or replacement dwelling.*** No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this part for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the agency.

***(e) Conversion of payment.*** A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Sec. 24.402(b) is eligible to receive a payment under Sec. 24.401 or Sec. 24.402(c) if he meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under Sec. 24.401 or Sec. 24.402(c).

***(f) Payment after death.*** A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(g) Insurance proceeds. To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with the loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (See 24.3)

***Mobile Homes***

***Applicability.***

(a) ***General.*** This subpart describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirement of this part. Except as modified by this subpart, such a displaced person is entitled to:

(1) A moving expense payment in accordance with subpart D of this part: and

(2) A replacement housing payment in accordance with subpart E of this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in 24.301(g)(1) through (e11).

(b) **Partial acquisition of mobile home park.** The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this part.

**Non-Availability of Comparable Housing**

When comparable Decent Safe and Sanitary (DSS) housing is not available and cannot otherwise be made available, the State may provide such housing by methods which include, but are not limited to, the following:

1. The purchase of land and/or existing dwellings in compliance with Procedure No. 08-03-07 & 08 concerning appraisal and appraisal review and Procedure No. 08-02-05 & 06 concerning negotiations;

2. The rehabilitation of existing dwellings purchased by the Highways Division for right-of-way purposes or acquired under the provisions of (l) above, to meet DSS requirements. No existing dwelling may be acquired as replacement housing if the cost of acquisition and/or rehabilitation exceeds the estimated cost of constructing a new comparable dwelling meeting the DSS requirements of the relocatees that can be constructed on a timely basis;

3. The relocation and, if necessary, the refurbishing or rehabilitation of existing dwellings purchased by the Highways Division for right-of-way purposes;

4. The construction of new comparable dwellings capable of filling the needs of those displaced;

5. The transfer from the General Services Administration to the State of any real property surplus to the needs of the United States;

6. Negotiated purchases of housing owned by other public or private agencies or individuals and to be moved from their existing location including rehabilitation; etc.

7. Joint development and/or subsidization in coordination with other governmental agencies;

8. Tri-party rental agreement;

9. Any other reasonable means to provide replacement housing.

Any person displaced because of the acquisition of real property for a last resort housing project under the Highways Division's power of eminent domain (including amicable agreements under the threat of such power) is entitled to all benefits for which he is eligible under the relocation assistance provisions, except an owner-occupant who voluntarily acts to sell his property to the Highways Division for last resort housing and so certifies in statement maintained in the Highways Division's files.

**General Provisions**

1. In addition to moving cost payments, individuals and families displaced from a dwelling, apartment. Condominium or co-operative apartments acquired for a Federal-Aid highways project are eligible for replacement housing payments in accordance with 49 CFR Part 24.402;

2. The displaced individual or family is not required to duplicate the same occupancy status (tenant or owner status) but has options according to his ownership status;

3. Only one replacement housing payment can be made for each dwelling unit except in the case of a multi-family occupancy of a single family dwelling.

**A. Requirements to Receive Payments**

1. In addition to the occupancy requirements other displaced person who is otherwise eligible for the payments, he must relocate and occupy a decent, safe and sanitary dwelling within one year beginning on the latter of the following dates:

   a. The date on which the owner received final payment for the acquired dwelling through negotiations, or in the case of condemnation;

   b. The date the Highways Division deposits the required amount in court for the benefit of the owner;

   c. The date he is required to move by the Highways Division's written notice to vacate;

   d. The date he moves if it is earlier than the date he is required to move.

2. A displaced person who has entered into a contract for the construction or rehabilitation of a replacement dwelling and for reasons beyond his control cannot occupy the dwelling shall be considered to have purchased and occupied the dwelling as of the date of such contract. The payments under these circumstances would be deferred until actual occupancy is accomplished.

**B. Inspection for Decent, Safe and Sanitary Housing (DSS)**

The Highways Division shall make an inspection of the replacement dwelling for DSS standards before making payments to the relocatee (see Attachment R).

**C. Statement of Eligibility to Lending Agency**

In cases here the relocatee qualifies for a replacement housing payment, but has not purchased or occupied a suitable replacement dwelling, the Highways Division after inspecting the proposed dwelling and finding that it meets the DSS standards may upon the relocatee's request state to the interested party, financial institution or lending agency, that the relocatee is eligible for the payment of a specific sum provided he purchases and occupies the inspected dwelling within the allowable time limit.

1. General Requirements. All applications for replacement housing payments shall be in writing on a form (Attachment I and J) provided by the Highways Division. It shall be filed no later than 18 months after the date of move except that in condemnation cases, such time may be extended to six months after the Final adjudication.

2. In the application, the displacee must indicate to the best his knowledge and belief that the replacement dwelling meets the DSS standards and the relocatee is eligible for the payment requested. The relocation agent is responsible for inspecting and filling out form.

3. The payments may be made directly to the relocatee or upon written instruction from the displacee made directly to the lessor for rent or to the seller for a purchase or into escrow:

**D. Advance Replacement Housing Payment in Condemnation Cases**

An advance replacement housing payment can be computed and paid to the property owner upon determination by the Highways Division that the acquisition price will be delayed pending the outcome of condemnation proceedings. The calculated amount will be based on the Highway's Division's maximum offer for the property as the acquisition price. Payment of such amount shall be made upon the owner-occupant's agreement that:

a. Upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the amount determined by the Highways Division necessary to acquire a comparable, decent, safe and sanitary dwelling.

b. If the amount awarded in the condemnation proceedings exceeds the amount determined by the Highways Division as the cost of a comparable dwelling, he will refund to the Highways Division, from his judgment, the amount in excess of the amount determined by the Highways Division.

c. If an agreement is not made, payment shall not be made until case is adjudicated.

**E. Ownership of Replacement Dwelling Prior to Displacement**

Any person who has obtained legal ownership of a replacement dwelling or land upon which his dwelling is constructed, either before or after displacement, and occupies the replacement dwelling after being displaced, but within the time limit specified in this procedure, is eligible for a replacement housing payment provided the replacement dwelling meets the requirements. The cost of the land and dwelling at the time of purchase by the displacee will constitute the “actual cost” in the replacement housing payment determination.

**F. Partial Take**

1. Where the dwelling is located on a tract normal for residential use in the area, the maximum replacement housing payment shall be determined by subtracting the ‘before value” of the property from the estimated selling price of a comparable dwelling on a lot typical for the area.

2. Where the dwelling is located on a tract larger than normal for residential use in the area, the maximum replacement housing payment shall be determined by estimating the value of the dwelling at the present location on a home site typical in size for area and deducting this amount from the selling price of a comparable dwelling on a typical residential home site for the area.

**G. Dwelling on Land with Higher and Better Use**

Where a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, the maximum replacement housing payment shall be determined by estimating the value of the

dwelling at the present location on a home site typical for the area and zoned for residential use and deducting this amount from the selling price of a comparable dwelling on a typical residential home site for the area.

**H. Multiple Occupancy of Same Dwelling Unit**

1. Families. If two or more eligible families occupy the same single family dwelling unit, each family is eligible for a replacement housing payment if they relocate to separate dwelling unit.

2. Individuals. If two or more eligible individuals with no identifiable head of household occupy the same single family dwelling unit, they are considered as one "family" for replacement housing payment purposes. When all individuals do not relocate to decent, safe and sanitary housing, the Highways Division shall determine and pay those who do relocate into decent safe and sanitary housing a pro-rata share of the appropriate payment that would have been received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

**I. Joint Residential and Business Use**

1. Where displaced individuals or families occupy living quarters on the same premises as a displaced business, farm or non-profit organization, such individuals or families are separate displaced persons for purposes of determining entitlement to relocation payments.

2. The procedures for computing replacement housing payments to owners of multi-family dwellings who occupy one unit are as follows:

    a. Comparability -- The comparable dwelling should be the same that acquired. If comparables are not available, then structures of the next lowest density must be used. If there are comparable multi-family units to be found, the comparison of the owner's living unit would be to a single family residence. A higher density structure should never be used.

    b. Payment Determination -- The value of the owner's unit is to be used as the base for the replacement housing payment determination, not the entire fair market value of the subject property. The replacement housing payment determination is the difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available DSS property. If a triplex, only one unit is used.

**J. Delivery of Payment Checks**

The person or persons who establish the estimate of value of replacement housing payments shall not negotiate for the parcel nor deliver the payment to the relocatee.

**Replacement Housing Payments for Owner-Occupant for 90 Days or More Who Purchase**

A. General

1. A displaced owner-occupant of a dwelling who purchases and occupies a decent, safe and sanitary dwelling and who is otherwise eligible, may receive an amount, the total combined payment of which shall not exceed the statutory limits for owner-occupancy replacement housing payment for the additional cost necessary to purchase the replacement housing which is adequate for him and his family. Compensate him for the loss of favorable financing on his existing mortgage in the financing of his replacement housing; and reimburse him for incidental expenses incident to the purchase of his replacement housing when such costs arc incurred by him (see Attachments I and K).

2. The owner-occupant is eligible for the payment when:

   a. He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part;

   b. He is in occupancy at the time he is given a written notice by the Highways Division that it is their intent to acquire the property by a given date;

   c. Such occupancy has been for at least 90 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier.

   d. The property was acquired from owner by the Highways Division.

   e. Owner purchased and occupied a decent, safe and sanitary dwelling within a one year period beginning on the latter of the following two dates:

      1. The date on which the owner received from the Highways Division final payment for two costs of the acquired dwelling in negotiated settlements; or in the case of condemnation the date on which the Highways Division deposits the required amount in court for the benefit of the owner; or

      2. The date on which he is required to move; or the date on which owner moves, if earlier that the date on which owner is required to move;

B. Replacement Housing Payments

1. Amount of Payment. The replacement housing payment is the amount, if any, when added to the amount which the Highways Division acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary dwelling or the amount determined by the Highways Division as necessary to purchase a comparable dwelling whichever is less.

2. Determination of Amount Necessary to Purchase

   a. Schedule. A schedule may be established to probable selling prices of comparable dwellings in various types of dwellings being acquired based on analysis of the market. The schedule shall be updated periodically to reflect current prices and shall be coordinated with governmental agencies causing displacement in the same community or area so as to assure uniformity to the maximum extent possible.

   b. Three Comparables Method. The Highways Division may use the Three Comparables Method. Three comparables are analyzed and the most comparable is selected. Selection of comparables and computation of the payment must be done by qualified Highways Division employee other than the appraiser or review appraiser on the parcel involved. The selected comparable must be the most nearly comparable and equal to or better than the subject property (see attachment M). No adjustments will be made to the asking price of the selected comparables.

   c. As an alternative, the Highways Division may develop a different method of determining the probable selling price of comparable dwellings and submit it to the Federal Highways Administration (FHWA) for prior approval.

3. Revisions to Replacement Housing Amount

In cases where the relocatee requests assistance in finding replacement housing and the comparable housing unit on which Highways Division made its determination are no longer available, a new replacement housing amount will be determined based on available housing which is equal or better and meets the other criteria.

C. Increased Interest Payments

1. Increased interest payments are provided to compensate a displaced person for the increased interest cost he is required to pay for financing a replacement dwelling and shall be allowed only when both of the following conditions are met:

   a. The dwelling acquired by the Highways Division was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 90 days prior to the established eligibility date covered under paragraph 5.2A(2); and

   b. The mortgage on the replacement dwelling bears a higher rate of interest than the mortgage interest rate on the acquired dwelling.

2. Limitation

   The increased interest payment will be based on and limited to the lesser of the following amounts:

   a. The present worth of the right to receive the monthly difference in mortgage payments on the existing mortgage using the old and new interest rates.

   b. The present worth of the right to receive the monthly difference in mortgage payments on the new mortgage using the old and new interest rates.

   c. To the amount derived will be added the actual amount paid by the purchaser as points on the amount refinanced, but in no instances would it exceed an amount which would have been paid if the original mortgage balance was refinanced, and/or a fee actually charged as an origination or service fee (not to exceed one per cent of the mortgage amount). If such fees are normal to real estate transactions in the area.

3. Payment Computation

   The amount of increased interest payment will be computed as shown on attachment B.

4. To whom Payment Made

   a. The increased interest payment is made directly to the relocated individual or family. Payment may be made directly to the mortgagee for the replacement dwelling upon written instructions from the relocated individual or family.

   b. Advance payment into escrow prior to the relocatee's moving may be made by the Highways Division if requested specifically by the applicant provided he qualifies for the interest payment.

*5.* Partial Acquisition

   a. Where the dwelling is located on a tract normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the

      acquisition price bears to the before value; except, the reduction shall not apply when the mortgagee required the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

   b. Where a dwelling is located on a tract larger than normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

6. Multi-Use Properties

   The interest payment on multi-use properties shall be based on the percentage ratio that the residential value of the multi-use property bears to the before value.

7. Other Highest and Best Use.

   If a dwelling is located on a tract where the fair market value is established on higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as provided in the appropriate preceding paragraphs. If the mortgage is obviously based on the higher use, however, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

D. Incidental Expenses

1. The owner-occupant is entitled to receive reimbursement for the actual costs incurred by him incident to the purchase of the replacement dwelling, but not for prepaid expenses. The claim for reimbursement is submitted by the owner in the form provided by the Highways Division as shown on Attachment C. Incidental expenses may include the following items if normally paid by the buyer.

   a. Legal, closing and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats and charges paid incident to recordation;

   b. Lenders FHA or VA appraisal fee;

   c. FHA or VA application fee;

   d. Certification of structural soundness when required by lender, FHA or VA and due diligence professional inspections;

   e. Credit report;

   f. Owner's title policy or abstract of title;

   g. Escrow agent's fee;

   h. Conveyance tax;

   i. Sales or transfer taxes.

2. No fee, cost, charge or expense is reimbursable as incidental expenses when it is determined to be a part of the debt service, or finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System.

E. Combined Payments Not to Exceed Statutory Limit for Owner-Occupant Replacement Housing Payment.

In no event shall the combined payment for replacement housing costs, increased interest payments and incidental expenses incurred incident to purchase of said replacement dwelling exceed the statutory limit unless Housing of Last Resort is required.

F. Owner Retention

If the owner retains his dwelling, and moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling;

(iii) The current fair market value for the residential use of the replacement dwelling site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost:" used when computing the replacement housing payment.

**Rental Replacement Housing Payment to Owner-Occupant for 90 Days or More who Rents**

A. General

An owner-occupant who is otherwise eligible to receive a replacement housing payment, for the additional cost necessary to purchase replacement housing; increased interest costs and incidental expenses incident to purchase of a replacement dwelling may elect to rent in lieu of purchasing a replacement dwelling. If he rents a replacement dwelling, he is eligible to receive a rental replacement housing payment not to exceed the statutory limit for rental replacement housing payment.

B. Computation and Disbursement

The payment shall be computed and disbursed in accordance with the provisions of paragraphs 5.4B and C, and D except that the present rental rate shall be economic rent as determined by the Highways Division.

**Replacement Housing Payments to Owner-Occupant for 90 Days or More Who Purchases**

A. General

A displaced owner-occupant otherwise eligible under paragraph 5.2A except that he has owned and occupied the dwelling for 90 days or more may receive an amount not to exceed the statutory limit for rental replacement housing payment to enable him to make a down payment on the purchase of a replacement dwelling and reimbursement for actual expenses incident to such purchase (see Attachment L); or for additional costs to relocate his retained dwelling in accordance with the following:

B. Computation of Down Payment and Incidental Costs

1. The amount of down payment shall be determined by the Highways Division as the amount required as a typical down payment on a comparable dwelling if such was financed by a conventional loan plus the amount required to be paid as points by the purchaser or an origination or loan service fee (not to exceed one per cent), if such fees are normal to real estate transaction in the area.

2. The expenses incident to the purchase of the replacement housing as described in paragraph 5.2D.

3. Upon purchase and occupancy of a decent, safe and sanitary dwelling within the time limits specified in paragraph 5.1 B. The relocatee may be reimbursed for the down payment and incidental expenses for owner-occupant with not less than 90 days.

4. The full amount of the down payment must be applied to the purchase price and such down payment and incidental costs claimed must be shown on the closing statement.

C. Owner Retention of Dwelling

The owner may retain his dwelling; and replacement housing payment, if any, will be determined as in paragraph 5.2F.I.

D. Combined Payments Not to Exceed the Statutory Limit for Rental Replacement Housing Payment. If an owner-occupant is qualified under this paragraph but has previously received a payment under paragraph 5.4, the amount of such payment made under said paragraph shall be deducted from the amount to which he is entitled.

**Rental Replacement Housing Payments to Tenant-Occupant of 90 Days or More Who Rents**

A. General

A displaced tenant is eligible to receive rental replacement housing payment not to exceed the statutory limit for rental replacement housing payment when:

1. He is in occupancy in whole or in part at the beginning of negotiations for the acquisition of real property;

2. He is in occupancy at the time he is given a written notice of intent to acquire the property by a given date by the Highways Division;

3. The occupancy has been for at least 90 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier;

4. The property was subsequently acquired;

5. He rented and occupied a decent, safe and sanitary dwelling within the time allowed;

6. If otherwise eligible, he may receive the payment if the State issues an order to vacate even though the property is not acquired.

B. Computation of Payment

1. The payment shall be determined by subtracting from the amount the tenant actually pays for a replacement dwelling or if lesser, the amount as determined by the Highways Division as necessary to rent a comparable dwelling for the next three and one-half years the following amount (sec Attachments J and 0) except as provided in paragraph 5.68.2*:*

   a. Forty-two (42) times the average monthly rental paid by the relocated individual or family during the last three months or such other appropriate time as may be proper; or

   b. The economic rent as set by the Highways Division if the average monthly rental is not reasonable equal to market rental for similar dwellings; or

c. The "monthly rental paid" shall include all rent supplements supplied by others except when, by law, such supplement is to be discontinued upon vacating from the property;

2. Where the average monthly rental being paid by the relocatee, not including the supplemental rent by public agencies, exceeds 30 per cent of the monthly gross income of such individual or family, the payment shall be determined by subtracting 12 times the average monthly income of the relocatee from:

a. Forty-two (42) times the monthly rental the tenant actually pays for his replacement unit or, if lesser, the amount determined by the Highways Division as necessary to rent a comparable dwelling if he relocates into private housing (see Attachment N); or

b. Forty-two (42) times the monthly rental the relocatee is required to pay if he relocates into a comparable unit of public subsidized rental housing;

c. When the rental replacement housing payment computed under these criteria exceeds the statutory limit, the selected replacement dwelling is to be classed as not comparable. Housing must be made available which is within the financial means of the relocatee.

C. Determination of Amount Necessary to Rent

The Highways Division shall determine the rental rates of comparable housing by the three comparables method or by a schedule.

D. Disbursement of Rental Replacement Housing Payments

The amount of the rental replacement housing payment shall be paid in a lump sum, unless the displaced person who is entitled to the payment requests that it be paid in installments.

**Replacement Housing Payments to Tenant-Occupant for Not Less Than 90 Days Who Purchase**

A. General

A tenant-occupant who is eligible for rental replacement housing payment under paragraph 5.5 who elects to purchase a replacement dwelling is eligible to receive the tenant replacement housing payment, not to exceed the statutory limit, to enable him to make a down payment on the purchase of a replacement dwelling including the expenses incident to such purchase.

B. Computation of Payment

The payments shall be computed in accordance with the provisions of paragraph 5.4.

**Replacement Housing Payments to Tenant of a Sleeping Room for More Than 90 Days**

A. General

In the case of a displaced individual renting only a sleeping room, the provisions of paragraph 5.6A shall apply. He may receive the rental replacement housing payment not to exceed the statutory limit, as a rental housing payment or to enable him to make a down payment on a replacement dwelling in accordance with the following paragraphs.

B. Rental Replacement Housing Payment

1. The payment shall be determined by subtracting from the amount which the tenant actually pays or if lesser, the amount determined by the Highways Division as necessary to rent a comparable sleeping room for the next three and one-half years the following amount:

   a. Forty-two (42) times the average monthly rental paid by the displaced tenant during the last three months.

   b. If such average monthly rental is not reasonably equal to market rentals for similar sleeping rooms The economic rent is established by the State.

2. The determination of the amount necessary to rent and disbursement of the rental replacement housing payment shall be as provided for in paragraphs 5.6C and 5.6D.

C. Down Payment

The down payment amount including the expenses incident to the purchase of the replacement dwelling are to be computed in accordance with the provisions of paragraph 5.4B.

