



DEPARTMENT OF PUBLIC WORKS



OFFICE OF RIGHT OF WAY

RIGHT OF WAY PROCEDURES MANUAL

November 17, 2017

RIGHT-OF-WAY PROCEDURE MANUAL

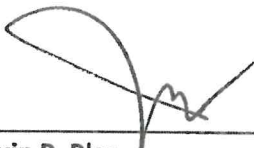
Department of Public Works
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Guam ROW Procedures Manual Forms

| <u>Form No.</u> | <u>Form Title</u> | <u>Manual Chapter Title</u> |
|-----------------|----------------------------------------------------------------------------------|-------------------------------------|
| 4.1-1 | Review Appraiser's Statement | Appraisal and Appraisal Review |
| 4.2-1 | Summary of Values | Supplemental Standards of Appraisal |
| 4.2-2 | Value Finding | Supplemental Standards of Appraisal |
| 4.2-3 | Certificate of Value | Supplemental Standards of Appraisal |
| 4.2-4 | Property Owner Contact Letter | Supplemental Standards of Appraisal |
| 5.1-1 | Donation of Real Property | Donation of Right of Way |
| 5.1-2 | Donation Deed | Donation of Right of Way |
| 5.2-1 | Notice to Owner | Negotiation Process |
| 5.2-1BO | Notice to Business Owner | Negotiation Process |
| 5.2-2 | Offer and Purchase Agreement | Negotiation Process |
| 5.2-3 | Representative Authorization | Negotiation Process |
| 5.2-4 | Settlement Approval | Negotiation Process |
| 5.2-5 | Right of Entry Agreement | Negotiation Process |
| 5.2-6 | Release & ROE for Asbestos Survey | Negotiation Process |
| 5.2-7 | Closing Statement | Negotiation Process |
| 5.2-8 | Property Inventory | Negotiation Process |
| 5.5-1 | Application for Payment of Closing Cost | Legal Docs & Acquisition Closing |
| 5.5-2 | Warranty Deed | Legal Docs & Acquisition Closing |
| 5.5-3 | Perpetual Easement | Legal Docs & Acquisition Closing |
| 5.5-4 | Temporary Easement (specific duration) | Legal Docs & Acquisition Closing |
| 5.5-5 | Temporary Easement (project duration) | Legal Docs & Acquisition Closing |
| 5.5-6 | Special Warranty Deed | Legal Docs & Acquisition Closing |
| 5.6-1 | Condemnation Process Checklist | Eminent Domain |
| 5.6-2 | Trial/Hearing Report | Eminent Domain |
| 5.6-3 | Request for Taxpayer Identification Number | Eminent Domain |
| 5.6-4 | Public Disclosure Notice | Eminent Domain |
| 7.2-1 | Statement of Eligibility for Supplementary Replacement Housing Payment for Owner | General Relocation Requirements |
| 7.2-2 | Replacement Housing Payment Determination – Three Comparables Method | General Relocation Requirements |
| 7.2-3 | 30 Day Notice to Vacate | General Relocation Requirements |
| 7.2-4 | 90 Day Letter of Assurance | General Relocation Requirements |

