

## **Honolulu Authority for Rapid Transportation**

### **RESOLUTION NO. 2013-3**

**APPROVING NOTIFICATION TO THE CITY COUNCIL OF INTENTION TO ACQUIRE THE REAL PROPERTY IDENTIFIED AS TAX MAP KEY 1-9-7-023:008 BY EMINENT DOMAIN AND PUBLICATION OF A RESOLUTION AUTHORIZING ACQUISITION OF SAID PROPERTY BY EMINENT DOMAIN**

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973, as amended (Charter); and

WHEREAS, Section 17-103.2(b) of the Charter empowers HART "to acquire by eminent domain ... all real property or any interest therein necessary for the construction, maintenance, repair, extension or operation of the fixed guideway system;" and

WHEREAS, prior to such acquisition the Charter directs HART to submit a list of real property to be acquired by eminent domain to the City Council; and

WHEREAS, the City Council may approve the acquisition by eminent domain or may object by adoption of a resolution within 45 days of the notification to acquire the real property; and

WHEREAS, the acquisition by eminent domain in fee simple of the real property identified as Tax Map Key (TMK) 1-9-7-023:008 and more particularly described in the attached legal description marked as Exhibit A, is necessary for the Honolulu Rail Transit Project fixed guideway system, a valid public use and purpose;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. That written notification to the City Council is approved, for the acquisition by eminent domain in fee simple of the real property identified as TMK 1-9-7-023:008 ; and
2. That in the event the City Council approves or does not object to the acquisition within 45 days of notification, then HART is authorized to publish in a daily newspaper at least three days prior to Board action, the attached resolution marked as Exhibit B, authorizing acquisition by eminent domain in fee simple of the above-identified real property.

ADOPTED by the Board of the Honolulu Authority for Rapid Transportation on  
JAN 24 2013.

Exhibit A – Legal description of TMK 1-9-7-023:008

Exhibit B – Resolution No. 2013-\_\_\_\_, Authorizing the Acquisition of the Real  
Property Identified as Tax Map Key 1-9-7-023:008 by Eminent  
Domain.

  
\_\_\_\_\_  
Board Chair

ATTEST:

  
\_\_\_\_\_  
Board Administrator

**PARCEL 28**

**Honolulu Rail Transit Project**

Being a Portion of Lot 1

Same Being a Portion of Grant 3725 to Oahu Railroad and Land Company  
and Land Patent 8168, Part 12, Land Commission Award 8305 to P. Kanoa

Situate at Manana-Iki and Manana, Ewa, Island of Oahu, Hawaii

Beginning at the North corner of this parcel of land, being the East corner of Lot 2, being a portion of R.P. 4475, L.C. Aw. 7713, Ap. 48 to V. Kamamalu and on the Southwest side of Kamehameha Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "EWA CHURCH" being 845.87 feet North and 2,845.73 feet East, thence running by azimuths measured clockwise from true South:

- |    |              |        |  |
|----|--------------|--------|--|
| 1. | 290° 19' 30" | 141.01 | feet along the Southwest side of Kamehameha Highway;   |
| 2. | 29° 36'      | 15.62  | feet along Lot 2 (Map 1) of Land Court Application 1695;   |
| 3. | 110° 19' 30" | 146.12 | feet along the remainder of Parcel 28, being a portion of Grant 3725 to Oahu Railroad and Land Company and L.P. 8168, Part 12, L.C. Aw. 8305 to P. Kanoa;                  |
| 4. | 226° 36'     | 17.20  | feet along Lot 2, being a portion of R.P. 4475, L.C. Aw. 7713, Ap. 48 to V. Kamamalu, to the point of beginning and containing an area of 2,211 Square Feet, more or less. |



R. M. TOWILL CORPORATION

Description prepared by:

*Ryan M. Suzuki*  
 Ryan M. Suzuki Exp: 4/30/14  
 Licensed Professional Land Surveyor  
 Certificate Number 10059

2024 North King Street, Suite 200  
 Honolulu, Hawaii 96819  
 December 19, 2012

This description is for exhibit purposes and does not purport a legally subdivided lot.



