

**ROADS IN LIMBO:
AN ANALYSIS OF THE STATE-COUNTY
JURISDICTIONAL DISPUTE**

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FOREWORD

Some twenty years ago, when the undersigned was in charge of the division responsible for land matters in the Office of the Corporation Counsel of the City and County of Honolulu, one of the perennial areas of controversy involving the State and the counties was that of jurisdiction over certain roadways, particularly substandard ones. At that time, the problem had been simmering for awhile. Today, the dispute continues, as it will likely continue twenty years from now if no serious consideration is given to the problem and a concerted but cooperative effort is made on the part of all involved to deal with the real issues.

The Bureau has no pretensions that this study will resolve a situation that has existed for so long. However, we do believe that efforts to arrive at a solution must begin with identifying the real problems that exist. It is with that approach the Bureau hopes to make a positive contribution. Only if the principals involved adopt an attitude of mutually striving to arrive at a consensus of what has to be done rather than one of saying the responsibility lies elsewhere, will the parties have made the first genuine attempts at resolving a situation whose correction is long overdue.

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Chapter 1

INTRODUCTION

Nature and Scope of the Study

The House of Representatives of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1989, adopted House Resolution No. 38, H.D. 2 (see Appendix A), requesting the Legislative Reference Bureau to study the issue of roadway jurisdiction disputes between the State and the counties. H.R. No. 38 described the origin of the jurisdictional dispute as arising in 1963 when public highways were separated into two categories: state highways under the jurisdiction of the Department of Transportation, and county highways, which comprise all other public roads. The State has since claimed that this and subsequent legislative enactments transferred title and maintenance responsibilities to the respective counties. The counties have cited an Intermediate Court of Appeals decision, *Santos v. Perreira*,¹ to support their position that the counties are only responsible for roads accepted or adopted by the County Council. The State and counties have been at an impasse over this conflict, and neither side is willing to take jurisdiction over these roads with their concomitant expense for maintenance, upgrading, and repair.

Objective of the Study

H.R. No. 38 requested the Legislative Reference Bureau to analyze the dispute between the State and the counties, suggest alternatives for settling the jurisdictional disputes, and identify all roadways whose jurisdiction is in question using data supplied by state and county authorities.

This report is organized into six chapters. Chapter 1 discusses the nature and scope of the study. Chapter 2 describes the problem and the positions taken by the State and the counties. Chapter 3 contains a historical analysis of the problem, including the legislative history of the relevant statutes. This chapter also discusses and analyzes the positions of the parties. Chapter 4 discusses the solutions proposed by the State and the counties. Chapter 5 divides the problem into five basic components and suggests ways to resolve each aspect. Last, chapter 6 makes findings and recommendations.

Appendix B contains a listing of specific disputed roads according to state and county lists.

ENDNOTE

1. 2 Haw. App. 387, 633 P.2d 1118 (1981).

Chapter 2

HOW THE PROBLEM AROSE

The responsible government has a duty
to keep its highways
in reasonably safe condition.¹

For residents throughout the State, attempts to get certain roads maintained, repaired, or improved end in frustration. When calls for assistance are made to the county, the county refers them to the State. When calls are made to the State, the State refers them back to the county. The jurisdiction over these roads remains in dispute, and it is the residents who pay the price.

This jurisdictional dispute was characterized in H.R. No. 38, the resolution requesting this study during the 1989 legislative session, as arising from the State Legislature's 1963 decision to divide the roads into two categories, state and county. However, the real roots of the problem reach back much further than that, and a more detailed analysis of roads in Hawaii is necessary to understand the scope of the problem and possible solutions.

Confusion over who owns roads in Hawaii stems from several sources. First, there is no complete and accurate list of roads in the State. In preparation for this study, the Bureau contacted the departments of public works for all four counties as well as the state Departments of Transportation (DOT), and Land and Natural Resources (DLNR). The DOT has a complete list of state highway roads only. The DLNR has a partial list of disputed roads on Oahu compiled by the City and County of Honolulu and has no list at all for the other counties.² Lists received from the counties were not complete. A listing of the disputed roads, as far as is ascertainable, is contained in Appendix B. As all roads in the State are not known, it is not surprising that disputes as to ownership -- be it State, county, or private -- have occurred.³

Second, ownership of government roads is complicated by the varied ways that a road can become public. If the State or a county chooses to create a planned public road, no dispute as to ownership would exist. In some situations, however, a public road can be forced on the government. A private party developer can construct a road in compliance with county standards, and, pursuant to statute, turn the roads over to the county upon completion without the need for county approval.⁴ Also, and more troublesome, if a private road or parcel of property is used consistently by the public, an unplanned public road by easement could be created.⁵ This category of roads is not within the scope of this report as these roads are not "public highways" under the statute.⁶ Roads created by easement generally have other problems also, such as a lack of an accurate metes and bounds description.⁷

HOW THE PROBLEM AROSE

Third, some public roads are not formally recorded, so that their existence or exact location may not be known by the government.⁸ Even for roads whose boundaries are known, there may be a dispute as to the road's ownership and exact dimensions because the road has *no metes and bounds* description. The lack of a *metes and bounds* description is generally a characteristic of the disputed roads. When the Highways Act was enacted in 1892, it declared as public highways all roads existing at that time, even those built by private parties who had dedicated, surrendered, or abandoned the roads to the government.⁹ The government thus obtained title to many roads without having a complete description or *metes and bounds* survey. In other cases, the roads may have been obtained at a time when the need for a complete and expensive *metes and bounds* survey may not have been as apparent as it is today, or, in some instances, because title documentation has been lost.

Different branches of the government may have jurisdiction over, or other ties to, public roads. Roads under the jurisdiction of the State fall into several categories. The most prominent of these is roads under the jurisdiction of the state Department of Transportation. These are the roads that comprise the state highway system,¹⁰ and there is no dispute as to their ownership: the State owns and maintains them. The Department of Hawaiian Home Lands owns title to roads under its jurisdiction, but these roads are to be maintained by the counties pursuant to the State Constitution.¹¹ Other state agencies, such as the Department of Corrections, also have roads on land under their jurisdiction, but these roads are not in dispute.

The roads that are in dispute fall nominally within the jurisdiction of the Department of Land and Natural Resources (DLNR). The DLNR apparently has paper title to many of these roads, which are also referred to as the "old government roads." The counties generally consider these roads to be state-owned since that is what the title documents reflect. The State, however, relies on a series of statutes that will be described in chapter 3 for the proposition that these roads have become county property by operation of law.¹² The counties, on the other hand, take the position that the State cannot thrust responsibility for these roads on them without the counties' approval, and that unless the county does accept a particular road, that road remains with the State.

Some efforts have been made to alleviate the problem, such as a pilot project consolidating maintenance of all roads with the counties,¹³ or by policy meetings¹⁴ or other studies,¹⁵ but these efforts have not produced a lasting result.

These positions have the practical effect of leaving a significant number of roads in all four counties in substandard conditions and without routine maintenance because no government body will accept responsibility for them. Occasionally, the State or county will perform minimal maintenance on a road, largely due to community pressure, but will do so only as a humanitarian gesture while still disclaiming ultimate responsibility.¹⁶

This situation has negative effects for all who use or depend on these disputed roadways throughout the State. An individual cannot get a pothole patched or a needed guardrail installed.¹⁷ All drivers who use these unmaintained roads (some of which are frequent commuter routes) face the slow traffic occasioned by poor roads and experience extra costs from wasted fuel, excessive tire wear, and extra vehicle repairs.¹⁸ Society as a whole also suffers when roadway jurisdiction is in dispute as these roads are less likely to be cared for than roads over which there is no dispute, and this situation can eventually lead to a breakdown in the infrastructure.¹⁹

The roadway jurisdiction problem is not simply one of statutory interpretation, and will not be solved merely by more legislation without considering the components of the problem. These components, which will be discussed in detail in the ensuing chapters, are the historical background, the legislative history, and five practical considerations: liability for traffic accidents, road title, metes and bounds description, maintenance responsibilities, and, most importantly, funding. Only when all or most of these factors are considered in the context of this problem will a workable solution occur.

ENDNOTES

1. Breed v. Shaner, 57 Haw. 656, 562 P.2d 436 (1977).
2. Memorandum from Mike K. Shimabukuro, Department of Land and Natural Resources, to Johnson Wong, Senior Deputy Attorney General, dated February 3, 1988: "The listing [of roads whose fee title has not been transferred to the county] was compiled by the City and County of Honolulu. We do not have any listing for any of the neighbor island Counties."
3. Some of these roads are prominent and well used. For example, in the City and County of Honolulu, parts of Kamehameha IV Road, Kapiolani Boulevard, Nuuanu Avenue, and Piikoi Street are in dispute. On Kauai, information on the ownership and the builder of the main road from Kekaha Town to Kokee is unknown. Conversation with Michael Belles, County Attorney, on June 9, 1989.
4. Hawaii Rev. Stat., §264-1(c).
5. These roads are on private land and have been so widely used by members of the public that the public has gained the right to travel over them by easement.
6. These roads are not state roads under the statute, because they are not within the state highway system. They are also not county roads, because a private road can become a county road only upon acceptance by the county council or compliance with county standards (Hawaii Rev. Stat., §264-1). These roads appear to be privately-owned public roads, although there is no specific provision for such in the statutes. It is presumed that the private owner or owners of the road are responsible for their maintenance even though they may be absentee owners unaware of the road's existence, may not have the funds to maintain the road, and may desperately want to close the road to the public or give it to the government. These privately-owned public roads may often be unmaintained and in poor condition. The Legislature may want to consider the plight of these roads in conjunction with its undertaking to resolve the subject of this study.
7. A metes and bounds description is a formal and legal method of surveying boundaries.

HOW THE PROBLEM AROSE

8. Problems with formal recordation of public roads occurred almost as soon as the Mahele. It was the practice of the Land Commission administering the land distribution and quieting title "not to include the location of...public roads within large land grants (ahupuaa) because (1) these roads were both known and reserved [to the public] and (2) many large grants were adjudicated in name only and detailed surveys were not immediately done until long after the Land Commission was disbanded." Memorandum from William M. Tam, Dona L. Hanaïke, and Beatrice K. Dawson, Deputy Attorneys General, to Deputy Attorneys in the Land/Transportation Division, dated April 26, 1985, p. 2.
9. In re Application of Kelley, 50 Haw. 567, 579, 445 P.2d 538 (1968).
10. See Hawaii Rev. Stat., §264-1 and chapter 264, part III.
11. The Hawaiian Homes Commission Act has been integrated into the State Constitution pursuant to Article XII. These roads do not fall strictly within the bounds of this study as their ownership is not disputed, but will be discussed because their maintenance responsibility is.
12. For example, one such old government road is the Old Pali Highway. According to the State, DLNR held title to the property and DOT had control over the road. When the new Pali Highway was completed, that road took the old road's place in the state highway system. The old road thus was no longer under DOT control, and reverted back to DLNR. The state position is that, at that point, the statute giving to the counties all roads not on the state highway system became effective, automatically transferring ownership of the Old Pali Highway to the City and County of Honolulu. Conversation with Fred Shinsato, Department of Transportation, May 24, 1989.
13. This consolidation occurred in 1968-69, and is described in chapter 4.
14. E.g., the recent Governor's Task Force on State-County Relations. The Task Force issued a draft report. The City and County of Honolulu reported that the counties did not agree with many of its recommendations, so no legislation was introduced. Committee Report 130 on City and County of Honolulu Resolution 88-425, adopted on November 2, 1988. At least one smaller-scale meeting on this issue has been called. Representative Bunda, Senator Hagino, and Councilwoman Rene Mansho held a meeting during the fall of 1989 with representatives from state and county offices to try to resolve roadway jurisdiction for California Road in Wahiawa.
15. See Office of the Ombudsman, Report #18, Fiscal Year 1986-87, at chapter II.
16. See, e.g., "Governor Agrees to Fund Repair of Waianae Road," Honolulu Star-Bulletin, December 15, 1983, p. A-3.
17. Recently the State and the counties have announced a "Pothole Patrol" campaign in which residents can report potholes to a hotline and have them repaired. "Pothole patrol asks public to phone for pothole patching," Honolulu Advertiser, August 31, 1989, p. A-3. As the hotline has separate numbers for state and county roads, it remains to be seen whether this service will provide help to the disputed roads.
18. "Bad roads seen costing motorists millions," Honolulu Advertiser, February 2, 1981, p. A-8.
19. This problem has been recognized for many years. Twenty-seven years ago, in discussing this issue, a report stated that improving roadway facilities would benefit everyone. "Highway users benefit through time savings, increased travel convenience, decreased cost of motor vehicle operation, and, in the case of commercial operators, increased profits. Property owners benefit by improved access to their land, and, in the case of agricultural and industrial properties, by improved access to markets. The general public, in

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addition to its role as road users or property owners, benefits...through better service from such public vehicles as fire trucks, police cars, ambulances, mail trucks, and school buses, and also from increased economic activity." (Emphasis in original) Public Administration Service, State and Local Government Relations in the State of Hawaii (Chicago: 1962), p. 211 (prepared for the Department of Budget and Review, State of Hawaii).

Chapter 3

HISTORICAL AND LEGAL BACKGROUND

1913

Ever since the beginning of county government...there has been a great deal of confusion in regard to the streets, roads, etc.... This bill is designed to place the entire matter in the hands of the Boards of Supervisors of the several counties...where it properly belongs, thus doing away with all confusion and conflict of authority.¹

1947

The purpose of this bill is to clarify, without extending, the provisions of the present law relating to public highways...and the provisions concerning who shall be in charge of them.²

1965

This bill would erase any doubt as to the intent of the Legislature in 1963 when it passed Act 190 to turn over title to county highways.³

1966

There presently exists an uncertainty of jurisdiction and responsibility between the State and the several counties in the areas relating to highway ownership, maintenance and repairs[.]... The present Bill would clearly define the counties' responsibility[.]⁴

1981

The purpose of this bill is to clarify the assignment of responsibility for all county highways...to the several counties.⁵

The statements quoted above aptly illustrate the length of time that confusion between the State and the counties has continued about roadway jurisdiction and maintenance for certain disputed roads. The primary source of this confusion has been the statutory law.

One aspect of the problem caused by the statute concerns the definition of "public highway," as the counties contend that it permits the State to classify the roads arbitrarily, and to the disadvantage of the counties. Another aspect arises from the fact that, for many years, ownership of the county roads and responsibility for their maintenance were divorced from each other, with the State holding title while the counties maintained the roads. When

the State sought to rectify this situation, it met strong opposition by the counties to the imposition of additional responsibilities on them.

Definition of State and County Roads

Prior to the Mahele of 1848, all roads in the Kingdom of Hawaii belonged to the people through the sovereign.⁶ After the Mahele, while private roads could be constructed on private property, roads that were formerly public remained so.⁷ The Highways Act of 1892 stated that: "All roads...whether now or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways."⁸

The counties were established in 1905,⁹ and while the counties were given certain rights and duties over roads in the ensuing years, it was not until 1947 that the legislature divided the broad category of public highways into two types: territorial or federal aid highways, and county highways.

It is important to note that no functional distinction between the two kinds of highways was codified in the statute: the territorial or federal aid roads were merely defined as "all those under the jurisdiction of the territorial highways engineer or the superintendent of public works pursuant to chapter 89 or any other law."¹⁰ This lack of a functional definition would continue and contribute substantially to the counties' perception of unfairness in the division of roadway responsibility.

The law today substitutes the State for the Territory¹¹ and is codified in section 264-1(a), Hawaii Revised Statutes:

All roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government are declared to be public highways. Public highways are of two types:

- (1) State highways, which are all those under the jurisdiction of the department of transportation; and
- (2) County highways, which are all other public highways.¹²

This definition still does not include a functional division of roads in determining classification as a state or county road. Its failure to do so opens the definition to charges of arbitrariness. In contrast, in some states the definition of what constitutes a state or local road is functional. State roads can be categorized as main arteries between populated areas such as cities and towns and those leading to public recreational areas. Local roads

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encompass feeder routes and residential streets. This type of definition is desirable in that it (1) limits the different types of roads that each governmental body must maintain, (2) enables residents to easily ascertain which governmental body to contact for repairs and accidents, and (3) provides for easier identification of the responsible governmental body when a new road is created.

In contrast, Hawaii's system places all choice over road designation with the state DOT, while forcing the county to accept all roads not selected by the DOT for the state highway system. The statutes do not articulate a functional division of responsibility that is perceived as fair by the counties, who shoulder most of the burden of roadway upkeep and maintenance.¹³ The apparent arbitrariness of the designation process is a source of concern to the counties, as will be discussed in chapter 4.

Maintenance Responsibilities

In 1892, the only existing governmental entity was the Kingdom of Hawaii, and the supervision, charge, and control of all public highways was assigned to the Minister of the Interior.¹⁴ The counties were established in 1905, and in the same year the territorial superintendent of public works was substituted for the Minister.¹⁵ However, shortly thereafter, in 1913, the maintenance functions of all public highways was transferred to the boards of supervisors of the respective political subdivisions (*i.e.*, the counties).¹⁶ Maintenance of Hawaiian Home Lands was added to the counties' duties in 1941.¹⁷

In 1947, the public highways were divided into two classes: territorial or federal aid, and county highways.¹⁸ The county boards of supervisors were given supervisory (*i.e.*, maintenance) authority over the county highways, although the legislative history indicates that the boards of supervisors of the counties previously had this authority.¹⁹

This section was codified into chapter 265, which was repealed in 1981.²⁰ In its place, section 265A-1 was enacted,²¹ which currently states that:

The several councils or other governing bodies of the several political subdivisions of the State shall have the general supervision, charge, and control of, and the duty to maintain and repair, all county highways[.]

Despite this language, the counties are in fact not maintaining all roads designated as county highways. The continuing confusion over maintenance duties has led to proposed legislation such as Senate Bill No. 738 (1987), in which the maintenance duties were sought to be clarified again. Part of the reason for the continuing confusion lies in the ownership of the roads.

Ownership of Public Highways

As discussed above, all public highways were originally owned by the Kingdom (later, Republic and Territory) because no other governmental body existed.²² Although maintenance responsibilities were transferred to the counties in 1913, title to all public highways remained with the State. Even after public highways were divided into two classes in 1947, territorial/federal aid and county roads, the classification was in name only: the roads still belonged to the State. Any private party who wanted to turn over a private road to a county was required to name the State, not the county, as grantee.²³

The State eventually found this practice inequitable,²⁴ and attempted in 1963 to remedy the situation. The original intent of Act 190 of the 1963 legislative session was "to provide for the retention of ownership of all county highways by the respective counties[.]"²⁵ Section 2 of the Act read that "[t]he ownership of all public highways...shall be in the government in fee simple. The term 'government' as used herein shall mean the State with reference to state highways and shall mean the respective counties with reference to county highways[.]" However, an amendment made as the bill passed through the Legislature added section 4, which narrowed the scope of the statute by stating: "The ownership of all county highways heretofore acquired by the counties by eminent domain, purchase, dedication or surrender is hereby transferred to and vested in the respective counties[.]"²⁶ The definition in section 4 excludes the large category of roads denominated county roads by the State in 1947. The reason for the restriction of ownership to certain county roads does not appear in the committee report. Although section 4 was only a session law, it was codified as a second paragraph to section 142-2 of the Revised Laws of Hawaii 1955.

The inconsistency between the broad language of section 2 and the more narrow scope of section 4 apparently caused some confusion between the State and the counties. The legislature attempted two years later to resolve the conflict between sections 2 and 4 of Act 190 in favor of the broader provision. The legislature enacted Act 221, Session Laws of Hawaii 1965, which deleted the second paragraph of section 142-2 (the prior section 4) and added "the ownership of all county highways is hereby transferred to and vested in the respective counties." (Emphasis added). Senate Standing Committee Report No. 468 on H.B. No. 364, Third Legislature, 1965, which ultimately became Act 221, stated that "[t]his bill would erase any doubt as to the intent of the Legislature in 1963 when it passed Act 190 to turn over title to county highways.... If enacted [this bill] will turn over to the counties title to all county highways."

Another committee report elaborated on the reasons for the transfer:

Your Committee recognizes that the counties have the general supervision and control over and the duty to maintain and repair county highways. The counties also use their own funds to condemn and buy private property for purposes of road widening and

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realignment. It seems inequitable under these circumstances to have the State retain ownership of those county highways.²⁷

While this provision appears equitable, it should be noted that this Act also provided that if any county road constructed in whole or in part with state or federal funds should be sold, all of the proceeds were to go to the State. One committee report²⁸ indicated that amendments were made to transfer the proceeds, up to the amount of federal funds expended, to the state highway fund, which would leave the remainder to the counties. However, the final form of the bill gave all the proceeds to the State.²⁹

The legislative history does not indicate the reason for the objection of the counties to the transfer of title to them. The counties already had the duty to maintain and repair the county highways, and in fact prior to 1947 has maintained all public highways. The privilege of owning property that they were bound to care for escaped them, however, because in 1966 the state legislature enacted additional legislation to force the counties to accept title to county highways.

This new legislation, styled an "urgency measure," provided that the Governor could, by executive order, turn over state land in fee simple to any county for use as a county highway, and the county involved would thereafter be responsible for its repair and maintenance as a county highway. The committee reports make the reason for enacting this urgency measure clear. According to committee reports, "[t]his [bill] will solve the problem that arose in the problem of Salt Lake Boulevard Bridge where the county refused to maintain and repair the road because it did not meet county standards."³⁰ Other problems, including one at Fort Ruger, were also mentioned.³¹ The committee report stated that the intent of the legislation was "to provide a mechanism to enable the Governor and the Department of Transportation to establish a coordinated and consistent highway policy."³²

From these comments, it can be deduced that at least the City and County of Honolulu did not believe that the 1965 Act mandated it to accept at least some of the county roads. However, even if this was their position, the counties were still required to maintain the county roads -- no matter who owned them -- under section 265A-1, Hawaii Revised Statutes. The counties' refusal to maintain all county roads thus denies the impact of two statutes, section 265A-1 giving them maintenance duties and section 264-1 giving them ownership.

With the benefit of hindsight, it appears that the State may have made a tactical error in passing this urgency measure instead of insisting, perhaps through the courts, that the previous legislation bound the counties. The counties could now use the 1966 legislation to logically infer that the 1963 and 1965 legislation was not effective in transferring title by operation of law, because the 1966 legislation would not have been necessary if maintenance duties and ownership had in fact passed to the counties in 1963 and 1965. The fact that the provisions relating to executive orders can be applied to the creation of new roads does not

negate this inference since the legislative history clearly states that the law was enacted in response to an ongoing refusal by the counties.

Another problem with the 1966 Act establishing the executive order provision is its indecisiveness in whether to force the roads on the counties. As initially introduced, the Act had the phrase, "and the county involved shall have no discretion but shall accept such land as a county highway," thus making it quite clear that the Governor's order was binding on the counties without their consent. This phrase was deleted in the Senate,³³ but restored in the House.³⁴

There was some floor debate on the issue of forcing acceptance of the roads on the counties, in which one legislator criticized the bill as allowing the State to:

..."pass the buck" to all counties of this State to allow any road, any bridge, any state highway, to run down into a deplorable condition and then...to turn over and mandate the counties to assume this responsibility without putting it up to the conditions that the various counties decided the road should be, without giving the proper money for any consideration for maintenance, but it will give the administration the power to say, "You will take it because we say so."³⁵

It is unclear whether this discussion had an impact on the final version of the bill, for while the version that came out of the Conference Committee emerged without the added language stating that the county would have no discretion to deny acceptance of the road, the word "shall" was retained in the phrase, "and the county involved shall thereafter be responsible for its repair and maintenance," which would indicate that the county was still mandated to accept the road. To further confuse matters, the explanation of the Conference Committee's action contradicts the plain meaning of the word "shall": Representative Oshiro, when asked if the term "shall" still remained in the draft, replied:

Yes, except this -- in the report that we have adopted in the conference committee report, we had the concept of the executive order. As a result, there is no mandate involved in the executive order and furthermore, although there is a word "shall" the "shall" is on the assumption that the executive order is accepted by the counties. (Emphasis added)³⁶

It is questionable, however, whether one legislator's contrary explanation would overcome the plain meaning of the bill enacted by the whole Legislature.

The result of the 1966 Act was to complicate the issue and give some support to the counties in their attempts to limit their responsibility for county highways.

TIMELINE

<u>Year</u>	<u>Definition</u>	<u>Ownership</u>	<u>Maintenance</u>
1892	All roads laid out by government or dedicated/abandoned by private parties are public highways.	Public highways owned by the Hawaiian government.	Public highways maintained by the Minister of the Interior.
1905 (counties established)			Public highways maintained by the superintendent of public works (state).
1913			Public highways maintained by the boards of supervisors (counties).
1941			HHL roads to be maintained by the counties.
1947	Public highways split into two types: Territorial/federal-aid and county highways.		Only county highways to be maintained by the counties.
1963	Territorial/federal aid roads become state/federal-aid roads.	State transfers ownership to counties of roads obtained by the counties through specified means.	
1965		State transfers ownership of all county roads to the counties.	
1966		State adds provision allowing governor to transfer title of roads to counties by executive order.	
1968			One year experiment of transferring maintenance of all roads to the counties.
1981			C 265 repealed: c 265A enacted giving counties duty to maintain all county highways.

The current version of the law is found in section 264-2, Hawaii Revised Statutes, and reads:

The ownership of all public highways and the land, real estate and property of the same shall be in the government in fee simple. The term "government" as used herein means the State with reference to state highways and means the respective counties with reference to county highways. If any county highway is required by the State for state highway purposes, the ownership of the county highway shall be transferred to and vested in the State without compensation.

The governor may, at any time by executive order, turn over to any county, state land, in fee simple, for use as a county highway, and the county involved shall thereafter be responsible for its repair and maintenance as a county highway.

The ownership of all county highways is transferred to and vested in the respective counties in which the county highways lie.

Recent Caselaw

The counties claim that the plain wording of the statutes discussed above has been modified by the case of *Santos v. Perreira*.³⁷ This case, according to the counties, holds that the counties have to agree to accept a county road before they become responsible for it. However, both this case and a similar one, *Mauī Ranch Estate Owner Association v. County of Mauī*,³⁸ are not necessarily applicable to the State.

Santos involved a property dispute between two private parties in which the issue was the ownership of a disputed dirt road. The plaintiffs claimed that they had an easement over the road and could freely travel over it, and sought an injunction prohibiting the defendants, who claimed ownership, from blocking the plaintiffs' use of the road. The plaintiffs won, and the defendants appealed.

One of the issues argued on appeal by the plaintiffs was that the road was a public road surrendered to the county under section 264-1. The plaintiffs contended that a public highway may be surrendered to the State without the State's acceptance. The court rejected this argument, stating that "[a] highway is not a county highway unless it is accepted or adopted as such by the county council."³⁹

This requirement of county consent before the county would become responsible for a road is codified in section 264-1, Hawaii Revised Statutes:

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Dedication of public highways shall be by deed of conveyance[.] The deed of conveyance shall be delivered to and accepted by...the legislative body of a county in the case of a county highway. Surrender of public highways shall be deemed to have taken place if no act of ownership...has been exercised for five years and when, in the case of a county highway, in addition thereto, the legislative body of a county has, thereafter, by a resolution, adopted the same as a county highway.⁴⁰

The only exception is not relevant to the *Santos* case.⁴¹

Maui Ranch similarly involved a private party's attempt to argue that a private road could be made a county road without the county's consent. In this case, *Maui Ranch* argued that the road became public by common law dedication. The court rejected this argument on the ground that common law dedication does not apply because the doctrine of statutory dedication applies instead, and the statute, section 264-1, requires the county's consent: "the roadway does not become a county highway unless and until it is accepted by the legislative body."⁴² The court cited *Santos* and concluded that as there was no evidence that the Maui County Council accepted the road, the road remained private.

While the language in these cases appears to favor the counties' position, it is important to note that both cases dealt with private parties and private roads, rather than public highways. The requirement for county consent before acceptance of these roads is included in section 264-1, as quoted above. It is not at all certain that the same restrictions would apply to state transfers of public highways to the counties. First, the silence of the statute concerning the transfer of state-owned public highways is significant. The Legislature had ample opportunity to add language requiring county consent for jurisdiction over state-owned public highways similar to that in the statute for private roads, but the Legislature has not done so. It would seem logical that a parallel provision would exist if the Legislature wanted to allow the counties to accept or reject the state public highways. The fact that one does not can be seen as evidence of legislative intent not to require the county's consent for the transfer of state public highways.

Second, the State is the creator of the counties and has the power to impose some types of restrictions or requirements on them through general laws enacted by the Legislature, such as the responsibility to clear beaches of debris,⁴³ to maintain public parks,⁴⁴ and to comport with certain zoning and building code requirements.⁴⁵ Requiring the counties to maintain and take title of roads would appear to fall under the same rubric.

It may be significant that the counties have failed to seek judicial relief⁴⁶ from maintenance and ownership functions, when they have had maintenance jurisdiction over roads since 1913 and ownership jurisdiction over county roads for well over twenty years. This could be interpreted as a tacit acknowledgment of the State's power to impose these responsibilities.

The State's Interpretation of the Legislative History

The State has taken the position that the 1963 and 1965 legislation has given the counties ownership of all county roads and that the counties are required to repair and maintain them.⁴⁷ The State also takes the position that since roadway jurisdiction was transferred before the 1978 Constitutional Convention, which requires the State to contribute monetarily when mandating the counties to perform a function, the State's requirement of repair and maintenance of county highways and Hawaiian Home Lands roads is not a "mandate" and that the State need not contribute monetarily to this upkeep.⁴⁸

The State has not voiced a concern over the provision allowing the State, if it needs a county road for the state highway system, to require the counties to turn the road over without compensation,⁴⁹ and that if a county ever sells a road constructed in whole or in part with state or federal funds, all of the proceeds go to the State.⁵⁰

The Counties' Position on the Legislative History

City and County of Honolulu

The City and County's legal position⁵¹ has been based on a 1977 opinion by the Department of the Corporation Counsel discussing whether certain roads were under the City and County's jurisdiction, which states:

The roads that are in question were originally government (Crown) land, then government (Territorial) land, and finally government (State) land upon Statehood. Under HRS Section 264-1, public highways or roads are of two types: (1) state or federal aid or (2) county highways. Since the roads here are not only owned but also built by the State, this section mandates that they are under State jurisdiction. This conclusion appears to be further supported by HRS Section 264-2, which states in part:

The Governor may, at any time by executive order, turn over to any county, state land, in fee simple, for use as a county highway, and the county involved shall thereafter be responsible for its repair and maintenance as a public highway.