**Forms Used for Relocation Assistance and Payments**

**The following forms are used in connection with our relocation assistance program:**

| | | Attachments |
|---|---|---|
| 1. | Moving Expense Schedule | A |
| 2. | Claim for Interest Differential Payment | B |
| 3. | Claim for Incidental Expenses | C |
| 4. | Request for Relocation Service | D |
| 5. | Request for Determination of Entitlement for Moving Expense Payment Based on Income | E |
| 6. | Claim for Payment - Income Basis in Lieu of Moving Expense | F |
| 7. | Claim for Payment - Moving Expense | G |
| 8. | Moving Expense Claim Form | H |
| 9. | Claim for Payment Replacement Housing Purchase Supplement | I |
| 10. | Claim for Payment Replacement Housing – Rent Supplement | J |
| 11. | Computation of Down Payment Assistance for Claimant Who Moved to Replacement Unit Purchased | K |
| 12. | Computation of Down Payment Assistance for Claimant Who Moved to Replacement Unit Purchased | L |
| 13. | Determination of the Amount Required as Down Payment on a NI Comparable Dwelling, if Such Purchase was Financed by a Conventional Loan | M |

| | | |
|---|---|---|
| 14. | Determination of the Amount Necessary to Rent a Comparable Dwelling | N |
| 15. | Computation of Rental Replacement Housing Amount (Tenant) | O |
| 16. | Computation of Rental Replacement Housing Amount (Owner-Occupant) | P |
| 17. | Relocation Assistance Appeal | Q |
| 18. | Standards for Decent, Safe and Sanitary Housing for Permanent Relocation Housing for Families | R |
| 19. | Survey Information Occupant(s) | S |

# REPLACEMENT HOUSING OF LAST RESORT

**PURPOSE:** To describe and establish procedures in providing appropriate replacement housing of last resort by use of funds authorized for a project when it is determined that a Federal or Federal-Aid project cannot proceed to actual construction because comparable decent, safe and sanitary (DSS) replacement sale or rental housing is not available for highway displacees and cannot otherwise be made available.

**POLICY:** Comparable DSS replacement housing must be "made available" to a highway displacee pursuant to the provisions of Act 166, Session Laws of Hawaii, 1970 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, implemented by 49 CFR Part 24.

**RESPONSIBILITY:** The Property Management Section (HWY-RM) is responsible for implementing replacement housing as a last resort.

**SCOPE:** The procedures described herein apply to the Right-of-Way Branch (HWY-R) and Fiscal Staff (HWY-SF) of the Highways Division, State Department of Transportation, the Hawaii Housing Authority, and, whenever practical, by cooperative agreements with any other Federal, State or local agency or contract with any individual, firm, association or corporation for services in connection with and having experience in the administration or conduct of housing assistance activities.

**PROCEDURES:** The following procedures shall apply to this Section.

**Replacement Housing of Last Resort** [1]

(a) **Determination to provide replacement housing of last resort.** Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in §24.401 or §24.402, as appropriate, the agency

[1] 49 CFR 24.404

shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to: (i) The availability of comparable replacement housing in the program or project area; (ii) The resources available to provide comparable replacement housing; and (iii) The individual circumstances of the displaced person; or

(2) By a determination that: (i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; (ii) a program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and (iii) The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

(b) **Basic rights of persons to be displaced.** Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The agency shall not require any displaced person to accept a dwelling provided by the agency under the procedures in this part (unless the agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) **Methods of providing comparable replacement housing.** Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include but are not limited to: (i) A replacement housing payment in excess of the limits set forth in §24.401 or §24.402. A replacement housing payment under this section may be provided in installments or in a lump sum at the agency's discretion. (ii) Rehabilitation of and/or additions to an existing replacement dwelling. (iii)

The construction of a new replacement dwelling. (iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free. (v) The relocation and, if necessary, rehabilitation of a dwelling. (vi) The purchase of land and/or a replacement dwelling by the agency and subsequent sale or lease to, or exchange with a displaced person. (vii) The removal of barriers for persons with disabilities.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling in 24.2(a), modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (See appendix A to this part, section §24.404(c)), including upgraded, but smaller replacement housing that is DSS and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with §24.2(a), comparable replacement housing.

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (See §24.2(a).) Such assistance shall cover a period of 42 months.

**State's Responsibility:**

A. It is the Highways Division's obligation and responsibility to provide comparable DSS replacement housing to any displaced person which places the displacee in the same ownership or tenancy status as he had prior to displacement. The Highways Division is not obligated to provide a dwelling unit which changes the ownership or tenancy status of the relocatee unless such a dwelling unit is available or can be provided more economically.

B. When an adequate supply of available comparable dwellings cannot be found on the open market, a last resort housing project may be programmed and authorized for the construction, purchase and/or rehabilitation of dwellings as replacement housing units for highway displacees under "housing replacement as last resort" as provided in 42 U.S.C. Chapter 61, Section 4601 et. seq., Title II, of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL. 91-646).

C. The provisions contained in this section are not intended to deprive any displaced person of his rights to receive relocation assistance, moving costs or replacement housing payments for which he may be otherwise eligible for or his freedom of choice in the selection of replacement housing. Nor is a displaced person required, without his written consent, to accept a dwelling provided by the Highways Division under these procedures in lieu of his acquisition payment, if any, for the real property from which he is displaced or the replacement housing payments for which he may be eligible under Chapter 4, Section 4, Relocation Payments of this manual.

D. The Highways Division's obligation will have been discharged when comparable DSS replacement housing has been made available to the displaced person in compliance with the Uniform Act.

**Implementation**

A. Utilization of Last Resort Housing Replacement housing may be provided when:

1. Comparable DSS housing is not available and cannot otherwise be made available for the displaced person.

2. Comparable DSS housing is available for the displaced person within his financial means but the sales price or rental rates exceed the applicable statutory limits of Chapter 4, Section 4, paragraphs 5.IE and 5.5B.

B Replacement Housing Costs in Excess of $41,200 for an Owner of More than 90 Days

1. A 90-day owner is a displaced person who has owned and occupied the dwelling from which he is being displaced for at least 90 consecutive days immediately prior to the initiation of negotiations, or the date of vacation if a notice of intent to acquire is given, whichever is earlier.

2. The 90-day owner, in accordance with Section 4, paragraph 5.lA is eligible for increased interest costs, closing costs and a replacement housing payment. When the sum of these items is estimated to exceed the statutory limit allowed under Section 4, paragraph 5.1E, the last resort housing provisions are applicable. If last resort housing provisions are applied a replacement housing payment will not be made directly to relocatee.

C. Rent Supplement Costs in Excess of $9,570 for an Owner of More than 90 Days or for a Tenant of More than 90 Days.

D. Owner Retention

The last resort housing procedures are generally not applicable when comparable housing, meeting DSS requirements is obtained by the relocatee through owner retention if the estimated replacement housing payment for which he is eligible is within the statutory limits, for the 90-day owner, respectively. If the estimated replacement housing payment exceeds the statutory limits, last resort housing would be utilized.

**Programming and Authorization**

A. Federal-aid funds may only be programmed for a last resort housing project when there are or will be other Federal funds involved on that project. If other Federal funds subsequently are not programmed, Federal-Aid funds which have been expended will be refunded to the project.

B. All of the following activities shall be programmed and authorized as a last resort housing alternative.

1. Preliminary Study;
2. Plan.

**Preliminary Housing Studies**

Whenever, in connection with the planning, development or execution of a Federal or federally assisted project, the relocation information required for the corridor public hearing the environmental impact statement, or any information developed at a later date indicates that a sufficient supply of comparable DSS replacement housing may not be available for all residents on the approved location to satisfy the requirements of 42 U.S.C. Chapter 61, Section 4601 et. seq., or that such housing is not available on a non-discriminatory or fair housing basis, the Highways Division shall submit a request for program approval to proceed with a preliminary housing study.

In its preliminary housing study, the Highways Division shall undertake the following, using existing data and supplementing it where necessary, to ascertain more precisely the need to construct housing:

A. Inventory of Housing Needs and Availability of Replacement Housing

1. Prepare an inventory of the characteristics and relocation needs, desires and intentions of the families and individuals to be displaced;

2. Prepare an inventory of currently available comparable DSS replacement sale and rental housing and housing to be constructed or rehabilitated. Such housing shall not include housing planned for removal or demolition by the highway project or by governmental or private agencies.

   In preparing such inventories, the Highways Division shall consult Federal, State or local agencies which may be able to provide such housing or are knowledgeable with respect to housing programs and also coordinate with other displacing agencies with respect to the utilization and allocation of these resources. The timing of the highway project must also be taken into consideration in preparing the inventories.

B. Analysis of Inventories

The Highways Division shall correlate and analyze the information contained in the above inventories. If last resort housing funds are to be utilized, the correlation and analysis of the above inventories must reasonably show that the project cannot proceed to actual construction because comparable replacement or rental of DSS housing is not reasonably anticipated to be available and cannot be made available.

**Replacement Housing Plan**

A. Plan Requirements

1. If the analysis of the information gathered in accordance with paragraph 8 indicates that the construction of last resort housing is necessary, the Highways Division shall develop or cause to be developed a replacement housing plan, innovative approaches and methods are encouraged, with FHWA concurrence, designed to produce comparable DSS replacement housing. A detailed analysis of the needs of each displacee shall be considered when planning the type of housing necessary to meet these needs.

   The plan shall include:

   a. A statement that the methods proposed in the plan to provide comparable DSS replacement housing can be legally accomplished in accordance with State law;

   b. How, when and where housing will be provided;

   c. The environmental suitability of the location of the proposed housing;

   d. The environmental impact of the proposed housing.

      1. Not more than 100 units of last resort housing in the replacement housing plan - the environmental effects of such housing in the replacement housing plan would ordinarily support a negative declaration under FHPM 7-7-2 that the proposed

housing project does not significantly affect the quality of the human environment unless the project is controversial.

2. Housing projects of more than 100 units, such housing may significantly affect the quality of human environment and hence may require an environmental impact statement as follows:

a. If the proposed housing project does not significantly affect the human environment, the discussion and analysis of the environmental impact in the replacement housing plan would be sufficient to support a negative declaration.

b. If the proposed housing project does significantly, affect the human environment, an environmental impact statement must be prepared for the housing project, or the highway project environmental impact statement may be supplemented.

e. How it will be financed and the amount of project funds to be diverted to such housing:

1. By contractual arrangement with State and local housing agencies;

2. By contractual arrangement with Housing and Urban Development (HUD) or the Farmers Home Administration;

3. Contract with non-profit or for-profit organizations experienced in the development of housing;

4. Interest subsidy payments;

5. Direct construction by the State.

f. The prices within the financial means of the families and individuals to be displaced at which the housing will be rented or sold;

g. The arrangements for maintaining rent levels appropriate for the persons to be re-housed;

h. The arrangements for rental housing management;

i. The disposition of the proceeds from rental, sale or resale of such housing;

j. How the construction will be monitored;

k. Any other comments pertinent to providing replacement housing.

B. Consultation

From the inception of the last resort housing plan and continuing during the course of its development, the Highways Division shall consult the HUD (or the Farmers Home Administration FMHA) where appropriate and with the residents to be displaced or their representatives.

C. 25 Units or Less

If a single last resort housing project (or in the case of joint development with other agencies, by several projects) is for 25 dwelling units or less, the Highways Division may plan and provide such housing without the assistance of an advisory committee or review by other agencies. The plan must be reviewed and approved by the FHWA as specified in paragraph 5.4A of this manual. The Highways Division shall be guided by the HUD project selection criteria and minimum property standards (see paragraph 5.4E) for comparable Federal housing programs and shall comply with the policies, requirements and procedures specified in paragraph 5.6.

D. More than 25 Units

In more than 25 units on a single last resort housing project, the Highways Division shall appoint an advisory committee, as specified in paragraph 5.8, which shall consult with and provide assistance to the Highways Division, or its selected organization, in the development of the plan. If the Highways Division elects not to develop a replacement housing plan with its own forces, it shall engage a State or local housing agency, or other agency to develop the last resort housing plan. In such eases, the Highways Division shall appoint an advisory committee to work with the agency or organization so engaged.

E. Submission of the Last Resort Housing Plan for Review.

Where more than *25* dwelling units are to be constructed, the Highways Division shall submit the replacement housing plan to HUD (or the Farmers Home Administration, where appropriate) and the Regional and State Clearinghouses designated pursuant to 0MB Circular No. A-95.

1. HUD (or the Farmers Home Administration, where appropriate) shall review and comment on the plan with respect to:

   a. Plan feasibility;

   b. Project selection criteria in determining priority of funding projects under Sections 235(i) and 236 of the National Housing Act (12 U.S.C. l 7z and l 7z-l), rent supplement projects and low-rent housing assistance applications under the U. S. Housing Act of 1937 (42 U.S.C. 1401 et. seq.);

   c. Minimum property standards for:

      1. One and two-family dwellings (FHA No. 300);
      2. Multi-family housing (FHA No. 2600);
      3. Nursing homes (FHA No. 4515.1);
      4. Housing for elderly (HUD PG 46).

   d. Environmental standards and procedures as provided in paragraph 5.4 A thru D;
   e. Compatibility with local and area wide housing plans, provided that such plans are in compliance with paragraph 5.4A1;
   f. Compliance with Civil Rights Act and Executive orders specified in paragraph 5.7;

2. The Regional and State Clearinghouses shall review and comment on the plan with respect to its compatibility with the area wide housing plan or strategy developed or being developed by the Regional Planning Agency.

3. HUD (or the Farmers Home Administration, where appropriate) and the Regional and State Clearinghouses shall review the plan and submit comments to the Highways Division within 30 calendar days after receipt of the plan. If necessary for the timely implementation of the plan or execution of the projects, the Highways Division may shorten the time allowed for review and comment to some reasonable period less than 30 days.

F. Revision of Last Resort Housing Plan after Review

Upon receipt and consideration of the comments on the plan, the Highways Division shall revise the plan, if deemed necessary to correct negative comments resulting from the above reviews.

G. Review of Substantial Modifications

Any substantial modifications in the plan, except those made in accord with such comments, should be resubmitted for review and comments unless time does not permit. Whenever an amended plan is resubmitted for review and comment, a copy may also be provided to the advisory committee for simultaneous review.

H. Determination of Compliance

Subsequent to receipt of review comments and modification of the plan, if deemed necessary, or if title 30-day review period has passed without receiving any comments, the State shall make a determination that the plan is in substantial compliance with paragraph 5.4E and shall submit it to the FHWA for approval or disapproval.

I. Aggregate Housing under Jointly Financed Programs

Where several agencies are administering programs resulting in residential displacement, opportunities shall be sought out for joint development and financing to provide replacement housing in sufficient quantity to satisfy the aggregate needs of such programs.

**Implementation of Housing Plan (Construction)**

Upon approval of the last resort housing plan, FHWA may authorize the Highways Division to proceed with the proposed construction.

A. Whenever practical, the Highways Division may utilize the services of Federal, State or local housing agencies, or other agencies, groups or individuals having experience in the administration or conduct of similar housing programs. The use of small and minority firms and firms located on or near the project area and the employment of residents of the project area are encouraged.

B. The Highways Division shall monitor, with its own forces or qualified fee personnel, the construction of replacement housing to assure that it is in accordance with the last resort housing plan. A final inspection shall be made and the signed certification of acceptability of the construction shall be in the State files.

**Advice and Technical Assistance by HUD and Other Federal Agencies**

Throughout the entire planning, development and implementation process, the HUD area or Insuring Office Director shall provide the Highways Division with advice, technical assistance and general information requested by the Highways Division. HUD shall also review pending applications for housing subsidy assistance or mortgage insurance to determine the effect on any estimated replacement housing deficit and keep the Highways Division advised as applications are recieved or commitments are made that are likely to affect any estimated deficit. Where appropriate, the Farmers Home Administration shall provide the Highways Division with similar assistance.

**Compliance with Other Statutes**

The development and implementation of last resort housing projects shall be in compliance with the applicable provisions of the following, including the amendments and regulations issued pursuant thereto:

1. Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982)

2. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 1972, 1975 and 2000 a-h-b; 23 U.S.C 1447)

3. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.)

4. The National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347)

5. Executive Order 11063 (Equal Opportunity in housing) 3 CFR Comp. 1959-1963**,** page 652.

6. Executive Order 11246 (Equal Employment Opportunity) 3 CFR Comp. 1964-1965, page 339 of Federal Laws, Regulations and Materials Relating to the Federal Highway Administration, page IV-4l.

7. Executive Order 11625 (Minority Business Enterprise) 3 CFR Comp. 1971, page 213.

**Advisory Committee**

The advisory committee shall include representatives of the following:

A. The Highways Division and its selected organizations, if any;

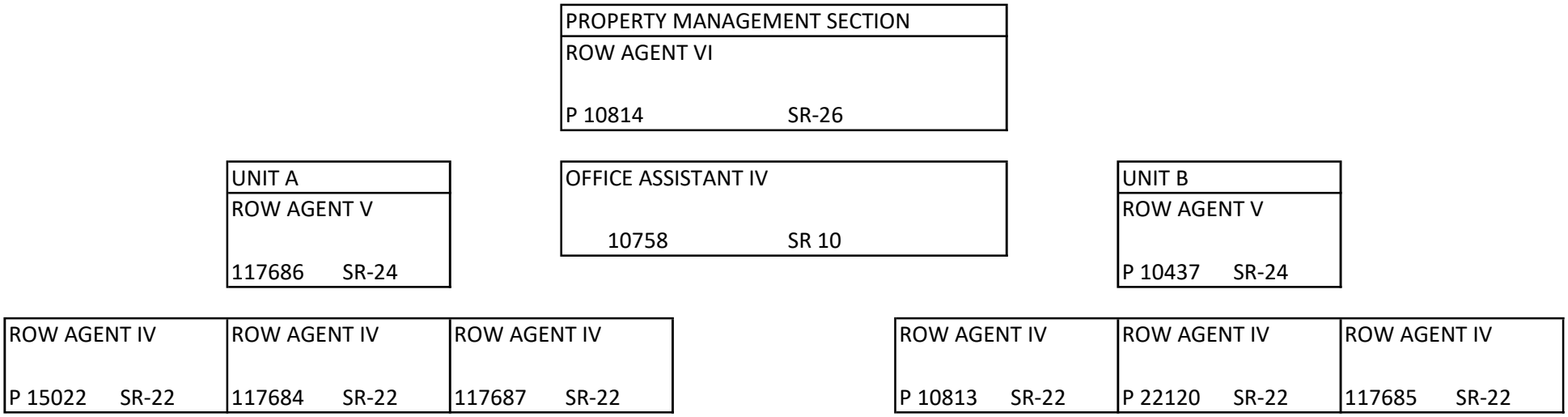
B. The chief executive officer of the jurisdiction in which displacement will occur;

C. State and local agencies knowledgeable regarding housing in the area, including, but not limited to, the Hawaii housing Authority and the Honolulu Redevelopment Agency.

D. In addition, the committee should include representatives of other appropriate public (e.g. local and area wide planning agencies) and private groups knowledgeable regarding housing and the problem of housing discrimination as well as representative of affected residents to be displaced. The failure of any person to participate on the committee shall not preclude the committee from satisfying the requirement of this paragraph.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
RIGHT-OF-WAY BRANCH
PROPERTY MANAGEMENT SECTION

POSITION ORGANIZATION CHART




P = PROJECT FUNDED
ALL OTHER POSITIONS ARE SPECIAL FUNDED

# 2021 Fixed Residential Moving Cost Schedule

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, Fixed Residential Moving Cost Schedule 2021 was published in the Federal Register/Notices on Tuesday, July 27, 2021. The provisions of the notice are **effective August 26, 2021** or on such earlier date as an agency elects to begin operating under this schedule.

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The payments listed in the table below apply on a state-by state basis. Two exceptions and limitations apply to all States and Territories. Payment is limited to $100.00 if either of the following conditions apply:

(a) A person has minimal possessions and occupies a dormitory style room, or

(b) A person's residential move is performed by an agency at no cost to the person.