Guam ROW Procedures Manual Forms

| <u>Form No.</u> | <u>Form Title</u> | <u>Manual Chapter Title</u> |
|-----------------|--------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| 7.2-5 | Replacement Housing Questionnaire/Certification | General Relocation Requirements |
| 7.2-6 | Application and Claim for Replacement Housing Payment | General Relocation Requirements |
| 7.2-7 | Application and Claim for Reimbursement of Moving Cost | General Relocation Requirements |
| 7.2-9 | Relocation Payment Appeal | General Relocation Requirements |
| 7.2-10 | Notice of Eligibility - Residential | General Relocation Requirements |
| 7.2-11 | Notice of Claim Denial/Right to Appeal | General Relocation Requirements |
| 7.3-1 | Moving Expense Calculation and Payment Determination | Payment for Moving& Related Expenses |
| 7.3-2 | Hazardous Substance Letter | Payment for Moving& Related Expenses |
| 8.5-1 | Radon Gas Notification and Disclosure of Lead based Paint Hazards Warning | Disposal of Surplus Real Property |
| 8.6-1 | Airspace Agreement | Right of Way Property Leases |
| 8.6-2 | Cash Receipt Form | Right of Way Property Leases |
| 8.6-3 | Collection Form | Right of Way Property Leases |
| 8.6-4 | Lease Agreement | Right of Way Property Leases |
| 8.6-5 | Proposed Lease Notification | Right of Way Property Leases |
| 8.6-6 | Right of Way Deposit Transmittal | Right of Way Property Leases |
| 8.7-1 | Asbestos Abatement Contract | Asbestos Management |
| 8.7-2 | Release and Notice of Non-Friable Asbestos Containing Materials for Temporarily Leased or Occupied Facilities | Asbestos Management |
| 8.7-3 | Affidavit "Asbestos Abatement" | Asbestos Management |
| 8.7-4 | Release and Notice of Non-Friable Asbestos Containing Materials (ACM) | Asbestos Management |
| 8.7-5 | Release and Notice of Friable Asbestos Hazard | Asbestos Management |
| 8.7-6 | Initial Building Survey Review | Asbestos Management |
| 8.7-7 | Initial Abatement Technical Specification Review | Asbestos Management |
| 8.7-8 | Notice of Asbestos Renovation or Demolition aka National Emissions Standards for Hazardous Air Pollutants (NESHAP) | Asbestos Management |
| 9.3-1 | Request for Vendor Identification Number | Asbestos Management |
| 10.1-1 | Right of Way Certification | Right of Way Certification |
| 10.1-2 | Right of Way Certification with exception(s) | Right of Way Certification |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|----------------------------------------------------------------|
| 1.1 | Right of Way Procedures Manual |
| 1.1.1 | Manual Changes |
| 1.1.2 | Forms |
| 1.1.3 | Directive |
| 1.1.4 | Guidance Documents |
| 1.1.5 | Liaison with Attorney Generals Office for Forms and Procedures |
| 1.1.6 | Manual Exemptions |
| 1.1.7 | Non-Discrimination Statement |
| 1.1.8 | Common Acronyms |
| 1.1.9 | Compliance with Law |
| | |
| 2.1 | Land Title |
| 2.1.1 | Quality and Quantity of Title |
| 2.1.2 | Title Evidence |
| 2.1.3 | Abstract of Title Reports |
| 2.1.4 | Title Insurance |
| 2.1.5 | Opinion of Title |
| 2.1.6 | Title Examination |
| 2.1.7 | Parcel Numbers |
| 2.1.8 | Fee Title |
| 2.1.9 | A Quitclaim Deed as a Conveyance |
| 2.1.10 | Perpetual Easement |
| 2.1.11 | Conservation Easement |
| 2.1.12 | Temporary Easement |
| 2.1.13 | License Agreement |
| 2.1.14 | Recording |
| | |
| 3.1 | Contaminated Parcels |
| 3.1.1 | Identification of Contaminated Sites |
| 3.1.2 | Petroleum Contaminated Parcels |
| 3.1.3 | Non-Petroleum Contaminated Sites |
| 3.1.4 | Valuation of Contaminated Parcels |
| 3.1.5 | Contaminated Uneconomic Remnants |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|------------------------------------------------------------|
| 4.1 | Appraisal and Appraisal Review |
| 4.1.1 | Responsibilities of DPW Land Agent Supervisor |
| 4.1.2 | Responsibilities of the Reviewer |
| 4.1.3 | Preliminary Project Review |
| 4.1.4 | Review of Data Books and Appraisal Reports-General |
| 4.1.5 | Review of Data Books |
| 4.1.6 | Review of Appraisal Reports |
| 4.1.7 | Major and Minor Deficiencies |
| 4.1.8 | Rejecting the Appraisal Report |
| 4.1.9 | Review of Owners Appraisal Report |
| 4.1.10 | Complex Parcels or Parcels Valued in Excess of \$1,000,000 |
| 4.1.11 | Pre-Litigation Coordination |
| 4.1.12 | Appraisal Review-Updated Reports and Litigation |
| 4.1.13 | RAS-General |
| 4.1.14 | RAS-Value Allocation, Changes and Rounding |
| 4.1.15 | Right of Way Records System |
| 4.1.16 | RAS-Uneconomic Remnant |
| 4.1.17 | Sign and Date RAS |
| 4.1.18 | Delivery of RAS |
| 4.1.19 | Review Appraisal Report-General |
| 4.1.20 | RAR-Partial or Whole Acquisition |
| 4.1.21 | RAR-Significant Changes to Reported Value |
| 4.1.22 | Appraisal Waivers |
| 4.1.23 | Value Finding Format |
| 4.1.24 | Payment of Appraisal Fees |
| 4.1.25 | Contract Review Appraisers |
| 4.1.26 | Conflict of Interest; Nonparticipation in Negotiations |
| 4.1.27 | Administrative Reviews |
| 4.1.28 | Technical Reviews |
| 4.2 | Supplemental Standards of Appraisal |
| 4.2.1 | Compliance with USPAP |
| 4.2.2 | Ethical Conduct |
| 4.2.3 | Co-Signing |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|--------------------------------------------------|
| 4.2.4 | Hypothetical Conditions |
| 4.2.5 | Confidentiality |
| 4.2.6 | Jurisdictional Exception |
| 4.2.7 | Appraisal Review |
| 4.2.8 | Other Appraisal Related Consulting Services |
| 4.2.9 | Property Owner Contact Letter |
| 4.2.10 | If Inspection Indicates Possible Contamination |
| 4.2.11 | Types of Appraisals |
| 4.2.12 | Update Reports |
| 4.2.13 | Presentation of Report |
| 4.2.14 | Clarity and Accuracy |
| 4.2.15 | Numbering System for Reporting Requirements |
| 4.2.16 | Data Book Requirements-Introduction |
| 4.2.17 | Presentation of Data Book |
| 4.2.18 | Collecting and Verifying Data in Data Books |
| 4.2.19 | Key Elements of Data Book-General |
| 4.2.20 | Data Book-Sales Data Sheet |
| 4.2.21 | Data Book-Market or Specialized Studies |
| 4.2.22 | Data book-Use of Listings and Contracts |
| 4.2.23 | Real Property Appraisal Reporting Requirements |
| 4.2.24 | Introduction and Premise of the Appeal |
| 4.2.25 | Presentation of Data |
| 4.2.26 | Analysis of Data Conclusions |
| 4.2.27 | Description and Valuation of Part Acquired |
| 4.2.28 | Valuation of Remainder as Part of Whole |
| 4.2.29 | Premise of the Appraisal-The Remainder Valuation |
| 4.2.30 | Presentation of Data-The Remainder Uncured |
| 4.2.31 | Analysis of Data ad Conclusions-The Remainder |
| 4.2.32 | Addenda |
| 4.3 | Reserved |
| 4.4 | |
| 5.1 | Donation of Right of Way |
| 5.1.1 | Donations from Government Agencies |
| 5.1.2 | Department May Accept Donations |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|----------------------------------------------------------------------|
| 5.1.3 | Conditions of Acceptance |
| 5.2 | Negotiation Process |
| 5.2.1 | Authorized Project |
| 5.2.2 | Agent's Price Estimate |
| 5.2.3 | Notification of Real Property Owners |
| 5.2.4 | Condominium Notices |
| 5.2.5 | Property Owner/Business Owner Request for Records |
| 5.2.6 | Binding Offers for the Purchase of Real Property |
| 5.2.7 | Delivery of Initial Binding Offers |
| 5.2.8 | Form and Content of Binding Offers |
| 5.2.9 | Conditional Offers for the Purchase of Real Property |
| 5.2.10 | Offers for Tenant-Owned Improvements |
| 5.2.11 | Uneconomic Remnants |
| 5.2.12 | Minimum Offers |
| 5.2.13 | Negotiations for Purchase of Real Property |
| 5.2.14 | Representative Authorization |
| 5.2.15 | Acquisition of an Entire Property |
| 5.2.16 | Purchase of an Entire Improvement |
| 5.2.17 | Non-Court Ordered Mediation |
| 5.2.18 | Binding Agreements |
| 5.2.19 | Threat of Condemnation |
| 5.2.20 | Execution of Agreements by Less than All Landowners |
| 5.2.21 | Clarifying Language Added to Agreements |
| 5.2.22 | All-Inclusive Settlements |
| 5.2.23 | Non-Monetary Negotiable Items |
| 5.2.24 | Owner Retention of Improvements |
| 5.2.25 | Holdback Warrant |
| 5.2.26 | Inclusion of Relocation Assistance Benefits in Negotiated Agreements |
| 5.2.27 | Administrative Settlements |
| 5.2.28 | Settlement Approvals |
| 5.2.29 | Protective Leasing |
| 5.2.30 | Final Agency Acceptance |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|-----------------------------------------------------|
| 5.3 | Incentive Offers |
| 5.3.1 | Project Selection |
| 5.3.2 | Incentive Offers |
| 5.3.3 | Establishing the Incentive Amount |
| 5.3.4 | Duration of the Incentive |
| 5.3.5 | Negotiations |
| 5.3.6 | Administrative and Legal Settlements |
| 5.3.7 | Effect of Incentive on Relocation Entitlements |
| 5.3.8 | Eminent Domain |
| 5.3.9 | Fees and Cost |
| 5.3.10 | DRT Reporting |
| 5.4 | Fees and Cost |
| 5.4.1 | Reimbursement of Fees and Cost |
| 5.4.2 | Expert Cost |
| 5.4.3 | Attorney Fees |
| 5.4.4 | Supplemental Purchase Agreements |
| 5.5 | Legal Documents and Land Acquisition Closing |
| 5.5.1 | Legal Document Preparation |
| 5.5.2 | Abstract of Title Update |
| 5.5.3 | Physical Inspection |
| 5.5.4 | Proration and Payment of Taxes |
| 5.5.5 | Deferring Encumbrances |
| 5.5.6 | Execution of Legal Documents |
| 5.5.7 | Closing Duties |
| 5.5.8 | Closing Cost |
| 5.5.9 | Delivery of Payments |
| 5.5.10 | Recording Legal Documents |
| 5.5.11 | Department of Revenue and Taxation Requirements |
| 5.6 | Eminent Domain |
| 5.6.1 | Limitations on Condemnation |
| 5.6.2 | Information Necessary to Prepare a Lawsuit |
| 5.6.3 | Litigation |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|------------------------------------------------------------------------------------------------------------|
| 5.6.4 | Appraisals |
| 5.6.5 | Expert Witness Services |
| 5.6.6 | Offers of Settlement |
| 5.6.7 | Mediation |
| 5.6.8 | Trial or Hearing |
| 5.6.9 | Legal Settlements |
| 5.6.10 | Defendant's Fees and Cost |
| 5.6.11 | Payment of Judgments and Orders |
| 5.6.12 | Closing Cases and Recovery of Excess Funds and/or Interest from the Registry of the Superior Court of Guam |
| 5.6.13 | Request to Clerk of the Superior Court of Guam to Invest Court Deposits |
| 5.6.14 | Right of Way Records System |
| 5.6.15 | Taxpayer Information |
| 5.6.16 | Inverse Condemnation |
| 5.7 | Public Disclosure |
| 5.7.1 | Public Disclosure |
| 5.7.2 | Notification |
| 5.7.3 | Failure to Disclose |
| 5.7.4 | Exceptions to Notification and Disclosure |
| 5.7.5 | Records |
| 5.8 | Reserved |
| 5.9 | Business Damages |
| 5.9.1 | Notification to Business |
| 5.9.2 | Business Owner Request for Records |
| 5.9.3 | Business Qualification and Claim Process for Business Damages |
| 5.9.4 | Department's Counteroffer for Settlement of Business Damage Claim |
| 5.9.5 | Payment of Business Owner's Fees and Cost |
| 5.9.6 | Coordination |
| 5.10 | Acquisition of Rights of Way from Federal and Government of Guam Agencies |
| 5.10.1 | Acquisition from Government of Guam Entities |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|-----------------------------------------------------------------------------|
| 5.10.2 | Acquisition of Right of Way from Chamorro Land Trust Commission |
| 5.10.3 | Federal Land Transfers |
| 5.10.4 | Functional Replacement of Property in Public Ownership |
| 5.11 | Acquisition Via Exchange |
| 5.11.1 | Requirements of Exchange |
| 5.12 | Department of Revenue and Taxation Income Tax Reporting Requirements |
| 5.12.1 | Reporting Requirement |
| 5.12.2 | Obtaining and Verifying Taxpayer Information |
| 5.12.3 | Allocating Gross Proceeds |
| 5.12.4 | Reporting a Non-Monetary Benefit |
| 5.12.5 | Reporting an Exchange |
| 5.12.6 | Distribution of Form 1099-S |
| 5.12.7 | Reporting Information |
| 5.12.8 | Data Changes |
| 5.12.9 | Corrected Returns |
| 5.12.10 | Mobile Homes |
| 5.12.11 | Exempt Volume Transferors |
| 6.1 | Advance Acquisition |
| 6.1.1 | Advance Acquisition Procedures |
| 6.1.2 | Use of Eminent Domain |
| 6.1.3 | Evaluating Advance Acquisition Opportunities |
| 6.1.4 | Early Acquisition |
| 6.1.5 | Proactive Acquisition |
| 6.1.6 | Protective Buying |
| 6.1.7 | Hardship Acquisition |
| 6.1.8 | FHWA Approval of Hardship Acquisition or Protective Buying |
| 6.1.9 | Use of Eminent Domain for Hardship Acquisition or Protective Buying |
| 7.1 | Relocation Assistance Program |
| 7.1.1 | Federal Program Authorization |
| 7.1.2 | Program Assurances |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|--------------------------------------------------------------------|
| 7.1.3 | Relocation Program at Conceptual Stage |
| 7.1.4 | Last Resort Housing Needs at the Conceptual Stage |
| 7.1.5 | Conceptual Stage Plan Data Sources |
| 7.1.6 | Data to be Obtained for Conceptual Stage Plan |
| 7.1.7 | Data Responsibilities for Conceptual Stage Plan |
| 7.1.8 | Authority for Needs Assessment Survey |
| 7.1.9 | Planning Considerations for Needs Assessment Survey |
| 7.1.10 | Requirements for Needs Assessment Survey |
| 7.1.11 | Identification of Last Resort Housing Needs |
| 7.1.12 | Identification of Business Displacees |
| 7.1.13 | Uniform Relocation Assistance and Real Property Acquisition Report |
| 7.1.14 | Special Relocation Reports |
| 7.1.15 | Relocation Records |
| 7.2 | General Relocation Requirements |
| 7.2.1 | Public Information |
| 7.2.2 | Eligibility Criteria |
| 7.2.3 | Relocation Advisory Services to be Provided |
| 7.2.4 | Waivers of Relocation Assistance |
| 7.2.5 | Comparable Replacement Housing |
| 7.2.6 | Availability of Comparable Replacement Housing Before Displacement |
| 7.2.7 | Decent, Safe and Sanitary Housing |
| 7.2.8 | Relocation Notices |
| 7.2.9 | Notice of Intent to Acquire |
| 7.2.10 | General Information Notice |
| 7.2.11 | Notice of Eligibility |
| 7.2.12 | Statement of Eligibility |
| 7.2.13 | 90-Day Notice |
| 7.2.14 | Documentation for Relocation Payment Claims |
| 7.2.15 | Payment Disbursement |
| 7.2.16 | Advance Payments |
| 7.2.17 | Time for Filing Relocation Claims |
| 7.2.18 | Payment Claims for Multiple Occupancy |
| 7.2.19 | Deductions From Relocation Payments |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|----------------------------------------------------------------------------------------|
| 7.2.20 | Relocation Payments Not Income |
| 7.2.21 | Inclusion of Relocation Assistance in Administrative/Legal Settlement |
| 7.2.22 | Denial of Claim |
| 7.2.23 | The Appeal Process |
| 7.3 | Payment for Moving and Related Expenses |
| 7.3.1 | Eligibility Criteria |
| 7.3.2 | Moves from a Dwelling |
| 7.3.3 | Moves from a Business, Farm or Non-Profit Organization |
| 7.3.4 | Personal Property Only Moves |
| 7.3.5 | Eligible Actual Moving Expenses |
| 7.3.6 | Ineligible Moving and Related Expenses |
| 7.3.7 | Notification and Inspection |
| 7.3.8 | Owner Retention of Dwelling Move Cost |
| 7.3.9 | Fixed Payment Residential Moves |
| 7.3.10 | Related Non-Residential Eligible Expenses |
| 7.3.11 | Multiple Occupancy |
| 7.3.12 | Claim for Payment |
| 7.3.13 | Re-Establishment Expenses for Non-Residential Moves |
| 7.3.14 | Move Cost estimates for Non-Residential Moves |
| 7.3.15 | Low Value, High Bulk Items |
| 7.3.16 | Direct Loss Payment, Purchase of Substitute Personal Property |
| 7.3.17 | Hazardous Waste and Substances |
| 7.3.18 | Fixed Payments, Non-Residential Moves for Business, Farms and Non-Profit Organizations |
| 7.4 | Replacement Housing Payments |
| 7.4.1 | Eligibility Criteria |
| 7.4.2 | Occupancy Status |
| 7.4.3 | Multiple Occupancy |
| 7.4.4 | Partial Ownership |
| 7.4.5 | Occupancy Requirements for Dwellings |
| 7.4.6 | Applicability of Last Resort Housing |
| 7.4.7 | Typical Homesite Determination |
| 7.4.8 | Large Tract for Area |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|---------------------------------------------------------------|
| 7.4.9 | Higher and Better Use Tract |
| 7.4.10 | Joint Residential/Business Use |
| 7.4.11 | Chamorro Land Trust Parcels |
| 7.4.12 | Carve-Outs of Homesites |
| 7.4.13 | Examples of Typical Homesite Determination |
| 7.4.14 | Submitting Application and Claim |
| 7.4.15 | Written Statement of Eligibility |
| 7.4.16 | Condemnation Clause |
| 7.4.17 | Inspection and Purchase of Replacement Dwelling |
| 7.4.18 | Payment after Death |
| 7.4.19 | 180-Day Homeowner Occupants-Eligibility |
| 7.4.20 | 180-Day Homeowner Occupants-Amount of Payment |
| 7.4.21 | Price Differential for a 180-Day Owner Occupant |
| 7.4.22 | Increased Mortgage Interest Cost for a 180-Day Owner Occupant |
| 7.4.23 | Incidental Expenses for a 180-Day Owner Occupant |
| 7.4.24 | Rental Assistance Payment for a 180-Day Owner Occupant |
| 7.4.25 | 90-Day Occupants Eligibility |
| 7.4.26 | Rental Assistance for 90-Day Occupants |
| 7.4.27 | Down Payment Assistance Payment |
| 7.4.28 | Cost of Comparable Replacement Dwelling |
| 7.4.29 | Revising the Replacement Housing Payment Eligibility |
| 7.4.30 | Owner Retention-Purchase Additive Payment |
| 7.4.31 | Conversion of Rental Assistance Payments |
| 7.4.32 | Protective Rent Agreement |
| 7.5 | Reserved |
| 7.6 | Last Resort Housing |
| 7.6.1 | Determining Need |
| 7.6.2 | Basic Rights of Displacees |
| 7.6.3 | Planning for Last Resort Housing |
| 7.6.4 | Methods of Providing Replacement Housing |
| 7.6.5 | Super Supplement Payments for 180-Day Owner Occupants |
| 7.6.6 | Super Supplement Payments for 90-Day Owner Occupants |
| 7.6.7 | Less Than 90-Day Occupants Eligibility Criteria |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|-------------------------------------------------------------------------------------------------------------------|
| 7.6.8 | Replacement Housing Payment Computations for Less Than 90-Day Occupants |
| 8.1 | Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance |
| 8.1.1 | Performing an Inventory Upon Acquisition |
| 8.1.2 | Assigning Serial Numbers |
| 8.1.3 | Documenting Disposition |
| 8.1.4 | Maintenance and Rodent Control |
| 8.1.5 | Inventory of Excess and Surplus Real Properties |
| 8.2 | Right of Way Clearing |
| 8.2.1 | Disposal of Improvements and Severable Items |
| 8.2.2 | Owner Retention |
| 8.2.3 | Retention by DPW and Transfer |
| 8.2.4 | Negotiated Sale |
| 8.2.5 | Sealed Bids |
| 8.2.6 | Sale of Severable Items/Improvements through the Demolition and Removal Contracting Process |
| 8.2.7 | The Sale Closing |
| 8.2.8 | Demolition and Removal Contracting |
| 8.2.9 | Advertising for Demolition and Removal Contracting |
| 8.2.10 | Preparation for Bid Proposal |
| 8.2.11 | Opening Sealed Bids and Bidder Selection |
| 8.2.12 | Contracts |
| 8.2.13 | Bid Security and Performance Bonds |
| 8.2.14 | Performance of Demolition and Removal |
| 8.2.15 | Extension of Time, Supplemental Agreements and Authorization for Additional Work |
| 8.2.16 | Payment on Contracts |
| 8.2.17 | Required Documentation |
| 8.3 | Reserved |
| 8.4 | Reserved |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|-------------------------------------------------------------------------------|
| 8.5 | Disposal of Surplus Real Property |
| 8.5.1 | Disposal Overview and Excess/Surplus Property Inventory Management |
| 8.5.2 | Negotiated Sale |
| 8.5.3 | Public Auction or Sealed Bids |
| 8.5.4 | Public Purpose Conveyance |
| 8.5.5 | Disposal of Nuisance Properties |
| 8.5.6 | Disposal of Property Originally Acquired as Replacement Housing |
| 8.5.7 | Disposal of Buildings and Acceptance of Replacement Buildings as Compensation |
| 8.5.8 | Concurrence by the Federal Highway Administration (FHWA) |
| 8.5.9 | Sale Closing |
| 8.5.10 | Disclaimers |
| 8.5.11 | Requirements for Disposal of Surplus Properties |
| 8.6 | Right of Way Property Leases |
| 8.6.1 | General Leasing Provisions |
| 8.6.2 | Collection of Rental Funds and Evictions |
| 8.6.3 | Payment on Leases |
| 8.6.4 | Leases by Sealed Bids |
| 8.6.5 | Negotiated Leases |
| 8.6.6 | Leasebacks |
| 8.6.7 | Public Purpose Leases |
| 8.6.8 | Concurrence by the Federal Highway Administration (FHWA) |
| 8.6.9 | Reporting Requirements |
| 8.7 | Asbestos Management |
| 8.7.1 | Obtaining Asbestos Surveys |
| 8.7.2 | Asbestos Surveys/Management |
| 8.7.3 | Asbestos Abatement Operations |
| 8.7.4 | Wet Demolition |
| 8.7.5 | Specifications for Surveys/O&M Plans/Abatement |
| 8.7.6 | Consultant Monitoring of Abatement/Demolition Activities |
| 8.7.7 | Notice of Asbestos Renovation or Demolition to GEPA (NESHAP) |
| 8.7.8 | Disposal of Regulated Asbestos Containing Material |
| 8.7.9 | File Documentation |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|------------------------------------------------|
| 8.8 | Reserved |
| 9.1 | Funds Management |
| 9.1.1 | Invoice Transmittals for Right of Way Payments |
| 9.1.2 | Expenditures |
| 9.1.3 | Deposit Transmittal |
| 9.1.4 | Revenues |
| 9.1.5 | Federal Participation in Right of Way Cost |
| 9.1.6 | Coding of Invoice Transmittals |
| 9.2 | Reserved |
| 9.3 | Right of Way Records Management |
| 9.3.1 | Right of Way Records Filing System |
| 9.3.2 | Retention Schedule |
| 9.3.3 | Employee/Agent Responsibilities |
| 9.3.4 | Social Security Numbers |
| 9.3.5 | Appraisals, Offers and Counteroffers |
| 9.3.6 | Title Information |
| 9.3.7 | Construction Plans |
| 9.3.8 | Business Records Provided to the Department |
| 9.4 | Right of Way Project Closing |
| 9.4.1 | Closing Completed Right of Way Projects |
| 9.4.2 | Closing Incomplete Right of Way Projects |
| 9.4.3 | Funds Management Handbook |
| 10.1 | Right of Way Certification |
| 10.1.1 | Certification for Construction |
| 10.1.2 | Certification Exceptions |
| 10.1.3 | Certifications |
| 10.1.4 | Certification Delivery |