Because there has been no executive order...the State still has ownership over the roads in question.

Although under HRS Section 265-2, the State may enter into agreements with the City to maintain highways or roads under State jurisdiction, there is no such agreement regarding these roads. Therefore, any maintenance by the City was strictly voluntary and

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such maintenance does not place such roads under City's jurisdiction.⁵²

This opinion does not appear to be supported by the law. First, while the statute does provide that the roads are divided into two categories, state and county, the opinion ignores the continuation of that sentence, which says that state roads are the roads under the jurisdiction of the department of transportation, and that the county roads are all other public highways. The opinion does not inquire into whether the roads in question are under DOT jurisdiction, and thus bypasses the statutory mechanism for determining how to classify public roads.

Second, the opinion indicates that the only method of transfer between the State and the counties is by executive order, as the opinion states that because such a transfer has not occurred, the road did not pass to the county. The opinion does not discuss the legislative intent that title to the county roads previously passed to the counties by operation of law.

Third, the opinion misuses chapter 265, which gave the counties maintenance obligations over county highways prior to its repeal in 1981 (maintenance duties were recodified in chapter 265A). Section 265-2 did not refer to the State transferring maintenance functions of state roads to the counties: it addresses the opposite situation, that of having the State maintain certain county roads. This section is irrelevant to this issue. The opinion also ignores section 265-1, which requires the counties to maintain all county highways.

Although the City and County appears to hold the position that title to the county roads did not pass by operation of law, on at least one occasion the county has used exactly that argument in obtaining title to a road that the City and County wanted. In correspondence from the Department of the Corporation Counsel to the state Department of Land and Natural Resources in 1983, the Corporation Counsel stated its position that title to Marin Street in downtown Honolulu was conveyed to the City and County pursuant to section 264-2, "by operation of law."⁵³

Another position of the City and County is stated in a communication to the Office of the Ombudsman on the perceived arbitrariness of the county road designation and the lack of authority for DOT to do so:

...the City's position is that the State Director of Transportation was, upon the enactments of Sections 264-41 and 42, HRS, to assume responsibility for all roads and highways which were already under State jurisdiction. The Director then could, at his discretion, add to the basic highways system "other public highways." The language of the state does not authorize the Director to exclude roads previously under the jurisdiction of the State.... We cannot agree that 1) all public highways owned in fee and under the jurisdiction of the Territory prior to the [City

and County's] incorporation...and 2) all roadways opened, laid out and constructed by the State on State land and never formally conveyed to the City in the last 78 years, can become County highways just by a simple unilateral declaration of the State Director of Transportation[.] The transfer...must be accomplished by actual conveyance by deed, executive order or specific legislation and not by mere exclusion from the State Highway System.⁵⁴

A more recent letter restates the City and County's belief that it does not have jurisdiction over these roadways because:

- (1) It does not have fee simple title to them, as title is vested with the State or private parties;
- (2) The roads have not been turned over by executive order under section 264-2; and
- (3) No joint maintenance agreements between the State and the City and County exist.⁵⁵

Hawaii County

Material received from the Hawaii County Corporation Counsel indicates that the county:

...has consistently questioned the provisions of 264-1. This county has taken the position that, irrespective of the literal context of the section, no street or highway may be deemed a County road until such time as the street or highway has been formally accepted by, or surrendered to, the County, or has been officially transferred by the State to the County via executive order.⁵⁶

The county states that the reason for this stance "relates in part to the high maintenance costs and great potential for liability which would result by virtue of the County's ownership in such roads."⁵⁷

It appears as though the county also relies in part on *Santos* as a memorandum for the record contained in testimony submitted on behalf of the county on two bills during the 1987 legislative session referred to that case.⁵⁸

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Kauai County

The opinion of the Kauai County Attorney's office relies on the *Santos v. Perreira* decision. The office also takes the position that since the statute does not explicitly require the counties to take a road from the State, the counties need not: "nowhere in Section 264-1 is a county public highway defined as a road which was once owned and/or maintained by the State but which was neither built nor accepted by a county."⁵⁹ The office concludes that the legislative history of section 264-1 indicates that the only title passed was that to roads that the county "de facto owned, and over which they had general supervision, control, and duties to maintain and repair."⁶⁰

The county also criticizes the Department of Land and Natural Resources, asserting that DLNR claims "ownership over most, if not all, of [paper] highways," freely leasing or selling these roads when it benefits them, and contending that the State's position is inconsistent.⁶¹

Maui County

The Maui County Department of the Corporation Counsel takes issue with the way in which the division of public highways into state and county highways occurs. Section 264-1 states that state highways are those under the jurisdiction of the DOT, and that all other roads are county roads. Maui's position is that the source of the DOT's authority to place certain roads on or off its list is unclear.⁶² Maui County also states that section 264-41 provides for designation by the state DOT of public highways to be included in the state highway system pursuant to section 264-42, and that section 264-42 states that the Director of Transportation must act in cooperation with county agencies. While Maui County's observation is correct, it is not on point: the issue at hand is not designation of state highway roads, for which cooperation is necessary, but with designation of county roads, about which there is no similar provision.

The Corporation Counsel also cites the *Maui Ranch* case in discussing privately-owned public highways, which is not the subject of this study.

Analysis of Common Positions

The State's position is the one most in keeping with the legislative history; although some of the legislative action is ambivalent, most of the language in the committee reports and the statutory enactments demonstrate a strong intent on the part of the Legislature to give the counties ownership of the county roads. The counties' arguments are not as persuasive, as discussed below.

Legislative Intent

The intent of the Legislature to turn over both maintenance and ownership jurisdiction to the counties seems clear. Most of the counties do not argue this point. Kauai county does argue that the only roads that the Legislature meant to transfer under section 264-1 were roads over which the counties had *de facto* jurisdiction already. No specific citations are made to support the county's conclusion. It appears faulty because the counties had *de facto* jurisdiction over all county roads up to the time of the 1963 and 1965 legislation. Indeed, prior to 1947, the counties were charged with the maintenance of all public roads.

Even if the counties' contention that transfer of county roads was limited was in fact correct, that would not affect the counties' separate legal obligation under chapter 265 (currently 265A) to maintain all county roads.

Designation of County Highways

Another county objection concerns the lack of county input into the designation of county highways by the State. One objection is: "what is the source of the DOT's authority to place or not place public highways on their list? The statute does not say this or grant such authority to make such designations to the DOT."⁶³ The flaw with this argument is that it does appear that the Legislature intended the DOT to make these designations. Chapter 264, part III, gives the DOT the authority to "designate for inclusion in the state highway system" any public highway used primarily for through traffic.⁶⁴ If the DOT is given the power to designate state highway system roads, then those roads not so designated by the DOT must be county highways. There is no other alternative in the statutes.

Another argument in the same vein is that section 264-1 does not specifically define a county highway as a road that was once owned by the State but was neither built nor accepted by the county. While no such specific language is in the statute, the more broad definition does imply exactly that situation. The statutes divide the category of public roads into two types. If a road is not under DOT control, it is classified as a county road -- whether willingly obtained by the counties, whether forced on them under section 264-1(c), or whether originally obtained by the State. Section 264-2 provides that these roads are owned by the government, which "means the respective counties with reference to county highways."

The real issue behind these arguments is the counties' dislike of the current decision mechanism that allows the DOT to pick and choose which roads will be state and which roads will be county. The counties feel left out of the decision-making process and resent having roads in poor shape thrust on them. The State should consider involving the counties in future decisions to create new county highways. However, realistically speaking, it may not be feasible to give the counties an equal voice with the State in making these designations.

While county input on the decision may be helpful, ultimately, to escape exactly the kind of problem that prompted the request for this study, a final decision needs to be made. If the roadway designation process were one of mandatory consensus rather than unilateral decision, some roads might end up in limbo indefinitely, with neither side (or perhaps both) wanting jurisdiction. This situation must be avoided. However, it may improve state-county relations on this issue if the counties are consulted and their input invited.

Santos v. Perreira

Santos v. Perreira also does not fully support the counties' position that they need to accept a road before they become responsible for it. *Santos* and *Maui Ranch* concerned private roads and the county, not state-owned roads. The State, as the creator of the county, has the ability to require certain things of the county that private citizens cannot require. For instance, the State requires the counties to keep the beaches clear of debris or own and maintain public parks.⁶⁵

Even if the courts were to consider applying *Santos* to the State, at least two cogent reasons exist for them to decide, as a matter of policy, not to do so. First, the State presently owns and maintains roads of one functional type: large-scale throughways. It is comparatively easy for the State to maintain these roads because the state employees develop an expertise in repairs and maintenance of this specific type of road. If *Santos* were to apply, the State would receive back from the counties a number of roads of all types -- everything from major arteries to unimproved roads (see Appendix B). Instead of a system where the State cares for the large, people-moving arteries and the counties the more local roads, the State would be responsible for a patchwork system of roads, ranging from interstates to tiny rambling dirt roads. As is demonstrated by Appendix B, which lists some of the roads currently under jurisdictional dispute, some roads would change ownership abruptly, going from the State to a county and back to the State. For example, in Honolulu, parts of the following roads are in dispute: Monsarrat Avenue, Harding Avenue, Kahala Avenue, Kalia Road, Kamehameha IV Road, Kapiolani Boulevard, Nuuanu Avenue, Piikoi Street, Punahou Street, Punchbowl Street, Puuhale Road, Sixth Avenue, and Waipahu Street. This is only a small sample of the 400 miles of roads in dispute in Honolulu alone. If partial portions of these roads were given to the State to maintain, coordinated maintenance and repair efforts of the roads would be extremely difficult.

Second, it may be inferred that, from the statutory description of the state highway system, the Legislature made an attempt to approximately classify roadway jurisdiction on the basis of function, as the statute provides that state highway system roads are to be used primarily for through traffic, and not for access to specific property.⁶⁶ The county now has jurisdiction over the more local roads, which are used for travel to specific destinations. This distinction would be removed if *Santos* were applied in the manner advocated by the counties.

The counties' concern in this area is clear: it is apparent that this division of roads results in a much greater burden on the counties than on the State. The county roadway mileage is far greater than the state roadway mileage,⁶⁷ and some of the county roads are in poor shape. The counties also have less money than does the State to finance maintenance and repairs. But the burden has to fall on one or the other, and as between the two, the counties are the more appropriate entities to care for local roads. The status of county roads has a significant impact on other services that the counties supply, such as street lighting, sewers, bus services, and emergency vehicle service. It is more appropriate that the counties handle all these responsibilities in order to perform their other governmental functions. However, it is equally apparent, as will be discussed in the next chapter, that the counties cannot maintain and repair county roads without additional funding, which may have to come from the State if this ongoing problem of roadway jurisdiction is ever to be resolved.

The *Santos* decision discussed none of these factors, and until the Hawaii courts have had a chance to analyze them, it is premature to conclude that *Santos* will apply to public highways built or previously owned by the State.

Refusal to Comply

The most basic of the county positions comes from the Maui County Corporation Counsel's statement that the county's reason for resisting application of section 264-1 relates in part to the high maintenance costs and great potential for liability. This theme has also cropped up in other discussions the researcher has had with officials in the other counties. Although this is not a legal position *per se*, it seems to be the key: if the State could help the county to address these concerns, perhaps the counties would be more willing to comply with the statutes.

Maintenance

Even if the Legislature's attempt to transfer ownership of the highways to the counties was flawed, section 265A-1, which requires the counties to maintain all county highways, would still apply. Additionally, the duty of the counties to maintain the Hawaiian Home Lands roads would still exist, independent of any ownership interest.

Conclusion

The legislative history indicates that the counties are charged with the duty to maintain all county roads, under section 265A-1, and with the ownership of all public highways other than those included in the state highway system, under section 264-1. County attempts to argue that this statutory duty does not exist or is nullified by caselaw are probably motivated

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by the excessive cost and potential for liability that their care would engender. Perhaps their duties would seem more fair to the counties if the statute reflected a more objective distribution of roads on a functional basis, and if the State aided them in overcoming their objections, which are addressed in the next chapter.

ENDNOTES

1. Hawaii, Senate Standing Committee Report on House Bill No. 280, 1913 Senate Journal at 1169.
2. Hawaii, Senate Standing Committee Report No. 341 on House Bill No. 90, 1947 Senate Journal at 903.
3. Hawaii, Senate Standing Committee Report No. 468 on House Bill No. 364, Third Legislature, 1965.
4. Hawaii, Senate Standing Committee Report No. 185 on Senate Bill 320, Fourth Legislature, 1966.
5. Hawaii, Senate Standing Committee Report No. 753 on House Bill 160, Eleventh Legislature, 1981.
6. State v. Zimring, 58 Haw. 106, 111, 566 P.2d 725 (1977).
7. Ibid., p. 114: "This...makes clear the validity of the basic proposition in Hawaiian property law that land in its original state is public land and if not awarded or granted, such land remains in the public domain."
8. 1892 Haw. Sess. Laws, Act 47, §2.
9. See 1905 Haw. Sess. Laws, Act 39. The City and County of Honolulu was then known as the County of Oahu.
10. 1947 Haw. Sess. Laws, Act 142.
11. 1963 Haw. Sess. Laws, Act 190.
12. Section 264-1(c), Hawaii Revised Statutes, also states that when a road is constructed and completed in accord with county ordinance, if offered to the county, the county must accept it, and that a private roads deeded or surrendered to the county, the county may accept it. This subsection merely sets forth ways of creating county roads and does not define what a county road should be.
13. There are approximately 97 miles of freeways in the State and 3,974 miles of other roads. While the State has jurisdiction over some roads that are not freeways, the counties still have jurisdiction over a vastly greater amount of roadway miles. Hawaii, Department of Business and Economic Development, The State of Hawaii Data Book 1988, p. 463.
14. 1892 Haw. Sess. Laws, Act 47, §6.
15. Rev. Laws of Hawaii (1905), sec. 594 [note: there appears to have been a substitution in the codification of the Revised Laws, not in a separate bill.]
16. 1913 Haw. Sess. Laws, Act 107.
17. The Hawaiian Homes Commission Act, which added this duty, is now a part of the State Constitution. See Hawaii Const. art. XII.

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18. 1947 Haw. Sess. Laws, Act 142.
19. See Hawaii, House Standing Committee Report No. 162, 1947 House Journal: "The bill also...[grants] to these boards specifically the power to repair and maintain public highways. This power has always been exercised by the several boards as an implied power so that no additional duty or responsibility is actually conferred on them but the legal position of the boards in this connection is clarified."
20. 1981 Haw. Sess. Laws, Act 4.
21. Ibid.
22. 1892 Haw. Sess. Laws, Act 47, §5.
23. 1947 Haw. Sess. Laws, Act 142.
24. See, e.g., Hawaii, House Standing Committee Report No. 964 on S.B. No. 585, Second Legislature, 1963.
25. Hawaii, Senate Standing Committee Report No. 96 on S.B. No. 585, Second Legislature, 1963.
26. Hawaii, House Standing Committee Report No. 1056 on S.B. No. 585, Second Legislature, 1963, indicates that this amendment was done "to make it clear that the county highways involved are only such highways acquired by the counties by eminent domain, purchase, dedication or surrender."
27. Hawaii, House Standing Committee Report No. 84 on H.B. No. 364, Third Legislature, 1965.
28. Hawaii, House Standing Committee Report No. 449 on H.B. No. 364, Third Legislature, 1965.
29. The reasons for this change are not given and the committee reports are confusing. One report states that the bill would allow the counties "to retain all revenues that may be derived from any sales," while the following paragraph indicates that proceeds from the sale of roads originally laid out by the State over state lands, or acquired with federal or state funds, shall be turned over to the State. Hawaii, Senate Standing Committee Report No. 468 on H.B. No. 364, Third Legislature, 1965.
30. Hawaii, Senate Standing Committee Report No. 255 on S.B. No. 320, Fourth Legislature, 1966; House Standing Committee Report No. 390 on S.B. No. 320, Fourth Legislature, 1966.
31. See discussion by Representative Robert C. Oshiro on Conference Committee Report No. 4 on S.B. No. 320. Journal of the House of Representatives of the Fourth Legislature of 1966, p. 203.
32. Hawaii, House Standing Committee Report No. 390 on S.B. No. 320, Fourth Legislature, 1966. Note that this is the original version of the committee report. The version printed in the House Journal erroneously inserts the word "not" before the quote.
33. See 1966 Senate Journal at 153.
34. See Hawaii, House Standing Committee Report No. 390 on S.B. No. 320, Fourth Legislature, 1966.
35. Comments by Representative D.G. Anderson on S.B. No. 320 in Journal of the House of Representatives of the Fourth Legislature, pp. 191-92.
36. Comments by Representative Oshiro on S.B. No. 320. Journal of the House of Representatives of the Fourth Legislature, p. 203.

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37. 2 Haw. App. 387, 633 P.2d 1118 (1981).
38. 6 Haw. App. 414, 724 P.2d 118 (1986).
39. Santos at 390.
40. Section 264-1, as amended by 1977 Haw. Sess. Laws, Act 68, §4. Section 264-1 was amended in 1988 (seven years after the Santos decision) and still contains the requirement of county consent for surrender of public roads. However, the statute now seems to require county acceptance for dedication of county roads: "In the case of [dedication of] a county highway...the deed shall be delivered to and accepted by the legislative body of a county." Section 264-1(c)(1).
41. Section 264-1 also provides that if a highway is constructed up to county standard, the county must accept the road. The Santos case involved an unimproved dirt road, clearly not up to 1981 county standards.
42. 6 Haw. Supp. at 422.
43. Hawaii Rev. Stat., §46-12.
44. Hawaii Rev. Stat., §46-65.
45. See sections 46-19.6 (requiring counties to incorporate certain lighting standards into their building codes), 205-12 (requiring counties to enforce use classification districts adopted by the state land use commission), and 356-20 (exempting multi-story housing for the elderly from county zoning code), Hawaii Revised Statutes.
46. The efficacy of title transfer by operation of law under section 264-1 has been a side issue in a few circuit court lawsuits in which a plaintiff injured in a traffic accident has sued the other driver, the county, and the State. In at least one, Foronda v. Konelio, Civil No. 69753, the State moved to be dismissed on the ground that it did not have title to the property, as title had passed to the City and County of Honolulu by operation of law. The City and County opposed the motion, citing Santos v. Perreira. The State won. In other cases, the court has refused to dismiss the State on this ground.
47. Letter from Dawn N.S. Chang, Deputy Attorney General, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated May 25, 1989; Att'y Gen. Ops. No. 85-16 (June 10, 1986).
48. Ibid.
49. Hawaii Rev. Stat., §264-2.
50. Hawaii Rev. Stat., §264-3.
51. Conversation with Deputy Corporation Counsel Donna Woo on August 30, 1989.
52. Memorandum from Winston K.O. Wong, Deputy Corporation Counsel, to Henry H. Nakagawa, Chief of the Division of Land Survey and Acquisition, Department of Public Works, City and County of Honolulu, dated April 29, 1977.
53. Letter from First Deputy Stanley D. Suyat to Susumu Ono, Chairperson of the Board of Land and Natural Resources, dated June 15, 1983. A copy of the letter is attached as Appendix C.
54. Letter from Russell L. Smith, Jr., Director and Chief Engineer, Department of Public Works, City and County of Honolulu, to Wayne Matsuo, Acting Ombudsman, dated August 20, 1986.

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55. Letter from Richard D. Wurdeman, Corporation Counsel, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated September 8, 1989.
56. Letter from Richard Miyamoto, Corporation Counsel, through Steven Christensen, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated July 21, 1989.
57. Ibid.
58. Testimony of Hugh Y. Ono, Chief Engineer, Department of Public Works, County of Hawaii, on Senate Bill No. 738 and House Bill No. 742, Hawaii State Legislature, 1987 Regular Session.
59. Letter from Warren C. R. Perry, Second Deputy County Attorney, County of Kauai, to Mr. Alfred Y. Itamura, Associate Analyst, Office of the Ombudsman, dated July 23, 1987.
60. Ibid.
61. Ibid.
62. Letter from Glenn M. Kosaka, Corporation Counsel, County of Maui, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated July 21, 1989.
63. Letter from Glenn Kosaka, supra.
64. Hawaii Rev. Stat., §264-42. This designation is to be done "acting in cooperation with appropriate federal and county agencies." Note that this does not require the counties to consent to accept state roads: this is the opposite situation, where the county's cooperation is requested in designating certain roads as state highway system roads.
65. Hawaii Rev. Stat., sec. 46-65. Requiring the counties to maintain and repair county roads appears to fall in the same type of state power.
66. Hawaii Rev. Stat., sec. 264-42: "The director...may designate for inclusion in the state highway system, such other public highways...which are used primarily for through traffic and not for access to any specific property[.]"
67. There are approximately 97 miles of freeways in the State and 3,974 miles of other roads. While the State has jurisdiction over some roads that are not freeways, the counties still have jurisdiction over a vastly greater amount of roadway miles. Hawaii, Department of Business and Economic Development, The State of Hawaii Data Book 1988, p. 463.

Chapter 4

SOLUTIONS PROPOSED BY THE STATE AND THE COUNTIES

The reason for the County taking such a stance...relates in part to the high maintenance costs and the great potential for liability which would result by virtue of the County's ownership in such roads.¹

In preparation for this study, the Legislative Reference Bureau solicited proposed solutions from each of the counties as well as several state departments. Their suggestions for resolving this problem are discussed and analyzed in this chapter.

The State

Department of Transportation

The Department of Transportation (DOT) did not list any solutions for resolving this problem. From discussions with state personnel, it appears that the DOT's position is that it is solely responsible for the state highway system and that responsibility for all other roads is clearly with the counties. The DOT has recognized the problem of roadway jurisdiction conflicts over the disputed roads, however, and in some instances, has worked on with the counties to jointly resolve a maintenance problem.²

Department of Land and Natural Resources

The Department of Land and Natural Resources (DLNR) is frequently involved when complaints arise from lack of maintenance of the disputed roads, since DLNR is in charge of public lands. However, the category of public lands specifically excludes roads and streets.³ Nevertheless, DLNR continues to receive referral calls from the counties. DLNR proposed six suggestions for resolving this problem:

- (1) To have the courts clarify the intent of the Legislature and chapter 264;
- (2) To make a one-time appropriation to bring the disputed roads up to acceptable standards for the counties;
- (3) To have the Governor issue executive orders for each of the roads, conveying title to the counties in an as-is condition;

- (4) To have the State conduct a metes and bounds survey of each road, and then quitclaim the roads to the counties;
- (5) To have the Department of Transportation take over the maintenance of all roads; and
- (6) To have DLNR take over maintenance of all roads, which DLNR does not want to do and has no facilities or staff to do.⁴

These suggestions span the gamut of options without stating a preference, except for the indication that requiring DLNR to take over maintenance of the roads would be the least desirable choice.

These suggestions highlight the complexity of the problem, and the potential for imposing inequities on each side. For example, the Governor could issue an executive order transferring the roads, but that would impose all of the responsibilities for these roads on the counties without any money to help upgrade them or bring them up to standard. Conversely, the State could take over maintenance of all the roads, but having the State maintain county-owned roads would be as *unfair as the past practice of having the counties maintain the state-owned roads.*

An analysis of the suggestions reveals that each touches on only part of the problem. The first suggestions, having the courts clarify the legislative intent, could probably only be done through a lawsuit as the courts in general do not give out advisory opinions. This option would be expensive and would probably only result in a reiteration of the counties' responsibility -- which would not help in implementing the law. The second suggestion, to make a one-time appropriation to help bring the roads up to acceptable county standards, has merit as it recognizes one of the key problems -- funding -- and requires participation by the State. It does not, however, address the problems of the ongoing maintenance costs and the liability issue, and the fact that some roads may not be able to meet "acceptable" standards. The third option, having the Governor issue executive orders, also abandons this problem to the counties without helping them with resources, and the fourth option, the metes and bounds survey with the quitclaim, would leave the counties in little better shape to deal with this problem. The fifth option of having the DOT assume maintenance functions of the highway would be more reasonable on its face to the State than the sixth option, of having DLNR assume such functions, because DOT has a road repair and maintenance corps, which DLNR does not, but would still not be suitable. An earlier study examined the issue of consolidating all road maintenance with the State, and decided:

In our view, the corresponding option (*i.e.*, consolidation of roadway maintenance at the state level) is not feasible. County road maintenance operations are heavily supportive of other county responsibilities such as the maintenance of drainage systems, parks, and county buildings. In addition, close coordination with

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local sewer operations is sometimes required. Elimination of the county road maintenance capability does not appear practical, nor desirable, in our view.⁵

Department of Hawaiian Home Lands

The Bureau was requested to contact the Department of Hawaiian Home Lands (DHHL) in preparation for this study. While the ownership of DHHL roads is not in dispute, the responsibility of the counties to maintain the roads is. Since the subject of the study also involved maintenance duties, the Bureau thought that it was appropriate to at least outline the special DHHL problem in this study.

DHHL lands are owned by the State pursuant to the State Constitution, which also provides that the counties shall have the duty of maintaining the DHHL roads.⁶ DHHL reported that for many years, the counties faithfully maintained DHHL roads. Only in recent years have there been problems, some of which relate to lack of county funding, in which instance only dedicated county roads are maintained, and some of which relate to the counties' position that they are not responsible for roads until accepted by the county council.⁷ DHHL also notes that some of the DHHL roads were built to standard at the time, but, with the change in county standards, are now below standard and will not be accepted for maintenance by the counties.⁸ The counties take the position that they need not assume maintenance and repair responsibilities until the roads are improved to meet county standards and only after dedication to the county by DHHL of the right-of-way area for maintenance purposes and its acceptance by the county council by resolution.⁹

DHHL suggests that it is willing to review operational policies and procedures for ways to improve the condition and maintenance of the DHHL roads. If better operational arrangements are needed by the counties, the counties would need to make alternate proposals in writing to DHHL. In the event that counties cannot fulfill their road maintenance responsibilities, they should be obligated to give the State and DHHL advance notice so that other arrangements can be made.¹⁰

DHHL notes that it has cooperated in joint projects with individual counties in the past to improve certain roads and maintain others.¹¹

The decision of the counties not to maintain DHHL roads is a particularly serious one, as the counties' duty to do so is stated in the Hawaiian Homes Commission Act which has been incorporated into the State Constitution. None of the counties has stated an overt legal objection to caring for these roads, and one would be difficult to imagine. The county is mandated to maintain the roads, not bring them up to standard.¹² If the counties and DHHL agree to improve the roads, the Legislature is authorized to appropriate necessary sums to provide DHHL with funding to carry out the development of DHHL lands, which could include

improvement of DHHL roads. The problem with DHHL roads is legally a separate issue from the problem assigned by this study, but is no less serious and should be rectified.

Other State Agencies

H.R. No. 38 requested the LRB to contact the Department of Corrections and the Hawaii Housing Authority to ascertain whether they were involved with this problem. Both departments indicated that they were not.¹³

The Counties

Copies of the counties' position papers and proposed solutions are contained in Appendix E.

Maui County

Maui County proposed five suggestions for resolving this problem. Four of them concern the issue of the proper division of roads between the State and the counties, and one involves funding. These suggestions reflect Maui County's concern that the power of the DOT to designate roads into the category of state or county is not explicitly stated in the statute.

Maui proposed creating a joint state-county committee to:

- (1) Review the rules concerning the jurisdictional separation of public highways;
- (2) Clarify the process by which the DOT considers public highways "state highways";
- (3) Consider specific lists of "public highways" and fairly categorize them as state or county highways;
- (4) Clarify the state of "public roads" as addressed in the *Maui Ranch* case; and
- (5) Consider an equitable funding process for maintenance and liability payments.¹⁴

Maui's suggestion of convening a joint state-county committee is a good one, as resolving the problem of roadway jurisdiction will be an ongoing process, and reliable communication at a high level between the State and the counties will be necessary. In

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general, these are solid suggestions, except for the suggestion of considering lists of roads and jointly characterizing them as state or county roads. If the State continues to take the position that it is responsible only for the state highway system, and the state highway system has a specific function, then it may be best to let the State make the final decision on which roads are most appropriate for the state highway system. Although it would be helpful to have the counties' input before a decision is made, decisions made by committee may result in compromises and trade-offs, leading to a patchwork system of roads controlled by the State, which is the situation sought to be averted.

Kauai County

Kauai county believes that a resolution must be accomplished through legislative action after discussion with the affected state departments and counties. Kauai also notes that Article VIII, section 5, of the State Constitution requires the State to share in the cost of any new program or increase in the level of service mandated to any of the counties by the legislature.¹⁵ The proposed legislative action appears to refer to clarifying two existing problems. The first is Kauai's contention that the existing statutes are unclear. The second is that DLNR, in contravention of the state position that paper roads,¹⁶ not being in the state highway system, are county roads, has, when private parties have sought to purchase the roads, claimed ownership over the roads so that the proceeds of the sale will go to the State and not the county.

Hawaii County

The Hawaii County Corporation Counsel proposed a three-prong solution:

- (1) To develop a legislative mechanism to allow counties to receive a formal document from the State evincing the transfer of the highways;
- (2) To provide reimbursement to the counties for the added cost of carrying out the state mandate to maintain and repair these roads; and
- (3) To call a meeting of all agencies and departments enumerated in H.R. No. 38 to facilitate a full discussion of the problems, issues, and recommended solutions.¹⁷

The last two recommendations are reasonable, especially the high-level discussion among the affected parties. Title documentation may or may not be reasonable, but it is within the State's power to do and will make documentation of future disposal of the roads easier for individuals and the courts to follow.