**Effective August 26, 2021**

**Uniform Relocation Assistance and Real Property Acquisition Policies ActResidential Moving Expense and Dislocation Allowance 2021 Payment Schedule**

| State | 1 room | 2 rooms | 3 rooms | 4 rooms | 5 rooms | 6 rooms | 7 rooms | 8 rooms | addt'l room | 1 room/no furn. | addt'l room no furn. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Alabama | 600 | 800 | 1000 | 1200 | 1400 | 1600 | 1800 | 2000 | 250 | 400 | 100 |
| 2. Alaska | 850 | 1100 | 1350 | 1625 | 1875 | 2075 | 2300 | 2500 | 350 | 600 | 250 |
| 3. American Samoa | 282 | 395 | 508 | 621 | 706 | 790 | 875 | 960 | 85 | 226 | 28 |
| 4. Arizona | 700 | 800 | 900 | 1000 | 1100 | 1200 | 1300 | 1400 | 100 | 395 | 60 |
| 5. Arkansas | 650 | 900 | 1100 | 1350 | 1600 | 1825 | 2050 | 2275 | 225 | 450 | 125 |
| 6. California | 780 | 1000 | 1250 | 1475 | 1790 | 2065 | 2380 | 2690 | 285 | 510 | 100 |
| 7. Colorado | 675 | 895 | 1115 | 1270 | 1425 | 1580 | 1735 | 1890 | 155 | 385 | 55 |
| 8. Connecticut | 715 | 930 | 1150 | 1350 | 1640 | 1920 | 2200 | 2500 | 175 | 260 | 70 |
| 9. Delaware | 700 | 900 | 1100 | 1300 | 1500 | 1700 | 1900 | 2100 | 150 | 500 | 100 |
| 10. District of Columbia | 800 | 1000 | 1200 | 1500 | 1700 | 1900 | 2100 | 2300 | 200 | 500 | 100 |
| 11. Florida | 800 | 975 | 1150 | 1350 | 1575 | 1750 | 1950 | 2200 | 325 | 550 | 175 |
| 12. Georgia | 600 | 975 | 1300 | 1600 | 1875 | 2125 | 2325 | 2525 | 200 | 375 | 100 |
| 13. Guam | 850 | 1200 | 1550 | 1900 | 2200 | 2500 | 2750 | 3000 | 350 | 300 | 175 |
| 14. Hawaii | 850 | 1200 | 1550 | 1900 | 2200 | 2500 | 2750 | 3000 | 350 | 300 | 175 |
| 15. Idaho | 600 | 800 | 1000 | 1200 | 1400 | 1600 | 1800 | 2000 | 200 | 350 | 100 |
| 16. Illinois | 850 | 1000 | 1150 | 1250 | 1400 | 1600 | 1750 | 2050 | 450 | 650 | 150 |
| 17. Indiana | 500 | 700 | 900 | 1100 | 1300 | 1500 | 1700 | 1900 | 200 | 400 | 100 |
| 18. Iowa | 550 | 700 | 800 | 900 | 1000 | 1100 | 1225 | 1350 | 125 | 500 | 50 |
| 19. Kansas | 400 | 600 | 800 | 1000 | 1200 | 1400 | 1600 | 1800 | 200 | 250 | 50 |
| 20. Kentucky | 700 | 900 | 1100 | 1300 | 1500 | 1700 | 1900 | 2100 | 200 | 400 | 100 |
| 21. Louisiana | 600 | 800 | 1000 | 1200 | 1300 | 1550 | 1700 | 1900 | 300 | 400 | 70 |
| 22. Maine | 650 | 900 | 1150 | 1400 | 1650 | 1900 | 2150 | 2400 | 250 | 400 | 100 |

A

# CLAIM FOR INTEREST DIFFERENTIAL PAYMENT

TO: State of Hawaii
Department of Transportation
Highways Division
Right-of-Way Branch
869 Punchbowl Street
Honolulu, Hawaii 96813

Project:

Parcel: | FAP No.:

1. Did Claimant Reside on Acquired Property? YES NO

2. Full Names of Claimants

3. Address of Acquired Property:

4. Address of Replacement Property:

5. Recording Data:
(a) Acquired Property
Book _____ Page _____
(b) Replacement Housing, Date Purchased
Book _____ Page _____

6. Controlling Amounts, Terms, Rates and Computations

| | Existing Mortgage 1st Mtg. | Existing Mortgage 2nd Mtg. | New Mortgage 1st Mtg. | New Mortgage 2nd Mtg |
|---|---|---|---|---|
| Interest Rate | | | | |
| Remaining Term | | | | |
| Remaining Principal Balance | $ | | $ | |

I. OLD MORTGAGE COMPUTATION

1st Mortgage

a. Monthly P & I Payment - $_____ for _____ yrs. at _____ % = $_____

b. Monthly P & I Payment - $_____ for _____ yrs. at _____ % = $_____

c. Monthly Interest Difference = $_____

d. Present worth of (c) $_____ monthly for _____ yrs. discounted at _____ % savings deposit rate ( ) = $_____

2nd Mortgage

a. Monthly P & I Payment - $_____ for _____ yrs. at _____ % = $_____

b. Monthly P & I Payment - $_____ for _____ yrs. at _____ % = $_____

c. Monthly Interest Difference = $_____

d. Present worth of (c) $_____ monthly for _____ yrs. discounted at _____ % savings deposit rate ( ) = $_____

II. NEW MORTGAGE COMPUTATION *

1st Mortgage

a. Monthly P & I Payment - $_____ for _____ yrs. at _____ % = $_____

b. Monthly P & I Payment - $_____ for _____ yrs. at _____ % = $_____

c. Monthly Interest Difference = $_____

d. Present worth of (c) $_____ monthly for _____ yrs. discounted at _____ % savings deposit rate ( ) = $_____

2nd Mortgage

a. Monthly P & I Payment - $_____ for _____ yrs. at _____ % = $_____

b. Monthly P & I Payment - $_____ for _____ yrs. at _____ % = $_____

c. Monthly Interest Difference = $_____

d. Present worth of (c) $_____ monthly for _____ yrs. discounted at _____ % savings deposit rate ( ) = $_____

AMOUNT OF INTEREST PAYMENT (Lesser of #I or II) $_____

* New mortgage computation not necessary if new mortgage is for the same amount and term of the old mortgage.

I CERTIFY that: (1) I am the former owner of property acquired by the Department of Transportation, Highways Division, at the address shown above; (2) that said property was subject to a bona fide deed or mortgage of record at least 180 days prior to state's initiation of negotiation for the property; (3) that no material changes were made in the terms of said deed or mortgage during said period; (4) that I have purchased property similar to that sold to the State at the address shown for replacement property; (5) that the replacement property is subject to a mortgage; (6) that I have not previously received payment of an interest differential arising from State's purchase of this parcel of real property. I understand that falsification of any item in this claim submitted herewith may result in forfeiture of the entire claim.

_____ Signature _____ Signature _____ Date

SPACES BELOW TO BE COMPLETED BY HIGHWAYS DIVISION

I CERTIFY that: (1) I have examined this claim and substantiating documentation and have found it to conform to the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, applicable thereto; (2) that the claimant has complied with said provisions and is eligible to receive an interest differential payment as requested. This claim is approved and payment authorized as follows:

Amount of Approved Payment $_____

_____ Authorized Signature _____ Date Approved

## CLAIM FOR INCIDENTAL EXPENSES

If you purchase a replacement dwelling and file a claim for a replacement housing payment, you must complete this form and submit it, together with a certified copy of the closing statement for the transaction, to the Right-of-Way Branch, Highways Division, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii.

List incidental expenses actually incurred by you in connection with the purchase of your replacement dwelling. Such expenses must be shown on the closing statement you submit with this claim. Complete columns (a), (b), (c) and (d). If you are an owner-occupant of less than 180 days, the closing statement must also show the total downpayment made and the amount of cash contribution from your own funds applied towards the purchase of your replacement dwelling.

| ITEM (a) | COSTS INCURRED BY CLAIMANT | | | This Column for use by Highways Division |
|---|---|---|---|---|
| | Charged to Claimant on Closing Statement (b) | Paid Directly by Claimant (c) | Amount Claimed (Col. (b) + (c)) (d) | Amount Approved (e) |
| | $ | $ | $ | $ |
| | | | | |
| | | | | |
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| | | | | |
| | | | | |
| | | | | |
| TOTAL | $ | $ | $ | $ |

Listing of documents submitted herewith in support of amounts entered in Column (d) above:

Date

Signature of Owner-Occupant(s)

This block for use by Highways Division

APPROVED:

Supervising Right-of-Way Agent

Date

# REQUEST FOR RELOCATION SERVICE

*To the occupant:*

If you must move from your present dwelling because it is needed for a highway project, the Department of Transportation, Highways Division, situated at 869 Punchbowl Street, Honolulu, Hawaii, will help you by providing relocation advisory assistance if you wish. To obtain this service, fill in this form, sign it, and mail or bring it to the Highways Division, Right-of-Way Branch at the address shown. You will then be furnished information about available housing which meets your needs. Please print or write legibly. Add comments at the bottom if necessary.

Mail or Bring to:

THIS SPACE FOR HIGHWAYS DIVISION USE

Project:

Section:

Parcel: | TMK No.:

Last Name | First | Initial

Address of State-owned Property you now occupy

Home Phone | Business Phone

Apt. No.

**FILL IN SECTION BELOW WHETHER YOU PLAN TO RENT OR BUY**

**NUMBER IN FAMILY**

| | | Give Ages & Sex of Children | | | | | |
|---|---|---|---|---|---|---|---|
| | | Age | Sex | Age | Sex | Age | Sex |
| Adults | ..... | | | | | | |
| Children | ..... | | | | | | |
| | | | | | | | |
| Total | ..... | | | | | | |

Family Gross Income

No. of Bedrooms Required

1 or 2 Car Garage

General Area Where you Wish to Move

List Special Features You Want (Such as 2 bathrooms, built-ins, swimming pools, etc.)

List Neighborhood Features You Want (Such as Parochial Schools, Public Transportation, etc.)

**FILL IN SECTION BELOW IF YOU PLAN TO BUY A HOME**

Price Range Wanted
$ _____

Down Payment
$ _____

Size (Estimated Area)
_____ Sq. Ft.

**FILL IN SECTION BELOW IF YOU PLAN TO RENT HOUSING**

Maximum Monthly Rent You Will Pay $ _____

Check Type Housing You Want

| | | | |
|---|---|---|---|
| House | ..... | Furnished | ..... |
| Duplex | ..... | Partly Furnished | ..... |
| Apartment | ..... | Unfurnished | ..... |

| Will You | Yes | No |
|---|---|---|
| Pay the Last Month's Rent in Advance? | | |
| Pay Cleaning Deposit? | | |
| Pay for Utilities? | | |
| Redecorate? | | |
| Do Yard Work? | | |

Do You Have Pets?

Type Laundry Facilities Needed?

Additional Comments:

_____

_____

_____

_____

Date _____ Signature _____

REQUEST FOR DETERMINATION OF ENTITLEMENT
FOR MOVING EXPENSE PAYMENT BASED ON INCOME

Business or Farm Operation

READ RULES ON REVERSE SIDE. PRINT OR TYPE ALL INFORMATION

TO: State of Hawaii
Department of Transportation
Highways Division
869 Punchbowl Street
Honolulu, Hawaii 96813

Project:

Parcel: | TMK No.:

1. Name and Address of Applicant

2. Name and Address of Business or Farm Operation

3. Applicant's Phone No.:
Home:
Business:

4. Occupancy of Property

| Dates of Occupancy From | To | Time Occupied Years | Months |
|---|---|---|---|
| | | | |

5. Kind of Operation

| Business | Farm |
|---|---|
| Retail Marketing | Wholesale Marketing |
| Manufacturing | Service |

6. Other, State here or add extra page

7. Principal Product, Commodity or Service

8. The undersigned owner or authorized representative of the business or farm operation named above hereby requests that the within application be reviewed to determine if said business or farm owner is entitled to receive a payment in lieu of actual moving expense, and to determine the amount to which such farm or business owner may be entitled. I understand that this determination may be used in connection with a State project; that this application and all data submitted herewith or included herein shall become a part of any claim for payment made subsequent to the determination requested herein and based hereon as if the same were part of such claim; that all financial statements and accounting records of the business or farm operation named above shall be made available for audit by the State during normal business hours. I CERTIFY that all information submitted herewith or included herein is true and correct. I understand that falsification of any item in this request as submitted herewith or included herein may result in forfeiture of any subsequent claim based on this information in its entirety, and may result in civil liability or criminal prosecution.

Applicant's signatures _____ Title _____

_____ Title _____
(Owner, Partner, Corporate Officer)

Date _____

Note to Applicant: If review of this application determines the business or farm operation to be entitled to receive payment based on average annual net earnings in lieu of actual moving expense, you will receive notice of the amount which may be claimed. If the business or farm operation is found to be ineligible for such payment, your notification will contain the reasons for the ineligibility.

E

RULES

1. A business or farm operation which moves or discontinues its business or farm operation may elect to receive payment in an amount equal to the average annual net earnings of the business or farm operation except that such payment shall be not less than $2,500 nor more than $10,000.

TO COMPLY WITH RULE NO. 1, ALL APPLICANTS MUST ATTACH CERTIFIED COPIES OF STATE INCOME TAX RETURNS for the two full tax years immediately preceding the tax year in which it plans to move from the property. The tax returns must be sufficient to show the net earnings of the business or farm operation, as follows:

(a) If individually owned, the compensation paid to the owner, his spouse, and dependents by the business or farm operation.

(b) If a partnership, the compensation paid to the partners, their spouses, and dependents by the business or farm operation.

(c) If a corporation, the corporate income tax returns and the income tax returns of the majority stockholder (if there is a majority stockholder), including any compensation paid to his spouse and dependents by the business or farm operation. Stock held by a husband, his wife and their dependent children shall be treated as one unit.

SPECIAL NOTE FOR FARM OPERATORS:

To be eligible for payment based on income in lieu of actual moving expense, a farm operator must have derived at least one-third of his total income from the farm, unless the operation is obviously a farm. FARM OPERATORS MUST ATTACH a statement indicating the dollar amount of the income derived from the farm operation affected by the State's acquisition, and the applicants total income if these amounts cannot be determined from income tax returns alone.

2. A business shall not be eligible for payment based on income in lieu of actual moving expense unless the Department is satisfied that the business cannot be relocated without a substantial loss in the average dollar volume of business, compared with the volume of business transacted during the two taxable years immediately preceding the year in which it plans to move from the property.

TO COMPLY WITH RULE NO. 2, BUSINESS OPERATORS MUST ATTACH

(a) A statement of reasons why the business cannot be relocated without a substantial loss in the average dollar volume of business. This statement should contain an estimate of the dollar volume the business would produce if relocated.

(b) A statement indicating the dollar volume of business transacted during the two full tax years immediately preceding the year it plans to move from the property if this amount cannot be determined from the income tax returns alone.

3. A business shall not be eligible for this payment if it is part of a commercial enterprise having at least one other establishment, not being acquired, and which is engaged in the same or similar business.

TO COMPLY WITH RULE NO. 3, A BUSINESS which operates under franchise, or as a consignee, or which operates one or more similar establishments must attach a statement giving name and address of the franchise or consignor, and stating the nature of the business relationship. Businesses operating more than one establishment must list the names and addresses of the other establishments and describe the product, commodity or service of each.

4. If only a portion of a property is acquired by the State, a business or farm operation shall not be eligible for payment in lieu of actual moving expenses if the Department of Public Works determines that the business or farm operation can continue to operate economically on the remaining property.

5. This application is not a claim for payment. Claims for payment based on income in lieu of actual moving expense shall be accepted only when it has been determined that the applicant herein is eligible for such payment and the amount of such payment determined by the Department of Public Works.

6. If claimant elects to receive payment in lieu of actual moving expense, no other compensation for moving shall be paid. Claimant must vacate the property at his own expense.

7. No payments in lieu of actual moving expense shall be made until the claimants have vacated the property.

8. The applicant herein does not have to claim payment in lieu of actual moving expense if determined to be eligible, he may still claim actual moving expense.

9. Claim for payment must be submitted within 18 months after claimant has moved from the property.

# CLAIM FOR PAYMENT
# INCOME BASIS IN LIEU OF MOVING EXPENSE
## Business or Farm Operation

**CLAIM MUST BE FILED WITHIN 18 MONTHS OF DATE OF MOVE. PRINT OR TYPE ALL INFORMATION**

| | |
|---|---|
| TO: | Project:<br>Section:<br>Parcel: TMK No.: |
| 1. Claimant's Name and Address | 2. Name and Address of Business or Farm |
| 3. Claimant's Phone No. | 4. Date of Move |
| 5. Address Moved to (if applicable) | 6. Controlling Dates |

| 6. Controlling Dates | Month | Day | Year |
|---|---|---|---|
| a. Property vacated on | | | |
| b. Last day to file claim | | | |
| c. Claim filed on | | | |

7. I CERTIFY that I have examined the income tax returns submitted with the Request for Determination of Entitlement by the above named claimant. I have found the net earnings for each year and the average annual net earnings to be as follows:

19....., $.....; 19....., $.....; Annual net earnings $.....

.....
Date

8. Payment of this claim is requested in the amount of $.....
I CERTIFY that I am the owner or authorized representative of the business or farm operation named above; that no other claim for reimbursement or compensation for payment of moving expense or in lieu of moving expenses has been submitted, or payment received, or will be accepted from any other source, by me or on behalf of said business or farm operation. I understand this claim for payment is based on information previously submitted to the Department of Transportation and that all such information is true and correct and is a part of this claim. I understand that falsification of any item in this claim as submitted herewith may result in forfeiture of the entire claim, and may result in civil liability or criminal prosecution.

Claimant's Signature ..... Title .....

Signature ..... Title .....

**SPACES BELOW TO BE COMPLETED BY HIGHWAYS DIVISION**

I CERTIFY that I have examined this claim and the Request for Determination of Entitlement with substantiating documentation, submitted in connection with this claim, and have found it to conform to the applicable provisions of the Federal-Aid Highway Act of 1968. This claim is approved and

payment is authorized in the amount of $.....

.....
Date

.....
*Authorized Signature*

DISPOSITION

Check Number .....

Date of Payment .....

.....
Fiscal Officer, Highways Division
State Department of Transportation

# CLAIM FOR PAYMENT
## MOVING EXPENSE

CLAIM MUST BE FILED WITHIN 18 MONTHS OF DATE OF MOVE. PRINT OR TYPE ALL INFORMATION

TO: State of Hawaii
Department of Transportation
Highways Division
Right-of-Way Branch
869 Punchbowl Street
Honolulu, Hawaii 96813

Project Name

Project Number

Parcel:

TMK No.:

1. Full Name of Claimant:

2. Claimant's Phone No.

3. Date of Move:

4. Distance Moved: . . . . Miles

5. Address Moved From:

6. Address Moved To:

7. Name of Moving Company or Person:

8. Mover's Phone No.:

9. Address of Moving Company or Person:

USE EITHER ITEM 10 OR 11 BELOW AS APPLICABLE

10. Claim for Actual Moving Expense (Must be supported by bills certified and in triplicate):

Amount of Claim $.....

Claim by Business or Farm Operation

Amount of Claim $.....

11. Amount of claim for moving expense allowance according to fixed schedule based on room count:

.....Rooms $_____

TOTAL CLAIM $_____

12. Applicant's Certification: (Strike out the words in brackets of applicants certification if claim is for fixed payment).

I CERTIFY that [the moving bills attached hereto accurately reflect moving services actually performed], all information submitted herewith or included herein are true and correct and I have not received a moving cost payment for displacement by the project named above and that this represents my entire claim for a moving cost payment to be made under State and/or Federal laws. I understand that falsification of any item in this claim may result in forfeiture of the entire claim, and may result in civil liability or criminal prosecution.

Date of Claim .....

Claimant's Signatures.....

.....
(if married, both spouses shall sign)

THIS SPACE FOR USE BY OTHER AGENCIES UNDER CONTRACT

RECOMMENDATION OF RELOCATION PAYMENT

This is to certify that the above claim is in conformance with the rules adopted by the Highways Division, State Department of Transportation, governing the making of relocation payments to individuals, families, business and farm operations displaced by Federal-aid highway projects under authority of the Highways Division, State Department of Transportation.

..... .....
Date

THIS SPACE FOR USE BY THE STATE AGENCY

APPROVAL OF CLAIM

I certify that I have examined the information regarding the claim contained herein, and on the basis of this information and the above recommendation, this claim is approved and payment is hereby authorized.

..... .....
Date Highways Division
State Department of Transportation

DISPOSITION

Check Number .....

Date of Payment .....

.....
Fiscal Officer, Highways Division
State Department of Transportation

G

# CLAIM FOR PAYMENT

## REPLACEMENT HOUSING - PURCHASE SUPPLEMENT

CLAIM MUST BE FILED WITHIN 18 MONTHS OF MOVE OR SIX MONTHS AFTER FINAL ADJUDICATION OF A CONDEMNATION CASE, WHICHEVER IS LATER.

PRINT OR TYPE ALL INFORMATION.

TO: State of Hawaii
Department of Transportation
Highways Division
Right-of-Way Branch
601 Kamokila Blvd., Room 691
Kapolei, Hawaii 96707

Project:

Parcel:

TMK No.:

2. Claimant's Phone No.:

1. Full Name of Claimant:

3. Address of Replacement Property:

4. Address of State-Acquired Property

5. Occupancy of State-Acquired Property

| From (Date) | To (Date) | Duration of Occupancy |
|---|---|---|
| | | |

6. Type of Occupancy Covered by this Claim

| Owner-Occupants | | Tenant-Occupant | ☐ | Others: |
|---|---|---|---|---|
| More than 180 days | ☐ | | | |
| Less than 180 days | ☐ | Sleeping Room Tenant | ☐ | |
| More than 90 days | ☐ | | | |

7. Date Claimant Required to Move from State Acquire dProperty:

| 9. Controlling Dates | Month | Day | Year |
|---|---|---|---|
| a) Initiation of Negotiation | | | |
| b) Acquired Property Vacated | | | |
| c) Must purchase and occupy replacement housing before | | | |
| d) Last day to file claim for payment | | | |

8. COMPUTATION OF PURCHASE REPLACEMENT HOUSING PAYMENT

OWNER-OCCUPANT OF MORE THAN 180 DAYS:

a) Comparable price of replacement dwelling

b) Cost of replacement dwelling purchased by displacee

c) Amount State paid claimant for his property

d) Cost Difference: The lesser of Item (a) or Item (b) minus Item (c)

e) Increased Interest Cost

f) Incidental Cost

g) Minus amount previously received as Replacement Housing Payment

h) Amount of Claim

OWNER-OCCUPANT OF AT LEAST 90 DAYS BUT LESS THAN 180 DAYS, OR TENANT-OCCUPANT OF AT LEAST 90 DAYS

a) Downpayment required, if such comparable was financed by a conventional loan $_____

b) Actual downpayment made, including eligible incidental costs on the purchase of claimants replacement dwelling $_____

c) The amount of cash contributed and applied by claimant toward the purchase of replacement $_____

d) Minus previous payment $_____

e) Amount of Claim $_____

Payment on this claim in the amount shown in Block 7 is requested. I CERTIFY that all information submitted herewith or included herein is true and correct; that I now occupy accommodations which are decent, safe and sanitary as determined according to standards established by State and/or Federal laws and, hereby, release and hold harmless the State of Hawaii, its employees and/or the agency hired to provide the relocation advisory assistance from any damages to person or property which may arise after such determination; that I have not submitted any other claim for or received payment of any compensation for the benefit claimed herein. I understand that falsification of any item in this claim as submitted herewith may result in the forfeiture of the entire claim and may result in civil liability or criminal prosecution.