**GUAM ROW PROCEDURES MANUAL
TABLE OF CONTENTS**

| <u>SECTION</u> | <u>TITLE</u> |
|-----------------------|-------------------------------------------------------------|
| 11.1 | Care and Protection of Highway |
| 11.1.1 | Encroachment Permit Requirement; Petty Misdemeanor and Fine |
| 11.1.2 | Permit Terms |
| 11.1.3 | Protection of Public Right of Way |
| 11.1.4 | Cost of Work Supervision |
| 11.1.5 | Bond May be Required |
| 11.1.6 | Notice Demanding Removal |
| 11.1.7 | Summary Removal by Department |
| 11.1.8 | Removal by Department |
| 11.1.9 | Renewal of Highway Encroachment Permit |

Section 1.1

RIGHT OF WAY PROCEDURES MANUAL

TABLE OF CONTENTS

PURPOSE.....1-1-1

AUTHORITY.....1-1-1

SCOPE.....1-1-1

EFFECT OF CHAPTER ON OTHER AGENCIES1-1-1

REFERENCES.....1-1-1

FORMS1-1-2

DEFINITIONS.....1-1-2

1.1.1 Manual Changes1-1-2

1.1.2 Forms1-1-2

1.1.3 Directive1-1-3

1.1.4 Guidance Documents.....1-1-3

1.1.5 Liaison with the Attorney Generals Office for Forms and Procedures1-1-3

1.1.6 Manual Exemptions.....1-1-3

1.1.7 Non-discrimination Statement1-1-3

1.1.8 Common Acronyms.....1-1-3

1.1.9 Compliance with Law1-1-**Error! Bookmark not defined.**

HISTORY1-1-4

Section 1.1

RIGHT OF WAY PROCEDURES MANUAL

PURPOSE

The Right of Way Procedures Manual (Manual) establishes the minimum standards for administering the Right of Way program for the Guam Department of Public Works Office of Right of Way hereafter referred to as the Department pursuant to Federal regulations, Guam Statutes, Guam Administrative Code, Department policy and good business practices. A flow diagram of the right of way acquisition process is included at the end of this section of the Manual.

AUTHORITY

23, Code of Federal Regulations, Part 710.201(c)
5 GCA Chapter 5, Article 2, Procurement Organization
5 GCA Chapter 54, Article 1, Highway Development and Maintenance

Each chapter of the Manual will identify the specific applicable authorities.

SCOPE

Each Section of the Manual will specifically identify the principal users of the document.

COMPLIANCE WITH LAW

Nothing in this Right of Way Procedures Manual shall be construed to diminish or supersede any provision of Guam or Federal law or of the Rules of the Superior Court of Guam. In the event of a conflict between this Manual and any current Guam law, Federal law or Rule of the Superior Court of Guam, then said Guam law, Federal law or Rule of the Superior Court of Guam shall prevail.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Age Discrimination Act of 1975
Civil Rights Restoration Act of 1987
Section 504, Rehabilitation Act of 1973
Section 324, Federal Aid Highway Act of 1973
Title VI, Civil Rights Act of 1964
Title VIII, Civil Rights Act of 1968
5 GCA § 5124(b) Exemptions

Each chapter of the Manual will specifically identify the applicable references. References listed are intended to provide the manual user the source of the detailed language of the law, rules and regulations that are the basis of this manual. The following are links to the majority of referenced publications cited in this manual:

Guam Code Annotated – <http://www.guamcourts.org/CompilerofLaws/index.html>
Code of Federal Regulations - <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>
Federal Highway Administration Laws - <http://www.fhwa.dot.gov/legsregs/legislat.html>
FHWA Real Estate - <http://www.fhwa.dot.gov/realestate/>
Appraisal Foundation - http://www.appraisalfoundation.org/s_appraisal/index.asp

The Guam Code Annotated (GCA) link provides access to all GCA's referenced in this manual. The Code of Federal Regulations (CFR) link provides access to all published CFR's. The Federal Highway Administration (FHWA) laws link provides access to all published law, United States Code (USC), CFR's and other regulation specifically dealing with transportation facilities. The FHWA Real Estate link provides access to CFR's, USC's and other regulations dealing specifically with real estate on transportation projects. The Appraisal Foundation link provides access to the Uniform Standards of Professional Appraisal Practice (USPAP) and other appraisal related information.

FORMS

The specific forms necessary for the process are identified in each chapter of the Manual. Forms are numbered by the section of the manual in which they are first referenced. Existing Department forms may continue to be used until the new forms are formally approved by the Office of Attorney General Office (OAG) and adopted by the Department.

DEFINITIONS

Directive: A temporary document which places a procedural document into effect immediately when there is not sufficient time for the procedure revision, review and adoption process. It may introduce a new process, establish a pilot program, or modify an existing procedure and will be effective for at least 12 months or until the complete procedure revision, review and adoption process is completed, which ever is sooner.

Guidance Documents: Recommended processes intended to provide efficiency in the implementation of policies, procedures, and standards. A guidance document provides general program direction and does not set mandatory minimum standards.

Mandatory Revisions: Revisions required by changes in Territory of Guam law, rules, Federal regulations, court rulings or Department policy.

Minor/Editorial Revisions: Revisions which do not change a minimum standard and are not mandatory or substantial such as changes to grammar, punctuation, spelling, and formatting.

Substantial Revisions: Revisions which are not mandatory but change minimum standards.

1.1.1 Manual Changes

The Department of Public Works Right of Way Supervisor (DPWRS), with approval from the Department of Public Works Highway Administrator (DPWHA) and the Director of the Department of Public Works (DDPW), will determine if proposed changes to the Manual are mandatory, substantial, or minor/editorial. Mandatory and substantial changes to the Manual will be processed and approved in accordance with the Department's standard policy. The changes could also require review and approval by the OAG and any other Government of Guam or Federal agency affected by the change. Minor/editorial changes may be approved by the DDPW following the Department's standard policy.

1.1.2 Forms

Department of Public Works Right of Way form changes will be processed in accordance with the Department's standard policy, and will include review and approval by the OAG and any other Government of Guam or Federal agency affected by the

change.

1.1.3 Directive

A Directive is created and processed by the DDPW in accordance with the Department of Public Works standard procedures.

1.1.4 Guidance Documents

If the DPWRS, DPWHA, and DDPW determine that written guidance or clarification should be provided to assist in implementing portions of the Manual, a Guidance Document may be issued. Guidance Documents will require only the review determined necessary by the DDPW, prior to issuance. Guidance Documents will be maintained at the end of the Manual in consecutive order as they are developed.

1.1.5 Liaison with the Attorney Generals Office for Forms and Procedures

All mandatory and substantial revisions made to the Manual and standard forms must be coordinated by the Department with the OAG. It is also recommended that the Federal Highway Administration (FHWA) review mandatory and substantial revisions that affect federally funded projects.

1.1.6 Manual Exemptions

The DDPW may grant an exemption to a requirement in the Manual provided it is not based on Federal and Territorial statutes or Guam Administrative Code. The DPWRS must submit a request for exemption in writing to the DPWHA and DDPW, stating the circumstances that support the exemption. The DPWHA and DDPW will review and may have the OAG review the request and render a written decision. FHWA and the OAG will be consulted on request for exemptions involving Federal aid participation.

1.1.7 Non-discrimination Statement

All Right of Way processes described in the Manual shall comply with the following:

"It is the policy of the Guam Department of Public Works Right of Way Office, under ***Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Section 504 of the Rehabilitation Act of 1973; Age Discrimination Act of 1975; Section 324 of the Federal-Aid Highway Act of 1973; Civil Rights Restoration Act of 1987***; and other related statutes and regulations, that no person shall, on the basis of race, color, national origin, sex, age, disability, religion, or familial status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any federally or non-federally funded program or activity administered by the Department or its sub-recipients."

1.1.8 Common Acronyms

The following acronyms are used throughout the manual. Typically, they are defined only the first time used in each section of the Manual.

| | |
|------|--------------------------------------------|
| ACM | Asbestos Containing Materials |
| BBMR | Bureau of Budget and Management Research |
| CFR | Code of Federal regulations |
| CLTC | Chamorro Land Trust Commission |
| COV | Certificate of Value |
| CPA | Certified Public Accountant |
| DDPW | Director of the Department of Public Works |
| DLM | Department of Land Management |

| | |
|--------|----------------------------------------------------------|
| DOA | Department of Administration |
| DOM | Days on Market |
| DPW | Department of Public Works |
| DPWFS | Department of Public Works Fiscal Section |
| DPWHA | Department of Public Works Highway Administrator |
| DPWLAS | Department of Public Works Land Agent Supervisor |
| DPWRS | Department of Public Works Right of Way Supervisor |
| DRT | Director of Revenue and Taxation |
| EPA | Environmental Protection Agency |
| FHWA | Federal Highway Administration |
| FNMA | Fannie Mae |
| GCA | Guam Code Annotated |
| GCPO | Guam Chief Procurement Officer |
| GDPHSS | Guam Department of Public Health and Social Services |
| GEPA | Guam Environmental Protection Agency |
| GHURA | Guam Housing and Urban Renewal Authority |
| GSA | General Services Agency |
| GTITS | Guam Territorial Income Tax Service |
| NEPA | National Environmental Policy Act |
| NESHAP | National Emission Standards for Hazardous Air Pollutants |
| OAG | Guam Office of Attorney General |
| OAS | Outdoor Advertising Sign |
| OSHA | Occupational Safety and Health Administration |
| RACM | Regulated Asbestos Containing Material |
| RAR | Review Appraisal Report |
| RAS | Review Appraiser's Statement |
| RHP | Replacement Housing Payment |
| TIN | Taxpayer Identification Number |
| USPAP | Uniform Standards of Professional Appraisal Practice |
| URAR | Uniform Residential Appraisal Report |