**Honolulu Authority for Rapid Transportation**

**RESOLUTION NO. 2013-\_\_**

**AUTHORIZING THE ACQUISITION OF THE REAL PROPERTY IDENTIFIED  
AS TAX MAP KEY 1-9-7-023:008 BY EMINENT DOMAIN**

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City and County of Honolulu 1973, as amended (Charter); and

WHEREAS, Section 17-103.2(b) of the Charter empowers HART “to acquire by eminent domain . . . all real property or any interest therein necessary for the construction, maintenance, repair, extension or operation of the fixed guideway system;” and

WHEREAS, the City Council approved or did not object to the acquisition of the real property identified as Tax Map Key (TMK) 1-9-7-023:008 by eminent domain in fee simple after written notification by HART; and

WHEREAS, the acquisition by eminent domain in fee simple of the above-identified real property, which is more particularly described in the attached legal description marked as Exhibit A, is necessary for the Honolulu Rail Transit Project fixed guideway system, a valid public use and purpose;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. That acquisition by eminent domain in fee simple of the real property identified as TMK 1-9-7-023:008 is hereby authorized and the Corporation Counsel of the City and County of Honolulu is empowered to institute eminent domain proceedings as provided by law for the acquisition thereof; and
2. That the acquisition of the above-identified property by eminent domain is determined and declared to be for a valid public use and purpose as aforesaid; and
3. That the acquisition of the above-identified property by eminent domain is determined and declared to be necessary for the aforesaid public use and purpose; and
4. That in the process of said proceedings in eminent domain, the Corporation Counsel is authorized and empowered to negotiate terms of settlement, subject to the approval of HART and/or the Court before which such proceedings are commenced; and

Exhibit B

5. That the Board Administrator be directed to transmit copies of this resolution to HART and the Department of the Corporation Counsel.

ADOPTED by the Board of the Honolulu Authority for Rapid Transportation on \_\_\_\_\_.

\_\_\_\_\_  
Board Chair

ATTEST:

\_\_\_\_\_  
Board Administrator

I:\CD\WKW-TEMP\RESOLUTION 2013-2 LANGUAGE.DOC

DRAFT

# Honolulu Authority for Rapid Transportation

## STAFF SUMMARY

<b>TITLE:</b> Review of Notification to City Council seeking authorization for Condemnation of land identified as TMK 1-9-7-023:008, and situated at 945 Kamehameha Highway.	<b>STAFF CONTACT:</b> Jerry Iwata	<b>DATE:</b> December 28, 2012
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Type:	Goal	Focus	Area	Reference Notes
<input type="checkbox"/> Action/Approval	<input type="checkbox"/> Project Delivery	<input type="checkbox"/> Livability/Land Use		
<input type="checkbox"/> Information	<input type="checkbox"/> Service Delivery	<input type="checkbox"/> Partnerships		
<input type="checkbox"/> Follow-up	<input type="checkbox"/> Resource Stewardship	<input type="checkbox"/> Agency Admin.		

**1. Purpose:**  
 Review of Notification to City Council for condemnation of land for public use, identified as Parcel 28, bearing Tax Map Key No. 1-9-7-023:008, and located at 945 Kamehameha Highway Pearl City, Hawaii. After discussions with the owners and their representatives, HART is unable to negotiate a settlement with the owners for the acquisition of 2,213 square feet of land as shown on the attached map along Kamehameha Highway. This property is on the critical path for successful completion of the Kamehameha Section (KHG). It is zoned Business 2 (B2), and is owned by Stuart Plaza Investments.

**2. Background/Justification**

This property (TMK 1-9-7-023:008) was designated as a partial take in the Final Environmental Impact Statement (FEIS). As required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and FTA C5010.1D, the owners were notified of HART's intent to acquire the property and agreed to allow HART on to the property in order to conduct an appraisal of the property by a certified local appraiser. This appraisal follows URA guidelines and took into consideration all site conditions and potential impacts the partial take would have on the remainder of the property. The appraisal review, as required by the URA was done by the Department of Design and Construction Land Division (DDC-LD) of the City and County of Honolulu.

The value of the land to be acquired is not in dispute; however, the owner claims damages to the remainder of the property. HART's independent appraiser determined that there were no damage to the remainder property. Five stalls on the front of the property would be affected by the acquisition, which would not impact the use of the building and remainder property. It was the appraiser's opinion that the sales comparison approach was appropriate to value the land being acquired.

The owner of the property retained an independent appraisal and asserts that damages to the remainder would be \$835,000. The appraiser felt that there would be a net loss of 12 stalls as well as a reduction in rental income. There is a substantial difference in the City's offer of \$115,000 (land) and the owner's value of \$950,000 (land and severance damage).