Date of Claim _____

Claimant's Signature X _____

☐ Check to be picked-up by HWY-RM

☐ Send payment to seller (attach written instructions) X _____

(If married, both spouses shall sign)

THIS SPACE FOR USE BY AGENCY UNDER CONTRACT

RECOMMENDATION OF PURCHASE SUPPLEMENT

This is to certify that the above claim is in conformance with the rules adopted by the Highways Division. State Department of Transportation, governing the making of relocation payments to individuals, families, business and farm operations displaced by Federal-aid highway projects under authority of the Highways Division, State Department of Transportation. This claim is recommended for approval.

Date _____

THIS SPACE FOR USE BY THE HIGHWAYS DIVISION

CERTIFY THAT: (1) the determination of the amount of this payment as shown in the computation above is correct;

DISPOSITION

# RULES

1. Claimant must have actually owned and occupied a single, two or three family dwelling for at least 180 days immediately preceding the initiation of negotiation for the property.
2. Payment of the replacement housing supplement shall never exceed $15,000.
3. Claimant must have purchased and occupied a decent, safe and sanitary dwelling (as defined below) within one year after he moved from the State acquired property.
4. Claims for payment must be submitted within 18 months after claimant has moved from the State acquired property.
5. If claimant has previously received a rent supplement, the amount paid shall be deducted from the replacement housing payment.
6. In case the claimants are a married couple, both spouses shall sign the claim form.

   Full names of claimants and their signatures must agree with those appearing on claimant's deed to the State.

A decent, safe, and sanitary dwelling is one which meets all of the following minimum requirements:

1. Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations applicable to the property in question.
2. Has a continuing and adequate supply of potable safe water.
3. Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and a sewage disposal system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.
4. Has a bathroom well-lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush water closet, all in good working order and properly connected to a sewage disposal system.
5. Has provision for artificial lighting for each room.
6. Is structurally sound, in good repair and adequately maintained.
7. Each building used for dwelling purposes shall have two safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multi-dwelling building must have access either directly or through a common corridor or to a means of egress to open space at ground level. In buildings of three stories or more, the common corridor on each story must have at least two means of egress.
8. Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes, and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries and unfinished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.
9. The Department may approve exceptions to these standards where unusal conditions exist.

CLAIM FOR PAYMENT
REPLACEMENT HOUSING - RENT SUPPLEMENT

CLAIM MUST BE FILED WITHIN 18 MONTHS OF MOVE OR SIX MONTHS AFTER FINAL ADJUDICATION OF A CONDEMNATION CASE, WHICHEVER IS LATER. PRINT OR TYPE ALL INFORMATION.

TO: State of Hawaii
Department of Transportation
Highways Division
Right-of-Way Branch
869 Punchbowl Street
Honolulu, Hawaii 96813

Project:

Parcel: TMK No.:

2. Claimant's Phone No.

1. Full Name of Claimant

3. Date Claimant Required to Move from State Acquired Property

4. Address of State Acquired Property

5. Address of Replacement Property

6. Type of Occupancy Covered by this Claim

| Owner-Occupant | Tenant-Occupant | Tenant Sleeping Room | Others: |
|---|---|---|---|
| ☐ | ☐ | ☐ | |

8. Occupancy of State Acquired Property
From (Date) To (Date) Duration

____Yrs. ____Mos.
____Days

| 9. Controlling Date | Month | Day | Year |
|---|---|---|---|
| (a) First written offer made on | | | |
| (b) State Acquired property vacated on | | | |
| (c) Must occupy replacement housing before | | | |
| (d) Last day to file claim for payment | | | |

7. COMPUTATION OF RENTAL REPLACEMENT HOUSING AMOUNT

OWNER-OCCUPANT OF 90 DAYS OR MORE:
(Use Items Below as Applicable Only)

(a) 48 x the amount necessary to rent a comparable dwelling $____
(b) 48 x the State determined economic rent applied to unit vacated
(c) 48 x the rental payment required if claimant relocates in public subsidized housing
(d) 12 x the average monthly income of the relocatee
(e) Rental Cost Difference: Item (a) minus Item (b); or Item (a) or (c) minus Item (d)
(f) Amount eligible under purchase option if owner-occupant of 180 days or more.
(g) Amount of Claim: Enter Item (e) if not more than Item (f); otherwise enter Item (f). $____

TENANT-OCCUPANT OF 90 DAYS OR MORE:

(a) 48 x the amount necessary to rent a comparable dwelling $____
(b) 48 x the average monthly rent paid by relocatee for unit vacated
(c) 48 x the State determined economic rent applied to unit vacated
(d) 48 x the rental payment required if claimant relocates in public subsidized housing
(e) 12 x the average monthly income of the relocatee
(f) Amount of Claim: Item (a) minus Item (b) or (c); or Item (a) or (d) minus Item (e) $____

Maximum Allowance Not To Exceed $4,000.00.

Payment on this claim in the amount shown in Block 7 is requested. I CERTIFY that all information submitted herewith or included herein is true and correct; that I now occupy accommodations which are decent, safe and sanitary as determined according to standards established by State and/or Federal laws and, hereby, release and hold harmless the State of Hawaii, its employees and/or agency hired to provide the relocation advisory assistance from any damages to persons or property which may arise after such determination; that I have not submitted any other claim for or received payment of any compensation for the benefit claimed herein. I understand that falsification of any item in this claim as submitted herewith may result in forfeiture of the entire claim and may result in civil liability or criminal prosecution.

Date of Claim .....

Claimant's Signatures .....

☐ Send payment to claimant
☐ Send payment to lessor (attach written instructions)

.....
(If married, both spouses shall sign)

THIS SPACE FOR USE BY AGENCY UNDER CONTRACT

RECOMMENDATION OF RENT SUPPLEMENT

This is to certify that the above claim is in conformance with the rules adopted by the Highways Division, State Department of Transportation, governing the making of relocation payments to individuals, families, business and farm operations displaced by Federal-aid highway projects under authority of the Highways Division, State Department of Transportation. This claim is recommended for approval.

.....
Date

.....

THIS SPACE FOR USE BY THE HIGHWAYS DIVISION

I CERTIFY that: (1) the determination of the amount of this payment as shown in the computation above is correct; (2) I understand that the determination may be used in connection with a Federal-aid highway project; (3) that to the best of my knowledge no official of the Right-of-Way Branch, or official under contract has a direct or indirect, present or contemplated personal interest in this transaction, or will derive any benefit from the supplemental payment; I further certify that I have examined this claim and the substantiating documentation and determined that: (4) the claimant herein actually and lawfully occupied the property acquired by the State for at least ninety (90) days continously immediately preceding the date of the State's initiation of negotiation for the parcel; (5) that he now occupies accommodations which meet the standards determined by the Highways Division of the State Department of Transportation as decent, safe and sanitary, within one year of the date he vacated the State acquired property; (6) that this claim was submitted for payment within the time limit prescribed by law. This claim is approved for payment as follows:

DISPOSITION

Check Number .....

Date of Payment .....

.....
Fiscal Officer, Highways Division
State Department of Transportation

Amount of Approved Payment $____

.....
Authorized Signature

Date Approved .....

J

RULES

1. Claimant must have lawfully occupied the State-acquired property for at least 90 days continuously immediately preceding the date of the initiation of negotiations for the property.
2. Payment of the rent supplement shall not exceed $4,000.
3. Claimant must have occupied decent, safe and sanitary accommodations (as defined below) within one year after moving from the State-acquired property.
4. Claim for payment must be submitted within 18 months after the claimant has moved from the State-acquired property.
5. If the claimants are married, both spouses shall sign the claim form.

A decent, safe and sanitary dwelling is one which meets the following minimum requirements:

1. Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations applicable to the property in question.
2. Has a continuing and adequate supply of potable safe water.
3. Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and a sewage disposal system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances, or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.
4. Has a bathroom well-lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush water closet, all in good working order and properly connected to a sewage disposal system.
5. Has provision for artificial lighting for each room.
6. Is structurally sound, in good repair and adequately maintained.
7. Each building used for dwelling purposes shall have two safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multi-dwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level. In buildings of three stories or more, the common corridor on each story must have at least two means of egress.
8. Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes, and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, and unfinished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.
9. The standards for decent, safe and sanitary housing as applied to the rental of sleeping rooms shall include the minimum requirements contained in paragraphs 1, 4, 6, 7 and 8 of this section and the following:
   a. At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.
   b. Lavatory and toilet facilities that provide privacy, including a door that can be locked if such facilities are separate from the room.
10. The Department may approve exceptions to these standards where unusual conditions exist.

NAME AND ADDRESS OF CLAIMANT

COMPUTATION PREPARED BY:

_____ (Name) _____ _____ (Date)

COMPUTATION FOR REPLACEMENT HOUSING PAYMENT
FOR OWNER OCCUPANTS OF 180 DAYS OR MORE

Required Information

1. Actual purchase price of replacement dwelling. $_____
2. Cost of comparable replacement dwelling based on comparative or other method. $_____
3. Acquisition price paid by State for claimants former dwelling. $_____

COMPUTATION

4. Line 1 or 2 whichever is less $_____
5. Minus line 3 - _____
6. Amount of differential payment $_____

COMPUTATION OF TOTAL REPLACEMENT HOUSING PAYMENT

1. Amount of differential payment $_____
2. Plus interest payment + _____
3. Plus incidental cost + _____
4. Total (Sum of lines 1, 2 and 3) $_____
5. Minus adjustments (amount previously received as Replacement Housing Payment) - _____
6. Total Replacement Housing Payment (line 4 minus line 5) $_____

K

COMPUTATION OF DOWNPAYMENT ASSISTANCE FOR CLAIMANT
WHO MOVED TO REPLACEMENT UNIT PURCHASED

Project No.: _____

Name of Claimant: _____

Property Displaced From: Address _____

Hwy. Parcel No. _____ TMK No. _____

Required Information:

1. Amount necessary for downpayment $_____

2. Costs incidental to purchase (Total amount approved by the State) $_____

Computation:

3. Base amount (Sum of Lines 1 and 2) $_____

NOTE: If line 3 is $2,000 or less, skip Lines 4, 5, 6 and 7 and enter the amount of Line 3 on Line 8a

4. Amount on Line 3 in excess of $2,000

Line 3 $_____

— $ 2,000.00

$_____

5. Amount on Line 4 divided by 2

Line 4 $_____ ÷ 2

$_____

6. Matching amount (If amount on Line 5 exceeds $2,000, enter $2,000. Otherwise, enter the amount on Line 5) $_____

7. Amount of Line 6 plus $2,000

Line 6 $_____

+ $ 2,000.00

$_____

8. Amount of downpayment assistance

a. Amount of Line 3 or Line 7 $_____

b. Minus adjustments (Explain below in remarks) — $_____

$_____

Remarks: _____

_____

Computation made by _____

DETERMINATION OF THE AMOUNT NECESSARY TO RENT A COMPARABLE DWELLING

Project: _____

Subject Property:

Owner: _____

Address: _____

Highway Parcel No.: _____ Tax Map Key No.: _____

Name of Displacee:

Owner-Occupant: _____ Tenant-Occupant: _____

Comparable(s) Available for Rent on the Market to Displacee:

Comparable #1 Address: _____ Tax Map Key No. _____

Whom and When Contacted: _____

Comparable #2 Address: _____ Tax Map Key No. _____

Whom and When Contacted: _____

Comparable #3 Address: _____ Tax Map Key No. _____

Whom and When Contacted: _____

| Criteria for Comparability | Subject | Comparable #1 | Comparable #2 | Comparable #3 |
|---|---|---|---|---|
| Monthly Rent | | | | |
| Meets DS & S Standards | | | | |
| Functionally equivalent | | | | |
| Substantially the same with regard to: | | | | |
| Number of rooms | | | | |
| Area of Living Space | | | | |
| Type of Construction | | | | |
| Age | | | | |
| State of Repair | | | | |
| Accessibility to public services and facilities and places of employment | | | | |
| Neighborhood | | | | |
| Fair Housing | | | | |
| Adequate to Accommodate the Relocatee | | | | |
| Within Displacee's Financial Means | | | | |

The one most comparable is _____ and the amount necessary to rent a comparable is $_____

REMARKS: _____

Determination Made By:

_____

Supervising Right-of-Way Agent

APPROVED:

_____ _____

Head, Right-of-Way Branch Date

COMPUTATION OF RENTAL REPLACEMENT HOUSING AMOUNT
(Tenant-Occupant for at least 90 days)

Project No.: _____

Name of Claimant: _____

Property Displaced From: Address _____

Hwy. Parcel No. _____ TMK No.: _____

Required Information:

1. 48 x the amount ($_____) necessary to rent a comparable dwelling $_____

2. 48 x the average monthly rent ($_____) during last 3 months) paid by relocatee for unit vacated $_____

3. 48 x the State determined economic rent ($_____) applied to unit vacated $_____

4. 48 x the rental payment ($_____) required if claimant relocates in public subsidized housing $_____

5. 25% of the monthly family gross income of claimant $_____

6. 12 x the average monthly income of the relocatee $_____

Computation:

7. Line 1 minus Line 2 if amount in parenthesis shown in Line 2 is reasonably equal to market rentals, or Line 1 minus Line 3 if amount in parenthesis shown in Line 2 is not reasonably equal to market rentals. Use this computation if the amount shown in parenthesis on Line 2 does not exceed the amount on Line 5)

   Line 1 $_____

   (Insert applicable Line) Line 2 — $_____

   $_____

8. Line 1 or Line 4, whichever is lesser, minus Line 6 (Use this computation if the amount shown in parenthesis on Line 2 exceeds the amount on Line 5)

   (the lesser) Line ____ $_____

   Line 6 — $_____

   $_____

9. Rental Replacement Housing amount for payment (If amount on Line 7 or Line 8 exceeds $4,000, enter $4,000. Otherwise, enter applicable amount shown in Line 7 or Line 8) $_____

Remarks: _____

_____

Computation made by _____

NOTE: When using computation in Line 7, "rent being paid" shall include any rent supplements applied by others except when, by law, such supplement is to be discontinued upon vacation of the property.
When using computation in Line 8, "rent being paid" shall not include supplemental rent by public agencies.

If the amount on Line 8 is $500 or less, a lump-sum payment is to be made. If the amount on Line 8 exceeds $500, divide the amount by 4. The resultant amount is the total of each of four annual payments to be made.

| Name and Address of Claimant | Computation Prepared by: |
|---|---|
| | Name _____ Date _____ |

## COMPUTATION FOR REPLACEMENT HOUSING PAYMENT FOR OWNER OCCUPANTS OF 180 DAYS OR MORE

Required Information

| | | |
|---|---|---|
| 1. Actual purchase price of replacement dwelling | | _____ |
| 2. Cost of comparable replacement dwelling based on comparative or other method. | | _____ |
| 3. Acquisition price paid by the State for claimants former dwelling | | _____ |

Computation

| | | |
|---|---|---|
| 4. Line 1 or 2 whichever is less | | $0.00 |
| 5. Minus line 3 | - | $0.00 |
| 6. Amount of differential payment | | **$0.00** |

Computation of Total Replacement Housing Payment

| | | |
|---|---|---|
| 1. Amount of differential payment | | |
| 2. Plus interest payment | + | |
| 3. Plus incidental cost | + | |
| 4. Total (Sum of lines 1, 2, and 3) | | $0.00 |
| 5. Minus adjustments (amount previously received as Replacement Housing Payment) | - | $0.00 |
| 6. Total Replacement Housing Payment (Line 4 minus Line 5) | | **$0.00** |

Remarks:

P

DOT 4-377
(HWY-RM 7/71)

# STANDARDS FOR DECENT, SAFE, AND SANITARY HOUSING

## FOR PERMANENT RELOCATION HOUSING FOR FAMILIES

## INSPECTION RECORD
## (CHECKLIST OF MINIMUM REQUIREMENTS)

Displaced by (Give Project No.) _____

_____

NAME: _____ Owner-Occupant _____ Tenant _____

Address: _____ Tax Map Key No. _____

Landlord or Agent _____ Phone _____

Contract Rent $_____ Unfurn. _____ Partly Furn. _____ Furn. _____

No. of Bedrooms Required _____ No. of Bedrooms _____ Total No. of Rooms _____

| | YES | NO |
|---|---|---|
| 1. The dwelling: | | |
| a. Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations applicable to the property in question | ☐ | ☐ |
| 2. The dwelling: | | |
| a. Has potable safe water | ☐ | ☐ |
| b. Has continuing water supply | ☐ | ☐ |
| c. Has adequate water supply | ☐ | ☐ |
| 3. The dwelling: | | |
| a. Has a kitchen or an area set aside for kitchen use | ☐ | ☐ |
| b. Has a kitchen with a sink | ☐ | ☐ |
| (1) In good working condition | ☐ | ☐ |
| (2) Connected to hot and cold water | ☐ | ☐ |
| (3) Connected to an adequate sewage system | ☐ | ☐ |
| c. Has a kitchen with a stove | ☐ | ☐ |
| (1) In good working condition | ☐ | ☐ |
| d. Has a kitchen with a refrigerator | ☐ | ☐ |
| (1) In good working condition | ☐ | ☐ |
| e. Has utility service connections | ☐ | ☐ |
| (1) With adequate space for the installation of such facilities | ☐ | ☐ |
| 4. The dwelling: | | |
| a. Has a bathroom | ☐ | ☐ |
| (1) That is well lighted | ☐ | ☐ |
| (2) That is well ventilated | ☐ | ☐ |
| (3) That affords privacy to person within | ☐ | ☐ |
| (4) With a lavatory basin | ☐ | ☐ |
| (5) With a bathtub or stall shower | ☐ | ☐ |
| (a) Properly connected to an adequate supply of hot and cold running water | ☐ | ☐ |
| (6) With a flush closet | ☐ | ☐ |
| (7) Numbers 4, 5 and 6 of the above in good working order and properly connected to a sewage disposal system | ☐ | ☐ |

R

| | YES | NO |
|---|---|---|
| 5. The dwelling: | | |
| a. Has adequate and safe wiring system | ☐ | ☐ |
| (1) For lighting | ☐ | ☐ |
| (2) For other electrical services | ☐ | ☐ |
| b. Is structurally sound | ☐ | ☐ |
| c. Is weathertight | ☐ | ☐ |
| d. Is in good repair | ☐ | ☐ |
| e. Is adequately maintained | ☐ | ☐ |
| f. Has a safe unobstructed means of egress which leads to safe open space at ground level | ☐ | ☐ |
| 6. The dwelling unit in a multi-dwelling building: | | |
| a. Has access either directly or through a common corridor to a means of egress to open space at ground level | ☐ | ☐ |
| 7. The dwelling if in a multi-dwelling building (three stories or more) with a common corridor on each story: | | |
| a. Has at least two means of egress | ☐ | ☐ |
| 8. Habitable floor space (defined as that space used for sleeping, living, cooking or dining purposes. Excludes enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, and unfurnished attics, foyers, storage spaces, cellars, utility rooms and similar spaces): | | |
| a. Totals at least 150 square feet for first occupant in a standard living unit | ☐ | ☐ |
| b. Includes at least 100 square feet for each additional occupant (70 square feet for mobile home) | ☐ | ☐ |
| c. Subdivided into sufficient rooms adequate for the family | ☐ | ☐ |
| 9. All rooms adequately ventilated | ☐ | ☐ |

## STANDARDS FOR SINGLE PERSON NON-HOUSEKEEPING FACILITIES

| | YES | NO |
|---|---|---|
| 1. The standards for decent, safe, and sanitary housing as applied to the rental of sleeping rooms include the minimum requirements contained in numbers 1, 5, 6 and 7 mentioned above | ☐ | ☐ |
| 2. The sleeping room: | | |
| a. Has at least 100 square feet of habitable floor space for the first occupant | ☐ | ☐ |
| (1) Has 50 square feet of habitable floor space for each additional occupant | ☐ | ☐ |
| 3. Lavatory, bath and toilet facilities: | | |
| a. Provides privacy for occupant | ☐ | ☐ |
| (1) If facilities are separate from the room, a door that can be locked | ☐ | ☐ |

REMARKS: _____

_____

_____

_____

I certify that I have inspected the replacement housing at the address shown above and in my opinion find that it (does) (does not) meet the standards of decent, safe, and sanitary as enumerated in IM 80-1-71.