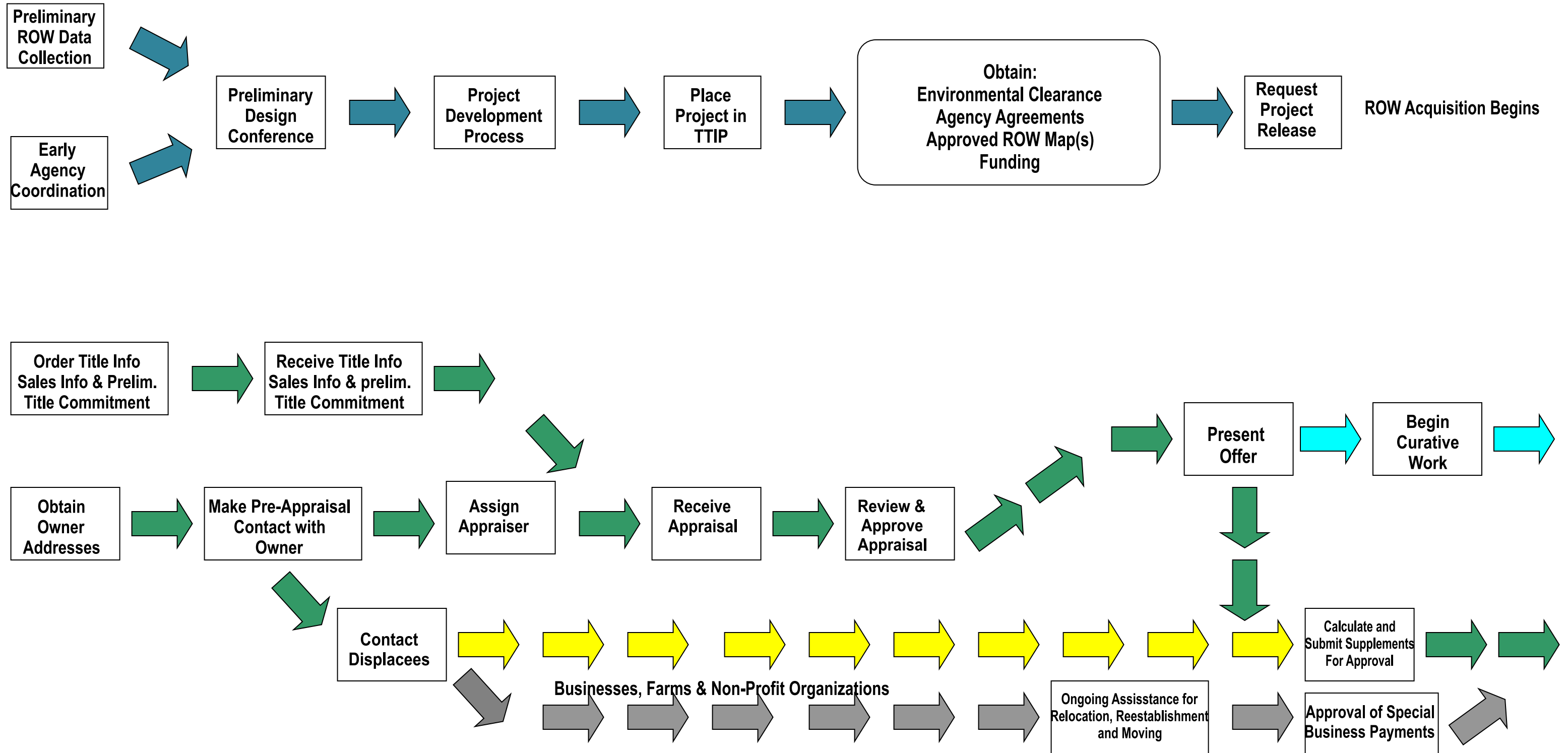
HISTORY

Original Issue January 2011

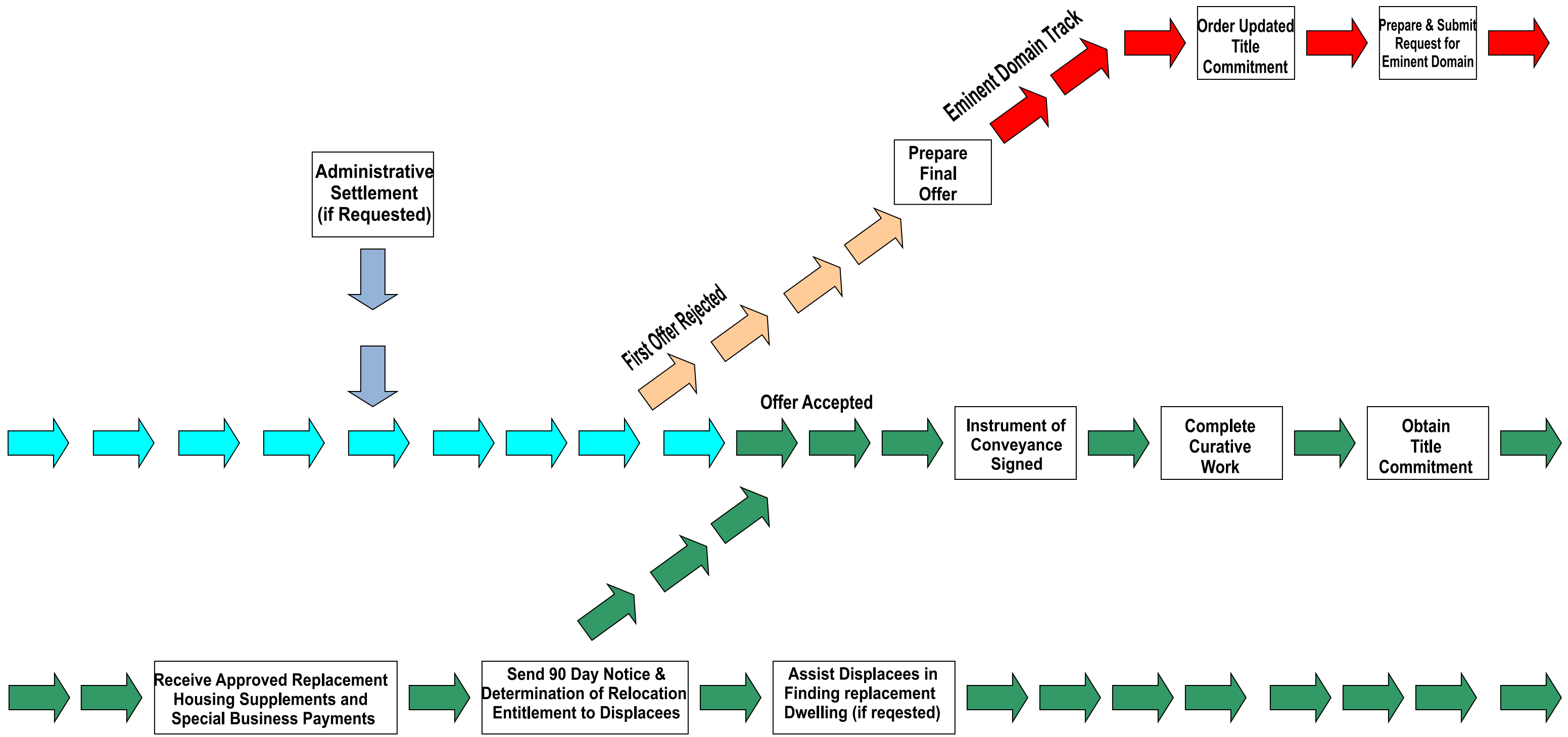
Revision 1 – October 2017- changes to sections; 1.1.1, 1.1.4, 1.1.6, and 1.1.8.

ROW Parcel Acquisition Flow Chart

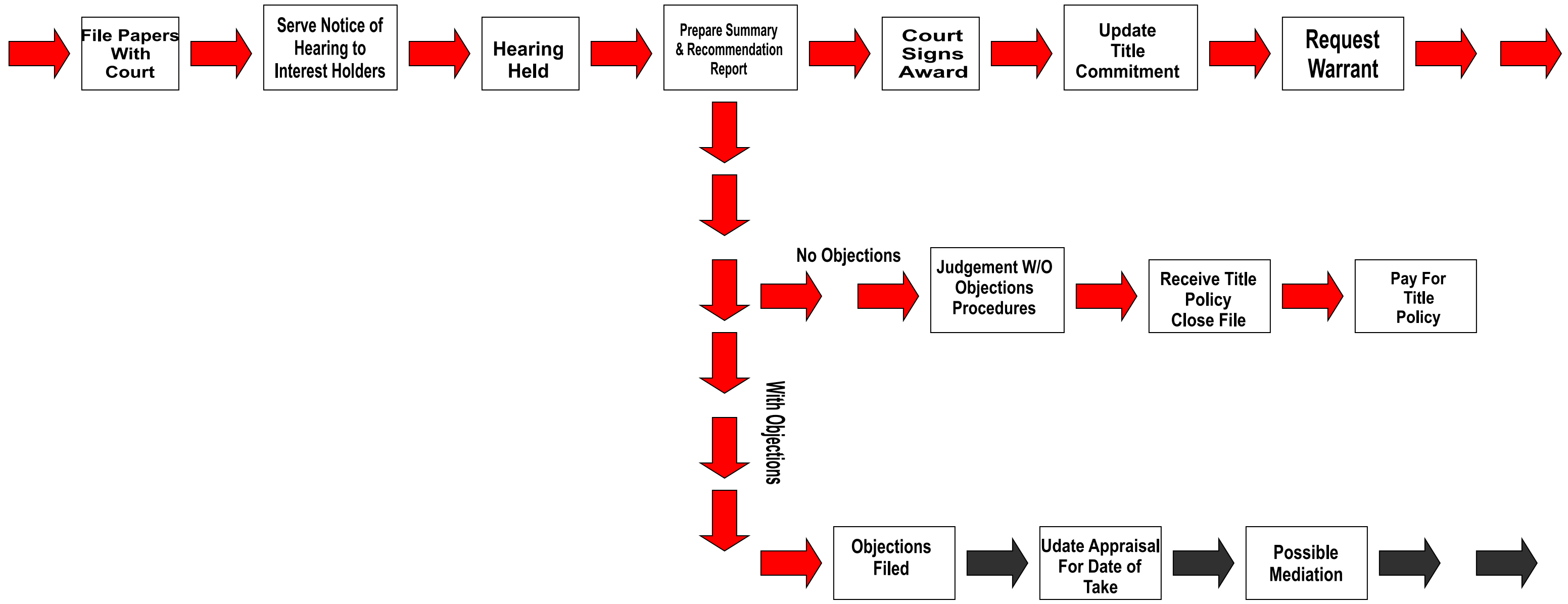
Page 1 of 5



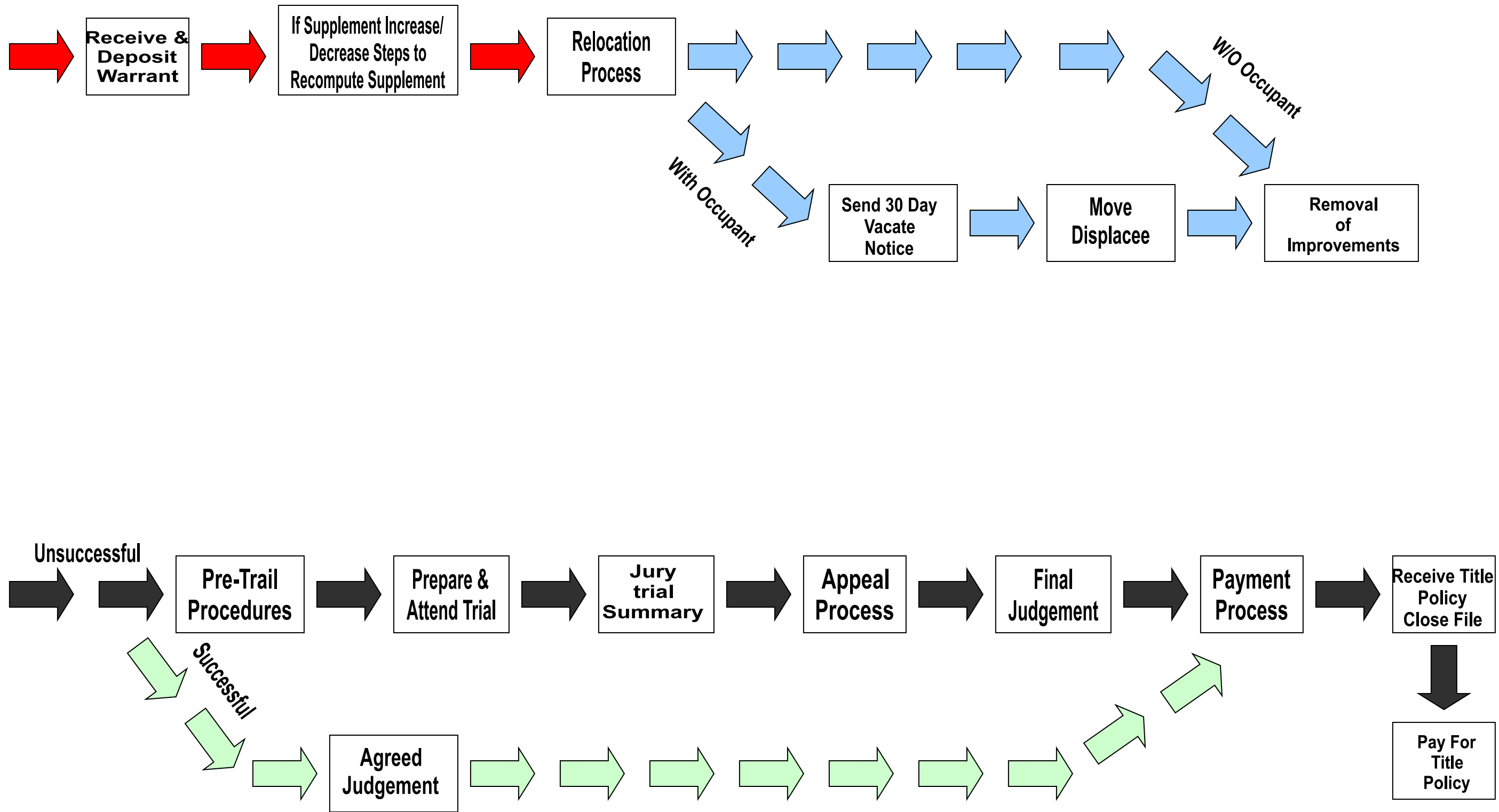
ROW Parcel Acquisition Flow Chart
Page 2 of 5



ROW Parcel Acquisition Flow Chart
Page 4 of 5



ROW Parcel Acquisition Flow Chart
Page 5 of 5



Section 2.1

LAND TITLE

TABLE OF CONTENTS

PURPOSE 2-1-1

AUTHORITY..... 2-1-1

SCOPE 2-1-1

EFFECT OF CHAPTER ON OTHER AGENCIES 2-1-1

REFERENCES..... 2-1-1

FORMS 2-1-1

DEFINITIONS..... 2-1-1

2.1.1 Quality and Quantity of Title 2-1-2

2.1.2 Title Evidence..... 2-1-3

2.1.3 Abstract of Title Reports..... 2-1-3

2.1.4 Title Insurance..... 2-1-5

2.1.5 Opinion of Title 2-1-5

2.1.6 Title Examination..... 2-1-5

2.1.7 Parcel Numbers..... 2-1-6

2.1.8 Fee Title 2-1-6

2.1.9 A Quitclaim Deed as a Conveyance..... 2-1-7

2.1.10 Perpetual Easement..... 2-1-7

2.1.11 Conservation Easement..... 2-1-7

2.1.12 Temporary Easement..... 2-1-7

2.1.13 License Agreement 2-1-7

2.1.14 Recording..... 2-1-7

HISTORY 2-1-7

Section 2.1

LAND TITLE

PURPOSE

This section establishes the minimum quality and quantity of title required by the Guam Department of Public Works Office of Right of Way (hereafter referred to as the Department) when acquiring real property and real property rights. It also sets out the methods for achieving the minimum standards.