HART staff met with the property owner's representative about the results of the appraisals; however, there was no resolution on damages to remainder land. The owner's representative felt strongly that their valuation was the correct one. In later conversation with the owner's representative, he said he would have the property owner's appraiser contact HART to discuss the assumptions behind the valuation; however after repeated

follow-ups, this discussion has not occurred.

Additionally, HART requested a Consent-to-Construct so that the project schedule would not be delayed and a negotiated settlement could be reached concerning damages to the remainder. The property owner's representative rejected this option.

Given the substantial difference in the City's and owner's valuations, the Kamehameha Section construction schedule and the impact of further delays have on the project, HART staff is now requesting the HART Board to review this Notification to City Council for authorization to institute condemnation proceedings for this property.

**3. Procurement Background**

N/A

**4. Financial/Budget Impact**

The project budget includes an estimated cost for legal action associated with the condemnation of the property.

**5. Policy Impact**

There is no policy impact since this action conforms to the requirement of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, FTA 1050.1D and Article XVII of the Charter of the City and County of Honolulu.

**6. Public Involvement**

N/A

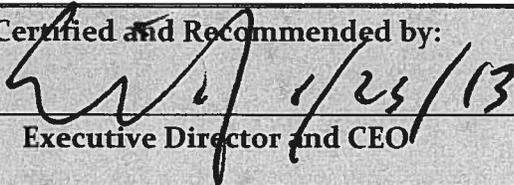
**7. Alternatives**

An alternative investigated was to eliminate or reducing the taking however this alternative was determined unfeasible.

**7. Exhibits**

Offer Letter to property owner.

Certified and Recommended by:



1/25/13

Executive Director and CEO

DEPARTMENT OF DESIGN AND CONSTRUCTION  
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813  
Phone: (808) 768-8480 • Fax: (808) 768-4567  
Web site: [www.honolulu.gov](http://www.honolulu.gov)

PETER B. CARLISLE  
MAYOR



COLLINS D. LAM, P.E.  
DIRECTOR  
LORITA M. KAHIKINA, P.E.  
DEPUTY DIRECTOR

LA 11-299.JH

May 25, 2011

Stuart Plaza Investments  
c/o Mark Johnson  
Johnson Management Co., Inc.  
945 Kamehameha Highway, #12  
Pearl City, Hawaii 96782

Gentlemen:

Subject: Honolulu High-Capacity Transit Corridor Project  
Kamehameha Highway Alignment  
945 Kamehameha Highway  
Parcel 28, 2,211 Square Feet  
Tax Map Key No. 9-7-023-008 (Portion)

This is a follow-up to our previous correspondence dated February 18, 2011, regarding the subject matter. An appraisal for the portion of your property to be acquired has been completed. Based on our findings as contained in the enclosed Statement of Just Compensation, the City offers to purchase Parcel 28, area 2,211 square feet, identified as Tax Map Key No. (1) 9-7-023-008 (portion), in fee simple, free and clear of all liens and encumbrances, for the consideration of \$115,000.00 (One Hundred Fifteen Thousand Dollars).

If this offer is acceptable, please sign the duplicate of this letter and the Consent to Enter and return them in the enclosed envelope by June 8, 2011. The remaining copies are for your files.

Also, enclosed for your information is the Appraisal Summary Statement.

In accordance with federal regulations affecting real property transactions, we request your cooperation in providing us with your Taxpayer Identification Number. Please execute and return the enclosed IRS Form W-9 at the same time. The W-9 is required by our Department of Budget and Fiscal Services to release the check.

Stuart Plaza Investments  
May 25, 2011  
Page 2

Please call David Lee at 768-8701 or Dodie Browne at 768-8733 if you have any questions regarding this matter.

Very truly yours,



Thomas T. Miyata, Chief  
Land Division

DL:jh

Enclosures

ACCEPTED:

STUART PLAZA INVESTMENTS:

By \_\_\_\_\_  
Its

Dated: \_\_\_\_\_

Phone (Bus.): \_\_\_\_\_

(Cell) \_\_\_\_\_

**CONSENT TO ENTER**

The undersigned, being the owner of that certain property bearing the tax map key listed hereinbelow, hereby consents to the entry by the City and County of Honolulu for the purpose stated:

**PROJECT: Honolulu High-Capacity Transit Corridor**  
**TAX MAP KEYS: (1) 9-7-023-008 (Portion)**  
**LOCATION: 945 Kamehameha Highway**  
**PURPOSE: Construction Activities**

It is understood that this consent to enter is granted upon the following terms:

(1) That the area covered by this consent document is colored in yellow on the attached map. That this consent includes the right of ingress to and egress from said consent to enter area over the land of the undersigned, adjacent thereto for all purposes in connection with this consent to enter.