Signature _____

Date _____ Title _____

**RESIDENCE USED FOR BUSINESS:**

Business: Yes____No____ Non-Profit Organization: Yes____ No____ Farm: Yes____ No____

Name:_____ No. of Employees_____

Type Of Business:_____

Building Construction Type: _____

No. Of Stories/Units:_____/_____ Age of Building:_____

Special Business Features:_____

(Submit an attachment if necessary to describe special features)

**HOUSEHOLD MEMBERS:**

LIST ALL HOUSEHOLD MEMBERS LIVING IN DWELLING/HOUSE: TO INCLUDE ADULTS AND CHILDREN

| Name | Relationship | Age | Sex | Location of School | Travel mode | Distance/Time |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

**PRINCIPAL RESIDENCE:**

How Long Occupied (yrs/mos.):_____ Date Of Purchase:_____ Date Rented: _____

## SURVEY INFORMATION
## OCCUPANT(S)

FHWA PROJECT #:_____
HWY PROJECT #:_____
PARCEL #:_____
(9a:\ren survey.wpd 9/30/99)

**PROPERTY/OCCUPANT INFORMATION:**

Occupant(s) Name:_____ Owner:_____ Tenant/Renter:_____
(Tenant(s) and/or Renter(s) may also be family members living in household who pay for living in said household. They may be considered tenants. If this is the case, you will then need to describe this type of arrangement to including costs they are responsible for paying and submit as an attachment.)

Property Address:_____ Telephone #:_____(H) _____(W)

_____ Fax No.:_____

_____ TMK No.:_____

**TYPE OF RESIDENCE:**

Type Of Residence (refers to structure): Single Family _____ Duplex _____ Multi Family _____

Stories/Levels: Single Story_____ Two Stories _____ Three Stories_____ Split Level_____

Rooms: Bedroom(s) #_____ Bathroom(s) #_____ Multi-Dwelling(s) (#)_____

**LIVING ARRANGEMENT(S):**

Type Of Living Arrangement As Applicable: (Example: Grandpa sleeps in living room; Daughter and Son-In-Law in one bedroom; teenage Daughter and Son share one bedroom, no one pays rent and legal owner is Grandpa, etc.):_____

(If Multi-Family, describe living arrangement, owner/tenant occupant, including room/bathrooms utilized by type and submit as an attachment)

**TYPE OF PARKING-GARAGE/CARPORT:**

Garage/Carport No. Of Cars:_____ Uncovered/No. Of Cars:_____ Total Cars In Household:_____

**SPECIAL DWELLING FEATURES:**

Special Dwelling Features (dog kennel, rock wall, chain link fence, near bus line, need to live in particular location/zone to attend specific school, outside enclosed storage, solar, gas versus electric, electronic garage door, etc.):_____

(Submit an attachment if necessary to describe special features)

**MORTGAGE:**

Current Monthly Mortgage Payment:_____ Approx. Mort. Balance:_____ Yrs. Remain.:_____

**UTILITIES:**

Monthly Utility Costs:

Electricity:_____ Sewer/Water:_____

Gas:_____ Other:_____

(We can determine utilities for you if you submit copies of utility invoices for the past 6 months. If others, describe and provide invoices so we can determine cost)

**RENTING:**

Current Monthly Rent:_____ Security Deposit Amount:_____

Monthly Utilities Cost If Not Included In Rent:

Electricity:_____ Sewer/Water:_____

Gas:_____ Other:_____

(We can determine utilities for you if you submit copies of utility invoices for the past 6 months. If others, describe and provide invoices so we can determine cost)

**INCOME:**

Total Gross Monthly Income (earned/recurring non-earned) Of Owner Occupant(s):_____

**SPECIAL NEEDS OF HOUSEHOLD MEMBER(S):**

Special Needs Of Household Members To Include Handicap Requirements If Applicable:_____

(Identify who and what is needed. Submit attachment if necessary and appropriate documentation to verify special needs.)



**SPECIAL UTILITY AND/OR TELECOMMUNICATION FEATURES:**

Describe Cable Connected TV, Computers, Multiple Telephones, Special Telephone (wander phone) etc.:

(Submit attachment if necessary, billing invoices for past 6 months)

**CURRENT DWELLING ROOM COUNT:**

Dwelling Room Count

| Living Room | Dining Room | Kitchen | Bedrooms | Bathrooms | Other Rooms | Car Storage | Other Storage |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

**(NOT APPLICABLE IN THE STATE OF HAWAII)**

MOBILE HOME Brand:_____ Model:_____ Own/Rent:_____

| Age | Dimensions | Underskirt | Patio/Porch | Awnings | Out buildings |
|---|---|---|---|---|---|
| | | | | | |

Describe Other Rooms And Any Other Information On Dwelling Size If Not Noted Above Or If Room Is Of Unusual Size (Example: Patio, Porch, Covered Lanai, Gazebo, Tea House, Sauna, Furo):

(You may want to provide us with construction plans of your dwelling so that we can make copies and return the originals to you.)

**OWNERSHIP INFORMATION**:

The Legal Owner(s) Is/Are As Indicated On TITLE:
Are Any Of The Owners Deceased? Yes: _____ No: _____

Name(s) _____Date Of Death_____

Is The Property Covered By A Will, An Estate, Trust, Or Other Conveyance, Describe?

_____
_____
_____
_____
_____

Has The Will Or Other Instrument Been Legally Processed, Describe?

_____
_____
_____
_____
_____

(Please attach copy of documents as applicable)

| CURRENT HEIRS ACCORDING TO DEED/TITLE/LEGAL DOCUMENT ARE: | | | | |
|---|---|---|---|---|
| Name | Relationship | Age | Spouse/Single | Address |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

**COMPLETE IF APPLICABLE**:

Estate Executor: _____Tele #:_____(H)_____(W)

Relationship To Legal Owner:_____FAX No.:_____

Address:_____
_____
_____
_____



**APPRAISAL**:

List Additional Items You Would Like The Appraiser To Know:_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
(Submit an attachment if necessary to describe)

**OTHER INFORMATION**
(Submit an attachment if necessary to describe items below):

Plan To Purchase _____ Or Rent _____ A Replacement Dwelling/Building.

Preferred Relocation
Areas:_____
_____
_____
_____
_____

Type Of Property Desired:
_____
_____
_____
_____
_____

Anticipated Relocation
Problems:_____
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Survey Information
Page No. 7
Comments:_____

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Questions:_____

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_____

The Above Information Is Being Submitted To The Best Of My Knowledge:

BY:_____ DATE:_____
(Print Name)

SIGNATURE:_____

REVIEWED BY:_____ DATE:_____
(RIGHT OF WAY AGENT)

*NOTE: Please do not hesitate to submit more information, either copies of receipts/documents or just by noting on another piece of paper and submitting it with this survey. Anytime there are any additions and/or changes please provide it to us in writing. Your written documents do not have to be fancy, just whatever is easiest, convenient and comfortable for you, something that we can understand.*

THANK YOU!



# ORGANIZATION AND FUNCTIONS

**PURPOSE:**

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

23 CFR 635.309

23 CFR 645.213, Use and Occupancy Permits

23 CFR 710.401- 409, Real Property Management

49 CFR 24.404, Uniform Relocation Assistance

HRS 171, Public Lands, Management and Disposition of

HRS 264, Highways

HRS 343- Environmental Compliance

HAR Section 19-105-19 (b), Use and Occupancy Agreements

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

**OBJECTIVE:**

The Property Management section is set to provide:

A. Relocation assistance services for the Division's projects and the Department;

B. Management and disposition of lands and improvements acquired for highway projects;

C. Property Management Services in general for all of the various branches and sections of the Division that are under highways jurisdiction or ownership.

**ADMINISTRATION:** The Property Management section is headed by the Right-of-Way (ROW) Agent VI (Supervising Right-of-Way Agent), who carries the title of Section Head. The Section Head is responsible for the functions and activities of his section and operates under the general supervision of the ROW Manager.

**ORGANIZATION:** The Property Management section is comprised of two units. The organizational chart of HWY-RM is shown on page 5.1-A.

**FUNCTIONS:** The Section Head is assisted by an office assistant IV and two ROW Agent V's (Supervising Right-of-Way Agent) separated under Unit A and Unit B. Unit A and Unit B consists of one supervisor with three ROW Agents that carry out assignments and/or projects assigned to them. The section:

A. Prepares Conceptual Relocation Program Plans for route selection proposed during the planning stage of the highway and final relocation plans for Federal Highways Administration (FHWA) review and approval for job authorization for right-of-way acquisition in design stage if required;

B. Provides relocation advisory assistance services and payments to individuals, families, businesses including farm operations and non-profit organizations displaced by highway projects;

C. Computes replacement housing payments in accordance with Federal and State laws and updates relocation brochures whenever Federal or State laws governing relocation assistance are amended;

D. Processes all claims for relocation assistance payments;

E. Administers the rental of real properties acquired as right-of-way for highway projects when it is determined practicable to do so on an interim basis; administers the rental of airspace under highway viaducts and excess properties acquired in connection with the highway project;

F. Disposes of improvements in connection with the clearing of right-of-way by public auction sale when County approval can be obtained to relocate buildings or by requesting demolition if approval cannot be obtained or disposal by sale is deemed impractical;

G. Determines as to whether or not rodent control measures are necessary prior to sale or demolition improvements for each project and makes arrangements for control measures by either the Board of Health or a private firm as required;

H. Prepares request to the Board of Land and Natural Resources (BLNR) for disposition of remnants that fall under HRS 171 and that are surplus to highway needs, then with BLNR's approval, disposes of the remnants;

I. Processes request for portions of the ROW under HRS 264 that is determined excess to highways needs, including subdivision and consolidation within abutting parcels owned by private entities.

J. Maintains records as supporting documentation and files reports on relocation activities as required by FHWA;

K. Maintains inventory of remnants, airspace and rentals;

L. Prepares annual reports of the Relocation Assistance Program and Property Management activities.

**PROPERTY MANAGEMENT PROGRAM:**

The Property Management Program is set to properly administer and control all real property (land and/or improvements) acquired for or by the Highways Division. It is operated in a manner consistent with all applicable State and Federal requirements acting in the public's interest with long-range benefits to the public as its primary concern. The functions are varied and involve work prior to construction and after completion of the project.

**Functions Prior to Construction**

Prior to construction, the Property Management Program may involve:

A. Rental of Improvements;

1. Interim rental of improvements within right-of-way until such time that the improvements are required and cleared for construction;

2. Rental of improvements on a revocable basis for improvements located within the project limits.

B. Rodent Control;

1. Determine if rodent control measures are necessary prior to demolition or sale of any improvements; and

2. When rodent control measures are necessary, the appropriate agency is notified to ensure that the proper measures are taken.

C. Clearing of Improvements from Right-of-Way;

1. Conduct and process the sale of any improvements; and

2. Notify appropriate agencies to process the demolition of any improvements that cannot be sold.

D. Inventory of Improvements.

**Functions after Construction**

After Construction has been completed, the Property Management Program involves:

A. Adding to and maintaining inventories of real property (improvements, parcels and remnants) and notification to any agency involved with the physical maintenance of newly acquired real property;

B. Disposal of improvements, remnants, access rights, easements, or any other real property rights that are not part of an unfinished highway project;

C. Relinquishment or transfer of any highways, roads and/or right-of-way;

D. Managing and leasing of air spaces within interstates;

E. Referral of a complaint to the appropriate agency in order to resolve the issue;

F. Other real estate management functions not covered above.

**Procedures Implementing Property Management Program**

The procedures for implementation of the Property Management Program are covered separately in subsequent sections.

## QUALIFICATIONS OF RIGHT-OF-WAY AGENTS:

The minimum qualification requirements of the Right-of-Way (ROW) Agent in the various classifications are as follows:

### A. Right-of-Way Agent VI (Section Head)

**ROW VI Section Head Experience and Training**

- Graduation from an accredited college of University;
- Four and one half years of progressively responsible work experience in the appraisal of real property, disposition of real property and right-of-way;
- Interim property management, of which at least one year of experience must have been comparable to that of the next lower level in this series, or an equivalent combination of training and experience;
- Possession of a valid driver's license.

**ROW VI Section Head Knowledge:**

- A thorough knowledge of principles and practices of appraising, negotiation and/or managing real property of all categories for disposition purposes;
- Laws pertaining to the disposition of right-of-way, disposition of Public Land and Highways, laws pertaining to relocation assistance, sources of appraisal data, pertinent laws, precedent decisions, and agency instruction;
- Legal instruments affecting real property;
- Condemnation laws;
- Principles and practices of supervision;

- Public relations;
- Principles of report writing;
- Arithmetic, mathematical problem solving;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW VI Section Head Ability:**

- Plan, schedule, assign, review and evaluate the work of others;
- Review and analyze appraisal, negotiation and relocation reports;
- Serve as expert witness in condemnation proceedings;
- Conduct orientation and training activities;
- Make conclusions and derive estimates based on facts;
- Meet and deal effectively with property owners and others;
- Speak and write effectively;
- Maintain effective public relations.

## B. Right-of-Way Agent V (Supervising Right-of-Way Agent)

**ROW V Supervisor Experience and Training:**

- Graduation from an accredited college or university;
- Three and one half years of progressively responsible work experience in the appraisal of real property, property management, disposition of real property and right-of-way and relocation advisory assistance work;
- Interim property management, of which at least one year of experience must have been comparable to that of the next lower level in this series; or any equivalent combination of training and experience;
- Possession of a valid driver's license

**ROW V Supervisor Knowledge:**

- A thorough knowledge of principles and practices of appraising, negotiation, and managing real properties of all categories;
- Laws pertaining to the disposition of right-of-way, disposition of Public Land & Highway, laws pertaining to relocation assistance, sources of appraisal data, pertinent laws, precedent decisions, and agency instruction;
- Legal instruments affecting real property;
- Condemnation laws;
- Principles and practices of supervision;
- Public relations;
- Principles of report writing;
- Arithmetic; mathematical problem solving;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW V Supervisor Ability:**

- Plan, schedule, assign, review and evaluate the work of others;
- Review and analyze appraisal, negotiation and relocation reports;
- Serve as expert witness in condemnation proceedings;
- Conduct orientation and training activities;
- Make conclusions and derive estimates based on facts;
- Meet and deal effectively with property owners and others;
- Speak and write effectively;
- Maintain effective public relations.

## C. Right-of-Way Agent IV (Journeyman Level)

**ROW IV Agent Experience and Training:**

- Graduation from an accredited college or university;
- Two and one half years of progressively responsible work experience in the appraisal of real property, property management, disposition of real property and right-of-way and relocation advisory assistance work;
- Possession of valid driver's license.

**ROW IV Agent Knowledge:**

- A thorough knowledge of the principles and practices of appraising, negotiation and/or managing of real property of all categories for disposition purposes.
- Laws pertaining to the disposition of right-of-way, disposition of Public Land and Highways, laws pertaining to relocation assistance, sources of appraisal data, pertinent laws, precedent decisions, and agency instruction.
- Legal instruments affecting real property;
- Condemnation laws;
- Principles and practices of supervision;
- Public relations; Principles of report writing; Arithmetic, mathematical problem solving; Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW IV Agent Ability:**

- Perform all categories of real property appraisal, negotiation and/or property management work;
- Gather, organize, and analyze data on sales, leases and other factors;
- Make sound conclusions and estimates based on facts;
- Prepare reports and compile data, maps, sketches and other materials;

- Make arithmetic computations;
- Meet and deal effectively with property owners, tenants and others;
- Serve as expert witness in condemnation proceedings;

## D. Right-of-Way Agent III

**ROW III Agent Experience and Training:**

- Graduation from an accredited college or university;
- One and a half years of progressively responsible work experience in the appraisal of real property, property management, disposition of real property and right-of-way and relocation advisory assistance work;
- Possession of valid driver's license.

**ROW III Agent Knowledge:**

- Principles and practices of appraising, negotiation and/or managing real property of all categories for disposition purposes;
- Laws pertaining to the disposition of right-of-way, disposition of Public Land and Highways, laws pertaining to relocation assistance, sources of appraisal data, pertinent laws, precedent decisions, and agency instructions;
- Legal instruments affecting real property; Condemnation laws; principles of report writing; Arithmetic, mathematical problem solving;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW III Agent Ability:**

- Perform all categories of real property appraisal, negotiation and/or property management work;
- Gather, organize, and analyze data on sales, leases and other factors;

- Make sound conclusions and estimates based on facts;
- Prepare reports and compile data, maps, sketches and other materials;
- Make arithmetic computations;
- Meet and deal effectively with property owners, tenants and others.

## E. Right-of-Way Agent II

**ROW II Agent Experience and Training:**

- Graduation from an accredited college or university;
- Six months of specialized experience (progressively responsible work experience) in the appraisal of real property, property management, disposition of real property and right-of-way and relocation advisory assistance work;
- Possession of valid driver's license.

**ROW II Agent Knowledge:**

- Basic methods of appraisal, disposition and/or management of real property;
- Laws pertaining to relocation assistance and disposition of Public Lands; source of appraisal data;
- Principles of report writing;
- Arithmetic; mathematical problem solving;
- Legal instruments affecting real property; pertinent laws and agency instruction;
- Real property values in Hawaii;
- Methods for determining ownership of property and existence of liens against property;
- Hawaiian land system.

**ROW II Agent Ability:**

- Apply simple methods and techniques of real property appraisal, disposition and/or property management;
- Read maps and blueprints;
- Write clearly and concisely;
- Perform arithmetic computations accurately;
- Organize and present data in tabular and narrative form;
- Prepare reports and compile data, maps, sketches and other materials;
- Meet and deal effectively with property owners, tenants and others.

## F. Right-of-Way Agent I

**ROW I Agent Experience and Training:**

- Graduation from an accredited college or university;
- Possession of valid driver's license.

**ROW I Agent Knowledge:**

- Principles of report writing;
- Arithmetic; mathematical problem solving.

**ROW I Agent Ability:**

- Learn the purposes, methods and techniques of real property appraisal, disposition and/or property management;
- Write clearly and concisely;
- Perform arithmetic computations accurately;
- Organize and present data in tabular and narrative form;
- Meet and deal effectively with property owners, tenants and others.

## G. Office Assistant IV

**Office Assistant IV Experience, Training and Knowledge:**

Six months of work experience which demonstrated knowledge of English grammar, spelling, and arithmetic; Two years of clerical work experience which involved the performance of a variety of clerical tasks and demonstrated knowledge of office practices and procedures;

**Office Assistant IV Abilities:**

- Ability to read and understand oral and written instructions,
- Ability to carry out procedures in clerical work systems, and operate various kinds of office equipment and technologies.
- Write simply and directly and compare words and numbers quickly and accurately.
- Ability to use computers and word processing and other software applications,
- Keyboarding/typing skills at 40 words per minute.

# 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) 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.

**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 of 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.

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.

**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 (Cap 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).

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.

**Revocable Permits**

After the rent has been determined, the agreement for occupancy - Revocable Permit (RP) is prepared by HWY-RM which permits the tenant to occupy the premises as part of the conditional requirement of the P9. 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 one year (renewable annually) with a clause for termination upon 30 days written notice either by the State or the tenant.

A. One original document of the RP is prepared and submitted to the tenant for execution by the agent from HWY-RM.

B. After execution by the tenant, all electronic copies of the RP are routed to the Highway Administrator, for approval.

C. The approved RP is distributed as follows:

1. One electronic copy to the tenant;
2. One electronic copy to the County's Taxation Assessment Department (Tax Map Branch.);
3. Two electronic copies retained by HWY-RM, the original filed in an RP folder and the other filed in the HWY-R project folder;
4. One electronic 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 under Title 23 or ceded lands and is put in the tenant's folder with a copy sent to HWY-SF for their information.

**Billing and Collection**

The billing and collection is done by HWY-SF. They shall use the New Tenant Data from HWY-RM 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-P.M. Prior to cancellation of the P2, the following will be done:

A. Prepare cancellation form and send it to the tenant for signature (original );

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 his rent.

# 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.

## 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 prepares a recommendation as to the upset price and date of public auction and submits the same to the Right-of-Way Manager for approval.

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 (81.3-0),

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.

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.

**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.

**Inventory of Remnant Chart**

Basic Data. 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.

A. 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.

B. If controls are necessary, the control measures may be carried out by one of the following methods:

1. 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.

2. 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.

3. 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.

4. 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 the successful bidder by CON. All formal contracts are handled by CON.