AUTHORITY

21 GCA Chapter 1, Property in General
21 GCA Chapter 4, Article 1, Mode of Transfer
21 GCA Chapter 29, Land Title Registration

SCOPE

The requirements or processes related to this section affect the Department, the Department of Land Management Survey and Records Offices, Consultants employed by the Department for title work, and the Office of Attorney General (OAG).

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

7 GCA Chapter 11, Time for Commencing Actions
5 GCA Chapter 5, Article 5, Procurement of Construction, Architect-Engineer and Land Surveying services, Procurement of Commodities and Contractual Services
5 GCA Chapter 32, Article 7, Social Security Number Confidentially Act
21 GCA §29101 Titles to Real Estate
21 GCA §29149 Transfer by Registered Owner
21 GCA §29150 Issuance of a New Certificate Where Only a Part of Land is transferred
21 GCA §29153 Forms of Deeds, Mortgages, Leases and Other Instruments
21 GCA Chapter 39, Marketable Title Act

FORMS

The conveyance instruments discussed in this section are contained in **Section 5.5, Legal Documents and Land Acquisition Closing**.

DEFINITIONS

Grant Deed: A deed containing standard recitations of consideration with words of conveyance but does not contain any of the common warranties or covenants. A grant deed is generally acceptable as a root of title and provides the protection of estoppel by deed.

Chain of Title: Successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively.

Easement: An easement is defined as an interest in land created by grant or agreement, express or implied, which confers on its owners a right to some profit or benefit, domain, or lawful use out of or over the estate on another.

Encumbrance: A claim, lien, charge, or liability attached to and binding real property, such as a mortgage, construction lien, judgment lien, lease, security interest, easement or right of way and accrued and unpaid taxes.

Estoppel by Deed: A principal of law which prohibits one party to a deed from asserting against the other party any right or title in derogation of the deed or from denying the truth of any material facts asserted in the deed.

Fee (Simple) Title: Fee title is the largest estate and most extensive interest that can be enjoyed in land.

General Warranty Deed: A deed that contains a general warranty of title by which the grantor agrees to defend and protect the grantee against claims by all persons. The warranty is a covenant that passes with the land to the heirs and assigns of the grantee.

Marketable Title: Title that is free from reasonable doubt and will not expose the party who holds it to hazards of litigation.

Parcel: One or more lots or pieces of land under one ownership in which a real property interest, easement or license is to be acquired under any given Right of Way project.

Quitclaim Deed: A deed that operates to release any interest, claim or title by which the grantor may have in the premises but does not profess that the grantor has an interest or that such interest is valid.

Right of Way: A right of way is the privilege of the immediate use of the highway, as set forth in 16 GCA § 1102(ee).

Special Warranty Deed: A deed containing a special limited warranty of title by which the grantor agrees to defend and protect the grantee against claims by persons claiming through the grantor.

Preliminary Title Report: A preliminary report as to the condition of a title and a commitment to issue a title insurance policy when the conditions and requirements have been met, all subject to the exceptions list.

Title Insurance Policy: Insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty, or from the enforcement of liens existing against it at the time of the insurance.

Abstract of Title: A search of the public records for recorded instruments that create, or purport to create, an interest in, a lien against, or an encumbrance on the title to the parcel of land under search.

Abstract of Title Report: A written report of the findings resulting from a title search.

2.1.1 Quality and Quantity of Title

The Department requires marketable title, free of liens and encumbrances, to all fee, perpetual easement and temporary easement parcels. For parcels acquired by negotiation, all interests will be acquired or released via execution and delivery of an appropriate document of conveyance or release. For parcels acquired through condemnation, the owners or holders of all interests will be named in the condemnation suit. The following are exceptions to this requirement:

- (A) Severed mineral interests do not have to be acquired or released.

- (B) For temporary easements acquired by negotiation, at a minimum a subordination of encumbrance must be obtained for all leases and easements affecting the temporary easement. In most cases utility easements will not be affected by the temporary easement and will not require subordination.
- (C) The OAG may, at the Department's request, authorize exceptions on a parcel by parcel basis. Each exception granted pursuant to this subsection must be in writing and must be maintained by the Department in the official parcel file.

2.1.2 Title Evidence

Title evidence in the form of an abstract of title or title insurance will be obtained for all parcels from which a real property interest will be acquired.

2.1.3 Abstract of Title Reports

2.1.3.1 Abstract of title reports will include copies of all documents that create, or purport to create, an interest, lien or encumbrance in the parcel. The caption page of the abstract of title report should contain:

- (A) The full name and address of the current record title holder;
- (B) The legal description of the parcel under search;
- (C) A tax summary including tax identification number; the name and address of the taxpayer, status of the current tax year, any delinquent taxes, and a list of any outstanding tax certificates showing for each the certificate number and tax year and the status of homestead exemption;
- (D) The names and recording data of any recorded plats affecting the subject parcel including condominium plats;
- (E) A description of the conveyance to the current record title holder and all conveyances that occurred in at least the five years immediately preceding the completion date of the abstract of title search shall be included in the abstract of title search report. Each description must include the names of both the grantor(s) and grantee(s) with the date of execution, recording date, book, page, and the amount of the recording fees;
- (F) The period of time covered in the search and the Department of Land Management (DLM) or Consultant's (Title Company) certification date of the search; and
- (G) Typed name and signature of the DLM Registrar of Titles or Consultant (Title Company).

2.1.3.2 The abstract of title search shall include all unsatisfied liens affecting the property under search, such as every mortgage, lease, contract to sell or other instrument intended to create a lien, encumbrance or charge upon registered land or any interest therein, including but not limited to:

- (A) Construction Liens including Claim of Lien, or Contest of Lien;
- (B) Certified copies of judgment liens based on a name search of every record owner of the subject property for their respective period of ownership within at least the 5 years preceding the certification date of the search;
- (C) Mortgages and assignments of mortgages;
- (D) Income tax liens;

-
- (E) Territory of Guam tax liens and warrants for collection of taxes;
 - (F) Improvement liens such as water and sewer liens;
 - (G) Uniform Commercial Code (UCC) Financing Statements, and
 - (H) Code Enforcement liens.

2.1.3.3 The abstract of title report should contain any additional title evidence affecting the property under search, including but not limited to:

- (A) Possessory interest such as easements, leases, and assignments of leases;
- (B) Lis Pendens indicating pending litigation;
- (C) Reservations for life estates;
- (D) Reversionary interests;
- (E) Quiet title or partition suits affecting the property under search;
- (F) Any contiguous lands owned by the record title holder and lying adjacent to the parcel under search;
- (G) Any suggestion of bankruptcy affecting the record title holder;
- (H) Public rights of way on or adjacent to the subject parcel other than Territory of Guam owned rights of way. This includes any maps filed by other governmental entities.
- (I) Any document creating or affecting a fiduciary or agency relationship, such as guardianships, power of attorney, or trusts;
- (J) Dissolution of Marriage including the Final Judgment, Property Settlement Agreement, or any order of the court that may affect title to the parcel;
- (K) Death certificates, if applicable;
- (L) Any applicable probate proceedings including the will and any codicils, the Petition for Administration, Letters of Administration, inventory if the subject property is included, Notice to Creditors with the proof of publication, any outstanding claims by creditors, receipt for Federal and Territorial estate taxes or the non-taxable certificate, and any Order of Distribution of the subject property;
- (M) Declaration of Condominium and name and address of condominium association;
- (N) Comments concerning the DLM Land Abstractor or Consultant (Title Company) researcher's personal knowledge of matters not of record affecting the parcel under search;
- (O) Legible copies of all documents reported and copies of all instruments referenced except for documents evidencing liens that have been satisfied or a transcript if legible copies are not available. Full size copies of all maps and plats must be included, and;

-
- (P) A Certification of Business License report from the Business License Division, Department of Revenue and Taxation for any business entity shown as current record owner registered with the Department of Revenue and Taxation.

2.1.3.4 Abstract of title update reports will reflect only those matters as described in **Section 2.1.3.1** that arise subsequent to the last search or update. The update report will clearly indicate the beginning and ending search dates. If there have been no changes since the last search, the update report will clearly state that fact. The typed name and signature of the DLM Land Abstractor or Consultant researcher will be included.

2.1.4 Title Insurance

2.1.4.1 Title insurance may be purchased when it is necessary to protect the public's investment in the property being acquired for transportation purposes.

2.1.4.2 The decision to purchase title insurance shall be made by the DDPW, with input from the DPWHA, DPWRS and AGO. This decision must be clearly documented in the Department's official parcel file.

2.1.4.3 The purchase of title insurance may be considered for, but is not limited to, high value urban parcels, parcels affected by complex financing arrangements, cooperatively owned parcels and parcels within areas having known title defects.

2.1.4.4 Title insurance may also be purchased when trained personnel are temporarily unavailable to examine titles.

2.1.4.5 The Department may contract for title insurance through competitive bid in accordance with procedures described in **5 GCA, Chapter 5, Article 5 Guam Procurement Law**.

2.1.4.6 With approval by DPWHA and DDPW, the Department's Registered Land Surveyor, or DPWRS, shall review title insurance commitments or binders issued by title companies. All matters set out as exceptions, other than exceptions for matters not of record and current year taxes, must be removed prior to issuance of the policy unless such exceptions are approved, in writing, by the OAG.

2.1.4.7 If a parcel is being acquired by negotiation and is to be insured, the title company's closing services should be utilized.

2.1.4.8 Normally, title insurance should not be purchased for parcels acquired through condemnation. If a title insurance commitment has been issued for a parcel that is subsequently condemned, the commitment should be canceled and any cancellation fee should be paid. There may, however, be circumstances when title insurance is necessary to protect the public's investment in a condemned parcel. In these cases, the DPWRS should make the decision whether to purchase the insurance after consulting with the OAG and with approval from DDPW and DPWHA.

2.1.4.9 A title insurance policy is a valuable document that must be permanently retained. The policy will be attached to the Department's executed deed or final judgment and will be kept with the deed or judgment.

2.1.5 Opinion of Title

The Department may use an attorney's title opinion if an attorney with experience in the field of real estate title is available to render such an opinion. This may be provided by an OAG attorney.

2.1.6 Title Examination

2.1.6.1 Title examination will comply with the **21 GCA, Chapter 29, Land Title Registration**, and will conform to the accepted standards of care in the title industry.

2.1.6.2 Negotiations and field reviews often bring to light matters affecting title to real property not reflected in the public records. Unrecorded conveyances, leases, easements, etc. can be discovered only through discussions with property owners and by physical inspection of the premises. The fact that these matters do not appear in the public records does not lessen their impact on title.

2.1.6.3 Any information discovered during negotiations or field reviews that may affect the title to the parcel being acquired must be provided to the Department's Registered Land Surveyor or DPWRS. This information will be provided in writing and will include copies of all pertinent documents if available. The Department's Registered Land Surveyor or DPWRS or designee will review the information and will make any necessary additions, deletions, or modifications to the document package or parcel flag sheet. The information will then be forwarded to DDPW and DPWHA for review and approval.

2.1.7 Parcel Numbers

2.1.7.1 The Department's Registered Land Surveyor or DPWRS, in coordination with the DLM, will assign parcel numbers to each parcel of property and to each property interest to be acquired by the Department as follows:

- (A) Existing recorded lot numbers will have a "R/W" suffix to identify these parcels as Right of Way land;
- (B) Parcels without a lot number will be numbered sequentially with the roadway contract number as a basis;
- (C) All parcels within a specific roadway contract will be referenced to that contract number.

2.1.7.2 Once an assigned parcel number or suffix number is voided, it may not be reinstated nor may it be used again on the affected parcel or project.