(2) That this consent to enter is granted for a **nominal** consideration of \$1.00.

(3) That the City and County of Honolulu shall indemnify the undersigned against liability for injury to or death of persons in the manner provided by law when such injury or death is caused by the negligent use of said property by the City and County of Honolulu, resulting from this consent to enter.

(4) That the entire cost of the work proposed to be done and all other expenses incidental thereto will be borne by the City and County of Honolulu.

(5) That the City and County of Honolulu will, in its discretion, determine the extent of the work to be done.

(6) That this consent to enter is granted for a period of thirty-six (36) months commencing from date of actual entry or upon completion of work, whichever is sooner.

(7) That the City and County of Honolulu or its representative will provide the undersigned written notification at least two weeks prior to the entry into said property by the City and County of Honolulu's contractor.

(8) That this consent to enter shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors in trust, successors and assigns.

(9) That this consent to enter shall be null and void upon recordation of the deed or other document conveying said property to the City and County of Honolulu.

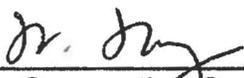
DATED: HONOLULU, HAWAII \_\_\_\_\_.

STUART PLAZA INVESTMENTS

By \_\_\_\_\_  
Its

Phone \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGALITY

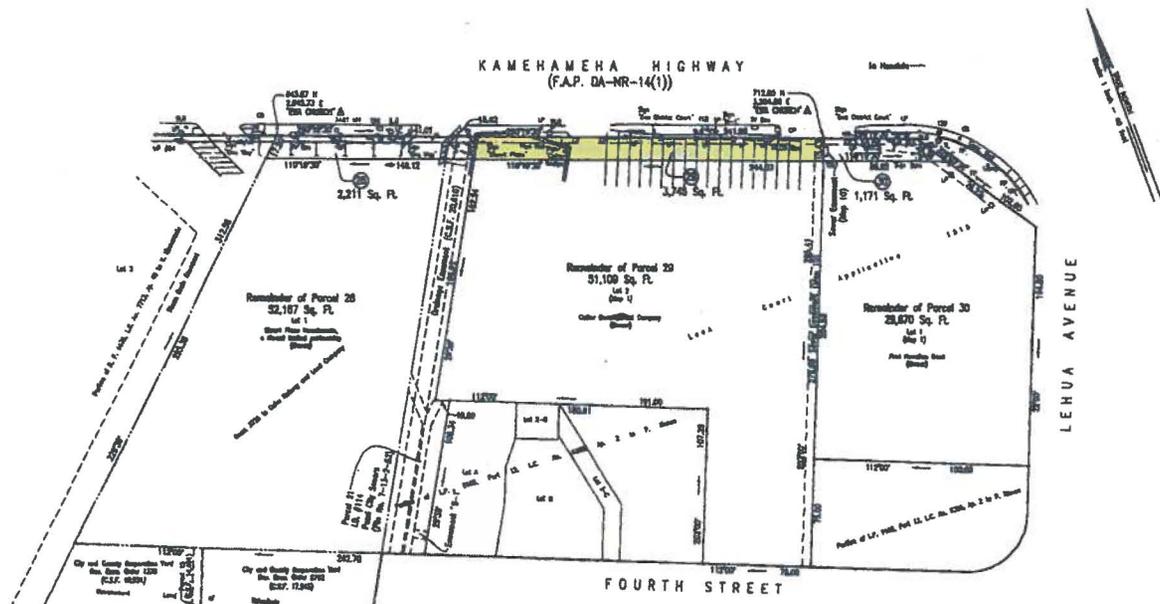
  
\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED AS TO CONTENTS

  
\_\_\_\_\_  
Department of Transportation Services

DL:jh  
(05/11/11)

(11-271.CTE)




 This map was prepared by me or under my direct supervision.  
 S. S. S.  
 Licensed Professional Land Surveyor  
 Certificate Number 1000

- Legend:
-  Fee Simple
  -  Catch Basin
  -  Guard Post
  -  Light Pole
  -  Street Light Pole
  -  Traffic Signal Pole
  -  Telephone
  -  Utility Pole
  -  Overhead Utility Line

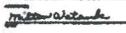
NOTES:  
 Coordinates referred to "20N CHERRY" A.  
 Parcel 28 to 30, includes are for right-of-way purposes.