C. 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.

D. 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.

# DISPOSALS

**PURPOSE:** To describe the procedures used for disposing of highway right-of-way no longer needed for 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 Fiscal Staff (HWY-SF) and the State Department of Land and Natural Resources (DLNR) or DOT Land Matters Board if applicable.

**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.

B. Prior to the request to FHWA, a request is made by memorandum to HWY-D 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 preset: 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.

**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 project 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, unless delegated to DOT Land Matters Board. 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, signed by the DIR, to Chairperson, DLNR, or if applicable DOT Land Matters Board) requesting authorization for disposal of the remnant.

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, or DOT Land Matters Board 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 review of the Legal Section of the DOT and the approval of the Legal Section of the DLNR.

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.

**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 according to the Hawaii Revised Statutes, but is authorized to designate a representative to do the disposing. DOT Land Matters Board may be disposing agency if applicable.

# RELINQUISHMENT

**PURPOSE:** To describe the procedures for relinquishment to another governmental agency of a portion of a highway right-of-way or facility for highway use where Federal-Aid funds have participated in either right-of-way or physical construction costs of said facility.

**POLICY:** A portion of a highway right-of-way or facility may be relinquished, under certain circumstances and conditions, to another governmental agency for highway use.

**RESPONSIBILITY:** The Property Management Section (HWY-RM) is responsible for relinquishment of portions of a highway right-of-way or facility to another governmental agency for highway use through the Department of Land and Natural Resources (DLNR), or DOT Land Matters Board if applicable

A. Upon request by HWY-RM, the Acquisition Section (HWY-RL) is responsible for coordinating with and assisting HWY-RM in securing pertinent data regarding the portion of the highway right-of-way or facility to be relinquished.

B. The Design Section (HWY-D) is responsible for determining whether or not a portion of the highway right-of-way or facility can be relinquished and the justification supporting such determination.

C. DLNR upon receipt of a request from the Department of Transportation (DOT) to relinquish a portion of the highway right-of-way to another governmental agency is responsible for the relinquishment, but authorizes DOT to carry it out. DOT Land Matters Board may be the approver if the lands fall under DOT ownership.

D. HWY-SF is responsible for the collection of proceeds, if any, and for the crediting thereof to Federal funds where necessary or for the accounting of these funds in the Highway Fund.

**SCOPE:** The provisions of this section apply to the Property Management and Acquisition Sections under the Right-of-Way Branch (HWY-R), the Design Branch (HWY-D), the Fiscal Staff (HWY-SF) and the Department of Land and Natural Resources (DLNR).

**PROCEDURES:**

A. Where sections of a State highway which have been superseded by construction of a new location are removed from the Federal-Aid system and the replaced section there is approved by the FHWA, the procedures to be used shall be:

1. HWY-RM shall ascertain whether or not there has been final acceptance of a project on the Federal-Aid Primary or Secondary system or approval of the PS&E for the physical construction on the right-of-way for a Federal-Aid Interstate Project, as the case may be, by FHWA.

2. After it is ascertained that such acceptance or approval has been granted by the FHWA, HWY-RM with assistance provided by HWY-RL, shall obtain data pertinent for the relinquishment of such section of the highway right-of-way or facility including environmental approvals per 23 CFR 710.403 (e) for all requests involving the interstate highway.

3. HWY-RM routes a memorandum together with suitable maps showing the section of a highway right-of-way or facility to be relinquished to engineering branches, requesting determination as to whether or not the section can be relinquished to another governmental agency for highway use and justification in support of such determination.

4. After the determination is made, HWY-RM shall submit a written statement of the Highways Division's intent to relinquish a section of the highway right-of-way or facility with a copy of suitable map or maps identified by the Federal-Aid project number to FHWA.

5. Upon approval by FHWA of the relinquishment in writing or by the signed endorsement of the Highways Division's maps delineating the relinquishment, HWY-RM shall request, through HWY-D, Cadastral Engineering Section (HWY-DC) that the affected parcel or parcels be subdivided. Electronic copies of the revised right-of-way maps or prints and a revised description are also requested and sent to the appropriate department of the County in which the relinquishment is to take place, with a completed subdivision application form for subdivision approval.

At the same time, electronic copies of a Draft Environmental Assessment (EA) with the revised maps are submitted to the Office of Environmental Quality Control (OEQC) who shall publish the Draft EA obtain the necessary concurrences from the Director. After comments and concerns are received and addressed, a Final EA & Finding of No Significant Impact (FONSI) is submitted to OEQC for publication.

6. Upon subdivision approval by the appropriate County department, HWY-RM shall prepare a written request to DLNR or DOT Land Matters Board to accomplish the relinquishment. Said request shall include the revised map or maps, together with the revised metes and bounds description.

B. Relinquishment as described in paragraph A above, may be made on an individual basis or on a project or route basis subject to the following;

1. If at anytime after the relinquishment it is determined that a relinquished facility is in fact required for the safe and proper operation of the Federal-Aid highway, the Highways Division shall take immediate action to restore such facility to its jurisdiction without cost to Federal-Aid highway funds.

2. If it is found at any time that a relinquished frontage road or portion thereof or any part of the right-of-way therefore has been abandoned by local governmental authority and a showing cannot be made that such abandoned facility is no longer required as a public road, the FHWA may cause to be held from Federal-Aid highway funds due the Highways Division an amount equal to the Federal-Aid participation in the abandoned facility.

3. In no case shall any relinquishment include any portion of the right-of-way within the access control lines as shown on the plans for a Federal-Aid project approved by the FHWA without their prior approval.

4. There cannot be additional Federal-Aid participation in future construction or reconstruction on any relinquished “off the Federal-Aid system” facility unless the underlying reason for such future work is caused by future improvement of the associated Federal-Aid highway.

C. Section of reconstructed local facilities that are located outside the control of access lines, such as turn-around of severed local roads or streets adjacent to the Federal-Aid project’s right-of-way, and local roads and streets crossing over or under said project that have been adjusted in grade and/or alignment, including any new right-of-way required for adjustments do not in fact become a part of the associated Federal-Aid project and, as such, may be relinquished to local custody. The procedures for such relinquishment shall be the me as specified in paragraph A, 1, 2, 3, 4 and 5 above.

1. The relinquishment of the type described in paragraph C may be made on an individual basis or on a project or route basis subject to the conditions as specified in paragraphs A, 1, 2, 3, 4 and 5 above.

2. Eligibility for Federal-Aid participation in the costs of the adjustments described in paragraph C is as determined at the time of PS&E approval under policies of the FHWA.

D. On frontage roads or portions thereof that are constructed parallel to and outside the control of access lines of a Federal-Aid project for the purpose of permitting access to private properties rather than to serve as extensions of ramps to connect said Federal-Aid project with the nearest crossroad or street are obviously not as necessary part of the Federal-Aid project but are useful as a means of either restoring local traffic circulation, which has been disrupted by the severing or adjustment of local streets and roads, or reducing or eliminating claims for severance damages by those whose access rights were affected by the construction of the Federal-Aid project. Relinquishment of said facilities shall be the same as stated paragraphs A, 1, 2, 3, 4 and 5 above.

Relinquishment of the type described in paragraph C, above, may be made on an individual basis or on a project or route basis.

E. Frontage roads or portions thereof located outside the access control lines of a Federal-Aid project that are constructed to serve as connections between ramps to or from the Federal-Aid project and exiting public roads or streets (in lieu of or in addition to the purposes outlined under the paragraph D above), thus, in effect becoming a pad of the ramps and obviously necessary for the intended functioning of the Federal-Aid project. The relinquishment procedure shall be the same as specified in paragraphs A, 1,2,3,4 and 5 above.

F. Ramps that are constructed to serve as connections for interchange or traffic between the Federal-Aid project and local roads or streets are necessary for the intended function of said Federal-Aid project and as such may not be relinquished from Highways Division's justification without FHWA approval.

G. Where a frontage road is not on an approved Federal-Aid system, title to the right-of-way may be acquired initially in the name of the political subdivision, which is to assume control, thus eliminating the necessity of a formal transfer later. Prior approval by FHWA is necessary. Appropriate written agreements regarding maintenance of the facility shall be secured prior to requesting approval of the proposal from FHWA.

H. Relinquishment or disposal of right-of-way may not be made without the joint determination and approval of the Highways Division, DOT and FHWA. This would not prevent the relinquishment of title, without prior approval of FHWA, of a segment of the right-of-way provided there is an abandonment of a section of highway inclusive of such segment.

I. Relinquishments must be justified by the Highways Division's finding, and concurred to by the FHWA that:

    1. The subject land will not be needed for Federal-Aid highway purposes in the foreseeable future;

    2. The right-of-way being retained is adequate under present day standards for the facility involved;

    3. The release will not adversely affect the Federal-Aid highway facility or the traffic thereon;

4. The lands to be 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 23 U.S.C. 319 and PL 89-285, Title III, Section 302-305 (Highway Beautification Act of 1965).

J. If a relinquishment is to a Federal, State or local government agency for highway purposes, there need not be a charge to the said agency, nor in such event any credit to Federal funds. If for any reason there is a payment to the Highways Division for the land transferred and Federal funds participated in the cost of the right-of-way, there shall be a credit to Federal funds on the same basis Federal funds participated in the cost of acquisition of the right-of-way.

# RIGHT OF WAY USE AGREEMENTS

**PURPOSE:** To describe the procedures for handling applications for the use of airspace, non highway use agreements for revocable permits, and use and occupancy documentation.

**POLICY:** Any individual, company, organization or public agency desiring to lease or rent airspace who submits a proposal or application shall be given consideration.

**RESPONSIBILITY:** The Property Management Section (HWY-RM) shall be responsible for processing applications for use of airspace.

**SCOPE:** This procedure extends to the Right-of-Way Branch (HWY-R), Design Branch (HWY-D) and the Fiscal Staff (HWY-SF) of the Highways Division and the Hawaii Department of Transportation Land Matters Meeting .

**PROCEDURES:** All applications for use of airspace shall be referred to the Director, Department of Transportation (DOT), for a policy decision before they are processed. The Director may delegate this authority to a representative.

A. Applications

All proposals that are submitted to the DOT must include a general statement of the use, a preliminary construction plan and general design for use of the space. Environmental clearances related to the National Environmental Policy Act (NEPA) for Section106 and Section 7 must be addressed, The proposal, together with the attachments thereto is routed to the engineering branches of the Highways Division for their review and comments. HWY-RM coordinates this review.

B. Submittal to the Federal Highways Administration (FHWA):

1. If a proposal is approved by all affected sections of the Highways Division, it is submitted to FHWA for approval.

2. The submittal shall include, but is not limited to, the following:

a. The proposed use of the airspace and the names of the user;

b. An adequate description of the space proposed for lease, revocable permit or use and occupancy agreement;

c. Right-of-Way maps and as-built construction plans of the highway facility at the location where the use of airspace is proposed;

d. Preliminary maps, plans, sketches, or artist's renderings which set out pertinent features of the improvements proposed to the construction;

e. A copy of the proposed lease, revocable permit or use and occupancy agreement which should be available at this preliminary stage;

f. Affirmative statements that the final submission will incorporate all the appropriate requirements, controls and safety provisions set forth in FHPM and assurance that (1) no person on the grounds of race, color, national origin or gender shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities thereon and (2) in the construction of any improvements, over or under the premises and the furnishing of facilities or services thereon, no person on the grounds of race, color, national origin or gender shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination and (3) the use of the premises and the facilities thereon and the providing of services thereon shall be in compliance with all other requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964,49 CFR part 21 as amended from time to time.

C. Prior to submittal, the applicant shall clear with the appropriate County department a zoning variance or conditional use permit, if applicable. If an environmental assessment or negative declaration is required by the County, the applicant shall prepare and submit it through HWY-RM.

D. After approval of the proposal by FHWA, a lease, revocable permit or use and occupancy document is prepared by HWY-RM and approved as to form by the Hawaii Department of Transportation Land Matters Meeting. .

E. An appraisal of the area is requested through the Appraisal Section (HWY-RP) of the Right-of-Way Branch. The appraisal may be prepared by a staff appraiser or an independent fee appraiser to establish the upset rental for the airspace.

F. Once the rental is determined, the lease, revocable permit or use and occupancy is :

1. Submittal of final construction plans for approval by the Highways Division and FHWA;

2. Approval of the final proposal by FHWA;

3. Approval of the lease, revocable permit or use and oocupancy agreement by the Hawaii Department of Transportation Land Matters meeting agenda items is delegated to the Director of DOT.

G. Use of Airspace under Revocable Permit (RP).

Use of airspace on a month to-month basis is covered by a RP. The applications are processed in the same manner as the applications for long-term use of airspace except that it is not granted on a public auction. Rental amount is based on an appraisal. The Fiscal Staff (HWY-SF) is responsible for the collection of the rent and billing.

H. Inventory

HWY-RM shall maintain an inventory of all potential airspace parcels and authorized uses of airspace. Such inventory shall include, but is not limited to, the following data:

- Location by project;
- Identification of the lessee of the airspace;
- Description, three dimensional or metes and bound description where appropriate;
- As-built construction plans of the highway facility at the location authorized;
- Construction plans of the facility authorized to occupy the airspace;
- Copy of the executed RP.

I. All correspondence relative to the specific area where the airspace is authorized to be used shall be kept in the project files under airspace.

# ORGANIZATION AND FUNCTIONS



**PURPOSE:**

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

23 USC 324 (Title VI of the Civil Rights Act of 1964),
42 USC Chapter 21 (Civil Rights), Sec. 2000d,

HRS 247 (Conveyance Tax),
HRS 264 Parts I-IV (Highways),
HRS 501-558 (Title 28 - Property),
HRS 531-538 (Title 29 - Decedent's Estates),
HRS 551-558 (Title 30 - Guardians and Trustees),
HRS 560 (Title 30A – Uniform Probate Code),

Hawaii Conveyance Manual III (Hawaii Institute for Continuing Legal Education, 1992),

Federal-Aid Highway Act of 1987, and other related laws, statutes, directives, opinions, rules and governing agencies.

**OBJECTIVE:**

The organization plan is set to provide:

- Abstract services for the Division's projects (49 CFR 24.101).
- Right-of-Way Abstract services in general for all of the division's branches and sections.

**ADMINISTRATION:**

HWY-RA is headed by the Title Abstractor X (Section Head) The Abstractor Section Head is responsible for the functions and activities of the section and operates under the general supervision of the ROW Manager.

**ORGANIZATION:**

The Abstract section is comprised of one unit. The organizational chart of HWY-RA is shown on page 6.1-A.

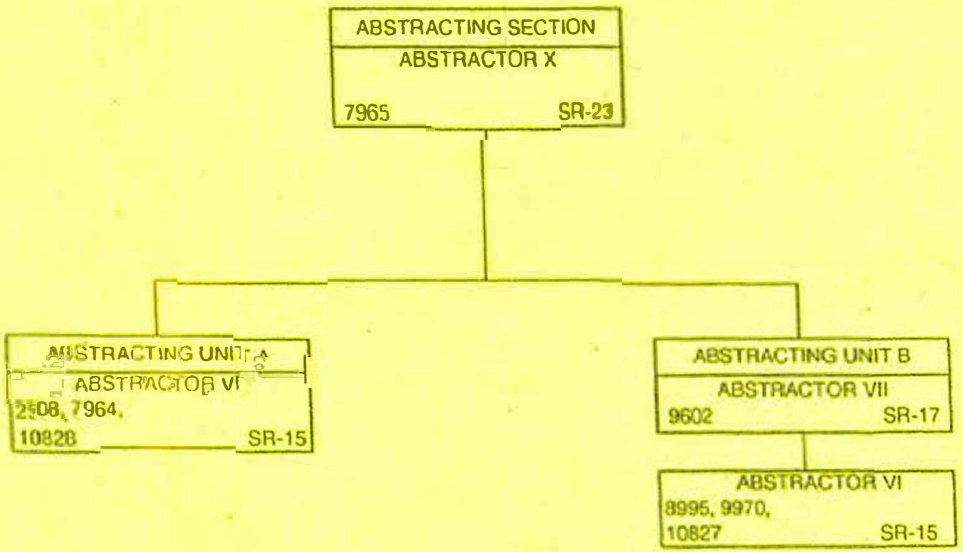
### Qualifications of Title Abstractor

The Title Abstractor has knowledge of sources of information and material pertaining to land title as follows:

- Land laws relating to land conveyances;
- Legal documents and terms relating to land titles and transactions;
- Hawaii land systems, words and phrases in the Hawaiian language used in land transactions;
- Encumbrances, tenancies and laws of descent and inheritance as applicable to land title searches;
- Office practices and procedures;
- Principles and practices of supervision;
- Principles and practices of management administration;
- Principles of real estate;
- Hawaii land laws (ancient, custom, common/statute, any and all amendments thereof/thereto);
- Recording laws and procedures of Land Court Application.

STATE OF HAWA II
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
RIGHT-OF-WAY BRANCH
ABSTRACTING SECTION

POSITION ORGANIZATIONAL CHART




All project funded positions

# TITLE EXAMINATIONS

**PURPOSE:** To describe the procedures required in conducting title examinations.

**POLICY:** Title examinations shall be conducted for:

A. Surveying and mapping;

B. Negotiation and acquisition of real property, appurtenant rights or interests therein.

**RESPONSIBILITY:** The Abstract Section is responsible for all title examinations and is accountable for the conclusions of the examinations as delineated in the title evidence.

**SCOPE:** The provisions of this procedure apply to employees of the Abstract, Land Acquisition and Appraisal Sections of the Right-of-Way Branch and the Cadastral Engineering Section of the Design Branch.

**PROCEDURE:** Four types of title examinations: preliminary, final, continuations and cursory are described in this procedure. The required evidence is obtained by examining indices and records found in City, County, State and Federal offices. Records filed in private offices, e.g., Bishop Estate, etc., are also examined when necessary.

Titles to lands in the State of Hawaii are either registered or unregistered. Registered titles are in the Land Court System and unregistered titles are in the regular system (Bureau of Conveyances).

**Type 1 Preliminary Title Examinations**

A preliminary title examination is a search made of the records in the Land Management and Conveyances Divisions, Department of Land and Natural Resources, and the Office of the Tax Maps Section of the Real Property Assessment Division of the City Department of Finance for the original and current descriptions of all lands involved. A search of the records is also made in the Survey Division, Department of Accounting and General Services, for any maps that delineate the boundaries of the lands affected.

The Cadastral Engineering Section uses this information for surveying and mapping.

A. The Cadastral Engineering Section will request, by memorandum and/or as designated on an attached tax map, the following:

   1. Descriptions of original land titles;

2. Current descriptions of pertinent tax key parcels;

3. All other metes and bounds descriptions that are available for final location surveys and mapping.

B. Dependent on the requested information an examination of the following is made:

1. The indices of awards and grants for the pertinent volumes and pages of the original land titles.

2. Records of the Office of the Tax Maps Section of the Real Property Assessment Division of the City Department of Finance for the libers and pages and/or documents in which current descriptions are recorded.

3. Records in the Land Management and Conveyances Divisions, Department of Land and Natural Resources, and the Survey Division, Department of Accounting and General Services, for descriptions of government lands, registered maps, etc.

C. If the preliminary examination does not reveal the information needed, the Cadastral Engineering Section shall be notified. If the matter is urgent, further examination will be requested.

D. Work shall be scheduled to meet all suspense dates as noted on the requests.

E. One copy of all completed work shall be forwarded to the Cadastral Engineering Section by memorandum. One copy shall remain in the files of the section. This copy shall be used in conducting final title examinations.

**Type 2 Final Title Examinations**

A final title examination involves making an investigation in the offices where the public records are kept to ascertain the history and present condition of the title to land or appurtenant rights and its status with reference to liens, encumbrances, clouds, etc. This includes the technical process of searching the records, examining all conveyances of whatever kind or nature which in any manner affect said land or any estate or interest therein, summarizing (abstracting) the operative portions of the conveyances to record the history of the title, determining ownership and all existing liens and encumbrances, and noting all defects. The results of the title examinations are used as a basis for preparing title evidence.

A. Requests for final examinations are received from the Acquisition Section and occasionally from the Cadastral Engineering Section. Requests received from the Harbors and Airports Divisions and other government agencies are routed through the Right-of-Way Manager.

B. The titles to be examined and the system in which the examination shall be made are determined by maps attached to the requests. If no maps are attached, tax key parcels are determined from tax maps obtained from the Office of the Tax Maps Section of the real Property Assessment Division of the City's Department of Finance. Maps from the Department of Accounting and General Services are also used to help determine clear title.

C. The method used for each title examination is dependent upon the title since the chain of ownership does not follow any defined pattern.

D. The title examiners shall conduct the title examinations to ascertain the history and present condition of the title to the property needed.

E. The history of the title will be kept on worksheets and the conclusion of the findings as to record ownership and status with reference to liens, encumbrances, defects, etc., will be shown on a title sheet as described in Paragraph 5.4.