2.1.8 Fee Title

The Department will seek to acquire fee title to all lands on which a permanent structure or improvement is to be placed and maintained. Parcels acquired for mitigation or exchange should also be acquired in fee. Land includes airspace, surface or subterranean areas that may be acquired independently. Acquisition of fee title to all parcels will be by **General Warranty Deed** except in the following situations:

- (A) **Special Warranty Deed:** When a grantor refuses to execute a **General Warranty Deed** and indicates that a **Special Warranty Deed** is preferred, the DPWRS may forward a written request for authorization to use a **Special Warranty Deed** to the OAG. This request must first be approved by DDPW and DPWHA, and will contain sufficient information to explain the reasons why a **Special Warranty Deed** is being requested. Once written authorization is obtained, the DPWRS will be notified and will assemble the **Special Warranty Deed**. This notification must be in writing.
- (B) **Personal Representative and Guardian Deeds:** When parcels are to be conveyed by personal representatives or guardians, special deeds are required. Care must be taken to ensure that the personal representative or guardian has been properly appointed and has been empowered to convey before preparing the deed.
- (B) **No Competent Grantor:** When a parcel is encountered for which no competent grantor can be identified from the record title, no deed can be provided. With approval from the DDPW and DPWHA, the DPWRS will forward a memo to the OAG that explains the circumstances of the parcel involved, together with an action plan to correct the defects. A legal description of the taking and copies of the abstract of title research should be attached.
- (D) **Condemnation:** When parcels are acquired through condemnation, no deeds are required.

2.1.9 A Quitclaim Deed as a Conveyance

A **Quitclaim Deed** will not be used for acquisition of fee title without prior written approval of the OAG except when parcels are being conveyed by Federal agencies. A **Quitclaim Deed** is generally not acceptable as a root of title nor does it provide the protection of estoppel by deed.

2.1.10 Perpetual Easement

When permanent improvements are to be constructed and maintained on parcels for which acquisition of fee title is impractical, a **Perpetual Easement** may be used. Additional examples include when green area or setback requirements will cause excess severance damages, if fee title is taken, or an underground structure is to be installed which will not preclude the owner's use of the parcel. The decision to use a **Perpetual Easement** should be made by the Department's Registered Land Surveyor or DPWRS in cooperation with the DDPW, DPWHA and OAG.

2.1.11 Conservation Easement

Conservation easements may be acquired when it is necessary to: protect natural, scenic, or open space values of real property; assure availability for agricultural, forest, recreational, open space use; protect natural resources; maintain or enhance air or water quality; and preserve sites or properties of historical, architectural, archaeological, or cultural significance.

2.1.12 Temporary Easement

A **Temporary Easement** will be used when it is necessary to temporarily occupy a parcel for a specific purpose. No improvement which is a permanent part of the transportation facility or which requires maintenance by the Department beyond the term of the easement will be constructed on a temporary easement.

2.1.13 License Agreement

A **License Agreement** will be used only when the work to be performed can be abandoned if the owner refuses to execute the agreement.

2.1.14 Recording

2.1.14.1 It is the responsibility of the DPWRS to ensure that all documents affecting the marketability of the Department's title are registered and delivered to the Deputy Registrar, Records Division, DLM. This may include instruments that are ancillary to the documents prepared by or on behalf of the Department (e.g., death certificates, affidavits or mortgage and lien satisfactions).

2.1.14.2 In compliance with **5 GCA, Chapter 32, Article 7, Social Security Number Confidentially Act**, any person preparing or filing a document for recordation in the official records may not include a social security number in such document, unless required by law.

HISTORY

Original Issue January 2011

Revision 1 – October 2017 – changes to sections; 2.1.4.2, 2.1.4.6, 2.1.4.8, 2.1.6.3, 2.1.8, and 2.1.10.

Section 3.1

CONTAMINATED PARCELS

TABLE OF CONTENTS

PURPOSE 3-1-1

AUTHORITY 3-1-1

SCOPE 3-1-1

REFERENCES 3-1-1

FORMS 3-1-1

GENERAL 3-1-1

DEFINITIONS 3-1-2

3.1.1 Identification of Contaminated Sites 3-1-3

3.1.2 Petroleum Contaminated Parcels 3-1-3

3.1.3 Non-Petroleum Contaminated Parcels 3-1-3

3.1.4 Valuation of Contaminated Parcels 3-1-4

3.1.5 Contaminated Uneconomic Remnants 3-1-4

HISTORY 3-1-4

Section 3.1

CONTAMINATED PARCELS

PURPOSE

This chapter establishes requirements regarding the acquisition of contaminated properties and implements procedures to protect the Guam Department of Public Works (DPW), hereafter referred to as the Department, from costs of remediation and liability for contamination caused by others.

AUTHORITY

40 CFR, Parts 260 through 272 and Parts 280 and 300
42 United States Code, Section 6901, et seq.
42 United States Code Annotated, Section 9601(35)
42 United States Code Annotated, Section 9607(b)(3)
10 GCA § 32108, Regulations
10 GCA § 32109, Examination and Investigation

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions.

REFERENCES

29 CFR 1910, Subpart Z, Toxic and Hazardous Substance Occupational Safety and Health Administration Act
40 CFR, Parts 260 through 272
10 GCA § 32112, Hazardous Substance Testing Offered
10 GCA § 32113, Government of Guam to Procure Hazardous Substance Liability Insurance Coverage

FORMS

None specific to this Section.

GENERAL

This section addresses the process to be followed in the acquisition of right of way parcels which are contaminated or suspected to be contaminated. To the extent possible, acquisition of parcels contaminated with non-petroleum contaminants are to be avoided. For non-petroleum contaminated parcels which cannot be avoided and must be acquired, the intent is to recover costs of remediation and to the extent possible minimize the Department's liability for contamination existing prior to the acquisition.

Recovery of costs of remediation is limited to those circumstances in which the Department would be required to undertake remediation where the owner or operator would have been required to carry out such remediation in the absence of the Department's acquisition. The costs to be recovered are those costs which the owner or operator would have incurred using the approved remediation technique(s) most advantageous to the owner. These costs may not be the same as those encountered by the Department in an expedited remediation.

It is critical that the Department work pro-actively and with due diligence in identifying the existence of contaminated parcels as early as possible in the project development process. This should be followed by the creation of a course of action to efficiently and effectively deal with the issues.

DEFINITIONS

Contaminant: Any pollutant, hazardous substance or contaminant.

Contamination: The presence of any contaminant on land or in the waters of the Territory of Guam, in quantities which are, or may be, potentially harmful or injurious to animals, plant life or human health and welfare, which exceed the established Federal or Territorial Maximum Contaminant Levels (MCL).

Contamination Source: The place of origin or major concentration of contaminants from which contamination migrates to surrounding areas through the soil or groundwater.

Contamination Stigma: A diminution in the market value of a property which results from the knowledge in the market place that the property is or was contaminated and which diminution persists after remediation to Federal and Territorial standards. Contamination stigma does not include the costs of remediation.

Hazardous Material: Any material which has, or when combined with other materials will have, a deleterious effect on people or the environment.

Hazardous Waste Site: A site at which wastes, as defined in *40 Code of Federal Regulations, Parts 260 through 272*, have been disposed, treated, or stored.

Non-Petroleum Contaminant: Any contaminant other than those defined as petroleum contaminants.

Non-Petroleum Contaminated Parcel: A parcel which has non-petroleum contaminants in the soil or groundwater in potentially dangerous quantities or levels in excess of the allowable maximum contaminant levels or risk based criteria established by rule or law. If both non-petroleum and petroleum contaminants are present, the parcel will be treated as a non-petroleum contaminated parcel.

Owner: The individual or legal entity holding title to parcels which the Department is seeking to acquire or from whom the Department has acquired title. In the case of multiple individuals or entities jointly holding title, the term will apply to all holders collectively.

Operator: The individual or legal entity holding a right of possession to parcels which the Department is seeking to acquire from the owner and who has performed activities at the site for personal or commercial reasons that may have contaminated or added to contamination of the soils and groundwater on the site or exiting from the site.

Parcel: A tract of land as defined in Chapter 2.1 and further defined as identified by the Department for acquisition as a portion of the right of way for a transportation project.

Petroleum Contaminant: Any petroleum or petroleum product as defined in *40 CFR, Part 261*.

Petroleum Contaminated Parcel: A parcel which has only petroleum contaminants in the soil or groundwater in potentially dangerous quantities or levels in excess of the allowable maximum contaminant levels. See **Section 3.1.3, Non-Petroleum Contaminated Parcel**.

Remediation: Those activities necessary to remove, treat, or otherwise reduce contamination to a level acceptable to the regulatory agency having jurisdiction.

Superfund site: A site on the National Priorities List as adopted by the United States Environmental Protection Agency.

Valuation: The process of estimating the market value of an identified interest or interests in a specific parcel of real estate as of a given date.

3.1.1 Identification of Contaminated Sites

Contaminated sites should be identified in accordance with *10 GCA, §32109, Investigation and Examination* and applicable Guam and Federal Environmental Protection Agency procedures. In all cases, the presence of contamination and the nature of the contamination present must be made known to the real estate appraiser so that a determination can be made regarding the presence of contamination stigma. For those parcels on which the remediation costs are to be considered during the valuation process, the nature and extent of the contamination must be known prior to the beginning of the valuation process and a supported estimate of the remediation costs must be made available to the real estate appraiser. The remediation costs included in such an estimate must be those the owner would be expected to incur in the absence of the taking by the Department.

3.1.2 Petroleum Contaminated Parcels

Petroleum contaminated parcels should be acquired using standard acquisition procedures. Since the owner of such properties would not be required to remediate the contamination except for the Department's actions, the costs of such remediation should not be considered in the valuation process. However, contamination stigma must be considered.

3.1.3 Non-Petroleum Contaminated Parcels

3.1.3.1 Superfund sites

To the extent possible, sites which have been designated as Superfund sites or which are proposed for such designation should not be acquired, either in part or in whole. If avoidance is not possible, the sites must be acquired by eminent domain or under threat of condemnation. Costs of remediation should not be considered in the valuation and acquisition process; however, contamination stigma must be considered.

Donations of parcels which are part of Superfund sites should not be accepted.

3.1.3.2 Hazardous waste sites

Contamination stigma must always be considered in the valuation of these sites and they must be acquired in the following manner:

- (A)** Sites which are enrolled in or are eligible to be enrolled in Federal or Territory-funded remediation programs may be acquired without considering the costs of remediation in the valuation and acquisition process.
- (B)** Sites which have not been enrolled in and are not eligible to be enrolled in Federal or Territory-funded remediation programs must be acquired as follows:
 - (1)** If the contamination source is not located within the parcel to be acquired, the costs of remediation should not be considered in the valuation and acquisition process.
 - (2)** If the contamination source is located, either partially or wholly within the parcel to be acquired, steps must be taken to protect the Department from costs and liability associated with the acquisition of the contamination source. The valuation process should reflect the impact to market value of the amount the owner would reasonably be expected to expend in the remediation of the contamination in the absence of the Department's taking. If anticipated remediation costs cannot be recovered through a reduction in purchase price, the acquisition documents should contain language preserving the Department's right to seek reimbursement of such costs from the owner or operator.

3.1.4 Valuation of Contaminated Parcels

Nothing in this procedure is intended to substitute for the application of proper professional judgment and due diligence in the valuation of properties. It is recognized that circumstances; (such as highest and best use, and severance analyses), may exist wherein the real property appraiser must consider the presence of contamination, even when such contamination or its source is not within the area to be acquired by the Department, in order to properly evaluate the impact of an acquisition on a tract. However, it is the intent of the Department that the value of the part to be acquired should not be directly impacted by the anticipated costs of remediation, except as indicated in this procedure.

3.1.5 Contaminated Uneconomic Remnants

3.1.5.1 Contamination source located on the remnant or contamination located only on the remnant:

The offer to purchase the remnant must be conditioned upon remediation being completed at the owner's expense. This may be accomplished by having remediation completed prior to title transfer or by the owner's agreement to pay the costs of remediation. Care must be taken to ensure that an owner entering into an agreement to pay remediation costs is financially capable of meeting the obligations under the agreement.

3.1.5.2 Contamination shared between the remnant and right of way parcel:

The offer to purchase the remnant should generally be conditioned upon the owner's agreement to pay the cost of remediation associated with the remnant. Where the cost of remediation of the remnant is indistinguishable from the cost of remediation of the right of way parcel, the Department of Public Works Right of Way Supervisor through consultation with the Attorney Generals Office may elect to not include the condition in the offer to purchase.