The Hawaii County Department of Public Works also submitted a proposal to resolve the disposition of certain disputed roads; specifically, the unimproved dirt roads that have never been formally planned, laid out, or constructed.¹⁸ Typically, these are agricultural access roads, roads to hunting areas, or roads giving access to privately-owned land parcels. The proposal suggests dividing these roads into three categories. Heavily traveled public roads would be improved to a maintenance standard and then dedicated to the county for maintenance. The State would supply the funding and the county would construct the improvements. State-owned and homestead roads inventoried and in use prior to July 1, 1990 would be maintained once annually and again upon emergency request if the county were reimbursed by the State. All other state-owned and homestead roads would not be maintained by either the State or the county, and the State would incorporate a covenant in the deeds to require the owner or lessee to maintain the roads or construct them up to a dedicable standard.

The value of this program is that it seeks to apportion responsibilities to the parties involved on the basis of their abilities. This program has been proposed by Hawaii county to begin the discussion between the several county public works departments and the state Departments of Transportation and Land and Natural Resources. It is hoped that by the time this study is issued that this group will have made significant progress on reaching a mutually satisfactory conclusion.

City and County of Honolulu

The Honolulu City Council has adopted two resolutions on the roadway jurisdiction dispute that contain their position on resolving this problem. The first resolution¹⁹ noted that the counties in general did not agree with the 1987 draft report issued by the Governor's Task Force on State-County Relations and instead turned toward the Intergovernmental Relations Committee of the Hawaii State Association of Counties (HSAC) for resolution. The executive committee of HSAC agreed to a unified proposal on October 28, 1988, which differed from the City and County's previous position. The City and County rescinded its earlier resolution and adopted the HSAC position, which provided that:

- (1) Highways...may be transferred or exchanged between the State and each county on a case-by-case basis as deemed in the public interest. Each county may establish its own criteria or method of determining the highways...which should be under county jurisdiction and those which should be under State jurisdiction.
- (2) If a county incurs a net increase in operating, maintenance, or development costs after an exchange or transfer of highways or parks, the State shall make available to the county the funds to assume the net increase. Funds may be made available to the county by the grant of annual

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appropriations or the provision of an adequate funding source. In either case, the State shall guarantee the funding commitment by the enactment of appropriate law.

- (3) With respect to liability exposure for the use of highways and parks assumed by a county, the State shall confer upon the county the same rights, privileges, immunities, and conditions afforded the State under chapter 662, Hawaii Revised Statutes, the State Tort Liability Act.

The counties' desire for coverage under the same tort liability provisions as afforded the State shall not be construed as applicable only for State highways and parks transferred to the counties. Rather, the counties contend that, as political subdivisions of the sovereign, provisions of the State Tort Liability Act logically and in fairness should extend to the counties to the same measure as applicable to the State.

- (4) Each county shall notify the State of the highways and parks which are candidates for transfer and exchange between the jurisdictions.²⁰

The second resolution adopted by the Honolulu City Council²¹ sets forth criteria for determining which roads should be under state or county jurisdiction:

- (1) Federal aid primary and federal aid secondary highways shall be under State jurisdiction.
- (2) Federal aid urban highways and other roadways serving essentially local traffic and access to properties shall be under City jurisdiction.
- (3) Roadways owned by the Department of Land and Natural Resources shall be transferred to the City.
- (4) Notwithstanding the willingness of the City to accept the State highways or roadways proposed to be transferred, the City may choose not to accept any highway or roadway which may require future, major capital improvement because of nonconformance to City standards or other reasons. (Emphasis added)²²

The resolution also contains a list of highways that are candidates for transfer between the State and the City and County,²³ and requested HSAC to take action to correct the inequity existing under section 264-3, Hawaii Revised Statutes, under which the State receives all proceeds from the sale of a county road that was formerly a state road.

The City and County's suggestion of categorizing the type of roads according to type of federal-aid received could help to simplify the accountability of the State and counties toward the roads. The state highway system presently includes the federal-aid interstate and primary roads and most of the federal-aid primary roads. The federal-aid urban roads, however, are under county jurisdiction.²⁴

There is some disparity here, however, with that suggestion and the suggestions that the roadway jurisdiction be considered on a case-by-case basis and that the county be allowed to reject roads that will need future major capital improvements. These latter suggestions undercut the simplicity and effectiveness of the first and may lead to the current situation of certain roads that are unmaintained and unclaimed by the State and the county because of poor condition. It might be more effective to assign jurisdiction to a defined agency, and then devise a joint strategy to maintain, and if necessary, upgrade, the road, than to continue to leave the status of the road in doubt.

The suggestion concerning additional county funding for net increases in expenses has merit and may even be required by the State Constitution, which requires state funding for an increase in the level of programs. While it may be argued that, as the counties have a duty to maintain all non-DOT roads pursuant to statute, no increase in duty exists, the cost of maintaining and upgrading roads is increasingly more expensive and the State may need to supply some funding to help the counties perform.

Bringing the counties under the State Tort Liability Act has broader ramifications than can be discussed within the scope of this study. As discussed in chapter 5, it should be noted that even if the State Tort Liability Act or similar legislation is made applicable to the counties, the counties will not be fully immunized from suit due to their maintenance responsibilities.

Last, the City and County asks for the transfer of the DLNR roadways. The State's position is that these non-DOT roads are already transferred to the counties. The concern is that the counties want tangible evidence of title, which the State says passed by operation of law. This issue is discussed in detail in chapter 5.

Other Solutions

The State Highway System Contracts

The State and the counties attempted in 1968 to resolve the problem of confusion over roadway jurisdiction by entering into four-phase contracts in which certain roads would be turned over to the State from the counties, and certain county roads would be turned over to the State.²⁵ The four phases of the contract were scheduled to be implemented by 1973.

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The four phases of the transfer have never been completed. Some of the roads on both sides were substandard, and so the implementation was delayed as neither side wanted to accept roads in that condition. To date, only two phases have been fully implemented, and the remaining two appear to be stalled over the issue of the cost involved of making these roads acceptable to the other side.²⁶

These roads are not the subject of this study as title to them is not in dispute. A Governor's Task Force on Overlapping State and County Jurisdiction has been established and is working on the implementation of Phases III and IV.²⁷

Consolidated Maintenance

One of the closely-allied problems of roadway jurisdiction is roadway maintenance. Originally, maintenance of all public roads in the State was done by the counties. Only in 1947 was the counties' responsibility reduced to maintaining only the county roads. It became apparent in the ensuing years that the practice of having the State maintain state roads, and the counties maintain county roads, was wasteful in terms of duplication of yards and equipment, and was confusing to the public, who had no central source to report problems.

In 1967, legislation was enacted²⁸ permitting the Governor and the individual counties to contract to allow the counties to take over the maintenance functions of the state roads. A one-year contract was implemented with all four counties in 1968-69. The results were mixed. Some of the counties did not perform up to the state standards²⁹ and after one year, the contracts were not renewed.

Combining maintenance functions has been discussed several times since then.³⁰ The attractiveness of this proposal lies in its economies of scale, accountability, and public convenience. One report concluded:

...The state and the counties maintain their roads and streets independently and without benefit of coordination. There is no consolidation of duplicate base yards, equipment purchasing, or quantity buying of repair material.

In evaluating...[the proposal to combine maintenance], the Commission [on Organization of Government] had considerable background information: the Public Service Administration Service 1962 survey of State-local relations, results of the 1967-68 experience with County maintenance of State roads as viewed by both levels, and the Arthur Young & Co. 1976 study of State transportation financing[.] Both PAS and Arthur Young recommended consolidation of road maintenance at the County level.

The Commission recommends responsibility for road maintenance be transferred to the Counties after formulation of a mutually agreeable funding plan and an adequately planned, time-phased transfer of functions, personnel, equipment, and facilities. (Emphasis in original)³¹

The report does make one assumption that is not necessarily true today. The report states that the counties "will not allow the level of maintenance to fall below Federal norms since the County will bear the consequences of withheld federal funds."³² The statute on which the report was relying, Title 23 United States Code §116(c), was amended in 1983 by removing the provision allowing federal funding to be withheld only for secondary or urban projects in the county if the county fails to comply. The section currently could allow all state funding to be impaired if the counties did not meet the federal maintenance standards. However, in conversation with the U.S. Department of Transportation, it was indicated that this outcome would be unlikely, as even without this language the federal funding could still be withheld selectively from the counties.³³

The real problem with placing all road maintenance functions in the counties would be that Title 23, which provides for federal funding through the U.S. Department of Transportation, is predicated on the existence of an effective state highway department.³⁴ If all maintenance functions are transferred to the counties, the effectiveness of the state DOT might be compromised.³⁵ The State and counties would have to work closely with the U.S. Department of Transportation if combined maintenance is seriously considered.

Combined Parks and Roads Pilot Project

Another suggestion for resolving this dispute was made by Councilmember David W. Kahanu of the Honolulu City Council. He notes that jurisdiction over parks is also a problem, and suggested implementing a pilot project in which the "State and City would assume full responsibility for one of the two [either parks or roads] for a specific area of the island. For example, for the area from Waimanalo to Kaaawa, the State could assume the responsibility for beach parks, streams and other waterways while the City assumes responsibility for roads."³⁶

Summary

Several themes run through most of the solutions to this problem proposed by the State and the counties. To better understand the nature of the problem so that the optimum solution may be reached, the next chapter breaks down the components of the problem and discusses how they might be resolved.

ENDNOTES

1. Letter from Richard Miyamoto, Corporation Counsel, through Steven Christensen, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated July 21, 1989.
2. Recently, the DOT and Hawaii county entered into an agreement to delegate the State's maintenance responsibility for street lighting to the county. The agreement included reimbursement of the county by the State for maintenance and operation costs, including 5% for administrative costs, and for electricity, as well as an indemnification holding the county harmless except for damages arising out of the county's sole negligence, wilful misconduct, or intentional tort. Agreement between the County of Hawaii and the State of Hawaii, dated September 27, 1988. A copy has been included as Appendix D.
3. Hawaii Rev. Stat., §171-2(3).
4. Letter from William W. Paty, Chairperson of the Board of Land and Natural Resources, to Samuel B.K. Chang, Director, Legislative Reference Bureau, May 30, 1989.
5. Arthur Young & Co., An Analysis of the Assignment of Responsibilities and Funding of Transportation in Hawaii (1976), p. 123, prepared for the Department of Budget and Finance, State of Hawaii.
6. Hawaii Const. art. XII, sec. 3.
7. Memorandum from Ilima Piianaia, Chair of the Hawaiian Homes Commission, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated August 23, 1989 (hereafter, Memorandum of August 23).
8. Ibid.
9. Memorandum from Ilima Piianaia, Chair of the Hawaiian Homes Commission, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated May 26, 1989.
10. Memorandum of August 23. supra, n. 7.
11. Ibid.
12. Hawaiian Homes Commission Act, section 220 (1920).
13. Letter from Mitsuo Shito, Executive Director of the Hawaii Housing Authority, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated May 23, 1989, and letter from Harold Faik, Director of the Department of Corrections, to Samuel B.K. Chang, dated June 19, 1989.
14. Letter from Glenn M. Kosaka, Corporation Counsel, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated July 21, 1989.
15. Letter from Warren C.R. Perry, Second Deputy County Attorney, to Alfred Y. Itamura, Associate Analyst, Office of the Ombudsman, dated July 23, 1987. This letter was sent to the researcher by County Attorney Michael J. Belles on July 17, 1989 in response to the Bureau's request for the county's position on this problem.
16. Paper roads are roads that at one time belonged to the Kingdom or Territory but have fallen into disuse for many years. These roads, generally rural, have become overgrown and generally indistinguishable from the countryside. Conversation with Warren C.R. Perry, Deputy County Attorney, October 4, 1989.

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17. Letter from Richard I. Miyamoto, Corporation Counsel, through Steven Christensen, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated July 21, 1989.
18. Proposed Maintenance Program for Certain State-Owned Roads, submitted by Hugh Y. Ono, Chief Engineer, County of Hawaii, dated September 11, 1989. A copy is included as Appendix F.
19. Resolution No. 88-425, adopted on November 2, 1988.
20. Ibid.
21. Resolution No. 88-426, adopted December 1, 1988.
22. Ibid.
23. See Appendix G.
24. The federal-aid designations are made through a coordinated effort of the State and the counties and approved by the federal government. Conversation with Julia Tsumoto, Planning Branch, Highways Division, Department of Transportation, September 12, 1989.
25. See contracts between the State and the County of Hawaii, dated January 30, 1968; the State and the County of Kauai, dated February 23, 1968; the State and the City and County of Honolulu, dated April 8, 1968; and the State and the County of Maui, dated April 25, 1968, on file with the Department of Transportation.
26. According to one recent report, the reason for the delay was because "the designated county segments have not been brought up to Federal Highway Standards. The necessary repair and maintenance of the county segments to be transferred to the State have been deferred by the respective counties due to limited funds being utilized for higher priority projects." Hawaii, Final Report of the Advisory Committee to Study Overlapping State and County Functions (December 1986), p. 4. Approximately 98 miles of roads wait to be transferred. Those in Phase III include, on Oahu, Wilson Tunnel on Likelike highway; in Hawaii, portions of Hawaii Belt Road and Palani Road (total 21.6 miles); and on Maui, portions of six roads including Kahekili highway, Kula highway, and Kihei road (total 27.7 miles). The Phase IV mileage involves a portion of Hawaii's Saddle Road. The cost to upgrade the roads involved in Phase III, as estimated by DOT, is \$3.5 million, with an annual \$1.5 million in annual maintenance; and the cost to upgrade Saddle Road in Phase IV has been estimated at \$10 million.

The Advisory Committee found that "as funds for county highway improvement are likely to remain limited...there is little chance of these segments being upgraded to meet federal Highway Standards. ... Your Committee therefore recommends that the State complete Phase III of the State Highway System plan by accepting the segments...and that the Legislature provide the necessary funding for the State...to bring these segments up to federal standards.

Your Committee did not address phase IV[.]" Ibid. at 5-6.
27. Conversation with Calvin Tsuda, Executive Assistant to the Director, Department of Transportation, June 4, 1989.
28. 1967 Haw. Sess. Laws, Act 203, §10; currently codified as §27-31, Hawaii Revised Statutes.
29. See Hawaii, Department of Transportation, Inter-Office Memorandum HWY-C 2.66512, dated March 6, 1969.

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30. See, e.g., Office of the Legislative Auditor, State-City Relationships in Highway Maintenance and Traffic Control Functions (February 1967), which concluded that the nature of the maintenance functions performed by the State and the City and County of Honolulu is "identical," and that "there is a functional duplication of services, and a physical duplication of workforce, equipment and baseyards in highway maintenance on Oahu." The study also concluded that this has resulted in public confusion and inconvenience (p. 19).
31. Report to the Ninth State Legislature, State of Hawaii, of the Commission on Organization of Government (February 1977), pp. 30-31. The report discussed three funding options: cost-reimbursable contract, fixed sum per lane-mile contract, and additional taxing power to counties, and recommended the second option for its "administrative ease, fairness to both levels of government, and flexibility." (p. 31)
32. Ibid., p. 32.
33. Interviews with Norm Arthur, Deputy Division Administrator, Federal Highways Division, U.S. Department of Transportation, July 12, 1989 and October 25, 1989. Mr. Arthur indicated that to his knowledge, the sanction of withholding a state's funding due to improper maintenance has been rarely applied to other states, and never to his knowledge to Hawaii. His division works with the State and counties to come to a mutual agreement on what needs to be done for proper upkeep of the road. If a serious defect is noted, the division would expect it to be remedied promptly, but if it is not serious, or it involves preventative maintenance, the division will wait for implementation until funds become available.
34. See 23 U.S.C.A. §302.
35. Interview with Norm Arthur, supra, n. 33.
36. Letter from David W. Kahanu to the Honorable John Waihee, dated April 26, 1989.

Chapter 5

ANALYSIS OF THE ROADWAY JURISDICTION PROBLEM

The substance of local government is in the services it renders to the community. This is the justification for its existence. Local governments are creatures of the state, established as a medium through which the state discharges a portion of its total responsibility for government within its boundaries. The role of local government, therefore, depends largely on how much of the job the state chooses, because of history and circumstances, to perform through agencies of state administration and how much it mandates or permits local governments to perform.¹

Merely passing the ownership from one governmental agency to the other does not solve the problem of improving the safety aspects of the road.²

In discussions with state and county agencies and officials, it became apparent that several obstacles to the willingness of the counties to accept jurisdiction over disputed roadways were mentioned frequently. Those obstacles are: lack of funding to pay for improvement and repair, increased liability for the counties, the substandard condition of certain disputed roads, lack of clear title, lack of metes and bounds description, and, for some counties, the special problems surrounding rural roads. These concerns are the basic components of the roadway jurisdiction problem, and are discussed in more detail in this chapter.

Funding

Adequate funding to support maintenance and repair of the roads appears to be one of the two key factors in arriving at a resolution of the dispute.³ To put it simply, road maintenance is expensive. In 1980, The Road Information Program (TRIP) undertook a private study for the General Contractors Association of Hawaii on the state of roads in Hawaii. The study reported that at that time, 54.6 percent of Hawaii's main roads were substandard, according to American Association of State Highway and Transportation Officials (AASHTO) criteria.⁴ A 1985 TRIP report evaluated the condition of county roads, and estimated that 966 miles of county roads were either in fair or poor condition and needed to be rebuilt, resurfaced, or resealed, and estimated the cost at \$29.1 million. The report also found that 278 miles of county gravel roads had sufficient volume to justify paving them, and that the cost for that would be \$15.3 million.⁵

ANALYSIS OF THE ROADWAY JURISDICTION PROBLEM

Actual figures reported by the counties for maintenance and repair are more modest but still substantial. Hawaii County reported that for fiscal year 1986-87, the actual cost of materials and supplies to maintain one mile of county road was \$1,493, although the county recommended a cost of \$3,600 per mile to perform maintenance up to their preferred standards.⁶ The total cost to maintain all 1,200 miles of county roads would be \$1,791,600 and \$4,320,000, respectively. These totals do not include employment of the 159 county roadwork personnel, which would be an additional expense.

Kauai county indicated that its total cost for road maintenance, including labor, is \$7,000 per mile.⁷ This does not include resurfacing costs, which are currently paid for by a recent increase in the fuel tax. Resurfacing costs are far greater than maintenance and repair costs: for instance, Maui county calculates them at \$100,000 per mile.⁸

Maui county has over 500 miles of roads, and estimates its total cost, including personnel, materials and supplies, and equipment, for fiscal year 1988-90, at \$9,618,993.⁹ This cost is \$19,238 per mile for maintenance alone, and is generally based on asphalt-surfaced roads. The county points out that the disputed roadways often involve dirt or gravel roads, for which total reconstruction would be needed to bring the roads up to standard. This cost does not include annual resurfacing costs, which are another \$2,500,000 per year, or capital improvement projects such as curbs, gutter, drainage, guardrail installation, and bridges. It is likely that the disputed roads would also be in need of these additional features. In 1989-90, the capital improvement project budget for this type of additional work was \$17,457,380.¹⁰

The City and County of Honolulu did not submit a cost breakdown by mile, but estimates that the cost of maintaining just the additional 400 miles of disputed roads would be \$3 million.¹¹

A firm total cost to upgrade and maintain the disputed roads is not known because at this time there is no complete list of the disputed roads.

The counties presently obtain all of the usual funding¹² for road maintenance through the county highway funds, which are composed of fuel taxes, motor vehicle weight taxes, and the public utilities franchise tax.¹³ Most of the counties have recently raised their fuel taxes, effective July 1, 1989.¹⁴

Another potential source of funding for the counties is from toll roads. Recent legislation¹⁵ authorized the counties to institute them, but none have been instituted as of the date this study was prepared. This may be a limited option for the counties, as instituting toll booths on busy main roads would further contribute to traffic congestion that is already a characteristic of commuter traffic in the State.

These limited funding options may indicate that, for the disputed roads to be maintained and upgraded as necessary, additional funding would have to be obtained. One position previously espoused by the Attorney General's office is that the road repair and maintenance requirements predate the 1978 constitutional amendment requiring that the State share in the expense of county mandates and that therefore the State "need not" share in the cost of maintaining and repairing the roads.¹⁶ Whether or not this position is correct, it is not particularly helpful in resolving the problem. The assumption that the increase in the cost of road maintenance due to significant increases in vehicular traffic is not construed to be an "increase in the level of service under an existing program...mandated to any of the political subdivisions by the legislature" under Article VII, section 5, of the State Constitution does not in any way increase the ability of the counties to deal with the problem. When the costs are too high to be wholly borne by the counties, despite existing or any new legislation, road repair and maintenance will still not be done, or will be done on an emergency basis only.

It has been suggested that funding could come directly from the State, or it could come indirectly through state authorization of additional taxing power to the counties or permission for the counties to receive traffic fine moneys. If the funding were to come directly from the State, at least one county has indicated that it would prefer a method that would "enable the county highway fund to receive the revenues on a permanent basis, without necessity of annual or biennial appropriations, [which] shall result in, to the extent possible, no net increase of highway user tax or fee rates applicable on Oahu[.]"¹⁷

It was not possible to come up with an exact cost of maintaining these disputed roads as the identity and extent of the disputed roads in the other counties has not been determined by either the State or the counties. Both sides -- State and county -- refuse to accept responsibility for the roads long enough to accurately catalog them all. It is unlikely that one side will voluntarily seek to expend the time and money necessary to do so at this time. A private survey would in all likelihood be quite expensive.

It may be feasible for the State to work with an individual county to determine, from the county's perspective, which disputed roads are the most used and the most in need of repair, and to estimate costs of improvement of those roads and decide on the extent to which the State will share the economic burden. Arguably, if undertaken on a pay-as-you-go basis, the job will be done more quickly and at less expense. The fact that an exact figure is unavailable should not call for another round of studies instead of action. It is obvious that the problem exists, will not disappear, and in fact worsens every year as persistent neglect compounds the problem.

Liability for Roadways

The counties' position with respect to liability is that they want the same "immunity from suit" for roadway accidents that the State enjoys. The counties have asked that the State Tort Liability Act (STLA)¹⁸ apply to them, and it appears that the counties believe that the STLA would prevent them from being held liable for certain types of roadway accidents. In at least one lawsuit by private parties against the other driver, the county, and the State for an accident on a public highway, the State has successfully sought to be dismissed. However, the reason for that dismissal had to do with the fact that the State was not maintaining the road, not because of the STLA.

The case of *Re Taxes Victoria Ward*¹⁹ indicates that it is control, and not ownership, that determines liability for negligent road maintenance. *Victoria Ward* was a tax appeal case in which the tax appeal court lowered the valuation because the property included a public easement, which created the legal responsibilities of upkeep, maintenance, and protection of the public. The Supreme Court reversed on the ground that the street was actually in the possession and control of the City and County of Honolulu. The court stated:

In view of this fact the city and county would be solely liable for any damages sustained through failure to maintain the highway in a safe and proper condition.... It is the control and not the ownership which determines liability. (Emphasis added)²⁰

The STLA might provide protection to the counties for design defects, but will not affect the counties' liability for improper maintenance.

The counties' concern that excessive liability might result should they assume jurisdiction over the disputed roads is valid. The counties do not have the funds to bring up to standard and maintain all of these disputed roads at one time. Roads in poor shape are more prone to cause accidents, and the county, as a potential deep-pocket defendant, would inevitably be brought in. Also, even if moneys were available immediately, some roads cannot be brought up to current county standard due to their physical placement. The counties are justifiably wary of having to shoulder the burden of potential liability without any assistance from the State.

Although no existing statute would protect the counties from liability, it may be possible to construct one that would shield the counties, at least in part, from excessive damages due to accidents occurring on these disputed roads. As this issue is an important one in helping to resolve the overall problem, the Bureau invited the Attorney General and the corporation counsel or county attorney from each county or their representatives to discuss methods of limiting liability in a way that would (1) allow the counties to avoid excessive liability for the condition of the disputed roads, (2) provide some protection for the public, and

(3) encourage the counties to bring the roads up to standard as far as possible. A meeting was held on September 15, 1989 at the State Capitol.²¹

The attendees discussed the following proposals:

- (1) Partial indemnity by the State;
- (2) A temporary liability cap for the counties during either a determined time period or until a certain amount of funds have been released to the counties by the State for road upgrading and maintenance;
- (3) Improved traffic control signals to warn the public of potentially dangerous conditions;
- (4) Posting warning signs on substandard roads so that the public would have to "assume the risk" of traveling on them, which could limit the counties' liability for negligence while still retaining it for reckless or intentional acts;
- (5) Increasing required liability insurance coverage for all motorists to \$100,000 (usually another motorist is more at fault than the county, so more money would be available from the driver's insurance policy and less required from the county);
- (6) Applying the State Tort Liability Act or similar law to the counties (a copy of the draft Uniform Law for the Regulation of Tort Claims Against Public Bodies is included in Appendix H as a sample);
- (7) Legislation holding counties jointly and severally liable for accidents only if the percentage of their negligence is thirty percent or more; and
- (8) Creating a state guarantee that would have the State pay for the amount of judgments and settlements in excess of a certain amount.

The last two proposals met with the most interest. Presently, under the joint and several liability provisions of the statutes,²² anyone who contributed in the slightest way to an accident can be required to pay all of the plaintiff's award if those who are more at fault are unable to pay. Increasing the percentage of fault that a county must incur before it will be held liable will minimize the drain on limited public resources in the cases where the county's fault is minimal and the primary wrongdoer, usually another motorist, is either uninsured or underinsured. However, if the public policy choice is not to provide any limitation on recovery, the institution of a state guarantee for roadway accidents could assure that the plaintiff is paid in full. The State could guarantee that, for a limited time, the State would pay that portion of a judgment or settlement against a county that exceeds a set amount. The

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amounts mentioned at the meeting ranged from \$50,000 to \$250,000. This would remove the pressure from the counties to upgrade, repair, and maintain these disputed roads simultaneously, which would be an impossible task, while the limited time period²³ would ensure that the roads are brought up to standard within that time frame. This function could be done by the creation of a state fund,²⁴ or simply by a state guarantee. Whichever method is chosen should contain the following elements:

- (1) A mechanism to bring the State into the lawsuit as soon as the county is implicated so that the State is involved in the litigation and settlement mechanism as if it were a named defendant;
- (2) An agreement that the State shall make the final decision on acceptance of a settlement if part of the settlement will come from the State; and
- (3) An agreement that the state guarantee will apply to any accident occurring during the limited time period, regardless of when suit is initiated.

Both of these proposals have merit: the wisdom of initiating either, both, or some other proposal depends on state policy decisions. While the proposal to eliminate joint and several liability for counties unless the proportion of their liability was significant²⁵ would preserve county funds in cases where the county's fault is minimal, the impact in a case where the other defendants have inadequate assets would be to leave the plaintiffs with a partial or possibly no recovery. This would raise the same type of arguments heard in opposition to "tort reform" proposals to reduce or eliminate joint and several liability. However, since this provision would be for a limited time, the impact on the State would be less. If the state policy is to ensure that every plaintiff should get a full recovery, then the next question is whether the county or the State will pay for it, and how much will they pay.

As this report was being finalized, Maui County sent additional suggestions to reduce liability. Those suggestions are contained in Appendix I.

While the choice of which liability-reduction mechanism will best suit state policy goals is unclear, what is clear is that without some state assistance in this area, the counties will continue to balk at responsibility for the disputed roads.

Title

Another concern of the counties is the fact that transfer of title through the statute (*i.e.*, by "operation of law") does not give them any tangible evidence that they have title. Normally, title to land in Hawaii is evidenced by a transfer certificate of title, if the property is registered with the land court,²⁶ or by deed.²⁷ In some instances, the county has requested, and the State has given, a quitclaim deed to a particular disputed road so that the county's

desire for written proof of ownership will be satisfied.²⁸ At present, however, the State is reluctant to continue that procedure on the ground that it is legally unnecessary as title has already passed to the counties. The process would also be time-consuming. Additionally, if the counties were to request that all roads be quitclaimed to them, the State would be unable to comply as the State does not have a complete list of the disputed streets, and the counties might refuse to care for the unquitclaimed streets. For similar reasons, the State is reluctant to comply with the counties' request for an executive order assigning the roads to them.

If title was transferred by operation of law, the counties do not need a written deed from the State to accomplish the transfer. What the counties do need, however, are two things: an inventory of their roads and assurance from the State that the State will not later change its mind and resume jurisdiction over a road on which the counties have spent time and money. The State and the counties need to join forces to prepare this joint inventory. There should be no unknown public roads. The inventory need not be fully detailed with a metes and bounds description, as it appears that that would be very costly. However, a simple description similar to the one given in the City and County of Honolulu's Street Index²⁹ listing road name, location, tax map key number, and jurisdiction should be prepared for each county.

In preparing this inventory, roads should also be classified according to function, as is done in some states. At present, ownership is roughly broken down by federal-aid classification: the state DOT has jurisdiction over the federal-aid interstate, primary, and secondary roads, while the counties have jurisdiction over the federal-aid urban roads and the nonfederal-aid roads.³⁰ These criteria have been suggested by the City and County of Honolulu as a possible way to divide roadway responsibility.³¹ However, this classification is not fully implemented, which makes it flawed currently as a device to provide the government and the public with certainty as to the entity responsible for the roads.

Another possible classification scheme would be to divide roads on basis of function as expressways, arterials, collectors, or feeders, and local roads.³² Expressways would be the current H-1 and H-2 systems; arterials would be routes providing relatively continuous service, of relatively high volume, high operating trip speed, high mobility importance, and long average trip length; collector roads would be routes with moderate volume, trip length, and average speed, which collect and distribute traffic between arterials and local roads; and local roads would be routes providing access to abutting property and having relatively low volume and short average trip length.³³ Classified this way, the state highway roads would probably all be arterials, and all other roads would be either collector or local, and under the jurisdiction of the counties. If roads were classified in this or a similar fashion, it would be clear to everyone which roads were state-owned and which county-owned, and would help reassure the counties that roads in their jurisdiction are less likely to be taken over by the State as part of the highway system, and so encourage them to expend their own funds on them.