F. Notice of differences between the right-of-way map, the tax map and title examination shall be given to the Cadastral Engineering Section, the Acquisition Section and the Office of the Tax Maps Section of the Real Property Assessment Division of the City's Department of Finance as necessary for proper action.

G. All title examinations shall be typed in a draft form by either a Certificate of Search, Continuation of Search, Lien Search, Memorandum of Title, Abstract of Title, and then reviewed by the Section Head or the Supervisor for propriety of conclusions. It is then typed in final, rechecked and signed by the Section Head or the Supervisor before it is sent out.

**Type 3 Continuations**

A continuation is the updating of a title examination made for the Acquisition Section as acquisition of property or interests therein progresses and prior to drafting documents such as, deeds, petitions for Land Court Subdivisions, etc. A continuation is also made subsequent to filing notices of pendency of action by the Legal Section and prior to recordation of the State's evidence of title. This insures current ownership and status.

A. All pertinent title examinations shall be updated to insure current ownership and status.

B. If condemnation proceedings have been filed, a continuation of the title examination shall be made to show the recorded notice of pendency of action.

C. Prior to drafting documents and recordation of the State's evidence of title, a continuation of the pertinent title examination shall be made to insure free and clear title to the State.

In each of the above cases the following will be done:

1. Any and all changes from the prior conclusion shall be so noted on the worksheets and title sheet as described in Paragraph 5.4;

2. All continuations to final title examinations shall likewise be typed in a draft form and then reviewed by the Section Head or Supervisor and then typed in final;

3. If no changes have occurred from the date of the last examination, it shall be so noted.

**Type 4 Cursory Examinations**

A cursory examination involves making an investigation using the records to determine the ownership of a certain tax key or parcel of land under question. A cursory examination uses the records found in the Office of the Tax Maps Section of the Real Property Assessment Division of the City Department of Finance, Department of Land and Natural Resources at the Bureau of Conveyances and the Department of Accounting and General Services, Survey Division. Cursory examinations also can determine whether a parcel of land is ceded or non-ceded.

A. Requests for cursory examinations are received from Acquisition or Property Management Sections. Requests from the Harbors and Airport Divisions and other governmental agencies are routed through the Right-of-Way Manager.

B. Title is examined given the information provided on the requests. Information is gathered from the Office of the Tax Map Section of the Real Property Assessment Division of the City Department of Finance and Department of Land and Natural Resources, Bureau of Conveyances. Maps from the Department of Accounting and General Services are also used to help determine clear title.

C. Work shall be scheduled to meet all suspense dates as noted on the requests.

D. One copy of all completed work shall be forwarded to the requesting party by memorandum and one copy shall remain in the files of the section. This section copy shall be used for reference or related matters.

**Worksheets and Title Sheets**

A worksheet (Form DOT 4-403, HWY-RA 7/71) (Exhibit "A") is used by the Abstract Section to record the history of the title while conducting a title examination. This history is necessary so that a conclusion can be reached as to who holds title to the property, how it is held and by what evidence. It shall also record the status as to liens and encumbrances. The conclusion is shown on a title sheet (Form HWY-RA Rev. 8/80). These worksheets and title sheets are used as a basis for the preparation of title evidence as described in Procedure No. 08-06-02.

A. Worksheets and title sheets shall be used in a title examination to record the history of the title and a conclusion as to the status.

B. The title examiners shall be responsible for recording the history of the title on worksheets and the conclusion on a title sheet.

C. The worksheets and title sheets with a draft of the Certificate of Search, Continuation of Search, Lien Search, Memorandum of Title or Abstract of Title, shall be reviewed by the Section Head or Supervisor for a summary knowledge of the history of the title and for the propriety of conclusions.

D. The worksheets and title sheets shall be used as a basis for the preparation of title evidence.

E. Upon completion of the acquisition and "close-out" of a project, all worksheets shall be filed in a permanent file of land titles in the office of the Abstract Section.

Abstractor Work Sheet

| Book | Page | Kind of Instrument | GRANTOR | GRANTEE | Date | Descri o Prop |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |

# TITLE EVIDENCE

**PURPOSE:** To describe the procedures required in preparing and furnishing title evidence.

**POLICY:** All title evidence shall reflect the results of the title examinations as described in Procedure No.6.1.

**RESPONSIBILITY:** The Abstract Section (HWY-RA) is responsible for all title evidence and is accountable for the contents as delineated.

**SCOPE:** The provisions of this procedure apply to employees of the Abstract Section.

**PROCEDURES:** In order to negotiate for and to acquire real property, it is necessary to furnish the Acquisition Section (HWY-RL) with the evidence of title to the land, and appurtenant rights or interests therein to be acquired. The same will apply to the disposition of State owned real property interests. The conclusions of the title examinations will dictate the type of title evidence to be furnished. This procedure includes the following types: certificates of search, continuations of search, lien searches, memorandums of title, and abstract of title. Each type has its own form and arrangement, but the basic objective is to show ownership and status of the title with reference to liens, encumbrances, etc.

**Preparation of Title Evidence**

Upon completion of the review of the worksheets and title sheet showing the conclusions of the title examination, one of the following shall be prepared and furnished as title evidence:

A. Certificate of Search:

A Certificate of Search shall show land title, description of property, record ownership, status and condition of title in present owner, liens and/or encumbrances and other pertinent data as a matter for attention. It shall be certified by the Section Head or the Supervisor. This type of title evidence is the most frequently used.

B. Continuation of Title:

When a continuation of a final title examination reveals changes in title and status, the title evidence furnished shall be updated to reflect the changes.

C. Lien Search:

When a Lien Search is requested, it shows all liens against a particular Tax Key parcel in a very brief uncertified format.

D. Memorandum of Title:

When a title examination reveals a defective title, a memorandum explaining the defect or defects shall be made or shall be incorporated in a Certificate of Title with proper notice of such.

E. Abstract of Title:

An abstract of title shall show a condensed history of the title to land. It consists of a synopsis of the material portion of all conveyances which in any manner affects said land and a statement of all liens, charges, or liabilities. The Abstract of Title shall be certified by the Head of the Abstracting Section.

**Review of Title Evidence**

All title evidences shall be reviewed for completeness and accuracy prior to signature.

**Distribution**

The original copy of the completed title evidence is kept in the files of the Abstract Section; two copies are transmitted to the Acquisition Section and one copy is transmitted to the Cadastral Engineering Section.

# RECORDATION – STATE'S TITLE

**PURPOSE:** To describe the procedures preceding, during and following recordation of the State's evidence of title.

**POLICY:** To insure prompt recordation of State's evidence of title.

**RESPONSIBILITY:** The Abstract Section (HWY-RA) is responsible for all activities with respect to Recordation of the State's Title.

**SCOPE:** The provisions of this procedure apply to the Abstract and Acquisition Sections of the Right-of-Way Branch (HWY-R).

**PROCEDURES:** All acquisition and disposition of real property or interests therein is documented by some form of evidence of title. This may be a Deed, Final Order of Condemnation or a Grant. These documents shall be filed or recorded in either the Office of the Assistant Registrar of the Land Court or the Bureau of Conveyances, depending upon whether the land is registered or unregistered, to insure proper notice of acquisition.

Recordation of these documents in either system must conform with statutory requirements. However, in addition to these statutory requirements, all documents to be filed in the Land Court system must also comply with the "Rules of Procedure", adopted by the Land Court effective December 15, 1989 or as amended.

**Preceding Recordation**

A. Unregistered Land:

1. Upon receiving the original and one copy of the State's evidence of title for recordation from the Acquisition Section (HWY-RL), the title evidence furnished in Procedure No. 6.2, Title Evidence, and the State's title shall be correlated to determine that acquisition of all rights, titles and interests have been completed.

2. The State's evidence of title shall also be examined for conformance with statutory requirements regulating recordation, verification of contents as to description, derivation of title, current liens and encumbrances.

3. A continuation of the final title examination shall be made to insure that title to the State is free and clear of further transfers and/or encumbrances up to the time of recordation.

4. If a document does not meet recordation requirements, or if the document differs from the title evidence furnished in Procedure No. 6.2, Title Evidence, or if there appears of record a change in the status of the title, the Right-of-Way (ROW) Agent assigned to the project shall be notified by memorandum of the differences with comments and recommendations. Upon resolution of the differences, the State's evidence of title shall be returned for recordation.

B. Registered Land:

1. For entire taking, HWY-RA receives the original and one copy of State's evidence of title from HWY-RL for recordation, and follows the procedures under paragraph 5.1.A. (unregistered land).

2. For partial taking, HWY-RA receives original and one copy of State's evidence of title from HWY-RL, and follows, in addition to the procedures under paragraph 5.1.A. (unregistered land), the following which is compulsory for partial taking due to the stringent statutory requirements for subdivisions of registered lands:

a. Upon notification from the Receiving Clerk of the Land Court System Division, HWY-RL will be notified by the Section Head that the subdivision is recorded. Two weeks after being notified, HWY-RL can then send the document for recording.

b. The order of subdivision, surveyor's report and petition for subdivision shall then be checked to insure that all pertinent information, such as, map number, lot number, document number, area, easement number or encumbrances created by the subdivision are properly identified by the State's evidence of title to be recorded.

**Recordation**

“All deeds, leases for a term of more than one year, mortgages of any interest in real estate, or other conveyances of real estate within the State, shall be recorded in the Bureau of Conveyances. Every such conveyance not so recorded is void as against any subsequent purchaser, lessee, or mortgagee, in good faith and for a valuable consideration, not having actual notice of the conveyance of the same real estate, or any portion thereof, or interest therein, whose conveyance is first duly recorded."

A. All documents should be no larger than eight and one-half inches by eleven inches or Registrar might refuse to accept it for recording. All documents must be single-sided sheets of written text. No paper or materials can be secured or attached to a page in any manner that may conceal any written text. The document should be stapled once in the upper left hand corner.

   Each document sent for recording must have a cover sheet attached to it. The top 3-1/2 inches of space (no less than 3-1/2 inches of cleared area) on the first page of all instruments to be recorded shall be reserved for Land Court recording information on the left half of such space, and for Regular System recording information on the right half of such space. The following one inch of space shall be reserved for the mailing address of the party to whom the document should be returned (mail to or pickup by). Each cover sheet must contain the following information:

   1. Tax map key number;
   2. Type of document;
   3. Name of all grantors and grantees involved;
   4. Address of grantee.

   The registrar may refuse to accept instruments, papers, or notices presented for recordation which will not reproduce legibly under photographic or electrostatic methods.

B. Conveyance Tax

1. State of Hawaii, Department of Transportation (DOT) is exempt from paying Conveyance Tax on acquisition for transportation purposes. Exemption from Conveyance Tax, Form P-64B (Rev. 2004) (green) “Exhibit B”, (see page 6.4-A) to be attached to all deeds from parties other than another governmental agency to DOT and must be signed by a ROW Agent. On the third sentence of the said form "The conveyance involves," "C. OTHER - Explain," type in "acquisition of property acquired by the State of Hawaii under threat of eminent domain".

2. When the State sells any remnant, the Conveyance Tax is required to be paid by the buyer. The Conveyance Tax is based on the consideration paid and a Conveyance Tax Certificate, Hawaii Form P-64A (Rev. 2005) (yellow) “Exhibit C”, (see page 6.4-B) with the cash or check must accompany the document to be recorded.

3. The Conveyance Tax Certificate must be filed within 90 days after the date of the transaction. Penalty of 5% per month up to an aggregate of 25% shall be imposed for late filing.

4. The Conveyance Tax is required only for Deeds and Leases. The following tax exempt documents do not require a conveyance tax certificate:

   a) Documents executed prior to January 1, 1967;
   b) Documents given to secure a debt or obligation;
   c) Documents confirming or correcting a deed transfer, or conveyance previously recorded or filed;
   d) Leases or subleases with terms of less than 5 years;
   e) Consideration of $100 or less is exempt from Conveyance Tax;
   f) Any deed, lease, sublease, assignment of lease, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;

g) Any document or instrument (executed pursuant to eminent domain proceedings by) conveying real property to the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;

h) Documents which solely convey or grant an easement or easements.

C. Checks

1. Checks may be made payable to either the "Bureau of Conveyances" or the "Director of Finance, State of Hawaii, A/C Land and Natural Resources".

2. Checks over six months old will not be accepted.

D. No instrument or map, or any attachment can be larger than eight and one-half inches by 11 inches.

E. If the instrument contains more than one page, it shall be stapled once in the upper left corner and shall not have a cover or backer attached.

F. Upon completing the above procedures all documents shall then be placed on record with a receiving clerk in either the Land Court System Division (for registered land) or Regular System of Conveyances (for unregistered land), Department of Land and Natural Resources (DLNR) between the hours of 8:00 A.M. to 3:30 P.M.

G. All documents are considered recorded at the time so noted.

**Following Recordation**

A. After documents have been processed through the Conveyance Division, HWY-RA shall be notified (paragraph 5.2.A.1) for "pickup".

B. For unregistered and registered lands, the originals shall be transmitted to HWY-RL.

Form P-64B
(REV. 2004)

STATE OF HAWAII—DEPARTMENT OF TAXATION

# EXEMPTION FROM CONVEYANCE TAX

DO NOT WRITE OR STAPLE IN THIS SPACE

(Please Type or Print) *CLIP THIS FORM TO DOCUMENT TO BE RECORDED. DO NOT STAPLE*

Before completing this form, please read the instructions for Form P-64A and Form P-64B. To obtain the instructions, go to the Department of Taxation's website at www.state.hi.us/tax or call the Department's Forms Request Line at 587-7572 or 1-800-222-7572 (toll-free).

Note: Section 247-6, Hawaii Revised Statutes (HRS), requires this form to be filed for the exempt transfers listed in Parts III & IV of this form.

**PART I.** All areas must be completed. If any area is incomplete, Form P-64B will not be accepted/approved.

**1. TAX MAP KEY INFORMATION:**

| TAX MAP KEY | | | | |
|---|---|---|---|---|
| Z | 9 | PLAT | PARCEL | CPR NO. |
| | | | | |

ISLAND _____ APT. NO. _____

**2. DATE OF TRANSACTION:** _____

**3. NAMES OF PARTIES TO THE DOCUMENT:**

SELLER(S) / TRANSFEROR(S) / GRANTOR(S), ETC.

_____

_____

_____

PURCHASER(S) / TRANSFEREE(S) / GRANTEE(S), ETC.

_____

_____

_____

**4. REAL PROPERTY TAX INFORMATION:**

If document will not be recorded, please provide: (1) land area; and (2) address or short legal description of property here: _____

Please provide mailing address for assessment notice (do not enter "Same" or "No Change"):

NAME _____ ADDRESS _____ ZIP _____

Please provide real property tax billing address, if different from assessment address (do not enter "Same" or "No Change"):

NAME _____ ADDRESS _____ ZIP _____

**PART II.** This part must be completed. Enter all amounts paid or required to be paid for the real property interest conveyed (cash and/or noncash). See instructions.

1. Cash ..... _____
2. Relief/assumption of debt ..... _____
3. Value of tangible good(s) e.g. equipment, furniture, etc. ..... _____
4. Value of real property interests exchanged ..... _____
5. Value of shares of stock ..... _____
6. Value of interest in limited liability company/limited liability partnership/partnership ..... _____
7. Value of any other economic benefit ..... _____
8. Total amount of actual and full consideration (add lines 1 through 7) ..... _____

Is the total amount of the actual and full consideration more than $100? If so, the exemption for a conveyance that involves an actual and full consideration of $100 or less is not applicable. Check the Specific Instructions for Form P-64B to see if the transfer qualifies for another exemption. If the transfer does not qualify for an exemption from the conveyance tax, you will need to file Form P-64A, instead of Form P-64B, and pay the conveyance tax.

**ATTACHMENT IV** (CONTINUE ON REVERSE SIDE. SIGNATURES ARE REQUIRED.) FORM P-64B

Form P-64A
(REV. 2005)

STATE OF HAWAII—DEPARTMENT OF TAXATION

# CONVEYANCE TAX CERTIFICATE

(Please Type or Print)

DO NOT WRITE OR STAPLE IN THIS SPACE

**PART I**

**1. TAX MAP KEY INFORMATION:**

| TAX MAP KEY | | | | |
|---|---|---|---|---|
| Z | S | PLAT | PARCEL | CPR NO. |
| | | | | |

ISLAND _____ APT. NO. _____

*CLIP THIS FORM TO DOCUMENT TO BE RECORDED AND MAIL OR DELIVER TO THE BUREAU OF CONVEYANCES. DO NOT STAPLE.* All parts of this Form *MUST be completed. If any area is incomplete,* Form P-64A will not be accepted.

Before completing this form, please read the instructions for Form P-64A and Form P-64B. To obtain the instructions, go to the Department of Taxation's website at www.state.hi.us/tax or call the Department's Forms Request Line at 587-7572 or 1-800-222-7572 (toll-free).

**2. NAMES OF PARTIES TO THE DOCUMENT:**

SELLER(S) / TRANSFEROR(S) / GRANTOR(S), ETC.

PURCHASER(S) / TRANSFEREE(S) / GRANTEE(S), ETC.

**3. REAL PROPERTY TAX INFORMATION:**

If the document will not be recorded, please provide: (1) land area; and (2) address or short legal description of property: _____

Please provide mailing address for assessment notice (do not enter "Same" or "No Change"):

NAME ADDRESS ZIP

Please provide real property tax billing address, if different from assessment address (do not enter "Same" or "No Change"):

NAME ADDRESS ZIP

**PART II. TAX COMPUTATION AND BALANCE DUE:**

1. DATE OF TRANSACTION ..... 1.
2. Amount from Page 2, Part IV, line 1, 2c, 3c, or 4c ..... 2.
3. Less: personal property included in amount on line 2, if applicable ..... 3.
4. Difference — Actual and full consideration (line 2 minus line 3) ..... 4.
5. By checking this box and signing below, the Purchaser(s)/Transferee(s)/Grantee(s), etc. attest under penalties set forth in the declaration below, that this transaction, is EITHER:
   - Not a sale of a condominium or single family residence OR
   - The purchaser is ELIGIBLE for a county real property tax homeowner's exemption with respect to the property conveyed ..... 5. ☐
6. Enter the applicable Conveyance Tax Rate:

| If the amount on Line 4 is: | And the box on Line 5 .... is NOT checked. | is checked. |
|---|---|---|
| Less than $600,000 | .0015 | .0010 |
| $600,000 or more but less than $1,000,000 | .0025 | .0020 |
| $1,000,000 or more | .0035 | .0030 |

6. x 0._____
7. Conveyance Tax (Multiply line 4 by line 6 and round to the nearest ten cents (5.10) ..... 7.
8a. Penalty. For late filing *(See Instructions)* ..... 8a.
8b. Interest. For late payment *(See Instructions)* ..... 8b. 8.
9. Total Balance Due (Add lines 7 and 8) ..... 9.

**DECLARATION**

I (We) declare, under the penalties prescribed for false declaration in section 231-36, Hawaii Revised Statutes (HRS), that this certificate (including accompanying schedules or statements) has been examined by me (us) and, to the best of my (our) knowledge and belief, is a true, correct, and complete certificate, made in good faith, for the actual and full consideration paid on the conveyance to which this certificate is appended, pursuant to the Conveyance Tax Law, chapter 247, HRS. Note: You must have a power of attorney if signing as agent.