HISTORY

Original Issue January 2011

Revision 1 – October 2017 – No change to this section

Section 4.1

APPRAISAL AND APPRAISAL REVIEW

TABLE OF CONTENTS

PURPOSE 4-1-1

AUTHORITY 4-1-1

SCOPE 4-1-1

REFERENCES 4-1-1

FORMS 4-1-1

DEFINITIONS 4-1-1

4.1.1 Responsibilities of DPW Land Agent Supervisor 4-1-2

4.1.2 Responsibilities of the Reviewer 4-1-3

4.1.3 Preliminary Project Review 4-1-4

4.1.4 Review of Data Books and Appraisal Reports - General 4-1-5

4.1.5 Review of Data Books 4-1-5

4.1.6 Review of Appraisal Reports 4-1-6

4.1.7 Minor and Major Deficiencies 4-1-7

4.1.8 Rejecting the Appraisal Report 4-1-8

4.1.9 Review of Owner's Appraisal Report 4-1-8

4.1.10 Complex Parcels or Parcels Valued in Excess of \$1,000,000 4-1-9

4.1.11 Pre-Litigation Coordination 4-1-9

4.1.12 Appraisal Review - Updated Reports and Litigation 4-1-9

4.1.13 RAS - General 4-1-9

4.1.14 RAS – Value Allocation, Changes, and Rounding 4-1-10

4.1.15 Right of Way Records System 4-1-10

4.1.16 RAS - Uneconomic Remnant 4-1-11

| | |
|-------------------------------------------------------------------|--------|
| 4.1.17 Sign and Date RAS..... | 4-1-11 |
| 4.1.18 Delivery of RAS..... | 4-1-11 |
| 4.1.19 Review Appraisal Report (RAR) - General | 4-1-12 |
| 4.1.20 RAR - Partial to Whole Acquisition | 4-1-12 |
| 4.1.21 RAR - Significant Changes to Reported Value | 4-1-12 |
| 4.1.22 Appraisal Waivers..... | 4-1-12 |
| 4.1.23 Value Finding Format | 4-1-13 |
| 4.1.24 Payment of Appraisal Fees..... | 4-1-13 |
| 4.1.25 Contract Review Appraisers | 4-1-13 |
| 4.1.26 Conflict of Interest Nonparticipation in Negotiations..... | 4-1-14 |
| 4.1.27 Administrative Reviews..... | 4-1-14 |
| 4.1.28 Technical Reviews..... | 4-1-15 |
| HISTORY..... | 4-1-15 |

Section 4.1

APPRAISAL AND APPRAISAL REVIEW

PURPOSE

The purpose of this section is to set forth procedures, requirements, and standards for the real property appraisal and appraisal review functions for the Department of Public Works, Office of Right of Way hereinafter referred to as the Department.

AUTHORITY

5 GCA Chapter 53, Care and Protection of Highways
5 GCA Chapter 54, Highway Projects

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform appraisal and appraisal review functions.

REFERENCES

5th and 14th Amendments to the U.S. Constitution
Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal
Right of Way Manual, Section 5.2, Negotiation Process
Right of Way Manual, Section 5.6, Eminent Domain
5 GCA Chapter 5, Guam Procurement Law
21 GCA Division 1, Ownership of Real or Immovable Property
21 GCA Chapter 17, Relocation Assistance Act
22 GCA Chapter 30, Real Estate Appraisers
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
Uniform Standards of Professional Appraisal Practice

FORMS

4.1-1 Review Appraiser's Statement

DEFINITIONS

Abbreviated Parent Tract: An abbreviated parent tract in an appraisal application is something less than the whole physical property. An abbreviated parent tract is typically an economic unit of land supported through a highest and best use analysis wherein a portion of the ownership is concluded to have a higher and better use than as an aggregate to the whole ownership. This term is used in the *Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal*.

Real Estate Appraiser: A person who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective. In addition the person must be licensed to practice in Guam as required by **22 GCA §30103**. The Department may contract for appraisal services in accordance with **5 GCA Chapter 5, Article 5**.

Administrative Review: Administrative review is work performed by clients and users of appraisal services as a due diligence function. It is typically non-concurrent with the technical review. The intent of this function is to assist in making

business decisions, evaluating appraisal reports for litigation purposes, procedural compliance monitoring, quality control, quality assurance, and assessment of training needs. A **Certificate of Value** is not required. For the purposes of **Section 4.1**, administrative reviews are performed by the Department of Public Works Right of Way Supervisor (DPWRS), or designated staff.

Client: The Department of Public Works Right of Way Supervisor (DPWRS) and his/her designee.

Quality Control Program: A written plan by which the Department regulates its activities based on compliance with Department policies and procedures to assure an acceptable level of products.

Recommended Compensation: The amount established by the Department's appraisal reviewer which typically represents full compensation, excluding business damages, moving costs, attorney fees, and landowner costs. Recommended compensation is almost always equal to the approved market value.

Technical Review: Work performed by an appraiser in accordance with **Standard 3 of the Uniform Standards of Professional Appraisal Practice (USPAP)** for the purpose of forming an opinion as to whether the analyses, opinions and conclusions in the appraisal report are appropriate, reasonable and adequately supported.

4.1.1 Responsibilities of DPW Land Agent Supervisor

The following are the responsibilities of the DPW Land Agent Supervisor (DPWLAS):

- (A) Assign appraisals and appraisal reviews.
 - (1) Assess the level of contractual compliance of submitted data books, appraisals, or studies to determine the appropriateness of assigning the product to appraisal review.
 - (2) The DPWLAS may find it necessary to return a significantly incomplete product to a contracted appraisal consultant and consider invoking contract provisions for liquidated damages.
- (B) Monitor appraisers and reviewers completion of assignments in compliance with Departmental policies, procedures, and contract specifications.
- (C) Resolve appraisal and appraisal review problems and issues.
- (D) Monitor and suggest corrections to the work of staff and consultants to provide procedural and contract compliance, reasonableness, uniformity, and quality of appraisal and appraisal reviews. A sampling of staff appraisal reviews must be administratively reviewed by the DPWLAS for quality control to monitor recommended compensation is reasonable, appropriate and supported.
- (E) Encourage staff reviewers to be proactive in their working relationships with consultant appraisers. The intent is not to guide or direct the appraiser regarding valuation issues and conclusions, but rather to deal with new information and potential time delaying issues and problems before the appraisal report is submitted.
- (F) Monitor for any increase or decrease in the value of any property to be acquired which occurs after the scope of the project for which the property is being acquired is known in the market. Any increase or decrease which is solely a result of the knowledge of the project location shall not be considered in arriving at the value of the property acquired. For the purpose of **Section 4.1**, the scope of the project

for which the property is being acquired shall be presumed to be known in the market on or after the Government of Guam executes a resolution which depicts the location of the project.

- (G) Provide appropriate professional development for appraisal staff.
- (H) Monitor proper interpretation of official instructions, contracts or agreements, and enforcement of such provisions are performed and documented by the employee assigned that responsibility.
- (I) Provide proper distribution of reports and correspondence. Distribution of reports and correspondence should be as follows:
 - (1) The original **Review Appraiser's Statement (RAS)**, appraisal report, and related documentation are routed to the Department's official project parcel file.
 - (2) A copy of both the **RAS**, appraisal report, and other correspondence are routed to the Department's ROW acquisition section, the Office of Attorney General (OAG), and others as appropriate.
 - (3) Paper or electronic copies of specifically requested appraisals and **all** approved data books are sent, without delay, to the DPWRS, OAG, and others as appropriate.
- (J) Monitor that the Invitation to Negotiate process is employed for all appraisal services contracts.
- (K) Monitor accurate and timely, within **five days** of an event, entry of all available appraisal data into the Department's official project parcel file.
- (L) Approve appraisal services and process appraisal services invoices for payment.
- (M) Be proactively involved in all phases of the project pertaining to appraisal and appraisal review. This shall include interaction during the pre-litigation negotiation process as well as with eminent domain legal counsel. This may also include interaction during the pre-production process.
- (N) Develop and administer the Department's Quality Control Program as it relates to right of way appraisal and appraisal review activities. This shall include the identification of the primary customers of the appraisal and appraisal review process and monitor satisfaction of the customer's valid requirements.
- (O) Submit a separate statement or memo to the DPWRS explaining significant, at least 15% and/or \$10,000, divergences in market value estimates and/or recommended compensation between any previous report and the latest report cited within a **RAS**.

4.1.2 Responsibilities of the Reviewer

The following are the responsibilities of the reviewer:

- (A) Establish proactive communication with the appraiser that should include:
 - (1) Establishing communication with the appraiser and others involved in the valuation process well in advance of appraisal submission;
 - (2) Inspecting the subject property and comparable sales with the appraiser;

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- (3) Reviewing rough drafts of data books and rough drafts of reports prior to contract delivery dates;
 - (4) Attend scope of services meetings and post award meetings.
 - (B) Proactively coordinate and consult with the agent, the assigned attorney, engineer and other professionals of the Department involved with the project, as needed.
 - (C) Be familiar with the real estate market in the project area, the appraised parcel, and the methods and techniques appropriate to the appraisal assignment.
 - (D) Review all assigned data books, appraisal reports, and other reports to monitor:
 - (1) Conclusions are reasonable and adequately supported;
 - (2) Appraisals have been made in conformity with Federal and Territory of Guam laws, rules, policies and procedures applicable to valuation under eminent domain for transportation purposes, and no portion of the market value consists of items which are noncompensable under the established law of the Territory of Guam or Federal Government on Federal participation projects;
 - (3) The market value estimate is reasonable and adequately supported;
 - (4) Pertinent and relevant market data have been examined, analyzed, and considered.
 - (E) Examine the Department's official parcel file to obtain knowledge of previous reports and other applicable data.
 - (F) Provide appropriate attention to appraisal divergences and changes to appraised value by properly analyzing the divergence or change in light of its appropriateness, reasonableness, and supporting data.
 - (G) Recommend the compensation for the property rights being acquired and any damages. Report the compensation on a **RAS**, see sample document attached with other supporting information. All **RAS** must be in writing and retained in the Department's official parcel file.
 - (H) Request the appraiser update the **RAS** if, prior to final settlement, it becomes necessary to reflect other pertinent data such as a property owner's appraisal or plan revisions.
 - (I) Recommend to the DPWLAS whether appraisal services are acceptable for payment. Appraisal reports not authorized for payment shall be considered rejected and must be processed in accordance with **Section 4.1.8**.

4.1.3 Preliminary Project Review

Projects should be field inspected by appropriate Department staff prior to preparing for an appraisal service evaluation and negotiation. This review may be combined with the project coordination outlined in the **Right of Way Manual, Section 5.6 Eminent Domain**. The inspection team should, when possible, identify and document or track the following:

- (A) Complex parcels or parcels where the market value is expected to exceed the value threshold established in **Section 4.1.10**.

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- (B) Unique appraisal problems, which may result in the need for variances, special exceptions, waivers, or specialist reports, such as cost estimates, traffic studies, land planner, etc.
 - (C) Parcels eligible for appraisal waiver and notify the DPWRS of that fact.
 - (D) Parcels suspected of having hazardous materials or environmental management concerns and consult with the DPWRS for further action.
 - (E) The need for and development of a request for legal opinions or legal advice.
 - (F) Possible trades or exchanges of surplus or excess properties.
 - (G) Unusual title situations where documentation of the ownership of various interests in the property needs to be further identified.
 - (H) Personal property and items that will be appraised and acquired as fixtures.
 - (I) Modifications or revisions to right of way requirements or project design that may mitigate cost, business damages, and hardship situations. Significant issues should be discussed with the Department's Design Project Manager or appropriate Department staff to monitor prudent expenditure of funds. Early identification of access and median opening location in relation to individual parcels should be completed before appraisal. Access design and impacts to a right of way acquisition parcel should be determined prior to appraisal. Changes to access details or decisions must be coordinated with the DPWLAS and the OAG.
 - (J) Appropriate appraisal development and reporting option(s) as specified in **USPAP**.
 - (K) Property type category of each parcel.
 - (L) Possible uneconomic remnants.

4.1.4 Review of Data Books and Appraisal Reports - General

Prior to their use, all data books and appraisal reports contracted for by the Department are to be technically reviewed, except **Value Findings**, which may be administratively reviewed. Reviewers are to take a proactive role and consult with the appraiser during the fieldwork, data book and report preparation periods. Contacts may include clarification of parent tracts, discussion of highest and best use, sales analyses, cost methods, and the review of draft segments of the data book or appraisal reports. The Department may find it appropriate for the appraiser to conduct a presentation to the Department on critical valuation issues within the scope of the contract.

The reviewer shall avoid directing or the appearance of directing the appraiser. To the extent practicable, contacts with the appraiser should be made informally. If there is an impasse or debate concerning appraisal issues, the reviewer should formalize concerns in writing to the appraiser.

4.1.5 Review of Data Books

The reviewer shall:

- (A) Become familiar with the project area real estate market and available data.

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- (B) Monitor that appraisal development and reporting complies with the **USPAP** and **Right of Way Manual Section 4.2 Supplemental Standards of Appraisal**.
 - (C) Monitor that data are detailed, factual, accurate and consistent.
 - (D) Monitor that data are understandable and the analyses reflect proper and reasonable support for any adjustments, or lack thereof.
 - (E) Verify details of reported data and motivations of pertinent market participants, as necessary.
 - (F) Resolve discrepancies of fact, if any, when more than one data book is received and the same transaction is reported in both.
 - (G) Field inspect all reported sales, leases, and other relevant data for factual consistency.
 - (H) Informally contact each appraiser to resolve questions and/or differing interpretation of facts and to convey results of any independent investigation of data.
 - (I) Communicate with the appraiser in writing when less formal efforts to resolve substantive issues are unsuccessful.
 - (J) Provide a written opinion as to whether the analyses, opinions, and conclusions in the data book under review are appropriate and reasonable, and develop the reasons for any disagreement.
 - (K) Recommend approval by the DPWLAS when all concerns have been resolved and the data book complies with **USPAP**, the **Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal**, and the contract.