The State may also want to consider whether it would be fair to allow the counties to receive recompense when a county road is sold or disposed of. Currently, if the State needs a road for the state highway system, the county is obliged to turn it over without monetary consideration. Similarly, if a county sells an abandoned county road that was originally obtained in whole or in part with state or federal funds, all proceeds must go to the State. To the extent that the State takes on this burden, the county is relieved from future costs and potential liability, and perhaps compensation should be nominal. But when a road or right of way is transferred to a private party, it seems inequitable for the State to claim all the profit. The State may not want to haggle the price of the road with the county or allow the county to block the transfer of the road, but it seems equitable that the county receive some reimbursement for its past efforts in maintaining the road. When the road is transferred to another party, the federal government would usually require reimbursement of federal funds actually expended on the road, but would not require funds in excess of that amount.³⁴ It seems equitable that excess funds should go to the county to help defray the past costs. Indeed, it seems as though the idea of allowing the counties reap the rewards of ownership was the whole rationale for the 1963 and 1965 legislation transferring ownership of the roads to them.

Metes and Bounds Description

Another county request is to have a metes and bounds description for every road turned over to them. While it is obvious why the county wants this, in practice it is very difficult to do because of the great expense this type of survey entails.³⁵ Many of the disputed roads in this State evolved from what originally was someone's trail or driveway: they were not surveyed and placed on a map. Many of them may also be private roads given to the government by dedication or abandonment. No original metes and bounds descriptions exist for an unknown number of these roads, and new ones will be very expensive. Perhaps the State and the counties can, over time, complete a metes and bounds description for the roads in this State, either through a methodical, budgeted plan, or, if that is too expensive, then on a road-by-road basis as repairs are done. But requiring a formal metes and bounds survey of all roads before responsibility is assumed for any of these roads is impracticable.

Substandard Roads

The counties are reluctant to accept roads that do not meet their current safety standards. In some instances, the counties have indicated that they will only take responsibility for the roads if the State brings them up to standard. This is not a viable solution. The governmental body that will be maintaining the roads is the better choice to bring these roads up to standard, as it will be able to do so in a way that dovetails with how maintenance will henceforth be done. The counties' concern is tied into two of the factors discussed above: fear of liability and lack of funding to upgrade and maintain the roads. If

these issues are addressed, the counties' reluctance to accept the roads should be diminished as to those roads that can be upgraded. However, it should be noted a certain number of these roads may never be able to be brought up to standard because of physical constraints (*i.e.*, narrow roads on hillsides that cannot be widened without threatening the stability of the area, or narrow roads in older neighborhoods where widening would impinge on the neighboring homes) or because it is not cost-effective.

Rural Roads

Hawaii county indicated that it has a special problem with rural roads. Apparently homesteaders, hunters, and hikers create trails that gradually evolve into dirt roads leading to isolated homes or forested areas. There has been much contention about who is responsible for maintaining and repairing these roads.

Hawaii has resolved the problem, after a period of mutual blame by the county and the State, by considering these roads to be privately-owned public roads, or, in the case of homesteads, to be driveways and not public roads at all. In these cases, neither the State nor the county is maintaining the roads at all on the ground that they are to be maintained by the homesteader or by the interested parties using the road. Hawaii county is also beginning discussions with the counties and the State on better methods of dealing with these problem areas, as is discussed in chapter 4.

Summary

There are five principal reasons the counties do not want jurisdiction over the disputed roads: lack of funding, fear of liability, lack of title documents, lack of metes and bounds descriptions, and the substandard condition of some of the roads. The first two are the most critical and need to be addressed first. If the State can help with the funding, and if some mechanism could be devised to shield the county, at least at first, from full liability for the disputed roads, it may be possible to agree in principle on how to resolve this issue, and the other concerns could be addressed as the resolution is implemented.

Legislative action alone, however, cannot fully resolve this problem. Some form of joint oversight committee involving participants from all affected parties, the counties, DOT, and DLNR, should be established to help evaluate these proposals, address other areas of concerns, and act, not as a study group, but as an active force in implementing solutions.

ENDNOTES

1. Public Administration Service, State and Local Government Relations in the State of Hawaii (Chicago: 1962), p. 7 (prepared for the Department of Budget and Review, State of Hawaii).

ANALYSIS OF THE ROADWAY JURISDICTION PROBLEM

2. Memorandum from George Kaya, Chief of Field Operations and Maintenance, Maui County Department of Public Works, to Brian Hashiro, Public Works Engineer (undated).
3. See, e.g., letter from William W. Paty, Chairman, Board of Land and Natural Resources, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated May 30, 1989.
4. "Bad roads seen costing motorists millions," Honolulu Advertiser, February 2, 1981, p. A-8.
5. The Road Information Program, An Evaluation of the Extent of Substandard Roads and Bridges in Hawaii (February 1985) (prepared for the General Contractors Association of Hawaii).
6. Conversation with Hugh Y. Ono, Chief Engineer, Department of Public Works, County of Hawaii, September 1, 1989.
7. Conversation with Russell Sugano, Chief of Operations, Road Maintenance Division, Department of Public Works, County of Hawaii, September 5, 1989.
8. Letter from Alvin K. Fukunaga, Director of Public Works, through Ralph Nagamine, to Susan Ekimoto Jaworowski, Researcher, Legislative Reference Bureau, dated September 28, 1989.
9. Ibid.
10. Ibid.
11. Letter from Richard D. Wurdeman, Corporation Counsel, to Samuel B.K. Chang, Director, Legislative Reference Bureau, dated September 8, 1989.
12. From time to time, the State or the counties will release funds to repair one of the disputed roads, but such repairs are usually done with the disclaimer that the act is done as an emergency measure and that the road still does not belong to them.
13. These funds differ slightly from county to county. For example, the City and County of Honolulu's fund also has parking meter fees and federal Urban Mass Transit funds. The latter, however, are used just for the county bus system. Conversation with Ted Takahashi, Fiscal Analyst, City and County of Honolulu.
14. The City and County of Honolulu raised its tax 5 cents per gallon, for a total of 16-1/2 cents per gallon; Maui county raised its tax 1 cent, for a total tax of 9 cents per gallon; and Kauai county raised its tax 2 cents, for a total tax of 10 cents per gallon. Hawaii, Department of Taxation, Tax Information Release No. 89-7, June 30, 1989.
15. 1989 Haw. Sess. Laws, Act 338.
16. Att'y Gen. Op. No. 86-15 (June 10, 1986).
17. Position paper of the Honolulu City Council (undated; after November 1987), p. 5.
18. Hawaii Rev. Stat., c 662.
19. 33 Haw. 235 (1934).
20. Ibid. at 237. Victoria Ward has been cited in more recent cases for the same proposition. Breed v. Shaner,

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57 Haw. 656, 562 P.2d 436 (1977), involved an auto accident in which the plaintiff sued, among others, the State and the City and County of Honolulu, who also cross-claimed against each other. The parties agreed that the City and County owned the road in question prior to 1969. They disagreed about who owned the road after that date. The City and County claimed that the State owned it. The State claimed that it did not, but conceded that it acquired the responsibility to repair and maintain the road. The City and County was dismissed from the case on the ground that at the time of the 1970 accident, the road belonged to the State.

The Supreme Court reversed, in part on the ground that the State had a reasonable time after the transfer to remedy any defects before any liability for accidents occurring from those defects will attach to the State. The court stated that the existence of liability of the City and County for negligence prior to 1969 depends on the control it exercised over the highway. The court cited Victoria Ward.

The court also reiterated the point that control, not ownership, determines liability for accident in Levy v. Kimball, 50 Haw. 497, 443 P.2d 142 (1968).

21. Attending were Michael Belles, Kauai County Attorney; Glenn Kosaka, Maui Corporation Counsel; Steven Christensen, Hawaii Deputy Corporation Counsel; Richard Wurdeman, Honolulu Corporation Counsel and Donna Woo and Duke Aiona, Deputy Corporation Counsels; Dawn Chang, Deputy Attorney General; Samuel B.K. Chang, Director of the Legislative Reference Bureau; and the researcher.
22. The limits on joint and several liability under section 663-10.9, Hawaii Revised Statutes, will expire on October 1, 1991. 1989 Haw. Sess. Laws, Act 300, §2.
23. The Bureau is reluctant to suggest a proposed time period as there is insufficient information available as to the number and condition of the disputed roads. This figure could more appropriately be obtained from the DOT and the county departments of public works.
24. This plan might seem facially similar to the patient compensation fund that became critically underfunded and had to be repealed in 1984. However, there are significant difference between the plans. That fund was originally mandatory for all health care providers and was the only agency through which excess malpractice coverage could be obtained. It serviced all patients. However, it was made voluntary and the surcharges, initially too low, had to be dramatically increased at a time when other insurance companies began to offer excess coverage at competitive rates. Provider participation decreased to only one-fourth of all providers, while the fund continued to service all patients. The increased exposure and the declining membership decimated the fund. See Hawaii, House Standing Committee Report No. 613-84, on H.B. No. 2016, Twelfth Legislature, 1984. The proposed suggestion, however, would involve direct state contributions and would be for a limited time.
25. This would not, of course, affect the counties' liability for any negligence not amounting to more than thirty percent of the total: it would just mean that the counties would pay that amount only and would not be financially responsible for the rest if the other defendants could not pay their share.
26. See generally, Jean K. Mardfin, Two Land Recording Systems, Legislative Reference Bureau, Report No. 7 (Honolulu: 1987).
27. Ibid.
28. See, e.g., letter from William W. Paty, Chairman of the Board of Land and Natural Resources to Alvin K. Fukunaga, Director of Public Works, County of Maui, dated January 12, 1988; letter to Governor John Waihee from Dona L. Hanaïke, Deputy Attorney General, dated March 10, 1987.

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29. Honolulu (City and County), Department of Public Works, Division of Land Survey and Acquisition, Street Index: Island of Oahu (Honolulu, 1988).
30. Conversation with Julia Tsumoto, September 12, 1989. Primary roads are connected main roads important to interstate, statewide, and regional travel, consisting of rural arterial routes and their extensions into urban areas; secondary roads are rural major collector routes; and urban roads are high volume arterials and collectors serving major urban centers of activities. 23 U.S.C.A. secs. 102(b), (c)(1), and (d)(1).
31. Letter from Jeremy Harris, Managing Director, to Marilyn Bornhorst, Council-member, Honolulu City Council, dated May 31, 1988. The State would have all federal-aid primary and secondary roads, and the City would have all federal-aid urban roads as well as "other roads serving essentially local traffic and access to properties."
32. This system of division was suggested as far back as 1962. See State and Local Government Relations, pp. 209-10. Norm Arthur, Deputy Division Administrator of the Federal Highways Administration, indicated that in 1976, each state performed an internal functional classification, dividing roads into categories such as arterial, collector, and local. Interview on July 12, 1989.
33. States having this type of classification include Florida and Wisconsin. See Fla. Stat. §334.03 (Supp. 1988), Wis. Stat. Ann. §84.60 (West Supp. 1988-89).
34. Conversations with Norm Arthur, October 2, 1989 and October 25, 1989. Mr. Arthur indicated that if the road was old and worn out, or had served its full useful life, the federal government would not request reimbursement.
35. For example, the estimate to complete a metes and bounds survey of Roundtop Drive in Honolulu is \$1 million. Deputy Attorney General Dawn Chang, meeting of August 16, 1989.

Chapter 6

FINDINGS AND RECOMMENDATIONS

Effective state-local relations, moreover, involve more than realistic division of service responsibilities. There are two other basic ingredients. One, the local governmental units must be responsive to the needs and legitimate demands of the citizens it serves, and be organized and equipped to provide services effectively. Two, local governmental units require sufficient financial resources to pay for the services and functions delegated to them by the State.¹

Findings

1. There is a considerable and uncatalogued number of public highways in the State whose ownership, as between the State and the counties, is in dispute, as the State holds paper title to these roads but contends that ownership of these roads has passed to the counties by operation of law.
2. No comprehensive lists of these disputed roads exist because neither the State nor the individual counties will take the responsibility of cataloguing them.
3. Between 1892 and 1947, all public roads were owned by the Kingdom (later, Territory of Hawaii) and were labelled "public highways."
4. By 1913, the counties were maintaining all of these public highways.
5. In 1941, the obligation to maintain the Hawaiian Home Lands roads was given to the counties through the State Constitution.
6. In 1947, the category of "public highways" was divided into two: one was territorial or federal-aid highways, which were all the highways under the jurisdiction of the territorial highway engineer or the superintendent of public works (later, the Department of Transportation); and the other was county highways. The counties' duty to maintain all public highways was reduced to maintaining only the county highways, and the DHHL roads.
7. Although certain roads were now denominated county roads, ownership of all public highways in both categories remained with the Territory (later, the State).
8. In 1963, the Legislature gave the counties ownership of all county roads obtained by eminent domain, purchase, dedication, or surrender, although arguably the language was broad enough to encompass all county roads.

FINDINGS AND RECOMMENDATIONS

9. In 1965, the Legislature amended the 1963 statute to attempt to transfer to the counties ownership of all county roads.

10. In 1966, due to failure by the City and County of Honolulu to maintain a road designated as a county road, the Legislature enacted an urgency measure permitting the Governor to force ownership of a road on a county through an executive order.

11. The counties refused to cooperate with this series of statutes, contending that:

- (a) Case law indicated that ownership of roads could not be forced on them by statute and that the county council needed to consent to ownership before any obligation could attach;
- (b) The authority of the Department of Transportation to designate which roads would be state-owned and which county-owned was unclear and possibly non-existent;
- (c) They have insufficient funds to maintain and upgrade these roads;
- (d) They were concerned with the potential for excessive liability should they become liable for these roads;
- (e) These roads lacked a full metes and bounds description;
- (f) These roads lacked title documents indicating a transfer of title to the counties.

12. Although the counties had maintained DHHL roads in the past, some were now refusing to do so unless the roads are brought up to county standard.

13. The counties' duty to maintain county roads independent of the ownership statutes of 1963, 1965, and 1966 has existed since 1913 under chapter 265A and its predecessors.

14. The current and past statutes have not defined the difference between state and county roads on a functional basis, which probably has contributed to the counties' sense that roadway responsibility has been applied arbitrarily.

15. The disputed roads have not been maintained on a regular basis, which would be proper procedure, although from time to time the counties or the State have performed emergency repairs on them.

16. Great expense will be involved in upgrading, repairing, and maintaining these disputed roads, as well as performing full metes and bounds surveys of them.

17. There has been considerable inconvenience to the public in regard to these roads, both because they are not properly maintained and because, when complaints are made, the complainant is given what is perceived as the runaround between the State and the county.

18. The counties are ignoring their statutory duties for specific reasons, and this will probably continue unless their concerns are addressed. The State will have to decide *between standing on principle and requiring the counties to perform this function without additional moneys, metes and bounds descriptions, and liability reassurances, and helping the counties in solving this problem.*

Recommendations

1. Further legislative attempts to force responsibility on the counties for these roads will probably be met with resistance until the counties' primary concerns, funding and liability, are also addressed. The State should make additional funding available to the counties, either by *increased taxing powers or an increase in grants-in-aid, to provide at least for initial upgrading and maintenance costs.* Permanent maintenance funding can be addressed by committee under recommendation 4 below.

2. Some type of temporary liability shield for the counties should be implemented for a short, *determinable period to allow the counties time to bring the roads, if not up to county standard, then at least to a non-dangerous condition.* This could be done by increasing the level of negligence necessary before full joint and several liability would apply to a county, and by a state guarantee to pay for damages in excess of a set amount.

3. The counties should be required, once funding and liability concerns are addressed, to assume maintenance and ownership of all public roads not on the state highway system. The counties' input should be solicited on the future categorization of public highways as state or county.

4. A high-level committee of officials from the offices of the Attorney General, Corporation Counsel, County Attorney, Department of Transportation, Department of Land and Natural Resources, and county agencies responsible for public works and transportation should be convened to meet on a regular basis to be responsible for implementing the acceptance of the roads by the counties, and consideration of the following:

- (a) Developing a complete list of all public roads in the State;
- (b) Categorizing these roads and their ownership on a functional basis, so that a more fair distribution of *jurisdiction* can be accomplished; although the State should have final say on any categorization to prevent any road, through

FINDINGS AND RECOMMENDATIONS

disagreement by the committee, from situations such as the ones that inspired this study:

- (c) Determining whether a complete metes and bounds survey for all the roads is feasible given time and budgetary restraints, and, if not, to come to an agreement on how each roadway description shall be done, and whether metes and bounds surveys should be ordered by the State in some, if not all, cases.
- (d) Agreeing on what indicia of title, if any, will be used to indicate county ownership of the disputed roads.

5. Maintenance of the DHHL roads by the counties is required by the State Constitution and should be immediately reinstated. If certain roads are a problem to maintain because they are in poor condition, the county and the DHHL should work together to obtain funding and bring the road up to a condition where it is more easily maintainable.

6. Section 264-3, Hawaii Revised Statutes, should be amended to permit the counties to retain some, if not all, of the excess funds when a county road is sold that was paid for in whole or in part by state or federal funds. The initial outlay of funds should be returned to the state or federal government. Any formula should be calculated to compensate the counties for maintenance of or improvements made to the roadway.

7. It is not recommended that an omnibus executive order be issued to transfer title to the counties of all disputed roads. Although it would effectively pass title, the failure to provide for funding and other county concerns would shift, but not solve, the problem.

ENDNOTE

1. Public Administration Service, State and Local Government Relations in the State of Hawaii (Chicago: 1962), p. 10 (prepared for the Department of Budget and Review, State of Hawaii).

HOUSE RESOLUTION

RELATING TO ROADWAY JURISDICTION.

WHEREAS, the safety of the public is of paramount concern to the Legislature, and the quality of roadway maintenance throughout the State has a direct impact on the safety of individuals operating motor vehicles and the condition of the property along the roadways; and

WHEREAS, because of jurisdictional disputes between the counties and the State regarding ownership and responsibility for maintenance and improvement of roadways and easements, many tax-paying citizens of this state have experienced considerable frustration in obtaining necessary repairs to and maintenance of public roads and easements bordering their property; and

WHEREAS, the origins of this problem apparently arose from a 1963 amendment to Section 142-1, Hawaii Revised Statutes, since redesignated Section 264-1, HRS, which created two categories of public highways--State highways, under the jurisdiction of the Department of Transportation, and county highways, which comprise all remaining highways; and

WHEREAS, the State claims that under this law all nonstate roadways were transferred from the State to the various counties and are now the responsibility of the counties, while the counties, citing Santos v. Perreira, 2 Haw. App. 387 (1981), maintain that a highway does not become a county highway unless it is accepted or adopted as such by the county council and therefore accept no responsibility for roadways they have not accepted in this fashion; and

WHEREAS, this dispute over roadway jurisdiction has been a lengthy one, with the State and county governments staunchly maintaining their respective positions and showing no interest in modifying them to facilitate a negotiated settlement of this issue; and

WHEREAS, the cost of improving and maintaining the roadways in question appears to be a significant impediment to the resolution of this problem, with the counties on the one hand not wanting to incur the expense of making the improvements necessary to bring the disputed roadways into conformity with county codes, especially without any financial assistance from the State, and the State on the other hand hoping to avoid the considerable

additional burden in personnel, equipment, and funds that responsibility for these roads would entail; now, therefore,

BE IT RESOLVED by the House of Representatives of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1989, that the Legislative Reference Bureau is hereby requested to undertake a study of roadway jurisdiction, including, but not limited to:

1. An identification of all of the roadways in the State whose jurisdiction is in question using lists and other data provided by appropriate State and County agencies, and;
2. Alternatives for settling jurisdictional disputes, including proposed legislation;

and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau solicit input from appropriate state and county departments, including the State Department of Transportation, the State Department of Land and Natural Resources, the State Department of Corrections, the State Department of the Attorney General, the State Department of Hawaiian Home Lands, the State Department of Human Services, the Hawaii Housing Authority, the County Departments of Transportation Services, and the County Attorneys or Offices of the Corporation Counsels; and

BE IT FURTHER RESOLVED that the aforementioned agencies cooperate with the Legislative Reference Bureau in its study; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau report its findings and recommendations, along with suggested legislation, to the Legislature not less than twenty days prior to the convening of the Regular Session of 1990; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Director of the Legislative Reference Bureau; Director of the Office of State Planning; the State Director of Transportation; the State Director of Land and Natural Resources; the State Director of Corrections; the Attorney General; the State Director of the Hawaiian Home Lands; the State Director of Human Services; the State Director of the Hawaii Housing Authority; the Director of Transportation Services of the City and County of Honolulu; Chief Engineer of the Department of Public Works of the County of Hawaii; the County Engineer of the Department of Public Works of the County of Kauai; the Director of Public Works of the County of Maui; the Corporation Counsels of the Counties of Hawaii, Maui, and Oahu; and the County Attorney of the County of Kauai.