Work Order No. 101  
 Contract No. 20020314

PARCELS 28 TO 30, INCLUSIVE  
 PARCEL MAP

DEPARTMENT OF DESIGN AND CONSTRUCTION  
and its successors or assigns  
 DIVISION OF LAND SURVEY AND ACQUISITION  
**HONOLULU HIGH-CAPACITY  
 TRANSIT CORRIDOR PROJECT**  
 KAMEHAMEHA HIGHWAY  
 AT MAHANA BO AND MAHANA 'EWA, OAHU, HAWAII

Date: 2/11/2011  
 Drawn by: S. S. S.  
 Checked by: S. S. S.  
 Title: 1. b. - 28 A.

DATE	FILE	DATE	FILE
2/11/2011	1000	2/11/2011	1000

All other rights are reserved by the Department of Design and Construction, State of Hawaii.

100-100-000-000-000  
 1-1-2011

Sheet No. 2 of 7 Sheets

FILE	REVISION	FOUNDER	DATE
1000	1	S	2/11/2011

## STATEMENT OF JUST COMPENSATION

**PROJECT:** HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT (HHCTCP)

**LOCATION:** 941 & 945 Kamehameha Highway, Pearl City, Ewa, Oahu, Hawaii

**TAX MAP KEY:** (1) 9-7-023-008

**OWNER(S):** Stuart Plaza Investments

**INTEREST TO BE ACQUIRED:** Unencumbered fee simple

**LARGER PARCEL:** 54,378 square feet

**PARCEL TO BE ACQUIRED:** Parcel 28; consisting of approximately 2,211 square feet

**ZONING:** B-2, Community Business

**IMPROVEMENTS:** None

**PURPOSE:** Under the United States and Hawaii Constitutions, private property cannot be taken for public use without payment of just compensation. In accordance with the Code of Federal Regulations, the City and County of Honolulu, Department of Design and Construction – Land Division, submits a written statement of and summary of the basis for the amount it has established as just compensation for the above identified property.

In estimating just compensation, an appraisal was performed by a State of Hawaii licensed appraiser. The amount established as just compensation is not less than the approved appraisal of the fair market value of the property being acquired.

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

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

**JUST COMPENSATION:** The City and County of Honolulu recommends a just compensation amount for the property being acquired as of August 18, 2010 at:

**\$115,000**

The original of this statement to be tendered to the above named owner has been signed in blue ink. If the signature is not in original ink, as opposed to duplicating, electrostatic or other media, this Statement of Just Compensation is not valid.



AARON T. K. SAKAMOTO, Review Appraiser  
Department of Design and Construction  
City and County of Honolulu  
Certified Residential Appraiser, #827  
Expiration Date: 12/31/2011

## APPRAISAL SUMMARY STATEMENT

**PROJECT:** HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT  
(HHCTCP)

**ADDRESS:** 941 & 945 Kamehameha Highway, Pearl City, Oahu, Hawaii

**TAX MAP KEY:** (1) 9-7-023-008

**PARCEL:** 28;  
Acquisition Parcel Map prepared by R.M. Towill Corporation  
dated March 21, 2011

**AREA OF TAKING:** 2,211 square feet

**AREA BEFORE TAKING:** 54,378 square feet

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

**INTEREST TO  
BE ACQUIRED:** Unencumbered fee simple

**OWNER(S):** Stuart Plaza Investments

**COUNTY ZONING:** B-2, Community Business

**HIGHEST & BEST USE:** Commercial

**ASSESSED VALUE (2011):**

Land	\$ 2,692,400
Improvements	\$ 1,711,200
TOTAL	\$ 4,403,600

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The Appraisal Estimate is: \$115,000

The value of the property being acquired is based upon an appraisal prepared in accordance with accepted appraisal practices. Full and careful consideration has been given to the highest and best use for development of the property and to all features inherent in your property in order that the highest valuation possible can be made. The Appraisal Estimate and appraisal were developed and reported in conformity with Federal regulations, State statutes, and City ordinances.