SIGNATURE(S) - Seller(s)/Transferor(s)/Grantor(s), Etc.
(If agent is signing, print or type name below signature)

SIGNATURE(S) - Purchaser(s)/Transferee(s)/Grantee(s), Etc.
(If agent is signing, print or type name below signature)

DAYTIME PHONE NO.: (___) _____ - _____
E-MAIL ADDRESS: _____

DAYTIME PHONE NO.: (___) _____ - _____
E-MAIL ADDRESS: _____

FORM P-64A (Rev. 2005)

ATTACHMENT V

6.4-B

**PART III.** Enter all amounts paid or required to be paid for the real property interest conveyed (cash and/or noncash). See instructions.

| | | |
|---|---|---|
| 1. Cash | 1 | |
| 2. Relief/assumption of debt | 2 | |
| 3. Value of tangible good(s) e.g. equipment, furniture, etc. | 3 | |
| 4. Value of shares of stock | 4 | |
| 5. Value of interest in limited liability company/limited liability partnership/partnership | 5 | |
| 6. Value of any other economic benefit | 6 | |
| 7. Total amount of actual and full consideration (add lines 1 through 6) | 7 | |

**PART IV.** Fill in the appropriate line(s) for the transfer taking place and the amount of consideration. For more information, see instructions.

| | | | |
|---|---|---|---|
| **SALE, AGREEMENT OF SALE (A/S), ASSIGNMENT OF A/S, OR OTHER TRANSFER/CONVEYANCE:** | | | |
| 1. Total amount of actual and full consideration paid or required to be paid (From Part III, line 7) | | | 1 |
| **EXCHANGE OF PROPERTIES:** | | | |
| 2a. Market value of all property(ies) exchanged | 2a | | |
| 2b. Total amount of other actual and full consideration paid or required to be paid (From Part III, line 7) | 2b | | |
| 2c. Total (Add lines 2a and 2b) | | | 2c |
| **ASSIGNMENT OF LEASE:** | | | |
| 3a. Total amount of actual and full consideration paid or required to be paid (From Part III, line 7) | 3a | | |
| 3b. Value of any increase in lease rental capitalized at 6% (See instructions) | 3b | | |
| 3c. Total (Add lines 3a and 3b) | | | 3c |
| **LEASE OR SUBLEASE:** | | | |
| 4a. Rent capitalized at 6% (See instructions) Term _____ years beginning: _____ | | | |
| 1st period _____ yrs @ $ _____ /yr. 2nd period _____ yrs @ $ _____ /yr. | | | |
| 3rd period _____ yrs @ $ _____ /yr. 4th period _____ yrs @ $ _____ /yr. | | | |
| Total rent capitalized at 6% | 4a | | |
| 4b. Total amount of actual and full consideration paid or required to be paid for the leasehold, including improvements (from Part III, line 7) | 4b | | |
| 4c. Total (Add lines 4a and 4b) | | | 4c |

Mail or deliver this form with all applicable documents to the Bureau of Conveyances at:

Bureau of Conveyances
P.O. Box 2867
Honolulu, Hawaii, 96803-2867

OR

Bureau of Conveyances
1151 Punchbowl Street
Honolulu, Hawaii, 96813

**INWOOD FACTORS AT 6%**

| Years | Factor | Years | Factor | Years | Factor | Years | Factor | Years | Factor | Years | Factor |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 0.943 | 16 | 10.105 | 31 | 13.929 | 46 | 15.524 | 61 | 16.150 | 76 | 16.467 |
| 2 | 1.833 | 17 | 10.477 | 32 | 14.084 | 47 | 15.589 | 62 | 16.217 | 77 | 16.479 |
| 3 | 2.673 | 18 | 10.827 | 33 | 14.230 | 48 | 15.650 | 63 | 16.242 | 78 | 16.489 |
| 4 | 3.465 | 19 | 11.158 | 34 | 14.368 | 49 | 15.707 | 64 | 16.268 | 79 | 16.499 |
| 5 | 4.212 | 20 | 11.469 | 35 | 14.498 | 50 | 15.761 | 65 | 16.289 | 80 | 16.509 |
| 6 | 4.917 | 21 | 11.764 | 36 | 14.620 | 51 | 15.813 | 66 | 16.310 | 81 | 16.518 |
| 7 | 5.582 | 22 | 12.041 | 37 | 14.736 | 52 | 15.861 | 67 | 16.330 | 82 | 16.526 |
| 8 | 6.209 | 23 | 12.303 | 38 | 14.846 | 53 | 15.906 | 68 | 16.349 | 83 | 16.534 |
| 9 | 6.801 | 24 | 12.550 | 39 | 14.949 | 54 | 15.949 | 69 | 16.307 | 84 | 16.541 |
| 10 | 7.360 | 25 | 12.783 | 40 | 15.046 | 55 | 15.990 | 70 | 16.384 | 85 | 16.548 |
| 11 | 7.886 | 26 | 13.003 | 41 | 15.138 | 56 | 16.028 | 71 | 16.400 | 86 | 16.555 |
| 12 | 8.383 | 27 | 13.210 | 42 | 15.224 | 57 | 16.064 | 72 | 16.415 | 87 | 16.561 |
| 13 | 8.852 | 28 | 13.406 | 43 | 15.306 | 58 | 16.098 | 73 | 16.429 | 88 | 16.567 |
| 14 | 9.294 | 29 | 13.590 | 44 | 15.383 | 59 | 16.131 | 74 | 16.443 | 89 | 16.573 |
| 15 | 9.712 | 30 | 13.764 | 45 | 16.455 | 60 | 16.161 | 75 | 16.455 | 90 | 16.578 |

For leases with terms of more than 100 years, refer to Inwood Tables or an equivalent table that computes present value of $1.00 per period at an interest rate of 6% per period.

# MISCELLANEOUS TITLE SERVICES

**PURPOSE:** To describe the procedures required for providing miscellaneous title services.

**POLICY:** Miscellaneous title services relative to land titles and title to lands may be provided to all other Divisions of the Department of Transportation, if time permits.

**RESPONSIBILITY:** The Abstract Section (HWY-RA) is responsible and accountable for the conclusions reached for these miscellaneous services.

**SCOPE:** The provisions of this procedure apply to all abstracting units involved with the services below.

**PROCEDURES:** The procedures for miscellaneous title services depend on what service is being requested. These services are in addition or subsequent to the services described in Procedure Nos. 6.1 to 6.3 inclusive, and include: assisting the Cadastral Engineering Section (HWY-DC) in their determinations of land titles, boundaries and registered easements; assisting the Acquisition Section (HWY-RL); assisting the Property Management Section (HWY-RM) in processing their documents and in preparing estimates on right-of-way costs as to man-day and cost requirements for providing title services; and assisting the Legal Counsel in their preparation of documents affecting registered lands and in their presentation of eminent domain proceedings relative to title.

**Cadastral Engineering Section**

A. Boundaries

1. If there is a question as to the boundaries of land titles, HWY-DC will request an exhaustive research for any and all information that may be available for use in their determinations.

2. Conduct of the research is dependent upon the actual problem; e.g., if the problem is a boundary involving a stream or old road, a research is made in both government and private offices for any and all maps showing the stream or road and all metes and bounds descriptions mentioning the stream or road.

3. Any and all information found as a result of the research is furnished to HWY-DC. All means of research may be exhausted in furnishing this information.

B. Easements (Registered Lands):

1. Whenever HWY-DC is preparing a subdivision map of registered property, it will request HWY-RA to check the records in the Office of the Assistant Registrar of the Land Court for the last registered easement number in the application.

2. When requested, HWY-RA may furnish information as to maps or orders and furnish copies of registered documents.

**Acquisition Section**

A. Processing Documents:

1. Subsequent to execution and prior to processing a document for recordation, if there is a question as to the acceptability of the document for recordation, the Right-of-Way (ROW) Agent will check with HWY-RA for a solution.

2. The solution will be dependent upon the type of problem; e.g., if the problem is of a minor nature, such as, adding an encumbrance (required in registered land) that had been inadvertently omitted, it is resolved immediately. However, if it is of a nature where advice or the solution is dependent upon the answer of the Bureau of Conveyances or Legal Counsel, it shall be so noted.

B. Estimates:

Whenever estimates on man-day and cost requirements are required for right-of-way activities, HWY-RA shall furnish the required information to the Acquisition or Appraisal Section.

C. Supplements to Evidence of Title Furnished:

When requested, HWY-RA shall furnish copies of documents registered in the Land Court System or recorded in the regular system.

**Legal Counsel**

A. Preparation of Documents Pertaining to Registered Lands:

1. Whenever documents affecting registered lands are being prepared, the Legal Counsel will request HWY-RA to report the following by Memorandum:

   a. All encumbrances and the lots which they encumber;

   b. Proper identification of documents relating to the pertinent lots.

2. Whenever partial taking of registered land is acquired by Final Order of Condemnation, HWY-RA shall report by Memorandum to the Legal Counsel for the preparation of a petition for subdivision:

   a. The status of title up to the date and time of registration of the Final Order of Condemnation;

   b. The registration date and document number of the Final Order of Condemnation.

3. Whenever a change in status of title appears as a result of a check of the title date and time of registration of the Final Order of Condemnation, HWY-RA shall by Memorandum:

   a. Request the copies of the evidence of title furnished and shall issue a continuation of search of title showing such changes for the preparation of an amendment to the Final Order of Condemnation;

   b. Request advice from Legal Counsel as to the effect of any additional liens and or encumbrances found.

B. Eminent Domain Proceedings:

Whenever title is the question in eminent domain proceedings, HWY-RA may prepare a title search or may comment to the review of a title search to present the history and status of the title. This presentation may include giving testimony, signing affidavits, as well as furnishing title or genealogical charts.

# SPECIAL TITLE STUDIES

**PURPOSE:** To describe the procedures required in conducting special title studies.

**POLICY:** Special title studies shall be conducted on public and/or private rights to land, air and/or sea whenever a problem arises involving the Department of Transportation and/or other agencies.

**RESPONSIBILITY:** The Abstract Section (HWY-RA) is responsible for all special title studies and is accountable for the conclusions reached from these studies.

**SCOPE:** The provisions of this procedure apply to the Abstract Section.

**PROCEDURES:** All requests for special title studies shall be submitted in writing to the Right-of-Way (ROW) Manager. The request shall include the proper coding for time charges to be charged against the department or agency requesting the assignment.

A. The ROW Manager shall determine whether the services of HWY-RA are available to complete the assignment. If, because of workload, HWY-RA's services are not available, he shall so inform the requesting department or agency.

B. If the services of HWY-RA are available, the request for special title studies shall be routed to said section by the ROW Manager, for completion of the assignment.

C. After completion of the assignment, HWY-RA shall furnish the requesting department or agency with the completed studies through the ROW Manager. Illustrations of the findings shall be attached to the studies to further clarify the determinations.

D. If the results of any study show other than what is of record, this information shall be given to the pertinent department or agency for proper action.

E. If court testimony is required, the department or agency requesting the services of the Abstractor shall first request the permission of the ROW Manager. The request shall be in writing.

**Examples**

The procedures for conducting special title studies are dependent upon what the problem is and why a study is needed. The following are examples of special title studies:

A. The State was named as party defendant in a tort case (Civil No. 17704). A study of that section of Kamehameha Highway in Heeia-Kea, where an accident occurred allegedly caused by a hole in the mauka shoulder of the highway, was requested by Legal Counsel. Legal wanted to prove that although title to this section was in the State of Hawaii, the City actually was responsible. The information and material that was provided as a result of the title study was enough to have the State dismissed from that action.

B. When the State was in the process of revising the boundaries of Honolulu International Airport, the Federal Aviation Agency posed the question of title. Consequently, the Airports Division requested a title study of the lands within Executive Order 1016, or as generally known, Honolulu Airport and Keehi Lagoon. A thorough review was made of all records in the Airports Division as well as records filed in other government offices, including the Supreme Court and Supreme Court Library, to determine what lands within the present boundary were still being held by the United States government, what lands had been returned by conveyances, and what portions were ceded lands, since the sea fisheries of Kaliawa, Mokauea and Moanalua were portions of this executive order. As a result and because of the legal technicalities involved, only the findings were presented, with the final determination made by Legal Counsel.

C. As a result of an action filed against the State as to their rights in the Ala Wai Boat Harbor, a request by the Harbors Division, through Legal Counsel, was made for a title study. From the report furnished, Legal was able to have this action dismissed.

D. Other title studies have included Kahului Harbor, in the vicinity of Pier 2, Hawaii National Guard Site, Executive Orders set aside for various purposes, lands in Mokuleia which were exchanged with Dillingham for ceded lands at Diamond Head, Easement "R" in Land Court Application No. 1000.

# State of Hawaii
# DOT

## Glossary of Terms

- **Acceleration Lane:** The portion of the roadway adjoining the traveled way for the purpose of enabling a vehicle entering a roadway to increase its speed to a rate at which it can more safely merge with through traffic.
- **Access:** The vehicular movement to and from an abutting property to a highway. Includes only that part of the driveway that lies within the established right-of-way limits of the highway.
- **Access, Control of:** The condition where the right of vehicular traffic to abutting property to the highways is fully or partially controlled by public authority.
- **Access, Full Control of:** The authority to control access if exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossing at grade or direct private driveway connections.
- **Access, Partial Control of:** The authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.
- **Access, Right of:** The right of an abutting property owner to vehicular movement to and from the highway to his property.
- **Access, Uncontrolled:** The authority having jurisdiction over a highway, street, or road, does not limit the number of points of ingress or egress except through the exercise of control over the placement and the geometrics of connections as necessary for the safety of the traveling public.
- **Access Point:** The connection of a driveway at the right-of-way to the highway.

# State of Hawaii
# DOT- ACRONYMS

| Acronym | Description |
|---|---|
| AIR | Airports Administrator |
| AIR-A | Staff Services |
| AIR-AB | Budget Staff |
| AIR-AF | Financial Management Staff |
| AIR-AM | Methods Standards and Evaluation Staff |
| AIR-AP | Personnel Management |
| AIR-E | Engineering Branch |
| AIR-EC | Construction Section |
| AIR-ED | Design Section |
| AIR-EE | Environmental Section |
| AIR-EG | Drafting Section |
| AIR-EM | Facilities Maintenance Section |
| AIR-EP | Planning Section |
| AIR-ER | Program Management Office |
| AIR-H | Airports Hawaii District |
| AIR-HL | Hilo International Airport |
| AIR-I | Information Technology Office |
| AIR-K | Airports Kauai District |
| AIR-L | Operations Branch |
| AIR-LC | Certification, Security and Safety |
| AIR-LD | DBE Coordinator |
| AIR-LF | Fire and Rescue |
| AIR-LG | General Aviation |
| AIR-M | Airports Maui District |
| AIR-O | Airports Oahu District |
| AIR-OAM | Assistant Airport Superintendent |
| AIR-OAS | Airport Duty Manager |
| AIR-OCF | ARFF (Firefighting) Unit |
| AIR-OCM | Communications Unit |
| AIR-OCU | Custodial Unit |
| AIR-ODF | Dillingham Field |
| AIR-OGT | Ground Transportation Manager |
| AIR-OKA | Kalaeloa Airport |
| AIR-OKA-CF | Crash Fire & Rescue |
| AIR-OL | Landslide Operations Section |
| AIR-OM | Airport Maintenance |
| AIR-OMB | Facilities Maintenance Unit |
| AIR-OME | Contract Maintenance Services |
| AIR-OO | Airside Operations Section |
| AIR-ORC | Airport Operations Control Unit |
| AIR-OSM | Security |
| AIR-OSU | Office Services |
| AIR-OTS | Terminal Services Unit |
| AIR-PM | Property Management and Land Acquisition Staff |
| AIR-V | Visitor Information Program |
| AIR-VA | Administrative Services |
| AIR-VH | Visitor Information Program- Kona International Airport at Keahole |

# State of Hawaii
# DOT- ACRONYMS

| Acronym | Description |
|---|---|
| AIR-VHL | Visitor Information Program- Hilo International Airport |
| AIR-VK | Visitor Information Program- Lihue Airpot |
| AIR-VM | Visitor Information Program- Kahului Airport |
| AIR-VMK | Visitor Information Program- Molokai Airport |
| AIR-VO | Oahu Staff |
| AIR-VS | Office Services |
| BUS | Business Management Office |
| BUS-F | Financial and Accounting Staff |
| BUS-G | Federal Aid Staff |
| BUS-I | Business Process Improvement and Internal Control Staff |
| BUS-O | Office Services Staff |
| BUS-S | Systems Accounting Staff |
| CADD | Engineering Computer Services Staff |
| CON | Contracts Staff |
| CSS | Computer Systems and Services Office |
| CSS-I | Information Resource Management Staff |
| CSS-N | Communications and Network Administration Staff |
| CSS-O | Computer Operations Staff |
| CSS-OA | Office Automation Staff |
| DEP-A | Deputy Director-Airports |
| DEP-H | Deputy Director-Harbors |
| DEP-HY | Deputy Director-Highways |
| DEP-S | Deputy Director-Staff Services |
| DIR | Director of Transportation |
| DIR-P | Community Affairs |
| DIR-SA | Special Assistant to Director |
| DIR-CZ | Office of Special Compliance |
| EA | Environmental Assessment |
| EIS | Environmental Impact Statement |
| FONSI | Finding of No Significant Impact |
| HAR | Harbors Administration |
| HAR-E | Harbors Engineering Branch |
| HAR-EC | Harbors Construction Section |
| HAR-ED | Harbors Design Section |
| HAR-EE | Harbors Environmental Section |
| HAR-EM | Harbors Maintenance Section |
| HAR-EP | Harbors Planning Section |
| HAR-H | Harbors Hawaii District |
| HAR-K | Harbors Kauai District |
| HAR-M | Harbors Maui District |
| HAR-O | Harbors Oahu District |
| HAR-OC | Harbors Operations Section |
| HAR-OE | Harbors Enforcement Section |
| HAR-OM | Harbors Baseyard Maintenance Section |
| HAR-PM | Harbors Property Management Staff |
| HAR-S | Harbors Staff Services Office |
| HAR-SF | Harbors Accounting Staff |

# State of Hawaii
# DOT- ACRONYMS

| Acronym | Description |
|---|---|
| HAR-SI | Harbors Management Information Systems Staff |
| HAR-SM | Harbors Management, Budget and Analysis Staff |
| HAR-SO | Harbors Office Services Staff |
| HAR-SP | Harbors Personnel Management Staff |
| HWY | Highways Administrator |
| HWY-A | Project Coordination and Technical Services Office |
| HWY-AP | Personnel Management |
| HWY-AT | Engineering Technical Services and Staff |
| HWY-C | Construction and Maintenance Branch |
| HWY-CC | Construction Section |
| HWY-CE | Environmental Section |
| HWY-CO | Equal Opportunity Section |
| HWY-CM | Maintenance Section |
| HWY-D | Design Branch |
| HWY-DB | Bridge Design Section |
| HWY-DC | Cadastral Engineering Section |
| HWY-DD | Highway Design Section |
| HWY-DH | Hydraulic Design Section |
| HWY-DS | Technical Design Services Office |
| HWY-E | Engineering Services Office |
| HWY-H | Hawaii District |
| HWY-HC | Engineering Services- Inspection Unit |
| HWY-HE | Engineering Section- Design Section |
| HWY-HM | Maintenance Section |
| HWY-HO | Office Services |
| HWY-K | Kauai District |
| HWY-KE | Construction Section |
| HWY-KM | Maintenance Section |
| HWY-KO | Office Services |
| HWY-L | Materials Testing and Research Branch |
| HWY-LB | Bituminous Materials Section |
| HWY-LG | Geotechnical and Pavement Design Section |
| HWY-LR | Research and Technology Transfer Section |
| HWY-LS | Structural Materials Section |
| HWY-M | Maui District |
| HWY-MC | Construction Section |
| HWY-MD | Maintenance Engineering Section |
| HWY-MM | Maintenance Section |
| HWY-MO | Office Services |
| HWY-O | Oahu District |
| HWY-OC | Construction Section |
| HWY-OCR | Rural Construction Unit |
| HWY-OCU | Urban Construction Unit |
| HWY-OL | Electrical Section |
| HWY-OO | Office Services |
| HWY-OT | Tunnel Section |
| HWY-P | Planning Branch |

# State of Hawaii
# DOT- ACRONYMS

| Acronym | Description |
|---|---|
| HWY-PA | Advance Planning Section |
| HWY-PH | Planning Survey Section |
| HWY-PM | Mapping and Drafting Section |
| HWY-PO | Office Services |
| HWY-PS | Systems Planning Section |
| HWY-R | Right-of-Way Branch |
| HWY-RA | Abstracting Section |
| HWY-RL | Land Acquisition Section |
| HWY-RM | Property Management Section |
| HWY-RP | Appraisal Section |
| HWY-S | Staff Services |
| HWY-SA | Audit and Compliance Review Section |
| HWY-SB | Budget Staff |
| HWY-SE | Methods, Standards, Evaluation Staff |
| HWY-SF | Fiscal Staff |
| HWY-SM | Project Management Staff |
| HWY-SP | Personnel Staff |
| HWY-T | Traffic Branch |
| HWY-TD | Traffic Design Services Section |
| HWY-TO | Traffic Operating Section |
| HWY-TS | Traffic Safety Section |
| HWY-V | Motor Vehicle Safety Office |
| HWY-VC | Motor Carrier Staff |
| HWY-VM | Motorcycle Safety, Driver Licensing, Education, Vehicle Registration |
| | and Vehicle Equipment Staff |
| HWY-VS | Highway Safety Staff |
| OCR | Office of Civil Rights |
| OCR-A | ADA |
| OCR-D | DBE |
| OCR-E | Equal Opportunity |
| OCR-T | Title VI |
| OMPO | Oahu Metro Planning Organization |
| PER | Personnel |
| PER-C | Position Classification Staff |
| PER-L | Labor Relations Staff |
| PER-R | Recruitment Services Staff |
| PER-S | Special Services Staff |
| PER-T | Training and Safety Staff |
| PPB | PPB Management Analytical Office |
| PPB-B | Budget Control and Execution Staff |
| PPB-E | Program Evaluation and Analyst Staff |
| PPB-M | Project Management Staff |
| PPB-P | Methods and Procedures Staff |
| ROW | Right-of-Way |
| STIP | Statewide Transportation Improvement Program |
| STP | Statewide Transportation Planning Office |
| STP-A | Planning Process Staff |

# State of Hawaii
# DOT- ACRONYMS

| Acronym | Description |
|---|---|
| STP-M | Plans Staff |
| STP-P | Programming Staff |
| USPAP | Uniform Standards for Professional Appraisal Practices |