Appendix B

DISPUTED ROADS ON OAHU PER CITY AND COUNTY OF HONOLULU

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10/03/88

STATE - DLNR

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
AALIAMANU PLACE	HONOLULU	2-05-023-000	STATE
ADAMS LANE	HONOLULU	2-01-010-000	CITY/STATE
ADAMS WAY	HONOLULU (SAND ISLAND)	1-05-041-000	STATE
AHE PLACE	HONOLULU	3-04-003-000	STATE
AHUI STREET	HONOLULU	2-01-058-000	STATE/PRIVATE
AIEA HEIGHTS DRIVE	EWA	9-09-042-000	CITY/STATE
AINAKEA WAY	HONOLULU	2-06-028-000	STATE
AKEPO LANE	HONOLULU	1-05-006-000	STATE/PRIVATE
ALA KOA STREET	KOOLAUPOKO	4-01-016-000	STATE
ALAIHI STREET	KOOLAUPOKO	4-01-005-000	STATE
ALALA ROAD	KOOLAUPOKO	4-02-054-000	CITY/STATE
ALAPAI STREET	HONOLULU	2-01-033-000	CITY/STATE
ALAPIO ROAD	KOOLAUPOKO	5-09-017-000	STATE/PRIVATE
ALAULA WAY	HONOLULU	2-09-012-000	STATE
ALEWA DRIVE	HONOLULU	1-08-027-000	STATE
ALEXANDER STREET	HONOLULU	2-08-011-000	STATE/PRIVATE
ALOHA AVENUE	EWA	9-07-001-000	STATE
ALOILOI STREET	KOOLAUPOKO	4-01-007-000	STATE
ALOKELE STREET	HONOLULU	1-05-024-000	CITY/STATE
ANOI ROAD	KOOLAUPOKO	4-05-087-000	CITY/STATE/PRIVATE
AOKEA PLACE	HONOLULU	1-01-003-000	STATE
AOLELE STREET	HONOLULU	1-01-003-000	STATE
AOLEWA PLACE	HONOLULU	1-01-003-000	STATE
AOPOKO PLACE	HONOLULU	1-01-003-000	STATE
AOHENA PLACE	HONOLULU	1-01-003-000	STATE
AOHENA WAY	HONOLULU	1-01-003-000	STATE
APIO LANE	HONOLULU	1-08-002-000	STATE
ARMSTRONG STREET	HONOLULU	2-09-003-000	STATE
ATHERTON ROAD	HONOLULU	2-08-021-000	STATE
AUAI STREET	HONOLULU	2-01-029-000	CITY/STATE/PRIVATE
AULII STREET	HONOLULU	1-06-011-000	STATE/PRIVATE
AULOA ROAD	KOOLAUPOKO	4-02-007-000	STATE
AUWAIOHIMU STREET	HONOLULU	2-02-013-000	STATE
AZORES STREET	HONOLULU	2-02-007-000	STATE/PRIVATE
BACHMAN PLACE	HONOLULU	2-08-000-000	STATE
BATES STREET	HONOLULU	1-07-013-000	CITY/STATE/PRIVATE
BAY STREET	HONOLULU	3-08-003-000	STATE
BEACH ROAD	HONOLULU	3-01-037-000	STATE
BECKLEY STREET	HONOLULU	1-03-004-000	STATE/PRIVATE
BECKWITH STREET	HONOLULU	2-09-007-000	STATE
BERETANTA STREET	HONOLULU	1-07-027-000	CITY/STATE
BETHEL STREET	HONOLULU	2-01-002-000	CITY/STATE
BETHSHAN ROAD	HONOLULU	3-02-035-000	STATE/PRIVATE
BIJOU LANE	HONOLULU	2-01-003-000	STATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
BISHOP STREET	HONOLULU	2-01-014-000	CITY/STATE
BOOTH ROAD	HONOLULU	2-02-011-000	CITY/STATE/PRIVATE
BROWN WAY	HONOLULU	2-09-011-000	STATE
CALIFORNIA AVENUE	WAHIAWA	7-03-018-000	CITY/STATE
CAMPUS ROAD	HONOLULU	2-08-023-000	STATE
CAPTAIN COOK AVENUE	HONOLULU	2-01-035-000	CITY/STATE
CASTLE STREET	HONOLULU	3-01-006-000	STATE
CENTER STREET	HONOLULU	3-03-006-000	CITY/STATE
CHANNEL STREET	HONOLULU	2-01-028-000	STATE
CHAPLAIN LANE	HONOLULU	2-01-003-000	STATE
CHARLES STREET	HONOLULU	3-01-001-000	STATE
CHESTER WAY	EWA	9-09-019-021	STATE
CHURCH LANE	HONOLULU	2-07-027-000	STATE
CONCORDIA STREET	HONOLULU	2-02-007-000	STATE
COOPER ROAD	HONOLULU	2-09-019-000	CITY/STATE/PRIVATE
CORREA ROAD	HONOLULU	2-03-008-000	STATE
CRAIGSIDE PLACE	HONOLULU	2-02-020-000	STATE/PRIVATE
DIAMOND HEAD ROAD	HONOLULU	3-01-042-000	CITY/STATE/PRIVATE
DOLE STREET	HONOLULU	3-03-055-000	CITY/STATE/USA
DOMINIS STREET	HONOLULU	2-04-023-000	CITY/STATE
DONAGHNO ROAD	HONOLULU	2-08-023-000	STATE
EAST MANOA ROAD	HONOLULU	2-09-007-000	STATE
EAST WEST ROAD	HONOLULU	2-08-000-000	STATE
ECKART ROAD	HONOLULU	2-08-023-000	STATE
EDMONDSON ROAD	HONOLULU	2-08-023-000	STATE
EHUKAI STREET	KOOLAUPOKO	4-01-007-000	STATE
ELLIOTT STREET	HONOLULU	1-01-003-000	STATE
EMERSON STREET	HONOLULU	2-01-039-000	STATE
ENA ROAD	HONOLULU	2-06-007-000	CITY/STATE
ERNEST STREET	HONOLULU	2-04-017-000	STATE
FARR LANE	HONOLULU	1-03-005-000	STATE/PRIVATE
FERDINAND AVENUE	HONOLULU	2-09-008-000	CITY/STATE
FIRST STREET	EWA	9-07-020-000	STATE
FOREST RIDGE WAY	HONOLULU	2-05-014-000	STATE
FORT BARRETT ROAD	EWA	9-01-016-000	STATE
FORT STREET	HONOLULU	2-01-001-000	STATE/PRIVATE
FOURTH AVENUE	HONOLULU	3-02-002-000	CITY/STATE/PRIVATE
FOURTH STREET	EWA	9-07-021-000	STATE
FRANKLIN AVENUE	EWA	9-07-001-000	STATE
GLEN AVENUE	WAHIAWA	7-05-020-000	CITY/STATE
GORE WAY	HONOLULU	2-09-010-000	STATE
GREEN STREET	HONOLULU	2-01-039-000	STATE
GRETCHEN LANE	HONOLULU	1-08-001-000	STATE/PRIVATE
GULICK AVENUE	HONOLULU	1-02-011-000	CITY/STATE/PRIVATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
HAENA DRIVE	HONOLULU	2-08-020-000	STATE
HAKAKA PLACE	HONOLULU	3-01-045-000	STATE
HAKAKA STREET	HONOLULU	3-01-045-000	STATE
HAKIMO ROAD	WAIANAЕ	8-07-007-000	STATE
HALA DRIVE	HONOLULU	1-06-027-000	CITY/STATE/PRIVATE
HALAWA HEIGHTS ROAD	EWA	9-09-010-000	CITY/STATE
HALEAHI ROAD	WAIANAЕ	8-05-005-000	STATE
HALEIKI PLACE	KOOLAUPOKO	4-01-032-000	STATE
HALEIWA ROAD	WAIALUA	6-06-006-000	CITY/STATE/PRIVATE
HALEKAUWILA STREET	HONOLULU	2-01-013-000	CITY/STATE/PRIVATE
HALEKOU ROAD	KOOLAUPOKO	4-05-097-000	CITY/STATE
HALONA ROAD	WAIANAЕ	8-06-012-000	STATE
HALULU WAY	HONOLULU	2-08-022-000	STATE
HANAKEALOHA PLACE	HONOLULU	3-04-004-000	STATE/PRIVATE
HANALULU PLACE	KOOLAUPOKO	4-01-032-000	STATE
HARDING AVENUE	HONOLULU	2-07-029-000	CITY/STATE
HART STREET	HONOLULU	1-02-005-000	CITY/STATE/PRIVATE
HASSINGER STREET	HONOLULU	2-04-019-000	STATE
HAUULA HOMESTEAD ROAD	KOOLAULOА	5-04-005-000	STATE
HEEN WAY	EWA	9-09-019-020	STATE
HELECONIA PLACE	EWA	9-09-038-000	CITY/STATE
HELEMANO STREET	HONOLULU	1-08-029-000	STATE
HERBERT STREET	HONOLULU	3-01-006-000	CITY/STATE
HEULU STREET	HONOLULU	2-04-024-000	STATE/PRIVATE
HIHIMANU STREET	KOOLAUPOKO	4-01-006-000	CITY/STATE
HIKIMOЕ STREET	EWA	9-04-014-000	CITY/STATE/PRIVATE
HILLSIDE AVENUE	HONOLULU	2-09-015-000	STATE
HILU STREET	KOOLAUPOKO	4-01-005-000	STATE
HINALEA STREET	KOOLAUPOKO	4-01-006-000	STATE
HOALUA STREET	KOOLAULOА	5-09-001-000	STATE
HOAPILI LANE	HONOLULU	1-06-002-000	STATE/PRIVATE
HOBRON LANE	HONOLULU	2-06-010-000	CITY/STATE/PRIVATE
HOENUI STREET	HONOLULU	1-03-011-000	STATE
HOLEWAI STREET	KOOLAUPOKO	4-05-007-000	CITY/STATE
HOMESTEAD ROAD	WAIANAЕ	8-05-004-000	STATE
HOOKUI STREET	HONOLULU	2-02-014-000	STATE
HOOLULU STREET	HONOLULU	3-01-006-000	STATE
HOOMAHA WAY	HONOLULU	2-09-005-000	STATE
HOOMAИKAI STREET	HONOLULU	1-08-028-000	STATE
HOPENA WAY	HONOLULU	2-09-012-000	STATE
HOTEL STREET	HONOLULU	1-07-003-000	CITY/STATE
HUALI STREET	HONOLULU	2-02-003-000	STATE
HUGH STREET	EWA	9-07-020-000	CITY/STATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
HULA STREET	EWA	9-04-011-000	STATE
MUNNEWELL PLACE	HONOLULU	2-08-022-000	STATE
MUNNEWELL STREET	HONOLULU	2-08-016-000	STATE/PRIVATE
MUNTER STREET	HONOLULU	3-01-005-000	STATE
HYDE STREET	HONOLULU	2-08-022-000	STATE
IMOLENA PLACE	HONOLULU	1-08-020-000	CITY/STATE
IMOLENA STREET	HONOLULU	1-08-020-000	STATE
ILIMA DRIVE	HONOLULU	1-08-035-000	CITY/STATE
IOLANI AVENUE	HONOLULU	2-01-021-000	STATE
IWAHO PLACE	HONOLULU	1-04-013-000	STATE
IWILEI ROAD	HONOLULU	1-05-008-000	STATE
JARRETT STREET	HONOLULU	1-05-009-000	STATE
JARRETT WHITE ROAD	HONOLULU	1-01-037-000	STATE/PRIVATE
JOHNSON ROAD	KOOLAUPOKO	4-09-003-000	STATE
JUDD STREET	HONOLULU	2-02-010-000	CITY/STATE/PRIVATE
KAHAH STREET	HONOLULU	2-07-016-000	CITY/STATE/PRIVATE
KAALA PLACE	HONOLULU	2-09-005-000	STATE
KAALA STREET	HONOLULU	2-09-002-000	STATE
KAALA WAY	HONOLULU	2-09-005-000	STATE
KAAMOOLOA ROAD	WAIALUA	6-06-019-000	CITY/STATE
KAHALA AVENUE	HONOLULU	3-01-040-000	CITY/STATE
KAHAUUKI PLACE	HONOLULU	1-03-001-000	CITY/STATE (SCHOOL)
KAHAUUKI STREET	HONOLULU	1-03-001-000	STATE
KAHAUOLA STREET	KOOLAULOA	5-09-001-000	STATE
KAHIKO STREET	KOOLAUPOKO	4-05-054-000	STATE
KAIKOO PLACE	HONOLULU	3-01-041-000	CITY/STATE
KAILI STREET	HONOLULU	1-03-004-000	STATE
KAIMAKANI STREET	EWA	9-09-029-000	CITY/STATE
KAIMANAHILA STREET	HONOLULU	3-01-046-000	STATE
KAIMI WAY	HONOLULU	2-09-006-000	STATE
KAIMUKI AVENUE	HONOLULU	2-07-030-000	CITY/STATE/PRIVATE
KAKELA IKI PLACE	HONOLULU	2-08-019-000	STATE
KALAHEO AVENUE	KOOLAUPOKO	4-03-022-000	CITY/STATE
KALAIOPUA PLACE	HONOLULU	2-05-014-000	STATE
KALAIWA WAY	HONOLULU	1-03-022-000	STATE
KALAKAUA AVENUE	HONOLULU	2-04-005-000	CITY/STATE/PRIVATE
KALANI STREET	HONOLULU	1-02-009-000	CITY/STATE/PRIVATE
KALAUNU STREET	HONOLULU	1-03-022-000	STATE
KALAUOKALANI WAY	HONOLULU	2-03-022-000	CITY/STATE
KALAWAHINE PLACE	HONOLULU	2-04-034-000	STATE
KALEI ROAD	HONOLULU	2-08-026-000	CITY/STATE/PRIVATE
KALELE ROAD	HONOLULU	2-08-026-000	STATE
KALENA DRIVE	HONOLULU	1-03-022-000	STATE
KALEPA STREET	HONOLULU	1-06-012-000	STATE/PRIVATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
KALEWA LOOP	HONOLULU	1-01-070-000	STATE
KALIA ROAD	HONOLULU	2-06-005-000	CITY/STATE/USA
KALIKIMAKA STREET	HONOLULU	1-08-028-000	STATE
KALOA WAY	HONOLULU	2-08-020-000	STATE
KALUAOPALENA STREET	HONOLULU	1-02-026-000	STATE
KAMAMALU AVENUE	HONOLULU	2-02-003-000	STATE
KAMEHAMEHA AVENUE	HONOLULU	2-09-002-000	STATE
KAMEHAMEHA IV ROAD	HONOLULU	1-03-021-000	CITY/STATE/PRIVATE
KAMENANI STREET	HONOLULU	1-05-003-000	STATE
KAPAHULU AVENUE	HONOLULU	2-07-029-000	CITY/STATE
KAPALAI ROAD	KOOLAUPOKO	4-05-071-000	STATE/PRIVATE
KAPIOLANI BOULEVARD	HONOLULU	2-01-034-000	CITY/STATE
KAUAI STREET	HONOLULU	1-08-014-000	CITY/STATE
KAUHAHE STREET	HONOLULU	2-02-015-000	STATE
KAUHIHAU PLACE	EWA	9-08-020-000	STATE
KAULU STREET	KOOLAUPOKO	4-01-006-000	STATE
KAULULAAU STREET	HONOLULU	2-05-021-000	STATE
KAWAILOA ROAD	KOOLAUPOKO	4-03-009-000	STATE
KAWAO AVENUE	WAIANAЕ	8-09-004-000	STATE
KE IKI ROAD	KOOLAULOА	5-09-003-000	STATE
KE NUI ROAD	KOOLAULOА	5-09-002-000	STATE
KE WAENA ROAD	KOOLAULOА	5-09-003-000	STATE
KEAAHALA ROAD	KOOLAUPOKO	4-05-020-000	STATE
KEALONA STREET	HONOLULU	1-03-007-000	STATE/PRIVATE
KEALOHANUI STREET	WATALUA	6-07-001-000	STATE/PRIVATE
KEANA ROAD	KOOLAUPOKO	4-05-048-000	CITY/STATE
KEAULANA AVENUE	WAIANAЕ	8-09-006-000	STATE
KEEALOMOKU STREET	HONOLULU	2-03-018-000	CITY/STATE/PRIVATE
KEHENA PLACE	HONOLULU	2-08-024-000	STATE
KEKAULIKE STREET	HONOLULU	1-07-002-000	STATE/PRIVATE
KELIKOI STREET	HONOLULU	2-01-060-000	STATE
KELLER ROAD	HONOLULU	2-08-000-000	STATE
KEOPUA STREET	HONOLULU	2-02-015-000	STATE
KEWALO STREET	HONOLULU	2-04-021-000	STATE
KIKOWAENA STREET	HONOLULU	1-01-035-000	CITY/STATE
KIHAU STREET	HONOLULU	2-01-040-000	STATE
KIONAOLE ROAD	KOOLAUPOKO	4-05-035-000	STATE
KOA MOALI PLACE	KOOLAUPOKO	4-01-023-000	STATE
KOALI ROAD	HONOLULU	2-08-027-000	STATE/PRIVATE
KOKEA STREET	HONOLULU	1-05-020-000	CITY/STATE
KOKO HEAD AVENUE	HONOLULU	3-03-007-000	CITY/STATE
KOKOKAHI PLACE	KOOLAUPOKO	4-05-031-000	CITY/STATE
KOLONANE PLACE	HONOLULU	2-05-023-000	STATE
KOULA STREET	HONOLULU	2-01-060-000	CITY/STATE/PRIVATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
KRAUSS STREET	HONOLULU	2-02-015-000	STATE
KUAHELANI AVENUE	EWA	9-05-016-000	CITY/STATE/PRIVATE
KUAHINE DRIVE	HONOLULU	2-09-015-000	STATE
KUAKINI STREET	HONOLULU	2-02-008-000	CITY/STATE
KUHONU PLACE	KOOLAUPOKO	4-05-006-000	CITY/STATE
KULA STREET	HONOLULU	1-08-021-000	CITY/STATE/PRIVATE
KULATWI STREET	KOOLAUPOKO	4-01-019-000	STATE
KULAMANU PLACE	HONOLULU	3-01-040-000	STATE
KULAMANU STREET	HONOLULU	3-01-040-000	STATE
KULIQUOU ROAD	HONOLULU	3-08-003-000	CITY/STATE
KUNAWAI LANE	HONOLULU	1-07-000-000	CITY/STATE/PRIVATE
KUWALE ROAD	WAIANAЕ	8-06-006-000	STATE
KUWILI STREET	HONOLULU	1-05-007-000	CITY/STATE
LADD LANE	HONOLULU	2-02-012-000	STATE
LAI ROAD	HONOLULU	3-04-012-000	CITY/STATE/PRIVATE
LANAKILA AVENUE	HONOLULU	1-06-007-000	STATE/PRIVATE
LANAKILA AVENUE	EWA	9-07-005-000	STATE
LANIHULI DRIVE	HONOLULU	2-09-001-000	STATE
LANIWAИ AVENUE	EWA	9-07-005-000	STATE
LANUI PLACE	HONOLULU	1-08-028-000	STATE
LAULIMA STREET	EWA	9-09-044-000	STATE
LAUMAKA STREET	HONOLULU	1-02-026-000	STATE
LAUMILO STREET	KOOLAUPOKO	4-01-004-000	STATE
LELE STREET	HONOLULU	1-01-070-000	STATE
LEWERS STREET	HONOLULU	2-06-003-000	CITY/STATE
LIKELIKE STREET	HONOLULU	2-01-025-000	STATE
LIKO LANE	HONOLULU	2-02-016-000	STATE
LILIPONA ROAD	KOOLAUPOKO	4-06-001-000	CITY/STATE
LILOA RISE	HONOLULU	2-09-006-000	STATE
LINOHAU WAY	HONOLULU	2-09-001-000	STATE
LIPTOMA WAY	HONOLULU	2-09-007-000	STATE
LOLENA STREET	HONOLULU	1-06-011-000	STATE/PRIVATE
LOWELLA AVENUE	EWA	9-07-007-000	STATE
LUALUALEI HOMESTEAD ROAD	WAIANAЕ	8-06-001-000	STATE
LUKANELA STREET	KOOLAUPOKO	4-01-022-000	STATE
LULUKU ROAD	KOOLAUPOKO	4-05-076-000	CITY/STATE
LUNALILO STREET	HONOLULU	2-01-040-000	STATE
LUNALILO TERRACE	HONOLULU	2-01-040-000	STATE/PRIVATE
LUSITANA STREET	HONOLULU	2-01-036-000	CITY/STATE
MAAKUA ROAD	KOOLAULOA	5-04-005-000	STATE
MADEIRA STREET	HONOLULU	2-02-003-000	STATE
MAEMAE LANE	HONOLULU	1-08-005-000	STATE/PRIVATE
MAGAZINE STREET	HONOLULU	2-04-016-000	STATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
MAGELLAN AVENUE	HONOLULU	2-01-021-000	CITY/STATE
MAHIKU PLACE	KOOLAUPOKO	4-01-008-000	STATE
MAHINUI ROAD	KOOLAUPOKO	4-05-037-000	CITY/STATE
MAHOLE STREET	HONOLULU	1-01-033-000	CITY/STATE
MAILE WAY	HONOLULU	2-08-022-000	STATE
MAILIILII ROAD	WAIANAЕ	8-06-001-000	STATE
MAKAAINANA STREET	KOOLAUPOKO	4-01-016-000	STATE
MAKAHA VALLEY ROAD	WAIANAЕ	8-04-011-000	STATE/PRIVATE
MAKALII PLACE	KOOLAUPOKO	4-03-011-000	STATE/PRIVATE
MAKEE ROAD	HONOLULU	2-06-027-000	CITY/STATE
MAKIKI HEIGHTS DRIVE	HONOLULU	2-04-026-000	STATE/PRIVATE
MALOLO STREET	KOOLAUPOKO	4-01-007-000	STATE
MANANA STREET	KOOLAUPOKO	4-01-005-000	STATE
MANELE STREET	HONOLULU	2-01-038-000	STATE
MANO AVENUE	WAIANAЕ	8-09-003-000	STATE
MANGA ROAD	HONOLULU	2-09-030-000	CITY/STATE/PRIVATE
MARIN STREET	HONOLULU	1-07-002-000	STATE
MARQUES STREET	HONOLULU	2-08-016-000	CITY/STATE/PRIVATE
MARTHA STREET	HONOLULU	3-01-006-000	STATE
MAUNAIHI PLACE	HONOLULU	2-04-016-000	STATE
MAUNAKEA STREET	HONOLULU	1-07-002-000	CITY/STATE
MAUNALAHA ROAD	HONOLULU	2-05-020-000	STATE
MAUNALUA AVENUE	HONOLULU	3-08-004-000	STATE
MCCULLY STREET	HONOLULU	2-06-014-000	CITY/STATE
MCKINLEY STREET	HONOLULU	2-09-001-000	STATE/PRIVATE
MEKIA STREET	KOOLAUPOKO	4-01-022-000	STATE
MERCHANT STREET	HONOLULU	2-01-002-000	CITY/STATE
MEYERS STREET	HONOLULU	1-03-011-000	STATE
MIKILUA ROAD	WAIANAЕ	8-06-014-000	STATE
MILLER STREET	HONOLULU	2-01-023-000	CITY/STATE
MILO LANE	HONOLULU	2-02-002-000	STATE
MISSION LANE	HONOLULU	2-01-032-000	CITY/STATE
MOHALA WAY	HONOLULU	2-09-007-000	STATE
MOKIHANA STREET	HONOLULU	3-01-003-000	STATE
MONSARRAT AVENUE	HONOLULU	3-01-043-000	CITY/STATE
MOOHEAU AVENUE	HONOLULU	3-01-006-000	STATE
MOOLE STREET	KOOLAUPOKO	4-01-034-000	CITY/STATE
NAKUINA STREET	HONOLULU	1-03-004-000	STATE/PRIVATE
NALUAHI STREET	WAILUA	6-07-005-000	STATE
NAPUANANI ROAD	EWA	9-09-067-000	STATE/PRIVATE
NAWAAKOA PLACE	EWA	9-04-011-000	STATE
NAWAAKOA STREET	EWA	9-04-011-000	CITY/STATE
NEHOA STREET	HONOLULU	2-04-030-000	CITY/STATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
NENUE STREET	KOOLAUPOKO	4-01-007-000	STATE
NOELA STREET	HONOLULU	3-01-043-000	STATE/PRIVATE
NONOKIO STREET	KOOLAUPOKO	4-01-026-000	STATE
NOTLEY STREET	HONOLULU	1-03-011-000	STATE
NUTRIDGE STREET	HONOLULU	2-05-000-000	STATE
MUJANU AVENUE	HONOLULU	2-01-002-000	CITY/STATE
MUJANU PALI DRIVE	HONOLULU	2-02-050-000	STATE
DAHU AVENUE	HONOLULU	2-08-022-000	CITY/STATE
OHAI LANE	HONOLULU	2-02-010-000	STATE
OHE STREET	HONOLULU	2-01-052-000	CITY/STATE/PRIVATE
OHELO LANE	HONOLULU	2-02-002-000	STATE/PRIVATE
OHONIA STREET	HONOLULU	1-01-004-000	CITY/STATE
OLD KALANIANOLE ROAD	KOOLAUPOKO	4-02-005-000	STATE
OLD PALAMA STREET	HONOLULU	1-07-044-000	STATE
OLD PALI ROAD	HONOLULU	1-09-004-000	STATE
OLU STREET	HONOLULU	3-01-003-000	STATE
OMILO LANE	HONOLULU	1-03-001-000	STATE/PRIVATE
OOPUOLA STREET	KOOLAULOA	5-09-001-000	STATE
OWENE STREET	HONOLULU	1-03-012-000	CITY/STATE
PAALAA ROAD	WAIALUA	6-06-015-000	CITY/STATE/PRIVATE
PACIFIC HEIGHTS ROAD	HONOLULU	2-02-020-000	CITY/STATE
PAHEEHEE ROAD	WAIANAЕ	8-06-003-000	STATE
PAHU STREET	EWA	9-04-011-000	CITY/STATE/USA
PAIKAU STREET	HONOLULU	3-01-048-000	CITY/STATE
PALAMA STREET	HONOLULU	1-07-031-000	CITY/STATE
PALEKAUA PLACE	HONOLULU	3-01-045-000	STATE
PALEKAUA STREET	HONOLULU	3-01-045-000	STATE
PALIMA PLACE	HONOLULU	3-02-010-047	CITY/STATE/PRIVATE
PALIMALU DRIVE	HONOLULU	1-09-009-000	STATE
PALIULI STREET	HONOLULU	3-01-003-000	STATE
PALM AVENUE	EWA	9-07-011-000	STATE
PALOLO AVENUE	HONOLULU	3-03-002-000	CITY/STATE
PANALAAU STREET	HONOLULU	1-06-008-000	STATE
PAGA PLACE	HONOLULU	2-06-008-000	CITY/STATE
PAPU CIRCLE	HONOLULU	3-01-044-000	STATE
PARKER PLACE	HONOLULU	2-09-012-000	STATE
PAUHI STREET	HONOLULU	2-01-003-000	STATE
PAUOA ROAD	HONOLULU	2-02-009-000	CITY/STATE/PRIVATE
PELE STREET	HONOLULU	2-01-021-000	CITY/STATE
PENSACOLA STREET	HONOLULU	2-03-011-000	CITY/STATE
PIIKOI STREET	HONOLULU	2-04-030-000	CITY/STATE
PINE STREET	HONOLULU	1-05-009-000	STATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
PINKHAM STREET	HONOLULU	1-03-003-000	STATE/PRIVATE
PLANTATION ROAD	WAIANAЕ	8-05-010-000	CITY/STATE
POALIMA STREET	KOOLAUPOKO	4-01-022-000	STATE
POKA PLACE	HONOLULU	3-01-047-000	STATE
POKA STREET	HONOLULU	3-01-047-000	STATE
POKAI BAY STREET	WAIANAЕ	8-05-008-000	STATE
POMAIKAI PLACE	KOOLAUPOKO	4-05-104-000	STATE
POOLEKA STREET	HONOLULU	3-04-003-000	STATE
POPE ROAD	HONOLULU	2-08-000-000	STATE
POPOIA ROAD	KOOLAUPOKO	4-03-010-083	CITY/STATE
PROSPECT STREET	HONOLULU	2-02-013-000	STATE
PUALANI WAY	HONOLULU	2-06-028-000	CITY/STATE/PRIVATE
PUNAHAI ROAD	WAIANAЕ	8-06-006-000	STATE/PRIVATE
PUKELE AVENUE	HONOLULU	3-03-043-000	CITY/STATE
PUNAHOU STREET	HONOLULU	2-03-023-000	CITY/STATE/PRIVATE
PUNCHBOWL STREET	HONOLULU	2-01-022-000	CITY/STATE
PUCOMAINA DRIVE	HONOLULU	2-02-007-000	STATE
PUPUKEA ROAD	KOOLAULOA	5-09-005-000	STATE
PUUHALE ROAD	HONOLULU	1-02-007-000	CITY/STATE/PRIVATE
PUUHULU ROAD	WAIANAЕ	8-06-011-000	STATE
PULMAKANI STREET	EWA	9-09-030-000	STATE
PULUNUI AVENUE	HONOLULU	1-08-014-000	STATE
PULUONE STREET	KOOLAUPOKO	4-01-004-000	STATE
QUEEN EMMA SQUARE ROAD	HONOLULU	2-01-018-000	STATE/PRIVATE
QUEEN STREET	HONOLULU	2-01-013-000	CITY/STATE/PRIVATE
RENTON ROAD	EWA	9-01-017-000	CITY/STATE/PRIVATE
RICHARD LANE	HONOLULU	1-03-002-000	STATE/PRIVATE
RICHARDS STREET	HONOLULU	2-01-027-000	CITY/STATE
RIVER STREET	HONOLULU	1-07-002-000	CITY/STATE
ROAD "A"	EWA	9-07-020-000	STATE
ROBINSON AVENUE	EWA	9-07-005-000	STATE
ROBINSON LANE	HONOLULU	1-08-003-000	STATE
ROUND TOP DRIVE	HONOLULU	2-05-019-000	STATE
SAN ANTONIO AVENUE	HONOLULU	2-02-013-000	STATE
SECOND STREET	EWA	9-07-020-000	CITY/STATE
SIERRA DRIVE	HONOLULU	3-03-005-000	CITY/STATE
SIXTH AVENUE	HONOLULU	3-03-003-000	CITY/STATE/PRIVATE
SMITH STREET	HONOLULU	1-07-002-000	STATE
SPENCER STREET	HONOLULU	2-01-039-000	STATE
ST. JOHN'S ROAD	WAIANAЕ	8-07-002-000	STATE/PRIVATE
SUMMER STREET	HONOLULU	3-08-002-000	STATE
TANTALUS DRIVE	HONOLULU	2-02-001-000	STATE
TENTH AVENUE	HONOLULU	3-02-005-000	CITY/STATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
TENTH AVENUE PLACE	HONOLULU	3-04-003-000	STATE
THIRD STREET	EWA	9-07-021-000	STATE
THURSTON AVENUE	HONOLULU	2-04-017-000	STATE
UHU STREET	HONOLULU	1-03-007-000	STATE/PRIVATE
ULUKAHIKI STREET	KOOLAUPOKO	4-02-013-000	STATE
UN-NAMED - NATIONAL MEMORIAL CEMETERY - R/W	HONOLULU	2-02-006-000	STATE
UN-NAMED - OFF ALEWA DRIVE	HONOLULU	1-08-023-000	STATE
UN-NAMED - OFF ALEWA DRIVE	HONOLULU	1-08-034-011	STATE
UN-NAMED - OFF AULII STREET	HONOLULU	1-08-020-000	STATE
UN-NAMED - OFF ADWAIOLIMU STREET	HONOLULU	2-02-014-000	STATE
UN-NAMED - OFF CRATER ROAD	HONOLULU	3-02-036-000	STATE
UN-NAMED - OFF FARRINGTON HIGHWAY	MAIANAE	8-07-008-000	STATE
UN-NAMED - OFF KAM HIGHWAY	KOOLAULOA	5-03-001-040	STATE
UN-NAMED - OFF KOA KAHIKO STREET	KOOLAUPOKO	4-05-061-000	STATE
UN-NAMED - OFF KULA STREET	HONOLULU	1-08-020-000	STATE
UN-NAMED - OFF KUWALE ROAD	MAIANAE	8-06-004-000	STATE
UN-NAMED - OFF MOANALUA ROAD	EWA	9-09-010-000	STATE
UN-NAMED - OFF PUOWAINA DRIVE	HONOLULU	2-02-006-000	STATE
UN-NAMED - OFF SOUTH KALAHED AVENUE	KOOLAUPOKO	4-03-011-074	STATE
UN-NAMED - OFF UNIVERSITY AVENUE	HONOLULU	2-09-003-000	STATE
UPAPALU DRIVE	EWA	9-09-044-000	STATE/PRIVATE
VARNEY CIRCLE	HONOLULU	2-08-023-000	STATE
WAHINEPEE STREET	KOOLAULOA	5-05-009-000	STATE/PRIVATE
WAI MANI WAY	HONOLULU	2-06-028-000	CITY/STATE
WAIHOLE HOMESTEAD ROAD	KOOLAUPOKO	4-08-008-000	STATE/PRIVATE
WAIHOLE VALLEY ROAD	KOOLAUPOKO	4-08-009-000	STATE/PRIVATE

ROADS JURISDICTION

STREET NAMES	LOCATION	TAX KEY	JURISDICTION
WAIANAЕ VALLEY ROAD	WAIANAЕ	8-05-001-000	STATE
WAIANA ROAD	EWA	9-06-003-000	CITY/STATE/PRIVATE
WAIKALOA STREET	KOOLAUPOKO	4-01-012-023	STATE
WAIKALUA ROAD	KOOLAUPOKO	4-05-018-000	CITY/STATE
WAIKAPOKI ROAD	KOOLAUPOKO	4-05-011-000	STATE
WAIKELE ROAD	EWA	9-04-011-000	CITY/STATE
WAIKULAMA STREET	KOOLAULOА	5-04-015-000	STATE
WAIKUPANAHA STREET	KOOLAUPOKO	4-01-025-000	CITY/STATE
WAILEA STREET	KOOLAUPOKO	4-01-004-000	STATE
WAIOMAO ROAD	HONOLULU	3-04-018-000	CITY/STATE
WAIPIA LANE	HONOLULU	1-07-032-091	STATE/PRIVATE
WAIPAHU STREET	EWA	9-04-051-000	CITY/STATE
WALU WAY	HONOLULU	2-09-002-000	STATE
WEST LOCH ACCESS ROAD	EWA	9-01-010-000	STATE/USA
WHITING STREET	HONOLULU	2-02-013-000	CITY/STATE
WILDER AVENUE	HONOLULU	2-08-007-000	CITY/STATE
WILLIAMS STREET	HONOLULU	3-01-005-000	STATE
WINAM AVENUE	HONOLULU	2-07-033-000	CITY/STATE
WOLTER LANE	HONOLULU	1-06-003-000	STATE
WYLLIE STREET	HONOLULU	1-08-016-000	STATE
YOUNG STREET	HONOLULU	2-04-002-000	CITY/STATE

DISPUTED ROADS ON OAHU
PER STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>	<u>ATTACHMENT "A"</u> <u>Compiled December 31</u> <u>1979</u> <u>revised 7/18/86</u> <u>MILEAGE</u>
✓AHE PLACE	3-4-03	
AHIAHI PLACE	1-6-09	
2) AHIAHI STREET	1-6-09	LANAKILA EMERGENCY HOMES TO LANAKILA STREET
5) ✓ALAIHI STREET	4-1-05	
ALAPAI STREET	2-1-42	
1) ALAPIO ROAD	5-9-17 & 18	
✓ALOILOI STREET	4-1-07	
1) ✓ALOKELE STREET	1-5-24	LOT B-2-A
	1-5-25:01	LOT B-1
ANIANIKU STREET	2-4-42	
✓AOKEA PLACE	1-1-03	
AOLELE STREET	1-1-03	
AOLEWA PLACE	1-1-03	
✓AOPOKO PLACE	1-1-03	
AOWENA PLACE	1-1-03	
✓AOWENA WAY	1-1-03	
✓CAMPUS ROAD	2-8-23	
1,3) ✓CAPTAIN COOK AVENUE	2-1-38 & 39	ALAPAI ST TO MANELE ST
✓CHANNEL STREET	2-1-28	
✓CHESTER WAY	9-9-19:21	
✓CORREA ROAD	2-3-08	
DONAGHO ROAD	2-8-23	
ECKART ROAD	2-8-23	
EDMONDSON ROAD	2-8-23	
5) ✓ENUKAI STREET	4-1-07	
✓ELLIOT STREET	1-1-03	
7) EWA WEST LOCH ROAD	9-1-10	(Control & Management by USA)
✓HAKAKA PLACE	3-1-45	
✓HAKAKA STREET	3-1-45	
✓HAKIMO ROAD	8-7-07	

CROWN OR STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>	<u>MILEAGE</u>
✓HALEIKI PLACE	4-1-32	
✓HALONA ROAD	8-6-12 & 10	
2) ✓HANAKEALOHA PLACE	3-4-04	BETWN 10TH AVE & TK: 3-4-04:19
✓HANALULU PLACE	4-1-32	
HAUPOU PLACE	1-3-16	(PVT)
HAYDEN STREET	3-1-09	(PVT)
1,5) ✓HIHIMANU STREET	4-1-06	KAL. HWY TO LAUMILO ST
	4-1-26	WAIKUPANAHUA ST TO OLUOLU ST
5) ✓HILU STREET	4-1-05	
5) ✓HINALEA STREET	4-1-06	KAL. HWY TO LAUMILO ST
1,2) ✓HOBSON LANE	2-6-10	MAKAI OF ALA MOANA BLVD
✓HOMESTEAD ROAD	8-5-04	FRONTING PARCELS 20 & 21
1) ✓HOOHULU STREET	9-7-40	HOOMALU TO HOOHULU PLACE
1) ✓HOOMALU STREET	9-7-32	LOT-405
	9-7-39 & 40	LOTS-368-A & 368-B
1) ✓HONAPAA STREET	3-2-63	LOT-13
5) ✓IAUKEA STREET	2-2-15	
1,2) ✓JUDD STREET	1-8-01	NUUANU AVE TO APIO LANE
✓KAAUIKI PLACE	4-1-32	
✓KAAUMANA PLACE	4-1-32	
✓KAAUMOANA PLACE	4-1-32	
1) ✓KAHAUIKI PLACE	1-3-01	FOR FERN SCHOOL
✓KAHUAPAANI STREET	9-9-02	
✓KAIMANAHILA STREET	3-1-46	
✓KALAIWA WAY	1-3-22	
✓KALAONU STREET	1-3-22	
✓KALENA DRIVE	1-3-22	
2) ✓KALEPA STREET	1-6-12	ALONG PUUKAMALU CEMETERY
✓KAMANAOIO PLACE	4-1-32	
1,3) ✓KANEOME BAY DRIVE	4-4-14	REMAINDER OF STATE HWY ON TK: 4-4-14
✓KAULU STREET	4-1-06	(To end of TK: 4-4-14:01)
✓KEAAHALA ROAD	4-5-20	

CROWN OR STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>	<u>MILEAGE</u>
✓KELLER ROAD (UH)	2-8-23	
✓KE-NUI ROAD	5-9-02	
)}---KOHOU-STREET-----	1-5-20+06	
KOKEA PLACE	1-5-17	
) KOKEA STREET	1-5-20	1-5-20:09 TO DEADEND
✓KRAUSS STREET	2-2-15	
KUHIMANA PLACE	4-1-34:93	
) ✓KUHONU PLACE	4-5-06	ABUTS TK: 4-5-06:59 & 60
) ✓KULAIWI STREET	4-1-08	
KUMUULA STREET	4-1-12	
✓KUWALE ROAD	8-6-06	
) LAGOON DRIVE	1-1-04	KOAPAKA ST TO DEADEND
,2) LA-I ROAD	3-4-21	TK: 3-4-21:44 to 3-4-21:17
,6) LANAKILA AVENUE (Kapalama)	1-6-07:68	
✓LAUMILO STREET	4-1-04	
✓LILIPUNA ROAD	4-5-13	KAM HWY TO TK: 4-5-13:08
	4-5-14	
✓LUALUALEI HOMESTEAD ROAD	8-6-01	
	8-6-03	
) ✓HAEMAE LANE	1-8-05	END OF TK: 1-8-05:20 TO DEADEND
) MAHINUI ROAD	4-5-37	ALL STATE EXCEPT LOT 68 (City)
MAILIILII ROAD	8-6-01	
MALOLO STREET	4-1-07	
MANANA STREET	4-1-05	
MANELE STREET	2-1-38	
6) MONSARRAT AVENUE	3-1-43	PART-AVE-TO KALAKAUA AVE TO LEAHI
MOOLE STREET	4-1-12	LOT R-1-A
✓MAPUANANI ROAD	9-9-67	LOT 19 TO AIEA HTS DRIVE
✓MENEUE STREET	4-1-07	
NEW JERSEY AVENUE	3-4-08	
✓NONOKIO STREET	4-1-26	

CROWN OR STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>	<u>MILEAGE</u>
OLD GOVERNMENT ROAD	8-5-12	
3) PACIFIC STREET	1-5-13	Remainder portion of STATE HWY
✓PAHEEHEE ROAD	8-6-03	
1) ✓PAIKAU STREET	3-1-47	POKA ST TO KAHALA AVE
✓PALEKAUA PLACE	3-1-45	
✓PALEKAUA STREET	3-1-45	
✓PALIMA PLACE	3-2-10:47	
PALOA PLACE	4-1-32	
✓POKA PLACE	3-1-47	
✓POKA STREET	3-1-47	
✓POPE ROAD (UH)	2-8-23	
✓PUHAWAI ROAD	8-6-06	
✓PUUHULU ROAD	8-6-11	
✓PUUONE STREET	4-1-04	
2) ✓RICHARD LANE	1-3-09	LUNALILO FREEWAY TO END
1) ✓RICHARDS STREET	2-1-27	ALA MOANA BLVD TO HALEKAUWILA ST
2) ✓ST. JOHN'S ROAD	8-7-02	FARRINGTON HWY TO KULAAUPONI ST
1,2,3) WAIKA ROAD	2-7-27	See map in Land Division
✓WAIANAЕ VALLEY ROAD	8-5-01	
✓WAIKALOA STREET	4-1-12	
1) ✓WAIKELE ROAD	9-4-11	FARRINGTON HWY TO HULA ST
1) ✓WAIKUPANAHA STREET	4-1-26	AHIKI ST TO NIHIMANU ST
✓WAILEA STREET	4-1-04	
1) ✓WAIOMAO ROAD	3-4-15	

CROWN OR STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>	
✓AALIAMANU PLACE	2-5-23	
✓ADAMS LANE	2-1-10	
✓AHUI STREET	2-1-58	ALA MOANA BLVD TO DEADEND
✓AIEA HEIGHTS DRIVE (POR)	9-9-09	
✓AINAKEA WAY	2-6-28	
✓ALA KOA STREET	4-1-16, 03	
✓ALALA ROAD	4-3-09	
✓ALAPAI STREET	2-1-41 2-1-39 2-2-04	BERETANIA ST TO KINAU ST LUNALILO FREEWAY TO PROSPECT PROSPECT TO DEADEND
✓ALAPIO ROAD	5-9-17	
✓ALEWA DRIVE	1-8-24, 23	
✓ALEXANDER STREET	2-8-12	LUNALILO FREEWAY TO WILDER AVE
✓AULOA ROAD	4-2-07	
✓AUWAIOLIMU STREET	2-2-13	
✓AZORES STREET	2-2-07	
✓BATES STREET	1-7-11	NUUANU AVE TO AUMOAE
✓BIJOU LANE	2-1-03	
BINGHAM STREET	2-8-08	ISENBERG TO PUNAHOU
✓CAPTAIN COOK AVENUE	2-1-35	LUSITANA TO FREEWAY
✓CONCORDIA STREET	2-2-07	
✓DIAMOND HEAD ROAD	3-1-47 3-1-39 3-1-34	PAIKAU TO KAHALA AVE KAHALA AVE TO BEACH ROAD COCONUT AVE TO PONI MOI RD
✓DOLE STREET	2-8-13	METCALF TO ALEXANDER
✓EMERSON STREET	2-1-39	
✓ENA ROAD	2-6-07	
✓ERNEST STREET	2-4-17	

CROWN OR STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>
FARR LANE	1-3-05
✓FOREST RIDGE WAY	2-5-14
FORT-BARRETT-ROAD AKA-PUU-KAPOLEY-RD BARBERS-POINT-ACCESS RD-	9-1-16
FREAR STREET	2-1-38 EXCEPT DEADEND ABUTTING FREEWAY (CITY)
FUNCHAL STREET	2-2-09
"G" ROAD	2-5-21
✓GLEN AVENUE	7-4-17
✓GREEN STREET	2-1-39
✓HALA DRIVE(POR)	1-6-09
✓HALEAHI ROAD	8-5-05
✓HALEIWA ROAD	6-6-15,20 PAALAA KAI BOUNDARY TO WAIALUA BEACH RD
✓HALEKOU ROAD(POR)	4-5-97
✓HARDING AVENUE	2-7-69---- KAPIOLANI-TO-FIRST-AVE 3-2-43 SIXTEENTH TO SEVENTEENTH AVENUES
✓HASSINGER STREET	2-4-19
HAUULA HOMESTEAD ROAD	5-4-05, etc
✓HEEN WAY	9-9-19-20
✓HELECONIA PLACE	9-9-38 PORTION ALONG FREEWAY
✓HELEMANO STREET	1-8-29
✓HEULU STREET	2-4-24,25
HIILANI STREET	2-2-15
✓HILLSIDE AVENUE	2-9-15
✓HOALUA STREET	5-9-01
✓HOLLOWAI STREET	4-5-07
✓HOOKUI STREET	2-2-14
✓HOOMAHA STREET	4-1-16
HOOPULAPULA STREET	4-1-19
✓HOTEL STREET	2-1-42,43 ALAPAI TO WARD
✓HUALI STREET	2-2-3

CROWN OR STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>
✓HUGH STREET	9-7-20 FIRST TO SECOND STREETS
✓HULA STREET	9-4-11
✓HOLENA STREET	1-8-20
✓IOLANI AVENUE	2-1-21,38
✓IWILEI ROAD	1-5-08
✓JARRETT STREET	1-5-09
✓JOHNSON ROAD	4-9-03
KAAMOOLOA AVENUE	6-6-19,23
KAHALA AVENUE	3-1-40,44 DIAMOND HD RD TO BLACK PT RD 3-5-2,3,4 BLACK PT RD TO HUNAKAI ST
✓KAHAUOLA STREET	5-9-01
KAHINANI PLACE-----	4-4-13
✓KAIMUKI AVENUE	2-7-30 KAPAHULU TO TK 2-7-30:32
✓KALAIOPUA PLACE	2-5-14
✓KALAKAUA AVENUE	2-4-05, etc BERETANIA TO PONI MOI
KALAMAKU STREET	2-2-15
KALAU STREET	4-1-30
✓KALEI ROAD	2-8-16 BETWEEN TK 2-8-16 & LOT 18
✓KALELE ROAD	2-8-26
✓KALEWA LOOP	1-1-70
KALIA ROAD	2-6-05 ALA MOANA TO PAOA PL
KAMAMALU STREET	2-2-03,07
✓KAMEHAMEHA IV ROAD	1-3-31 SCHOOL TO LIKELIKE PIO PLACE TO H-1 FREEWAY
KAONOHI STREET	9-8-11 KAMEHAMEHA HWY TO MOANALUA RD
KAPAHU STREET	2-4-2
✓KAPALAI ROAD	4-5-71
✓KAPIOLANI BOULEVARD	2-7-34,etc KALAKAUA TO HARDING 2-7-29 KING TO WAIALAE

CROWN OR STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>	
✓KAUHANE STREET	2-2-15	
✓KAUHIHAU PLACE	9-8-20	
✓KAULULA'AU STREET	2-5-21,22	
KAUWAHI AVENUE	8-9-04	
✓KAWAILOA ROAD	4-3-9,10	
✓KAWAO AVENUE	8-9-04	
✓KEALOHA STREET	1-3-07	NAKUINA ST TO KAM FIELD
✓KEALOHA'NUI STREET	6-7-01,09	
✓KEANA ROAD	4-5-48	
✓KEAULANA AVENUE	8-9-06	
✓KE-IKI ROAD	5-9-03	
✓KELIKOI STREET	2-1-60	
KEOPUA STREET	2-2-15	
✓KINAU STREET	2-1-40, etc	
KING STREET	1-2	MIDDLE-ST-TO-OIA-OVERPASS KAPIOLANI-TO-MANGA-PALOLO-DRN-CANAL H-1-TO-WAIALAE-AVE-
KIONAOLE ROAD	4-5-35	
✓KOALI ROAD	2-8-27	
✓KOA MOALI PLACE	4-1-23	
✓KOKO HEAD AVENUE	3-2-42	HARDING TO PAHOA
✓KOLONAHE PLACE	2-5-23	
KOULA STREET	2-1-60	DEADEND TO ILALO ST
✓KUAHINE DRIVE	2-9-15	
✓KULA STREET	1-8-20	
✓KULIOUOU ROAD	3-8-03	
✓KUNWILI STREET	1-5-07	
✓LADD LANE	2-2-12	
LAUMANIA AVENUE	8-9-06	
LEHUA AVENUE	9-7-03	ROAD A TO CORAL AVE

CROWN OR STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>	
✓LELE STREET	1-1-70	
LEPEKA AVENUE	8-9-05	
✓LIKELIKE STREET	2-1-25	
LILIHA STREET	1-8-15	WYLLIE TO PUUNUI
✓LUNALILO STREET	2-1-40	ALAPAI TO ERNEST
	2-4-14	KEWALO TO KEEAUMOKU
✓LUSITANA STREET	2-1-36	ALAPAI TO PAUOA STREAM
MAAKUA ROAD	5-4-05	
MADEIRA STREET	2-2-03	
MAGELLAN AVENUE	2-1-21	MANELE TO END
MAKAAINANA STREET	4-1-16	
MAKAHIO STREET	4-5-13	LOT 44
MAKEE ROAD	2-6-27,28	
MANO AVENUE	8-9-03,04	
MARIN STREET	1-7-02	
MARTHA STREET	3-1-06,12	
MAUNALANA ROAD	2-5-20	
MCCULLY STREET	2-7-36	ALA WAI TO KAPIOLANI BLVD
MILLER STREET	2-1-22,37	VINEYARD TO FREEWAY
MOREIRA STREET	2-5-21	
✓ROUND TOP DRIVE	2-5-19, etc	
✓TANTALUS DRIVE	2-2; 2-4, etc	
✓WAIPAHU STREET	9-4-51, etc	

CROWN OF STATEATTACHMENT "C"
(Compiled 1/2/86)
revised 7/18/86

<u>ROAD</u>	<u>TAX MAP KEY</u>
NAALE STREET	2-4-42
✓NAWAAKOA PLACE	9-4-11
✓NAWAAKOA STREET	9-4-11 PERPENDICULAR FR DRN CHNL TO KULA ST
✓NEHOA STREET	2-4-28, etc MOTT-SMITH TO PUNAHOU
✓NUUANU AVENUE	2-1-02 NIMITZ TO MERCHANT 2-1-03, etc. HOTEL TO PALI HIGHWAY
✓NUUANU PALI DRIVE	2-2-50
✓ONE STREET	2-1-59 ILALO TO DEADEND
✓OLD PALI ROAD	1-9-04,07
OLOMEHANI STREET	2-1-60
OLUOLU STREET	4-1-21
✓PALAMA STREET	1-7-31 KING TO VINEYARD
✓PALOLO AVENUE (POR)	
✓PAOA PLACE	2-6-08
✓PAOA ROAD	2-2-8,10 NUUANU AVE TO PUNCHBOWL
✓PELE STREET	2-1-21 EXCEPT DEADEND AT FREEWAY
✓PENSACOLA STREET	2-4-12 BERETANIA TO NEHOA
✓PIIKOI STREET	2-4-30 PENSACOLA TO KING
PILILAAU AVENUE	8-9-04
PILIOKAHI AVENUE	8-9-06
✓PINE STREET	1-5-09
✓PLANTATION ROAD	8-5-10 EXCLUSION 11-A
✓POALIMA STREET	4-1-22,23
POHAKUNUI AVENUE	8-9-06
✓POKAI BAY STREET	8-5-8,15,16
✓POOLFKA STREET	3-4-03
✓PROSPECT STREET	2-2-13, etc.
PUA AVENUE	8-9-05
PUALANI WAY	2-6-28
✓PUKELE AVENUE (POR)	3-3-43,44

CROWN OR STATE

<u>ROAD</u>	<u>TAX MAP KEY</u>
✓PUNAHOU STREET	2-4-06, etc KING TO NEHOA
✓PUNCHBOWL STREET	2-1-22 LUSITANA TO VINEYARD 2-1-26 QUEEN TO HALEKAUWILA 2-1-27 HALEKAUWILA TO END OF TK 2-1-27-7
✓PUOWAINA DRIVE	2-2-07,etc
✓PUPUKEA ROAD	5-9-05
✓PUUHALE ROAD	1-2-20 REPUBLICAN TO NIMITZ (EWA HALF)
✓PUUNCI AVENUE	1-8-14,etc
REED LAND	2-1-30
✓RIVER STREET	1-7-02 NIMITZ TO BERPTANIA BERETANIA TO END(PORS)
ROSE STREET	1-3-11,12
✓SAN ANTONIO AVENUE	2-2-13
SCHOOL STREET	1-7-33,etc LILIHA TO KALIHI
✓SIXTH AVENUE	3-2-11 HARDING TO PAHOA
✓SPENCER STREET	2-1-39,etc
✓TENTH AVENUE PLACE	3-4-03
✓THURSTON AVENUE	2-4-17,18
VICTORIA STREET	2-4-1,etc
✓WAHINEPEE STREET	5-5-16,17
✓WAIHOLE HOMESTEAD ROAD(POR)	4-8-08,11
✓WAIHOLE VALLEY ROAD(POR)	4-8-09,etc
✓WAIKAPOKI ROAD	4-5-11
✓WAI NANI WAY(POR)	2-6-28
✓WAIPIA LANE(POR)	1-7-32
WAIPAHU DEPOT ROAD(POR)	9-4-11
WAIPAHU STREET	9-4-59 HIANAKU TO WAIKELE 9-4-27 WAIKELE TO KUNIA(PORS)

CROWN OF STATE

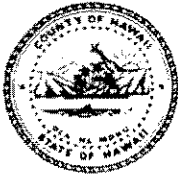
<u>ROAD</u>	<u>TAX MAP KEY</u>
WARD AVENUE	2-4-01 KING TO PROSPECT
WEST LOCH ACCESS ROAD	9-1-10
✓WHITING STREET	2-2-13
WILDER AVENUE	2-8-07 UNIVERSITY TO DOLE 2-8-17 METCALE TO CLEMENT LANE 2-4-16 THURSTON TO END
✓WOLTER LANE	1-6-03
✓WYLLIE STREET	1-8-16
YOUNG STREET	2-4-02,etc VICTORIA TO McCULLY(POR)

DISPUTED ROADS ON COUNTY OF HAWAII

Bernard K. Akana
Mayor

Hugh Y. Ono
Chief Engineer

Bruce C. McClure
Deputy Chief Engineer



Department of Public Works

25 Aupuni Street, Rm. 202 • Hilo, Hawaii 96720 • (808) 961-8321 • Fax (808) 969-7138

May 19, 1989

MR SAMUEL B K CHANG
DIRECTOR
LEGISLATIVE REFERENCE BUREAU
STATE OF HAWAII
STATE CAPITOL
HONOLULU HI 96813

SUBJECT: HOUSE RESOLUTION NO. 38

In response to your letter of May 11, 1989, and our phone conversation of May 15, attached are the following items:

- ° Three copies of a testimony booklet prepared in 1987.
- ° A standard letter to parcel owners on State-owned homestead roads.
- ° Letters to DLNR regarding State-owned paper road dated March 10, 1989, and April 6, 1989.

The County's main interests are in the order shown:

1. Mana Keanukolu Road: 40 miles.
2. Honolulu Landing Road: 15 miles.
3. Haao Springs Road: 9 miles.
4. All other State-owned Paper Roads: 100-200 miles.

The above should provide all information necessary. As discussed, I am eager to meet at any time to further discuss this.

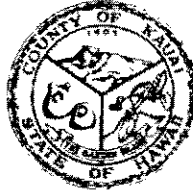

HUGH Y. ONO, P.E.
Chief Engineer

Attachments

cc: DPW
HWY
ENG

DISPUTED ROADS ON COUNTY OF KAUAI

JOANN A. YUKIMURA
MAYOR



COUNTY OF KAUAI
DEPARTMENT OF PUBLIC WORKS
3021 UMI STREET
LIHUE, KAUAI, HAWAII 96756

June 6, 1989

STEVEN M. KYONO
COUNTY ENGINEER
TELEPHONE 245-3318

ARNOLD W.F. LEONG
DEP. COUNTY ENGINEER
TELEPHONE 245-3602

MAILING ADDRESS:
4444 RICE STREET, RM. 230
LIHUE, HI 96766

RECEIVED

JUN 13 1989

LEGISLATIVE
REFERENCE BUREAU

Mr. Samuel B.K. Chang, Director
Legislative Reference Bureau
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

ATTENTION: MS. SUSAN JAWOROWSKI

Dear Mr. Chang:

Reference is again made to your letter dated May 11, 1989 regarding questions on jurisdiction of State and County roads.

Attached is a list of roads on which we would like further research made as to proper ownership. Some of the road are unimproved, and some roads involve only a portion of which fall under County jurisdiction.

Please call Mr. Oscar Portugal of my staff at 245-4751 if you should have any questions.

Very truly yours,

STEVEN KYONO, P.E.
County Engineer

RS/11v

Attachments

ZONE 1

1. OLD GOVERNMENT MAIN ROAD
(FROM KEKAA TO MANA)
TMK: 1-2-02
2. LOWER SAKI/MANA ROAD
TMK: 1-2-02
3. POLIHALE ROAD
TMK: 1-2-02
4. IWI POLENA ROAD (PORTION)
TMK: 1-3-02
5. WAIMEA VALLEY ROAD (PORTION)
TMK: 1-5-02
6. HANAPEPE VALLEY ROAD (AWANA)
TMK: 1-8-07
- ? 7. KO ROAD (OLD ABANDONED ROAD)
8. KAHAKAI ROAD (BEACH ROAD)
TMK: 1-6-07

10. ILI ROAD
TMK: 2-5-03
11. AKEMAMA ROAD (PORTION)
TMK: 2-5-03

ZONE 2

1. 4HH LHI ROAD
TMK: 2-3-02
2. UMIUMI ROAD
TMK: 2-3-02
3. PALAMA ROAD
TMK: 2-3-03
4. LOLO ROAD (PORTION)
TMK: 2-3-07
5. NIHO ROAD (PORTION)
TMK: 2-3-15
6. IHU ROAD
TMK: 2-3-07
7. LIMA ROAD
TMK: 2-3-15
8. LAE ROAD (PORTION)
TMK: 2-4-05
9. UMAUMA ROAD
TMK: 2-5-02
10. ILI ROAD
TMK: 2-5-03
11. AKEMAMA ROAD (PORTION)
TMK: 2-5-03

ZONE 2

13. HAPA ROAD (FROM POIPU to WELIWELI)
TMK: 2-8-14

ZONE 3

ZONE 4

1. PORTION of KAHOLAHELE RD.
(4-2-07)
2. WAIPOULI RD
(4-3-06)
3. PORTION of WAIAKEA ROAD
(4-6-05)
4. AKIA ROAD
(4-5-05)
5. AWAKEA ROAD
(4-6-03)

DISPUTED ROADS ON COUNTY OF MAUI

HANNIBAL TAVARES
Mayor

ALVIN K. FUKUNAGA
Director

BRIAN HASHIRO, P.E.
Deputy Director

GEORGE KAYA
Highways Division

FRED ARAKI, P.E.
Engineering Division

EASSIE MILLER, P.E.
Waste Management Division

AARON SHINMOTO, P.E.
Land Use and Codes Administration



COUNTY OF MAUI DEPARTMENT OF PUBLIC WORKS

200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

MEMO TO: BRIAN HASHIRO
PUBLIC WORKS ENGINEER

F R O M: GEORGE KAYA *gk*
CHIEF OF FIELD OPERATIONS & MAINTENANCE

SUBJECT: ROADS WHOSE JURISDICTION IS QUESTIONABLE

Following are our comments and recommendations.

1. The question of state ownership whether Department of Transportation or Department of Land and Natural Resources makes the difference. We are experiencing DLNR quit claims that automatically turns the travelway to the county. Some of these roads are primarily unimproved, unpaved, and in some cases resemble river beds. If these roads are to be turned over to the county, funding to improve should be appropriated also as practically new roadways must be constructed or perhaps improved prior to the turnover.

2. Rights-of-way of these roadways must be defined and staked out prior to any acceptance by the county. In most suits that arise from accidents the responsible persons for ownership, design, construction, and maintenance enter into the picture.

3. Some of these roads are:

- a. Road leading to Maakalae Homesteads in Hana.
- b. Kamaole Road in Kula.
- c. Upper Kanaio Road leading to Kanaio Church (roads are not defined).
- d. Pookela Road - Makawao Ranch Acres to Olinda Road (someone frequently chains off road).
- e. Haumana Road, branch off from Hana Highway, vicinity of Kaupakalua Road.

Brian Hashiro
May 16, 1989
Page -2-

4. Many of the roads mentioned have never been maintained by DLNR making the condition of the roads almost impassable. Takeover of the roads must be planned so proper funding can be provided to maintain properly.

Merely passing the ownership from one governmental agency to the other does not solve the problem of improving the safety aspects of the road.

STATE HIGHWAY SYSTEM ROADS
(All Counties)

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

June 1986

Streets and Highways on Oahu Under the Jurisdiction of
the State Highways Division

1. Interstate Route H-1, Palailai Interchange to Airport Interchange (Lagoon Drive)
2. Interstate Route H-1 (Lunalilo Freeway), Middle Street to Ainakoa Avenue
3. Interstate Route H-2
4. Interstate Route H-3
5. Ala Iki Street
6. Ala Moana Boulevard, Richards Street to 135 Feet Makai of Kalakaua Avenue
7. Barbers Point Access Road, Barbers Point Naval Reservation Boundary to Makakilo Drive Overpass
8. Bingham Street, Punahou Street to Isenberg Street
9. Bougainville Drive, Radford Drive to Vicinity of Radford High School
10. Farrington Highway, Kamehameha Highway at Pearl City to Fort Weaver Road
11. Farrington Highway at Barbers Point Road/Makakilo Drive, 500 feet on both sides of intersection
12. Farrington Highway, Palailai Interchange to Satellite Tracking Station near Kaena Point
13. Farrington Highway, Beginning of paved section at Camp Kaena to Kaukonahua Road at Thompson Corner
14. Farrington Highway (Old), Palailai Interchange to Laaloa Street
15. Fort Weaver Road, Navy Reservation Gate to Farrington Highway

16. Halawa Heights Road, Kikania Street to Gate No. 3 at Camp H. M. Smith
17. Halona Street
18. Iroquois Road, Fort Weaver Road to Boundary of Naval Reservation
19. Kahekili Highway, Kahaluu Bridge to Likelike Highway
20. Kahinani Place (Off Mokapu Saddle Road)
21. Kahuapaani Street, Salt Lake Boulevard to Halawa Heights Road
22. Kailua Road, Waimanalo Junction to Kailua side of Kawainui Bridge
23. Kalaniana'ole Highway, Castle Junction to Waimanalo Junction
24. Kalaniana'ole Highway, Waimanalo Junction to Ainakoa Avenue
25. Kalihi Street, Nimitz Highway to School Street
26. Kamananui Road, Kamehameha Highway to Wilikina Drive
27. Kamehameha Highway, 100 feet + Kokohead side of Kalihi Stream Bridge to Middle Street
28. Kamehameha Highway, Vicinity of Valkenburgh Street to Haleiwa end of the Waialua Twin Bridges
29. Kamehameha Highway, Kahalewai Place to Kahaluu Bridge
30. Kamehameha Highway, Pali Highway to Likelike Highway
31. Kaneohe Bay Drive, Kamehameha Highway to 225 feet Kailua side of Kaimalu Place
32. Kaneohe Bay Drive, 110 feet Kailua of Malae Place to 1100 feet Kailua side of H-3
33. Kapahulu Avenue, Harding Avenue to Kapiolani Boulevard
34. Kaula Street, Middle Street to Pineapple Road
35. Kaukonahua Road, Farrington Highway at Thompson Corner to Kamehameha Highway at Weed Junction No. 2
36. Keeaumoku Street, Kinau Street to Kaihee Street

37. Kukahi Street, between Nimitz Highway Outbound & Inbound Lanes in Iwilei
38. Kunia Road, Farrington Highway to Wilikina Drive
39. Lagoon Drive, Nimitz Highway to Koapaka Street
40. Leilehua Golf Course Road, Kamehameha Highway to H-2 Freeway
41. Likelike Highway, School Street to 1,942 feet Honolulu side of Wilson Tunnel
42. Likelike Highway, 357 feet (OB) and 270 feet (IB) Kaneohe side of Wilson Tunnel to Kamehameha Highway
43. Liliha Street, North King Street to School Street
44. Lunalilo Street, Ernest Street to Kewalo Street
45. McCully Street, Beretania Street to Dole Street
46. Metcalf Street, Dole Street to Alexander Street
47. Middle Street, Kamehameha Highway to Mauka of H-1 Freeway
48. Moanalua Road, Middle Street to Kamehameha Highway at Aiea Interchange
49. Moanalua Road (at Waiiau Interchange), 220 feet Ewa of Kaulike Drive to 175 feet Kokohead of Hoomalu Street
50. Mokapu Boulevard, 400 feet South of Ilipilo Street to 170 feet South of Kalaheo Street
51. Mokapu Saddle Road, Mikiola Drive to 400 feet South of Ilipilo Street
52. Nimitz Highway, Main Gates at Pearl Harbor and Hickam Air Force Base to Richards Street
53. North King Street, Middle Street to Ola Lane Overpass
54. Olomea Street
55. Pacific Street, between Nimitz Highway Outbound and Inbound Lanes in Iwilei
56. Paiea Street
57. Pali Highway, Vineyard Boulevard to Castle Junction

58. Papaku Place
59. Puuloa Road, Kamehameha Highway to 585 feet North of Mahiole Street
60. Queen Street, Fort Street Mall to Nimitz Highway
61. Radford Drive, Kamehameha Highway to Bougainville Drive
62. Salt Lake Boulevard, Kahuapaani Street (Halawa Heights Road) to Luapele Drive (Makalapa Access Road)
63. Sand Island Parkway
64. Sand Island Road, Ewa end of Bascule Bridge to Nimitz Highway
65. South King Street--Harding Avenue, Waialae Avenue (near Humane Society) to Second Avenue
66. Sumner Street, between Nimitz Highway Outbound and Inbound Lanes in Iwilei
- ~~67. Varsity Place, University Avenue to Kalo Place Deleted~~
68. Vineyard Boulevard
69. Waiaka Road, Waiaka Place to Kapiolani Boulevard
70. Waialae Avenue, 17th Avenue to Kilauea Avenue
71. Waialae Avenue, Kapiolani Boulevard to King Street
72. Waiawa Road, Farrington Highway to Ala Iki Street
73. Waipahu Street Realignment, Kamehameha Highway to Makai End of H-1 Overpass
74. Waokanaka Street
75. Ward Avenue, Kinau Street to Lunalilo Street
76. Whitmore Avenue, Kamehameha Highway to Naval Radio Station Reservation Boundary
77. Wilikina Drive, Kamananui Road to Kamehameha Highway

NOTE: There are numerous side streets along State highways where State jurisdiction extends various distances into the side road.

STATE HIGHWAYS AND STREETS

HAWAII DISTRICT

1. Akaka Falls Road, Akaka Falls Park to Route 19
2. Akoni Pule Highway, Queen Kaahumanu to Mahukona Wharf
3. Bayfront Highway, Wailuku Bridge (N. End) to Kuhio Wharf
4. Hawaii Belt Road, Capt. Cook to Iolani Lane
M.P. 60.9 to Park Headquarters entrance
Mudlane to Wailuku Bridge (N. End)
Palani Road Junction to Waikoloa (Rte 190, MP 8)
5. Honokaa-Waipio Road, Waipio Lookout Access to Route 19
6. Kanoiehua Ave., Makalika St. to Kamehameha Ave.
7. Kawaihae-Waimea Road, Queen Kaahumanu to M.P. 58.1
8. Keaaau-Pahoa Road, FASC 132 to Volcano Road.
9. Ke-Ala-o-Keawe Road, City of Refuge to F.A.P.11
10. Kohala Mountain Road, Waiaka Bridge to FAS 270 (Hawi)
11. Kuakini Hwy., Palani Road to Honalo Junction.
12. Mahukona-Niulii, Mahukona Wharf to Pololu Valley
13. Mamalahoa Highway, Waikoloa (Route 190, M.P. 8) to M.P. 1.2 (Waimea)
14. Mamalahoa Highway, M.P. 52.3 to Mudlane
15. Pahoa-Kalapana Road, Hawaii Volcanoes Nat'l. Park Entrance
to FASC 132
16. Puainako Street, Kanoiehua Avenue to Komohana Street
17. Queen Kaahumanu, Palani Road to Kawaihae Road
18. Volcano Road, Park Headquarters entrance to Makalika Street

NOTE: There are numerous side streets and roads along State Highways where State jurisdiction extends various distances into the side street on road.

January 1988

STREETS AND HIGHWAYS ON MAUI UNDER THE
JURISDICTION OF THE STATE HIGHWAYS DIVISION

	<u>Route No.</u>	
1. Dairy Road	380	Intersection with Puunene Ave. to intersection with Keolani Place.
2. Haleakala Crater Road	378	Junction of Haleakala Hwy./ Kekaulike Ave. to National Park boundary
3. Haleakala Hwy	37	500' Southeast of centerline intersection with Hana Hwy to Kula Hwy Jct.
4. Haleakala Hwy	377	Kula Hwy Jct to Crater Road Jct.
5. Hana Hwy	36	Kaahumanu Ave to intersection with Kaupakalua Road
6. Hana Hwy	360	Intersection with Kaupakalua Road to Keawa Place at the centerline of drainage ditch before Hana Bay
7. High Street	30	Intersection with Main St. to south edge of pavement of Kahookele St.
8. Hobron Avenue	361	350' north of centerline intersection with Hana Hwy to gate at Pier I, Kahului Harbor
9. Honoapiilani Hwy	30	Kahookele St. to west end of Honokohau Bridge and Main St.
10. Kaahumanu Avenue	32	Intersection with Hobron Ave intersection with High St.
11. Kahekili Hwy	340	340' south of centerline intersection with Waiehu Beach Rd. to 320' north of intersection with Malaihi Rd and about 1,090' south of intersection with Waihee Valley Road to 320' north of Waihee Bridge No. 2.
12. Kahului Beach Rd.	340	220' north of centerline intersection with Kaahumanu Ave. to 80' west of centerline intersection with Waiehu Beach Road.

	<u>Route No.</u>	
13. Kekaulike Ave	377	Crater Rd. Jct to Kula Hwy Jct.
14. Keolani Place	36A	Intersection with Dairy Rd to <u>about 400' west of intersection with Palapala Drive.</u>
15. Kuihelani Hwy	380	Intersection with Puunene Ave to intersection with Honoapiilani Hwy.
16. Kula Hwy	37	Haleakala Hwy Jct to centerline intersection with Kula Hospital Road.
17. North Kihei Road	310	Centerline intersection of north and south approaches from Honoapiilani Hwy to 0.94 miles towards Kihei and, from 2,900' northwest of intersection with Mokulele Hwy to the intersection with Mokulele Hwy.
18. Piilani Hwy	31	Intersection with Mokulele Hwy to intersection with Kilohana St.
19. Puunene Ave.	350	85' south of the centerline intersection with Kaahumanu Ave to about 360' from south east edge of pavement of Kuihelani Hwy.
20. Waiehu Beach Road	340	Intersection with Kahului Beach Road to intersection with Kahekili Hwy.
21. Wharf Street	361	North edge of pavement of Kaahumanu Avenue to south boundary of Harbor's Division Lot.

January 1988

STREETS AND HIGHWAYS ON MOLOKAI UNDER
JURISDICTION OF THE STATE HIGHWAYS DIVISION

	<u>Route No.</u>	
1. Farrington Ave	480	Intersection with Puupeelua Ave to 16' west of Kalae Hwy.
2. Kalae Hwy	470	Intersection with Maunaloa Hwy to Kalaupapa Lookout.
3. Kamehameha V Hwy	450	Intersection with Ala Malama/ Maunaloa Hwy/Kaunakakai Place to end of pavement at Halawa Valley.
4. Kaunakakai Place	460	Kaunakakai Wharf to intersection with Ala Malama/Maunaloa Hwy/ Kamehameha V Hwy.
5. Maunaloa Hwy	460	Intersection with Ala Malama/ Kamehameha V Hwy/Kaunakakai Place to Maunaloa Village.
6. Puupeelua Ave	480	Intersection with Maunaloa Hwy to intersection with Farrington Ave.

January 1988

STREETS AND HIGHWAYS ON LANAI UNDER THE
JURISDICTION OF THE STATE HIGHWAYS DIVISION

	<u>Route No.</u>	
1. Airport Spur Road	440	Intersection with Kaumalapau Hwy to Airport.
2. Kaumalapau Hwy	440	Kaumalapau Harbor to 150' northeast of centerline intersection with Manele Rd.
3. Manele Road	440	Intersection with Kaumalapau Hwy to entrance of Hulopoe Beach Park near Manele Bay.

NOTE: There are numerous side streets along State Highways where State jurisdiction extends various distances into the side road. Refer to right-of-way map for specific information.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

JANUARY 1988

STREETS AND HIGHWAYS ON KAUAI
UNDER THE JURISDICTION OF THE STATE HIGHWAYS DIVISION

1. Ahukini Road, route 570, Kuhio Highway to 290' East of Kapule Highway
2. Halewili Road, route 540
3. Kao Road, route 50, North gate to Lio Road
4. Kapule Highway, route 51, Rice Street to Ahukini Road
5. Kaunualii Highway, route 50, Lio Road to Rice Street
6. Kokee Road, route 550, Waimea Canyon Drive to Halemanu
7. Kuhio Highway, routes 56 and 560
8. Kuamoo Road, route 580
9. Lio Road, route 50
10. Maalo Road, route 583
11. Nawiliwili Road, route 58
12. Rice Street, route 51, Kapule Highway to Lala Road
13. Waapa Road, route 51, Lala Road to Nawiliwili Road
14. Waialo Road, route 541
15. Waimea Canyon Drive, route 550

Appendix C

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813

20 JUN 20 P 1: 15

ILEEN R. ANDERSON
MAYOR

LAND AND NATURAL RESOURCES
STATE OF HAWAII



GARY M. SLOVIN
CORPORATION COUNSEL

STANLEY D. BUYA
FIRST DEPUTY

June 15, 1983

RECEIVED
DIVISION OF
LAND AND NATURAL RESOURCES
JUN 21 10 12 AM '83

Mr. Susumu Ono, Director
Department of Land and
Natural Resources
State of Hawaii
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Dear Mr. Ono:

The City and County of Honolulu has been asked to consider a proposal by one of the real property owners abutting Marin Street, located between Nimitz Highway and King Street in the downtown Honolulu area, to convert Marin Street into a pedestrian mall. A title search of Marin Street indicates that the State of Hawaii holds legal title to the street. However, we believe that pursuant to Section 264-2, Hawaii Revised Statutes [HRS], title to Marin Street was transferred to the City by operation of law. The pertinent provision of Section 264-2, HRS, provides as follows:

The ownership of all county highways is transferred to and vested in the respective counties in which the county highway lies.

It is our opinion that Marin Street is a county highway within the meaning of Section 264-1, HRS. Ascertaining the legal ownership of the street is important in this case because one of the alternatives being discussed is a lease of the property or sale thereof, pursuant to Section 264-3, HRS, to abutting landowners who would develop and maintain the pedestrian mall over Marin Street.

Mr. Susumu Ono, Director

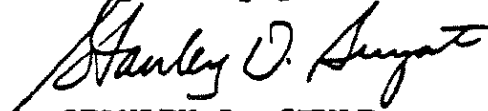
-2-

June 15, 1983

I would appreciate it if you would review this matter and advise me of any concerns which you may have with respect to the title of Marin Street or restrictions upon the transfer of the same to private individuals.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Stanley D. Suyat".

STANLEY D. SUYAT
First Deputy

SDS:yz

Appendix D

A G R E E M E N T

THIS AGREEMENT, made this 27th day of September,
1988, by and between the COUNTY OF HAWAII, hereinafter called
the "COUNTY", and the STATE OF HAWAII, by its Director of
Transportation, hereinafter called the "STATE."

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

WHEREAS, it is the intent of the County and the State to
work cooperatively to improve traffic conditions on the Island
of Hawaii; and

WHEREAS, the State, pursuant to the authority vested in
the Director of Transportation under Sections 264-31 and
264-44, HRS, as amended, is willing to delegate maintenance of
the State's street lighting system on the Island of Hawaii to
the County; and

WHEREAS, the County is willing to accept the delegation of
said maintenance control, as evidenced by Resolution No. 464-88,
marked Exhibit A, attached hereto and made a part hereof:

NOW, THEREFORE, in consideration of the covenants
hereinafter contained and on the part of the County and the
State to be observed and performed, the parties hereto agree as
follows:

1. APPLICATION

This agreement shall be limited to the routine maintenance of street lights, such as troubleshooting malfunctions and the replacement of ballasts, lamps, photocells or fuses. The County, upon notification by the State, the general public or any State, County or Federal governmental agency, shall commence the repair and maintenance of all street lights on the State Highway System within the following time limits:

South Hilo: 3 working days following the close of business on the day of notification.

All Other Districts: 21 days following the close of business on the day of notification.

2. DELEGATION OF MAINTENANCE

The County shall maintain a list of all street lights within the State Highway System by district, including pole number, location, wattage and type of source, over which routine maintenance is delegated to the County under this Agreement.

3. COMPLIANCE WITH LAWS AND STANDARDS

The State shall be responsible for all inspections as required by State statutory requirements.

The County may, at its discretion, supplement these inspections. The County, upon request, shall provide the State a copy of its schedule of inspections in order to avoid duplication of inspections.

The County may convert street lights to conform to County standards and practices, utilizing County standards for wattage and type.

4. EXPENDITURE AUTHORIZATION

The State shall reimburse the County in regular monthly payments for all costs incurred by the County in the routine maintenance and operation of all street lights on State highways plus an administrative cost of 5%. The County shall maintain the street lights in accordance with the County's established schedule and practices.

Additional reimbursement shall be made by the State for other improvements such as new installations, conversions, transfers and accident damage repairs, plus administrative cost of 5%.

All new street light installations within the State Highway System shall be determined solely by the State. The County agrees to conduct all required joint pole acquisition documentation at no additional charge.

5. PAYMENT

The County shall arrange and pay for electrical power directly to Hawaii Electric Light Company, Inc. for all nonmetered, overhead, multiple circuit systems. The State shall pay the County monthly for electrical power, using the calculated kilowatt consumption as shown on attached Schedule A and at the rate of the most current electrical charge.

The State shall pay on a monthly basis for routine maintenance work as shown on attached Schedule B.

The State shall pay on a monthly basis for joint pole maintenance as shown on attached Schedule C.

The County will pay contractors directly and at no additional cost to the State for routine maintenance work that is contracted out.

The State shall pay on a monthly basis for all other work such as conversions, transfers and accidents at the actual cost incurred by the County.

6. ACCOUNTING

No accounting shall be required by the County; however, the County agrees to update calculated data annually. Work order records will be furnished to the State upon request.

7. BUDGETING

The lump sum basis of payment shall be reviewed every year and changes shall be made by mutual agreement.

8. LIAISON OFFICER

The County's Traffic Operation Supervisor shall be designated as the Liaison Officer for the County to receive and follow up on complaints and problems pertinent to this contract. The State shall submit the name of its Liaison Officer to the County.

9. INDEMNIFICATION

The State shall indemnify, defend and hold harmless the County, its officers, agents, representatives, successors and employees from and against any claim, action, demand, suit or judgment, for loss, liability or damage, including claims for property damage, personal injury or death, and for costs and attorney's fees, except for those injuries or damages arising

or growing out of the sole negligence or willful misconduct of the County, its officers, agents, representatives, successors and employees in connection with this Street Light Maintenance Agreement. This Agreement to indemnify shall not apply to intentional torts.

10. TERM OF CONTRACT

This contract shall become effective upon execution and shall remain in effect until amended or terminated.

The contract may be amended at any time upon mutual consent of the parties. A six month notice shall be required for the unilateral termination of this contract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the day and year first above written.

RECOMMEND APPROVAL

COUNTY OF HAWAII



Chief Engineer

By 

Dante K. Carpenter
Its Mayor

Date 9-17-68

APPROVED AS TO FORM
AND LEGALITY:


STATE OF HAWAII

AARON S. Y. CHUNG

Deputy Corporation Counsel

By 

Director of Transportation



Deputy Attorney General

Bernard K. Akana
Mayor

Richard I. Miyamoto
Corporation Counsel

Steven Christensen
Assistant Corporation Counsel



Office of the Corporation Counsel

Hilo Lagoon Centre • 101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720 • (808) 961-8251

July 21, 1989

Mr. Samuel B. K. Chang
Director
Legislative Reference Bureau
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Mr. Chang:

Re: Public Highway Jurisdiction

This is in response to your inquiries relating to the above-referenced subject. Specifically, you have asked our office, as well as a number of other State and County agencies, to comment upon the jurisdictional problems surrounding public highways within the State of Hawaii.

The focal point of this County's concern with respect to the matter is centered upon the ownership of old government roads, paper roads, jeep trails, and other similar types of substandard roadways. The cause of such concerns, we feel, is directly attributable to the language contained in section 264-1, Hawaii Revised Statutes. In essence, that section provides that all public highways, of which such substandard roads would be included, which are not within the State highway system are necessarily County highways. In refuting the ownership of several such substandard roads on the Big Island, the County of Hawaii has consistently questioned the provisions of section 264-1. This county has taken the position that, irrespective of the literal context of the section, no street or highway may be deemed a County road until such time as the street or highway has been formally accepted by, or surrendered to, the County, or has been officially transferred by the State to the County via executive order. We have enclosed for your perusal, a copy of a testimony booklet prepared in 1987 by Chief Engineer Hugh Ono which sets forth the various contentions of the County. The reason for the County taking such a stance on

Mr. Samuel B. K. Chang
Page 2
July 21, 1989

the subject relates in part to the high maintenance costs and great potential for liability which would result by virtue of the County's ownership in such roads. In addition, this County finds objectionable the fact that section 264-1 makes no provision for the transfer of documents evincing the County's ownership in those highways.

In an effort to help resolve, or at the very least alleviate, some of the problems relating to public road ownership within the State of Hawaii, we offer the following suggestions:

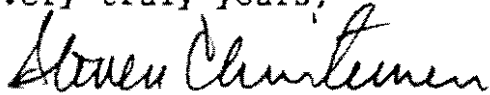
1. If it is the intent of the legislature to have such non-state public roads fall under the jurisdiction of the respective counties, then a legislative mechanism should be developed which would allow the counties to receive a formal document from the State evincing the transfer of those highways, rather than by merely requiring the counties to acquire ownership of such properties through the operation of law;

2. Inasmuch as added costs would be incurred by the counties as a result of their assuming responsibilities which, if not for the provisions of section 264-1, would not otherwise be theirs, a provision should be included in chapter 264 which would allow the counties to be reimbursed by the State for those added costs attributable to their carrying out of the state mandate; and

3. A meeting of all of the agencies and departments listed in House Resolution No. 38 (1989) be convened for the purpose of facilitating a full discussion of the problems, issues and recommended solutions incident to the subject.

If you have any further questions regarding this matter, please feel free to contact our office at 961-8251.

Very truly yours,

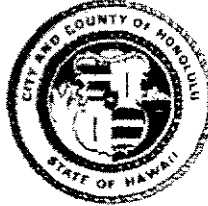
for 

RICHARD I. MIYAMOTO
Corporation Counsel

RIM:jk
Enclosure

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813

FRANK F. FASI
MAYOR



RICHARD D. WURDEMAN
CORPORATION COUNSEL

HAND DELIVERY

September 8, 1989

Samuel B. K. Chang, Esq.
Director
Legislative Reference Bureau
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Mr. Chang:

Re: Road Jurisdictional Dispute Between the City
and the State

The City and County of Honolulu (hereinafter referred to as the "City") would like to begin by thanking you and your staff for your patience and in granting us several extensions for submitting the City's position regarding the above-referenced matter.

The City has thoroughly researched the matter of disputes over jurisdiction of over four hundred (400) lane miles of roadways within its territorial limits and responds to the request for information by your office in the letter dated May 11, 1989 as follows:

1. A List of all Roads Whose Jurisdiction Your Agency Believes is in Dispute.

We have enclosed as Appendix A the most recently updated list, dated September 5, 1989, of roadways which jurisdiction we believe is under dispute at this time. This list contains the names of the streets, the location, the tax key number and jurisdiction the City believes the roadways are under.

2. The Reason for the Dispute, if Known.

The City believes that it does not have jurisdiction over these roadways because (1) it does not have fee simple title to them; fee title to these roads is vested with the State or with private parties,

Samuel B. K. Chang, Esq.
September 8, 1989
Page 2

(2) these roadways have not been turned over to the county by executive order as required by Section 264-2, Hawaii Revised Statutes, nor (3) are there any joint highway maintenance agreements between the State and the City regarding the maintenance and repair of these roads. This position is contrary to the State's position regarding these roadways. We have enclosed, per your staff's request via telephone, previous correspondence and opinions which espouse the City's position on the present topic of discussion.

3. Information Relating to the Road's Physical Placement (Width, What the Road Connects, State of the Road, if Known).

In response to this request, we have enclosed Appendix C, which is self-explanatory.

4. The City's Suggestions as to How This Dispute Might be Resolved.

The City Council of the City and County of Honolulu has adopted Resolution Nos. 88-425 (CD-1) and 88-426 (CD-1) relating to the transfer of disputed roadways from the State to the City. We have enclosed these resolutions as Appendix D for your information and use. We feel that the terms provided in the City Council resolutions will resolve the major issues raised in the jurisdictional disputes over roadways. At this point, we would like to restate the most pertinent terms of the resolutions as they apply to the present issue of road jurisdiction:

a) If the City incurs a net increase in operating, maintenance, or development costs after an exchange or transfer of highways, the State shall make available to the City the funds to assume the net increase. Funds may be made available to the City by the grant of annual appropriations or the provision of an adequate funding source. In either case, the State shall guarantee the funding commitment by the enactment of appropriate legislation.

b) With respect to liability exposure for the use of highways assumed by the City, the State shall confer upon the City the same rights, privileges, immunities, and conditions afforded

Samuel B. K. Chang, Esq.
September 8, 1989
Page 3

the State under Chapter 662, Hawaii Revised Statutes, the State Tort Liability Act.

c) Action should be taken to correct the inequity under Section 264-3, Hawaii Revised Statutes, under which when a county sells a highway which was formerly a State owned roadway, the entire proceeds must be remitted to the State.

For your information, the City has estimated the annual net increase to maintain the disputed roadways at three million dollars (\$3,000,000) (1989 dollars). We recommend that the legislature be requested to fund the task to establish an accurate inventory of these disputed roadways and their boundaries. It will be difficult for any county to accept jurisdiction of any roadway if the right-of-way is not established.

Again, we apologize for the delay in responding to your request for information. Should you have further questions on this matter, please call Deputy Corporation Counsel Donna Woo at 527-5688.

Sincerely,



RICHARD D. WURDEMAN
Corporation Counsel

APPROVED:



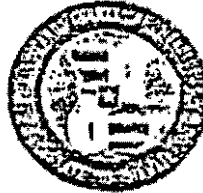
JEREMY HARRIS
Managing Director

RDW:dm
Enc.

SH89058X

RECEIVED

FRANK P. FAN
MAYOR



MAY 5 AM 9 55

BARRY CHUNG
CORPORATION COUNSEL

DIV. OF LAND SURVEY
AND ACQUISITION

April 29, 1977

MEMORANDUM

TO : HENRY H. NAKAGAWA, CHIEF
DIVISION OF LAND SURVEY AND ACQUISITION

FROM : WINSTON K. Q. WONG, DEPUTY CORPORATION COUNSEL

SUBJECT: OWNERSHIP OF CERTAIN ROADS IN WAIANAE

This is in response to your written inquiry of December 16, 1975 as to whether or not your title abstractor was correct in stating that the roads on the attached search are under the City's jurisdiction.¹

We answer in the negative.

The roads that are in question were originally government (Crown) land, then government (Territorial) land, and finally government (State) land upon Statehood. Under HRS Section 264-1, public highways or roads are of two types: (1) state or federal aid or (2) county highways. Since the roads here are not only owned but also built by the State, this section mandates that they are under State jurisdiction. This conclusion appears to be further supported by HRS Section 264-2, which states in part:

The governor may, at anytime by executive order, turn over to any county, state land, in fee simple, for use as a county highway, and the county involved shall thereafter be responsible for its repair and maintenance as a county highway.

¹Revised to couch question in more general terms.

MEMORANDUM

TO: HENRY H. NAKAGAWA, CHIEF
DIVISION OF LAND SURVEY
AND ACQUISITION

-2- April 29, 1977

Because there has been no executive order by the Governor turning over any of said State land to the City and County of Honolulu, the State still has ownership of the roads in question.

Although under HRS Section 265-2, the State may enter into agreements with the City to maintain highways or roads under State jurisdiction, there is no such agreement regarding these roads. Therefore, any maintenance by the City was strictly voluntary and such maintenance does not place such roads under City's jurisdiction.²


WINSTON K. Q. WONG
Deputy Corporation Counsel

APPROVED:

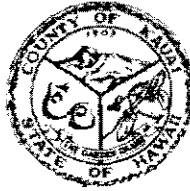

HARRY CHUNG
Corporation Counsel

WXQW:ele

²Traffic control may be placed on the subject roads by the City pursuant to HRS Section 70-63, if necessary for the safety of motorists and pedestrians using the subject roads.

JOANN A. YUKIMURA
MAYOR

MICHAEL J. BELLES
COUNTY ATTORNEY



MAILING ADDRESS:
Room 230
4444 Rice Street
Lihue, Kauai, Hawaii 96766

COUNTY OF KAUAI
OFFICE OF THE COUNTY ATTORNEY
4396 RICE STREET
LIHUE, KAUAI, HAWAII
TEL. NO. (808) 245-3688

July 17, 1989

Ms. Susan Ekimoto Jaworowski
Researcher
Legislative Reference Bureau
State of Hawaii
State Capital
Honolulu, Hawaii 96813

Dear Ms. Jaworowski:

Re: Roadway Jurisdiction Study

As per our telephone conversation of Monday, July 17, 1989, relative to the above-referenced matter, please find enclosed a copy of a relevant opinion issued by our office in 1987 concerning the legal analysis and position of the County of Kauai. In addition to the opinion you will also find enclosed copies of various communications from our files that are equally applicable to your inquiry.

If, after reviewing the enclosures you have any further questions concerning this matter or if you are in need of any additional data or information, please feel free to contact us at anytime.

Very truly yours,

MICHAEL J. BELLES
County Attorney

MJB:my

Enclosures

July 23, 1987

Mr. Alfred Y. Itamura
Associate Analyst
Office of the Ombudsman
State of Hawaii
Kekuanaoa Building, 4th Floor
465 South King Street
Honolulu, Hawaii 96813

Dear Mr. Itamura:

Re: #86-2017(I)--Complaint Concerning
Jack Rodrigues

Your letter of September 5, 1986 to our County Engineer was referred to this office for appropriate action.

I interpret your letter to imply that action should be taken by the County of Kauai (as opposed to the State) against Mr. Rodrigues for his apparent trespass, because, based on A. G. Opinion No. 86-15, the County of Kauai "owns" the subject roadway. With all deference to Mr. Murakami's opinion, I disagree on two grounds with the most crucial premise of the opinion, i.e. the seemingly unassailable statement that Santos v. Perreira stands for the proposition that if a public highway is not within the State Highway System, then it is a county highway.

First, although I do not dispute that the Hawaii Supreme Court ruled that in order for any public highway to be a state highway, it must be within the State Highway System, I also know that after making this statement, the court added, "[a] highway is not a county highway unless it is accepted or adopted as such by the county council." 2 Haw.App. at 390. Given both statements, and applying them to the situation at hand, i.e. the subject road is not within the State Highway System and has never been accepted or adopted by the Kauai County Council, it appears that this road belongs to a category of roads which has never been specifically addressed by the Legislature or courts. This

inquiry leads to my second point of disagreement with Opinion No. 86-15.

Section 264-1, Hawaii Revised Statutes, defines a public highway. Relative to a county, a county public highway can come into being when (a) the county builds it, (b) a private party builds a private road but dedicates it to the county via conveyance deed, (c) an owner of a private road exercises no acts of ownership for a period of five years and the county council adopts the road by resolution, or (d) a private party constructs and completes a road as required by any county ordinance (whereupon the county council must accept the dedication or surrender of the road). Note that nowhere in Section 264-1 is a county public highway defined as a road which was once owned and/or maintained by the State but which was neither built nor accepted by a county. Irrespective, Opinion No. 86-15 concludes that a county has all ownership obligations over any public highway merely because the State does not now claim any interest over the highway.

The legislative history of §264-1's predecessor statutes which is contained in Opinion No. 86-15 is correct, but I do not wholly agree with the conclusions drawn therefrom. That is, Opinion No. 86-15 concludes that these statutes show irrefutably that the ownership of ALL public highways which were not part of the State's Highway System "was transferred to and vested in the respective counties as a matter of law", irrespective of which governmental entity actually owned, controlled and maintained the highway. My reading of the Opinion and that legislative history, also leads me to conclude that these statutes did in fact transfer to and manifest in the counties title to some public highways, but only those highways which the counties de facto owned, and over which they had general supervision, control, and duties to maintain and repair. As the Opinion detailed, the legislature did believe that "it was inequitable to have the State retain ownership of those county highways," but the inequity arose because of the "circumstances" of de facto county ownership and attendant obligations, while de jure ownership rested with the Territory/State. At the very least, the legislature recognized that if counties had obligations to repair and maintain such roads, then they should also be able to have control over alienability of these roads. But I do not believe that

the legislature intended to transfer to and manifest in the counties the title to public highways which were owned, supervised, maintained and repaired by the Territory/State.

One last fact needs to be revealed which further supports my contention that determining the ownership of public highways is not as simple as Opinion No. 86-15 concludes. There are a lot of "paper" public highways which neither the State nor counties presently maintain, which are not part of the State Highway System, and ownership of which has never been conclusively established. Although under Section 464-2 and Opinion No. 86-15, ownership of these "highways" should rest with the counties, it is a fact that the Department of Land and Natural Resources claims ownership of most, if not all, of these highways; and does not feel the least bit restrained in exercising all ownership rights, to include lease and sale, over these lands. In these situations, there is an inconsistency between Opinion No. 86-15 and Section 171-3, H.R.S., with the latter defining "public lands", in part, as "all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date . . . except . . . (3) lands being used for roads and streets" (Emphasis added) Thus, the Department is correct in assuming ownership of these highways when they satisfy the parameters of Section 171-3, yet runs afoul of Section 464-2 and Opinion No. 86-15. It is highly probable that the subject road is one of these paper highways, the Department of Land and Natural Resources considers it to be under its jurisdiction and if it felt like it, would lease or sell it without any thought as to the County's supposed ownership under Section 464-2, H.R.S.

Given all of the preceding, I believe strongly that conclusive determination of the ownership of a road such as that in question cannot be accomplished merely through resort to statutes, legislative history and judicial precedents. Rather, one must perform a tedious investigation as to which entity, the state or a county, bought, built or accepted the road. I further believe that final resolution of this problem must be accomplished through legislative action after discussions with the affected State departments and counties. (Note that Article VIII, Section 5 of the State Constitution requires the State to "share in the cost"

July 23, 1987

of "any new program or increase in the level of service under an existing program . . . mandated to any of the political subdivisions by the legislature.")

Regarding the problem of Mr. Rodrigues' alleged trespass, the County of Kauai would, of course, prohibit any private citizens' usurpation of public property for their own private use to the exclusion of the general public. However, given that the legal ownership of the subject road has not been established in the County, we are averse to initiate any action against Mr. Rodrigues which depends on ownership. But I would opine that between the State and County of Kauai, one entity surely owns the road, and joint, concerted action on our part against Mr. Rodrigues would cure any legal ownership problems vis-a-vis the road and would be successful in ceasing the trespass.

With apologies for my dilatory response, with a hope that we can resolve the subject trespass and problem of public highway ownership, and with an extension to you and yours of the County's assistance in these matters, I remain

Very sincerely yours,

WARREN C. R. PERRY
2nd Deputy County Attorney

WCRP:my

bcc: Mr. Fred Rohlfing



DEPARTMENT OF THE CORPORATION COUNSEL

County of Maui
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE 243-7740

July 21, 1989

Samuel B. K. Chang, Director
Legislative Reference Bureau
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Attention: Susan Jaworowski, Researcher

Re: House Resolution No. 38

Dear Mr. Chang:

Jurisdictional Disagreements

A major question is source of authority for State proposition that unless on the State list, a "public highway" is a "county highway". Section 264-1 HRS provides only the following:

1. Public Highway defined.
2. Once a "public highway", a road is a "state highway" if under the jurisdiction of the Department of Transportation (DOT), otherwise a public highway is a "county highway".

The point of contention between the State's position and the Counties' position appears to be this: That the State says "if the road is not on the DOT list, it's a county highway". What is the source of the DOT's authority to place or not place public highways on their list? The statute does not say this or grant such authority to make such designations to the DOT. The statute only says that State highways are those public highways under the jurisdiction of the DOT.

A very important question is whether in the first place a given "public highway" is "under the jurisdiction of the DOT".

Samuel B. K. Chang, Director
July 21, 1989
Page 2

Section 264-41 HRS provides for designation by the State Director of Transportation of public highways to be included in state highway system "...pursuant to section 264-42." The latter section says the Director of Transportation must act in cooperation with county agencies.

Other Roads

Occasionally, a road falls in neither category. For instance, if a road is laid out by private parties and neither surrendered nor abandoned to the government, nor accepted by a county council, it is what might be termed a "public road", over which the public has acquired a right of access, but which is privately owned. Maui Ranch Estate Owners Association v. County of Maui, et al., 6 Haw. App. _____ (1986), says among other matters, that before a municipality can be held responsible for the maintenance, repair of and liability for said roads, there must be unequivocal acceptance by the municipality.

Further, lawsuits involving motor vehicle accidents frequently name both the State and the County since the plaintiffs' attorneys are not themselves sure of ownership/control/maintenance. This results in unnecessary State or County involvement in lawsuits. Usually, the State then holds up its DOT "list" and says it's a County highway. Obviously the liability burden on the Counties is significant.

Recommendation

In view of the foregoing, it is respectfully suggested that a joint State-County committee:

1. Review the rules concerning the jurisdictional separation of public highways.
2. Clarify the process by which the DOT considers public highways "state highways".
3. Consider specific lists of "public highways" and fairly categorize them as state or county highways.
4. Clarify the status of "public roads" as addressed in the Maui Ranch case.

Samuel B. K. Chang, Director
July 21, 1989
Page 3

5. Consider an equitable funding process for maintenance and liability payments.

I hope you will find the foregoing helpful in implementing House Resolution No. 38. Attached is a partial list of roads, the jurisdiction of which is questionable.

Very truly yours,



Glenn M. Kosaka
Corporation Counsel

GMK:cs
8957/letters/c

Enclosure

xc: Department of Public Works

Appendix F

Proposed Maintenance Program for Certain State-Owned Roads

Hugh Y. Ono, P.E.
September 11, 1989

Problem

Maintenance of certain State-owned roads either by the State, County, or others is still yet undetermined and should be defined and resolved.

Facts and Factors

- ° Statutes, Ordinances, and Codes do not clearly define the responsibility.
- ° These certain roads are:
 - ° State-owned, usually DLNR.
 - ° Not registered in the county's road inventories.
 - ° Usually unimproved dirt roads that have never been planned, engineered, laid out, or constructed.
- ° Typically are agricultural access, hunting roads, or access to a land parcel.
- ° The roads may be "paper" roads which exist on tax maps but not on the ground.
- ° The roads are all public roadways.
- ° Past maintenance on some of these was performed under emergency ingress/egress when declared by Civil Defense.
- ° Other past maintenance has occurred under special circumstances as authorized by the Department of Public Works.

Proposed Program

A three-part program under which the following road categories would be administered (see attached).

MAINTENANCE OF CERTAIN STATE ROADS
PROPOSED PROGRAM

CATEGORY	PROGRAM DESCRIPTION	PROGRAM IMPLEMENTATION	RESPONSIBLE AGENCY
<ul style="list-style-type: none"> ° Public Roads; heavily traveled; as designated by this agreement. 	<ul style="list-style-type: none"> ° To improve such roads to a maintenance standard and then dedicated to the County for maintenance. 	<ul style="list-style-type: none"> (1) Agree on specific roads. (2) Provide funds for improvements (possibly by increments). (3) Design and construct. (4) Transfer title to the counties. (5) Accept title and perform maintenance. (6) While above is occurring, perform maintenance under the category below. 	<ul style="list-style-type: none"> STATE/COUNTY STATE COUNTY STATE COUNTY STATE/COUNTY
<ul style="list-style-type: none"> ° State-owned and homestead roads inventoried and in use prior to July 1, 1990. 	<ul style="list-style-type: none"> ° To provide maintenance once annually and upon emergency request with reimbursement from State. 	<ul style="list-style-type: none"> (1) Submit inventory and furnish annual estimated cost to State. (2) Establish reimbursement fund. (3) Perform maintenance as follows: <ul style="list-style-type: none"> ° Annual road grading and shaping. ° Emergency ingress and egress as authorized by Civil Defense. ° Above maintenance shall be with materials in-kind with the exception that higher quality materials may be used in critical areas where the need for emergency repairs would be reduced significantly. ° Any additional need for road grading and shaping would be the responsibility of the lessees or affecting property owners. (4) Request reimbursement. 	<ul style="list-style-type: none"> COUNTY STATE COUNTY COUNTY
<ul style="list-style-type: none"> ° State-owned and homestead roads not inventoried above. 	<ul style="list-style-type: none"> No maintenance provided. 	<ul style="list-style-type: none"> (1) Establish inventory. (2) Incorporate covenant in deeds. (3) Lessees and property owners to bear the cost of maintenance or construct to a standard dedicable to the counties. 	<ul style="list-style-type: none"> STATE/COUNTY STATE OWNERS

Appendix G

ATTACHMENT TO
RESOLUTION NO. 426, CD-1

HIGHWAYS WHICH ARE CANDIDATES FOR TRANSFER OR EXCHANGE PURSUANT TO THE POLICIES UNDER RESOLUTION NO. 88-426, CD-1

CITY HIGHWAYS TO STATE

Federal aid primary and federal aid secondary highways shall be under State jurisdiction.

1. Route 63 (FAP), Likelike Highway (Wilson Tunnel)
2. Route 83 (FAP), Kamehameha Highway (Haleiwa)
3. Route 803/801 (FAS), Kaukonahua Road
4. Route 803 (FAS), Wilikina Drive

STATE HIGHWAYS TO CITY

Federal aid urban highways and other roadways serving essentially local traffic and access to properties shall be under City jurisdiction.

Federal Aid Urban Highways

1. Farrington Highway (Waipahu)
2. Liliha Street - King Street to School Street
3. Aina Koa Avenue - Kalaniana'ole Highway to Aliikoa Street
4. Kalia Road - Ala Moana to point 310 feet from Ala Moana
5. School Street - Likelike to 230 feet toward Gulick Avenue and 305 feet toward Houghtailing Street
6. Kaneohe Bay Drive/Kaimalu Place - Mokapu Saddle Road toward Ikeanani Place
7. Queen Street - Fort Street Mall to Bethel Street
8. Ahua Street - Nimitz Highway to Kilihau Street
9. Kunia Road - Schofield Boundary to Wilikina Drive
10. Whitmore Avenue - Kamehameha Highway to Helemano Naval Reservation
11. Iroquois Road - Fort Weaver Road to West Loch Ammunition Depot
12. Kahuapaani Street - Salt Lake Boulevard to Ulune Street
13. Halawa Heights Road - Ulune Street to Camp Smith
14. Puuloa Road - Nimitz Highway to Moanalua Freeway
15. Jarrett White Road - Moanalua Freeway to Ala Mahamoe
16. Kaula Street - Middle Street to Ala Mahamoe
17. Middle Street - Nimitz Highway to King Street
18. Lunalilo Street - H-1 Off-Ramp to Ernest Street
19. Old Waialae Road - Kapiolani Boulevard to King Street

Other roadways serving essentially local traffic and access to properties:

1. Waokanaka Street - Pali Highway to End
2. Old Halawa Heights Road - Kikania Street (Halawa Naval Housing) to connection with realigned Halawa Heights Road
3. Bougainville Drive - Radford Drive to Salt Lake Boulevard (State jurisdiction presently ends near Radford High School)
4. Kakoi Street - Nimitz Highway to Kilihau Street
5. Old Farrington Highway - Palailai Interchange (Kalaeloa Boulevard) to Farrington Highway
6. Kuleana Road - Kamehameha Highway to end of present State jurisdiction
7. Ena Road - Ala Moana to point 205 feet from Ala Moana
8. Varsity Place - University Avenue to Kalo Lane
9. Waiaka Road - Kapiolani Boulevard to Waiaka Place
10. Kahinani Place - Mokapu Saddle Road to End
11. Papaku Place - Piikoi Street to End
12. Pacific Street - Nimitz Highway outbound to 427 feet mauka
13. Radford Drive - Kamehameha Highway to Bougainville Drive
14. Ala Ike Street - Waiawa Road to Leeward Community College
15. Bingham Street - Punahou Street to Isenberg Street
16. Metcalf Street - Alexander Street to Dole Street
17. Halona Street - Palama Street to Houghtailing Street
18. Olomea Street - Palama Street to Houghtailing Street

Roadways owned by the Department of Land and Natural Resources shall be transferred to the City.

(List Compiled December 3, 1979)

1. Ahe Place
2. Alaihi Street
3. Alapai Street
4. Alapio Road
5. Aloiloi Street
6. Anianiku Street
7. Captain Cook Avenue - Alapai Street to Manele Street
8. Chester Way
9. Ehukai Street
10. Hakaka Place
11. Hakaka Street
12. Hakimo Road
13. Haleiki Place
14. Halona Road
15. Hanakealoha Place - Between 10th Avenue and TMK:
3-4-04:19
16. Hanalulu Place

17. Hihimanu Street - Kal. Hwy. to Laumilo St., Waikupanaha St. to Oluolu St.
18. Hilu Street
19. Hinalea Street - Kal. Hwy. to Laumilo St.
20. Homestead Road - Fronting Parcels 20 and 21
21. Hoohulu Street - Hoomalu to Hoohulu Place
22. Iaukea Street
23. Judd Street - Nuuanu Ave. to Apio Lane
24. Kaauiki Place
25. Kaaumana Place
26. Kaaumoana Place
27. Kahauiki Place - For Fern School
28. Kahuapaani Street
29. Kaimanahila Street
30. Kalepa Street - Along Puukamalu Cemetery
31. Kamanaoio Place
32. Kaneohe Bay Drive - Remainder of State Hwy. on TMK: 4-4-14 (To end of TMK: 4-4-14:01)
33. Kaulu Street
34. Keaahala Road
35. Ke-Nui Road
36. Kokea Street - TMK: 1-5-20:09 to Deadend
37. Kuhimana Place
38. Kuhonu Place - Abuts TMK: 4-5-06: 59 and 60
39. Kulaiwi Street
40. Kumuula Street
41. Kuwale Road
42. La-I Road - TMK: 3-4-21: 44 to 3-4-21: 17
43. Laumilo Street
44. Lilipuna Road - Kam Hwy to TMK: 4-5-13: 08
45. Lualualei Homestead Road
46. Mahinui Road - All State except Lot 68 (City)
47. Mailiilii Road
48. Malolo Street
49. Manana Street
50. Manele Street
51. Monsarrat Avenue - Kalakaua Ave. to Leahi
52. Moole Street - Lot R-1-A
53. Napuanani Road - Lot 19 to Aiea Heights Drive
54. Nenu Street
55. Nonokio Street
56. Old Government Road
57. Pacific Street - Remainder portion of State Hwy
58. Paheehee Road
59. Paikau Street - Poka St. to Kahala Ave.
60. Palekaua Place
61. Palekaua Street
62. Palima Place
63. Paloa Place
64. Poka Place
65. Poka Street
66. Puhawai Road
67. Puuhulu Road

68. Puuone Road
69. Richard Lane - Lunalilo Freeway to End
70. St. John's Road - Farrington Hwy to Kulaaupuni St.
71. Waiaka Road - See map in Land Division
72. Waianae Valley Road
73. Waikalua Street
74. Waikele Road - Farrington Hwy to Hula St.
75. Waikupanaha Street - Ahiki St. to Hihimanu St.
76. Wailea Street
77. Waiomao Road

Roadways owned by the Department of Land and Natural Resources shall be transferred to the City.

(List Compiled December 4, 1988)

1. Aaliamanu Place
2. Adams Lane
3. Ahui Street - Ala Moana Blvd. to Deadend
4. Aiea Heights Drive (por.)
5. Ainakea Way
6. Ala Koa Street
7. Alala Road
8. Alapai Street - Beretania St. to Kinau St.
Lunalilo Freeway to Prospect
Prospect to Deadend
9. Alapio Road
10. Alewa Drive
11. Alexander Street - Lunalilo Freeway to Wilder Ave.
12. Auloa Road
13. Auwaiolimu Street
14. Azores Street
15. Bates Street - Nuuanu Ave. to Aumoae
16. Bijou Lane
17. Bingham Street - Isenberg to Punahou
18. Captain Cook Avenue - Lusitana to Freeway
19. Concordia Street
20. Diamond Head Road - Paikau to Kahala Ave.
Kahala Ave. to Beach Road
Coconut Ave. to Poni Moi Road
21. Dole Street - Metcalf to Alexander
22. Emerson Street
23. Ena Road
24. Ernest Street
25. Farr Lane
26. Forest Ridge Way
27. Fort Barrett Road a.k.a. Puu Kapolei Road
28. Frear Street - Except Deadend Abutting Freeway
29. Funchal Street
30. Glen Avenue
31. Green Street
32. Hala Drive (por.)

33. Haleahi Road
34. Haleiwa Road - Paalaa Kai Boundary to Waialua Beach Rd.
35. Halekou Road (por.)
36. Harding Avenue - Kapiolani to First Avenue
Sixteenth to Seventeenth Avenues
37. Hassinger Street
38. Hauula Homestead Road
39. Heen Way
40. Heleconia Place - Portion along Freeway
41. Helemano Street
42. Heulu Street
43. Hillside Avenue
44. Hoalua Street
45. Holowai Street
46. Hookui Street
47. Hoomaha Street
48. Hoopulapula Street
49. Hotel Street - Alapai to Ward
50. Huali Street
51. Hugh Street - First to Second Streets
52. Hula Street
53. Iholena Street
54. Iolani Avenue
55. Iwilei Road
56. Jarrett Street
57. Johnson Road
58. Kaamooloa Avenue
59. Kahala Avenue - Diamond Head Rd. to Black Point Rd.
Black Point Rd. to Hunakai St.
60. Kahauola Street
61. Kahinani Place
62. Kaimuki Avenue - Kapahulu to TMK: 2-7-30: 32
63. Kalaiopua Place
64. Kalakaua Avenue - Beretania to Poni Moi
65. Kalamaku Street
66. Kalau Street
67. Kalei Road - Between TMK: 2-8-16 and Lot 18
68. Kalia Road - Ala Moana to Paoa Place
69. Kamamalu Street
70. Kamehameha IV Road - School to Likelike
Pio Place to H-1 Freeway
71. Kaonohi Street - Kamehameha Hwy to Moanalua Road
72. Kapalai Road
73. Kapiolani Boulevard - Kalakaua to Harding
King to Waialae
74. Kauhihau Place
75. Kauwahi Avenue
76. Kawailoa Road
77. Kawao Avenue
78. Kealoha Street - Nakuina Street to Kam Field
79. Kealohanui Street
80. Keana Road
81. Keaulana Avenue

- 82. Ke-Iki Road
- 83. Kinau Street
- 84. King Street - Middle Street to Ola Overpass
Kapiolani to Manoa-Palolo Drainage Canal
H-1 to Waiialae Avenue
- 85. Kionaole Road
- 86. Koali Road
- 87. Koa Moali Place
- 88. Koko Head Avenue - Harding to Pahoa
- 89. Kolonahe Place
- 90. Koula Street - Deadend to Ilalo Street
- 91. Kuahine Drive
- 92. Kula Street
- 93. Kuliouou Road
- 94. Kuwili Street
- 95. Ladd Lane
- 96. Laumania Avenue
- 97. Lepeka Avenue
- 98. Liliha Street - Wyllie to Puunui
- 99. Lunalilo Street - Alapai to Ernest
Kewalo to Keeaumoku
- 100. Lusitana Street - Alapai to Pauoa Stream
- 101. Maakua Road
- 102. Madeira Street
- 103. Magellan Avenue - Manele to End
- 104. Makaanana Street
- 105. Makahio Street - Lot 44
- 106. Makee Road
- 107. Mano Avenue
- 108. Marin Street
- 109. Martha Street
- 110. Maunalaha Road
- 111. McCully Street - Ala Wai to Kapiolani Boulevard
- 112. Miller Street - Vineyard to Freeway
- 113. Nawaakoa Place
- 114. Nawaakoa Street
- 115. Nehoa Street - Mott-Smith to Punahou
- 116. Nuuanu Avenue - Nimitz to Merchant
Hotel to Pali Highway
- 117. Nuuanu Pali Drive
- 118. Ohe Street - Ilalo to Deadend
- 119. Old Pali Road
- 120. Olomehani Street
- 121. Oluolu Street
- 122. Palama Street - King to Vineyard
- 123. Palolo Avenue (por.)
- 124. Paoa Place
- 125. Pauoa Road - Nuuanu Avenue to Punchbowl
- 126. Pele Street - Except Deadend at Freeway
- 127. Pensacola Street - Beretania to Nehoa
- 128. Piikoi Street - Pensacola to King
- 129. Pililaaui Avenue
- 130. Piliokahi Avenue

- 131. Pine Street
- 132. Plantation Road - Exclusion 11-A
- 133. Poalima Street
- 134. Pohakunui Avenue
- 135. Pokai Bay Street
- 136. Pooleka Street
- 137. Prospect Street
- 138. Pua Avenue
- 139. Pualani Way
- 140. Pukele Avenue (por.)
- 141. Punahou Street - King to Nehoa
- 142. Punchbowl Street - Lusitana to Vineyard
Queen to Halekauwila
Halekauwila to End of TMK: 2-1-27-7
- 143. Puowaina Drive
- 144. Pupukea Road
- 145. Puuhale Road - Republican to Nimitz (Ewa Half)
- 146. Puunui Avenue
- 147. Reed Lane
- 148. River Street - Nimitz to Beretania
Beretania to End (pors.)
- 149. Rose Street
- 150. Round Top Drive
- 151. San Antonio Avenue
- 152. School Street - Liliha to Kalihi
- 153. Sixth Avenue - Harding to Pahoa
- 154. Spencer Street
- 155. Tantalus Drive
- 156. Tenth Avenue Place
- 157. Thurston Avenue
- 158. Victoria Street
- 159. Wahinepee Street
- 160. Wai Nani Way (por.)
- 161. Waiahole Homestead Road (por.)
- 162. Waiahole Valley Road (por.)
- 163. Waikapoki Road
- 164. Waipa Lane (por.)
- 165. Waipahu Depot Road (por.)
- 166. Waipahu Street (TMK: 9-4-51, etc.)
- 167. Waipahu Street - Hianaku to Waikēle
Waikēle to Kunia (pors.)
- 168. Ward Avenue - King to Prospect
- 169. Whiting Street
- 170. Wilder Avenue - University to Dole
Metcalf to Clement Lane
Thurston to End
- 171. Wolter Lane
- 172. Wyllie Street
- 173. Young Street - Victoria to McCully (por.)

Appendix H

Uniform Law For The Regulation of Tort Claims Against Public Bodies

by Leonard A. Mentzer: 1982-83 Chairman,
NIMLO Committee On Tort Liability; Chief, Tort Division,
New York, New York

[Editors' Note: The following draft of legislation was prepared for distribution and comment at NIMLO's 1983 Conference. Because of continuing interest in the subject, it is being excerpted here for the benefit of members who were unable to attend that meeting. You are encouraged to send any comments or suggestions about this draft legislation to NIMLO.]

UNIFORM LAW FOR THE REGULATION OF TORT CLAIMS AGAINST PUBLIC BODIES

Section 1. Title.

This law shall be known as the "Uniform Law for the Regulation of Tort Claims Against Public Bodies."

Section 2. Usage of Terms.

a. As used in this law:

(1) The term "actions in tort" means claims for money damages based upon negligence, medical malpractice, intentional tort, nuisance, products liability and strict liability, and also includes wrongful death and survival-type actions.

(2) The term "public body" means the state or any division, agency, authority, board or other organ of the state, or a political subdivision of the state, including any county, parish, city, town, village, borough or taxing district, and also includes any separately organized corporation chiefly dependent for its revenues upon taxes, tolls, or public appropriations.

(3) The term "other public property" includes roadways, sidewalks, parklands, and the like, dedicated to public use, or for the condition or maintenance of which, a public body is or may be liable, regardless of ownership.

(4) The term "public employee" means any elected or appointed official, including a judicial officer, and any paid, or unpaid employee or agent of a political body, whether or not identifiable by name.

(5) The term "non-economic loss" includes conscious pain and suffering, emotional distress, grief, loss of consortium and loss of uncompensated services.

b. The terms "he", "his" and "him" shall be taken to refer to all persons regardless of sex.

Section 3. Application.

a. All actions in tort against a public body or a public employee for death, personal injury or property damage proximately caused by (1) any defect or hazardous condition in public lands, buildings or other public property, including personalty, (2) any act or omission of a public employee, while acting within the scope of his public employment or duties, or (3) any act or omission of a person other than a public employee for which the public body is or may be liable, shall be subject to the provisions of this law.

b. All enacted and case-made law, substantive or procedural, concerning claims against a public body or public employee shall continue with full force and effect except as otherwise provided by this law.

c. In the event any provisions of this law shall be determined to be unconstitutional, ultra vires or otherwise unenforceable as a matter of law, the remaining provisions shall to the extent possible continue with full force and effect.

Section 4. Limitation of Liability.

a. The amount of damages recoverable by a claimant against a public body or a public employee for death, personal injury or property damage arising out of a single accident or occurrence, or sequence of accidents or occurrences, shall not exceed the lesser of (1) the total damages found and otherwise recoverable by the claimant, reduced by the percentage of fault, including contributory fault, attributed by the trier of fact to the other parties, if any, or (2) the sum of one hundred thousand dollars, provided further that the aggregate liability of a public body or a public employee for a single accident or occurrence, or sequence of accidents or occurrences, shall not exceed the sum of three hundred thousand dollars, to be apportioned equitably among all claimants therefor.

b. Except upon proof by a claimant of permanent disfigurement or dismemberment, or permanent loss of a bodily function, or whose recoverable expenses for medical treatment exceed the sum of two thousand five hundred dollars, he shall not be entitled to recover damages for non-economic loss.

2. In no event shall a public body be liable for punitive or exemplary damages.

Section 5. Other Rights and Remedies.

This law shall not be construed to abrogate or restrict any immunity or right of indemnification of a public body or public employee whether by insurance or otherwise, or to confer a right of action upon any person against a public body or public employee, nor shall anything in this act be construed to impose liability on a public body or public employee for any negligent or wrongful act or omission.

Section 6. Effective Date.

The limitations on damages of this law shall apply to all actions in tort in which money damages have not been adjudged as of the effective date hereof.

Section 1 -- Comment

The aim of these provisions is to balance the legitimate demands of the individual tort victim against the rightful expectations of the many as to how their limited tax revenues shall be spent, avoiding as much as possible the vagaries of tort trials.

Section 2 -- Comment

Subsection a (1). There is no attempt made here to distinguish between proprietary and governmental functions. Neither however does the law abrogate this or other such distinctions designed to insulate certain sovereign acts, since Section 3b expressly preserves such enacted law. Because the aim is to preserve the public fisc, and not to regulate the behavior of public employees, excepting intentional torts from the limitation-of-damages provisions would be unwarranted. Inclusion of nuisance and products and strict liability is meant to simplify judicial treatment of borderline claims sounding under these doctrines, with the end being comprehensive limitation-of-damages.

Subsection a (2). The inclusion of independent corporations may seem to invite controversy but, again, the aim is preservation of the fisc. Subsection a (3). The intent here is to limit liability without it being made relevant whether the public body owns, as opposed to merely controls, the offending property.

Subsection a (4). Since government acts through its servants, there should be no procedural difference between suits

based upon the torts of known versus inferred employees.

Subsection a (5). With the occasional exception of medical costs, the most inflationary and uncontrollable element in tort recoveries has proven to be the unmeasurable awards for "pain and suffering" and the like. On the other hand, the recovery of such items by claimants is least compelling from an economic standpoint, since they are indirect economic costs at best.

Section 3 -- Comment

Subsection a. The aim hereof is to apply the same limitations across the board regardless of the legal theory by which it is reasoned that the public body should pay. Subsection b. Substantive case law, such as may immunize certain governmental activities, or statutory law should continue to retain such validity as the courts or legislatures shall intend; similarly, procedural rules should be retained as befits traditional state practice. Subsection c. No attempt is made here to categorize constitutional provisions such as may forbid damages limitations. Rather, such inherent conflicts should be resolved on a state-by-state basis before adoption hereof.

Section 4 -- Comment

Subsection a. This section is the heart of the law. The joint-and-several liability doctrine is abrogated to the extent shown in clause (1). The arbitrary amounts set forth in clause (2), which may be locally determined, are designed to mirror the universal practice in private insurance of single-claim and multiple-claim limits. Subsection b. This provision ought to have the salutary effect of reducing the number of frivolous suits. Subsection c. This provision is ordinarily derived from the doctrine underlying punitive damages, but its codification will clear away all doubts.

Section 5 -- Comment

That the municipality might choose to purchase liability insurance ought not to affect its treatment in court, since insurance premiums will tend to follow the trend of verdicts.

Section 6 -- Comment

The limitations-on-damages provisions should be viewed as procedural and, as such, do not affect rights but merely remedies.

Appendix I

HANNIGAL TAVARES
Mayor



GLENN M. KOSAKA
Corporation Counsel

PAUL L. HORIKAWA
First Deputy Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

County of Maui
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October 26, 1989

MEMO TO: Glenn M. Kosaka, Corporation Counsel
F R O M: Guy P. D. Archer, Deputy Corporation Counsel
SUBJECT: LEGISLATIVE REFERENCE BUREAU/DISPUTED ROADS

In response to the draft from the Legislative Reference Bureau concerning public liability on disputed roads, it would be a positive move if legislation were enacted providing additional financial protection to the counties.

The County of Maui has only rarely had to pay more than \$100,000 in lawsuits based upon claims of negligent road conditions. The last instance was the Murakami case which went to trial in 1984 and was finally settled after appeal in 1987-88. It was undisputed that the County owned and maintained the roadway and bridge at issue, and it paid in excess of \$200,000 in settlement.

More recently, the State and County were parties to Griffith, which involved a wrongful death, and Morgan, which involved personal injuries. Both cases arose out of a single jeep accident where the driver swerved to avoid a cow on the old State Route 31 which runs from Ulupalakua to Kaupo. Ownership was disputed although the County was maintaining the road. The County settled the wrongful death case for \$50,000 and the personal injury suit for \$10,000. The State reportedly contributed an equal amount in both lawsuits while Ulupalakua Ranch paid substantially more.

Recently, total costs incurred by the County to go to trial have run in the \$20,000 to \$30,000 range. The County is often unable to recover any of its costs because of indigent plaintiffs. Although the County has defended successfully in a number of cases recently, there is bound to be a case sometime in the future where settlement, even

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for a substantial sum, will be prudent. Whether such a case will involve a disputed roadway, however, is another question.

It appears that the proposed legislation will affect only a very small number of cases where ultimate liability to the State will be minimal. If the State were to provide "umbrella" protection against losses that exceed \$50,000, for example, the County would be protected against the rare instance of catastrophic loss in exchange for ongoing effort of maintaining an admittedly substandard road. Given the infrequency of lawsuits arising on disputed roadways and the rarity of judgment being entered, the State should be willing to provide "umbrella" protection at a reasonable \$50,000 amount.

Although the report does not focus on several of the other proposals, I recommend that additional attention be given to the following:

1. Posting warning signs on substandard roadways. If the County is going to assume maintenance responsibility for "substandard" roadways, the traveling public should be warned of the situation. The State should share in the cost of posting prominent signs detailing the hazards to motorists. This will protect both the State and County in any lawsuit arising out of the condition of the "substandard" roadway. In the alternative, the State and County should consider closing hazardous roads. Both the State and County have a common law duty to maintain their roads in a reasonably safe condition.

2. Improved traffic control signals. The State should share in the cost of identifying particular hazards on disputed roads and providing traffic control signals to warn motorists of the specific hazard. Again, a small expenditure of funds could, in the long run, save the State and County from having to pay a large judgment. Also, both State and County owe a common law duty to motorists to warn of hazardous conditions of which they have notice.

3. Joint and several liability. The most recent tort reform law failed to eliminate joint and several liability in cases involving motor vehicle accidents, except where the claim is for negligent road design and/or maintenance and tortfeasor negligence does

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not exceed 25%. The County has yet to benefit from this provision, and raising the percentage to 30% will not help in the situation where a "substandard" road is the primary cause of an accident.

4. Increasing required liability insurance.
One of the proposals suggests that minimum liability insurance be raised to \$100,000. There are some variations on this theme which should be explored. The taxpayers can (i) be taxed more to improve the roads; (ii) be taxed somewhat less and pay judgments when people are injured on bad roads; or (iii) pay additional insurance premiums to cover adequately all personal injuries.

A good argument can be made that the vehicle owners are the ones who should pay the expense. If the minimum liability insurance were only raised from \$25,000 to \$50,000, for example, the situation would be much improved in terms of providing injured parties with adequate medical and liability coverage.

Alternatively, the State could pass legislation requiring vehicle insurers to name the State and County as additional insureds in motor vehicle accidents. This alternative would probably be less expensive to the policy holder. Another alternative would be to raise the minimum insurance on car rentals to \$100,000. It appears that tourists are generally unfamiliar with Hawaii roads and seem to be more prone to get into accidents.

Serious consideration should also be given to requiring moped operators to have insurance to cover themselves in the event of an accident. Under current no-fault law, mopeds are not covered. Thus, the County sees with some frequency lawsuits involving moped riders who had no insurance whatsoever to cover their injuries.

The only problem with putting this in the insurance arena is that it may eliminate the incentive for the State and County to upgrade the roads. Thus, another component necessary for a solution to the problem is for the State Legislature to provide adequate revenues to bring "substandard" roads up to a reasonably safe condition.

In any event, if coverage were increased for rental cars, and government were to make a concerted effort

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to warn of hazardous road conditions, and the State were to provide "umbrella" protection above \$50,000, then the County would have the additional protection that it needs to assume the responsibility of routine maintenance on disputed roads.

GPDA:jso
cc: Susan Ekimoto Jaworowski, Researcher,
Legislative Reference Bureau
L6-zzb-ga