4.1.6 Review of Appraisal Reports

The reviewer shall:

- (A) Complete an initial desk review to determine:
 - (1) Proper project and parcel identification.
 - (2) The appraiser adequately addressed the assignment in compliance with the appraisal services contract and the **Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal**.
 - (3) Completeness and mathematical accuracy.
 - (4) Consistency with previously approved reports on the subject parcel. The reviewer must be familiar with all reports and **RAS** previously prepared on an individual parcel and must explain any differences in the value estimate within the current **RAS**.
 - (5) Consistency of support for the existence or absence of estimated damages.
- (B) Field inspect the subject project to determine:
 - (1) Conclusions presented in the report are based on pertinent market facts and appropriate sources are used to substantiate statements of fact, such as buyers, sellers, brokers, and governmental agencies.
 - (2) The appraiser properly analyzed and reported the impact of the project on the property being appraised.
 - (3) The appraiser has adequately described and addressed areas of concern on the subject property.

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- (4) The appropriateness of proposed cures, consultant analyses, and severance damage or lack of severance damage.
 - (5) The comparable sales used are similar and differences are properly addressed.
 - (C) Utilize other sources of information, if applicable, such as sales, listings, or pending contracts, and leases.
 - (D) Monitor that all components of real and personal property are addressed. Personal property may be included within the transaction of certain commercial and special use properties as may be customary in the marketplace (e.g. motels, restaurants, certain industrial properties). This component, if any, should be addressed within the appropriate/applicable approaches to value. The sales data and rental sheets should include comments about the existence or non-existence of such components that may have influenced the price and/or rents paid. Grids included within the analysis should include a line item to address these items.
 - (E) Complete a final desk review to determine:
 - (1) Compliance with **USPAP**, the **Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal**, the contract, and written instructions.
 - (2) Clear, convincing and logical presentation of certain facts and valuation techniques which lead the reader to the same or similar conclusion as the appraiser.
 - (3) Any inclusion of a subconsultant estimate or analysis is market supported, feasible and reasonable and has been analyzed and adopted by the appraiser.
 - (4) The appraiser has sought and properly applied legal, engineering and title opinions.
 - (5) That in the case of tenant owned buildings, structures, or other improvements; the appraiser has presented appraisal opinions reflecting both the contributory value to the parent tract and salvage value.
 - (6) Exclusion of noncompensable items and noncompensable damages through coordination with the OAG.
 - (7) Exclusion of personal property unless pertinent to the appraisal assignment.
 - (8) The report neither omits nor contradicts relevant factual data.
 - (9) The report contains no inconsistencies, unsupported statements or conclusions or limiting conditions which are in conflict with **USPAP**, the **Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal**, the contract and written instructions.
 - (10) The report clearly presents support for the existence or absence of severance damages.
 - (11) The report presents a supported value estimate allocated to land, improvements, special benefits, and severance damages, as applicable.

4.1.7 Minor and Major Deficiencies

- (A) Minor corrections, such as typographical and mathematical errors not affecting the value conclusion may be corrected, initialed and dated on the appraisal report by the reviewer, or, if there are many such errors, the reviewer may request corrections. The reviewer shall notify the appraiser of the changes made, and then notify the DPWLAS that the report is acceptable for payment of the appraisal fee.
- (B) Major deficiencies are when the reviewer finds that the appraisal report needs clarification or contains substantive errors. In these instances the reviewer must initially attempt to resolve the issues informally, and if not successful, summarize the deficiencies in writing to the appraiser with copies to the DPWLAS. The reviewer shall meet with the appraiser, as necessary.

4.1.8 Rejecting the Appraisal Report

Having taken the actions specified in **Section 4.1.7**, if an acceptable report is still not obtained, the reviewer must prepare a memorandum to the DPWLAS stating the reasons for rejection and the efforts made to obtain an acceptable report. The DPWLAS or designee must examine the appraisal report and the appraisal rejection memo. The DPWLAS or designee will:

- (A) Upon concurrence with the rejection:
 - (1) Will sign and date the appraisal rejection memorandum.
 - (2) Attach the original of the appraisal rejection memorandum to a reproduced copy of the appraisal report and place them in the Department's official parcel file.
 - (3) Return all copies of the appraisal reports and appraisal invoices to the appraiser with a written notice stating the reason(s) for the rejection. Advise the appraiser that payment is not authorized and that while all copies of the reports and invoices are being returned, a photocopy is being retained by the Department for documentation purposes. Attach a copy of the notice to the appraiser and a copy of the appraiser's invoice to the reproduced copy of the appraisal report in the Department's official file. Send copies of the letter to the Director of Administration.

NOTE: When rejecting and refusing to pay for a work product, all copies of the product should be returned to the appraiser and reproduced copies retained, unless the contract provides otherwise. The retained copies should be clearly marked as Reproductions - Original Copies Returned to Appraiser.

- (4) Initiate action to secure an acceptable appraisal report from a different appraiser, if appropriate.
- (B) Upon non-concurrence with the rejection, return the appraisal rejection memorandum to the reviewer with a memo attached stating the action to be taken by the reviewer.

4.1.9 Review of Owner's Appraisal Report

4.1.9.1 When received prior to Declaration of Taking the following applies:

- (A) If the property owner submits an appraisal report for consideration by the Department during negotiations prior to Declaration of Taking, the DPWLAS will assign it to a reviewer for a technical review for compliance with **USPAP**.
- (B) If the property owner's appraisal report has useful information, the reviewer may either approve the report for negotiation, include information from the report in the **RAS** in support of the reviewer's recommended compensation, or prepare a **Review Appraisal Report (RAR)** referencing information in the owner's report.

4.1.9.2 When received during litigation, the following applies:

- (A) Upon request of the OAG assigned attorney, a property owner's appraisal report received during litigation will be either administratively or technically reviewed.

-
- (B) Upon request of the OAG assigned attorney, the reviewer shall set forth strengths and weaknesses of a property owner's appraisal report.
 - (C) Retention in the Department's official project parcel file will be required for all property owner appraisal reports whether or not technically or administratively reviewed.

4.1.9.3 When received for surplus real property disposition, appraisals (which must comply with **USPAP**) will be reviewed administratively or technically. If technically reviewed, a determination must be made as to the level of compliance with **USPAP**. All reviews must be summarized in writing. Further, any review shall result in a determination of the adequacy of the report under review and the degree of reliance one can place on the report from which to base a business decision.

4.1.9.4 Distribution and retention in the Department's official project parcel file shall be as follows:

- (A) Distribution of property owner appraisals and appraisal reviews shall be in accordance with **Section 4.1.1(I)**.
- (B) Retention in the Department's official project parcel file will be required for all property owner appraisal reports whether or not technically or administratively reviewed.

4.1.10 Complex Parcels or Parcels Valued in Excess of \$1,000,000

Two appraisals may be advisable when an acquisition presents complex appraisal issues and/or the value estimate of the parcel is, or is anticipated to be, in excess of \$1,000,000. Using a different cost analyst for each appraisal is also advisable when primary reliance is placed on the Cost Approach to value.

4.1.11 Pre-Litigation Coordination

During pre-litigation negotiation on assigned parcels, the reviewer shall assist the appraiser when questions arise regarding valuation concepts, support for conclusions, new information, or other relevant market data is presented by the negotiator. The reviewer shall take appropriate actions to resolve issues and/or answer inquiries.

4.1.12 Appraisal Review - Updated Reports and Litigation

4.1.12.1 The DPWLAS shall monitor that all written appraisal reports will be reviewed and, if appropriate, approved by a Department Reviewer prior to use. The reviewer should be consulted in the mediation and trial preparation process. The reviewer must revisit all data, including that presented by the property owner (see **Section 4.1.9**). Sufficient time is to be allowed to perform an adequate review of each appraisal report, recognizing the constraints of the court schedule.

4.1.12.2 When assigned parcels are placed in suit, the reviewer shall, upon request of the OAG assigned attorney:

- (A) Contact and offer the OAG assigned attorney any information or services which may be helpful in pre-trial, mediation, or trial.
- (B) Review Department appraisal reports not only according to requirements of **Section 4.1**, but also to set forth strengths and weaknesses to assist in the negotiation and litigation process.

4.1.12.3 Any changes in value from prior parcel appraisals must be discussed in the **RAS**. The **RAS** shall reference any legal advice concerning the appraisal with every attempt made to obtain such advice in writing.

4.1.13 RAS - General

The **RAS** shall be prepared as follows:

- (A) Upon completion of the desk and field review of an appraisal, a **RAS**, see attached sample document, shall be prepared by the reviewer according to **Section 4.1** and standards set forth in **USPAP**. A **RAS** shall be prepared for all technically reviewed reports. A **RAS** is not required for administrative reviews of owner's reports received during the litigation process, Value Findings, surplus property appraisals, or for administrative reviews for compensation purposes, such as, evaluations of contract fee reviewer's report or **RAS** in order for a Department employee to determine recommended compensation in the amount suggested by the contract reviewer.
- (B) Part A of the **RAS** shall identify the project and parcel reviewed and includes all previous and current appraisal activity in chronological order. Part B should identify and briefly describe the parent tract and its location. It should be a clear, concise and logical presentation of facts. The **RAS** must contain the reviewer's analysis and conclusion as to the adequacy and appropriateness of the appraiser's analyses, opinions and conclusions. Part B must summarize significant issues and information necessary to assist the Department and OAG attorneys. The **RAS** should serve to bolster and reinforce the appraisal being approved. In some instances, the **RAS** may also state the reviewer's reasons for finding a specific report unacceptable, and for making recommendations to management of a solution to the appraisal problem. In either situation, the **RAS** is to be written in a professional, objective manner.

4.1.14 **RAS – Value Allocation, Changes, and Rounding**

The reviewer shall report each allocation of the recommended compensation to land, improvements and damages, if any. A reasonable effort shall be made to identify tenant owned improvements to be acquired. The value of any known tenant owned improvements to be acquired shall be listed separately. In no instance should the value of the part to be acquired and severance damages exceed the before value of the property. Recommended compensation shall not include cost to cure amounts for work to be performed by the Department. Coordination with the DPWLAS and DPWRS is necessary to identify these instances.

For technical reviews, changes in analyses or value conclusions from previously approved reports shall be thoroughly explained by the reviewer in **Part B** as to reasonableness and appropriateness. Such discussion is to include the reviewer's evaluation as to the validity of the revised analysis or conclusion and an explanation as to why the superseded analysis or conclusion is no longer appropriate or reasonable. Such explanations may address, but are not limited to: modification of maps or plans, changes in costs to cure, comparable data selection, severance damages, highest and best use, and new data analyses.

The sum of the amounts allocated to land, improvements and damages must equal recommended compensation. The reviewer shall determine that any rounded amounts are logical and reconciled to equal the recommended compensation. The reviewer must determine, to the extent practicable, that rounding decisions within an appraisal report do not inadvertently result in an offset of severance damage amounts or result in a conclusion of severance damages that would not otherwise exist. Downward rounding of compensation components (land, improvements, and damages) should be avoided.

4.1.15 **Right of Way Records System**

Before completing the **RAS**, the reviewer or designee shall examine the appraisal records in the Department's official project parcel file for the parcel. The reviewer shall report any inaccurate information to the DPWLAS.

4.1.16 RAS - Uneconomic Remnant

An uneconomic remnant is property which, as a result of a partial taking, has little or no utility or value to the owner, as determined by the reviewer. An uneconomic remnant may have value in the market but may have little or no utility or value to the owner. The test is whether the reviewer determines that the remnant has little or no utility to the owner, not whether there is value in the marketplace. A remnant or part of a severed ownership may be declared an uneconomic remnant, even though such was its status before the acquisition, because it has been further reduced in utility. The reviewer must complete the uneconomic remnant section in the lower left hand corner of **Part A** on the **RAS**, or if a Value Finding or the Certificate of Value, as appropriate. The following information is to be entered:

- (A) Enter the land area: Land area should be the sum of the area of the taking and the uneconomic remnant.
- (B) Under P/W, Partial/Whole, enter "P" if there is a remainder to the parent tract in addition to the uneconomic remnant plus the take. Enter "W" if the uneconomic remnant plus the take constitutes a whole taking of the parent tract.
- (C) The allocation to land, improvements, damages and/or cost to cure, and the total estimate of value are to be completed considering that the area of taking includes the uneconomic remnant. When an uneconomic remnant results in the whole property being acquired, the allocation shall be for land and improvements only.
- (D) The reviewer shall explain in the **RAS** why the remnant is uneconomic and shall conclude a total value for the part to be acquired, plus the value of the uneconomic remnant. The reviewer's recommended compensation shall exclude the value of the uneconomic remnant. The final paragraph on the **RAS** shall clearly identify the uneconomic remnant, support its declaration as such, and state its value. If there are two or more remainders the reviewer must clearly identify which remainder(s) is/are being declared uneconomic. If the reviewer has reason to believe any portion of the uneconomic remnant is contaminated, a statement to this effect must be made to alert the acquisition agent.
- (E) The DPWLAS shall monitor that the value of the uneconomic remnant is properly entered into the Department's official project parcel file.
- (F) Unless otherwise authorized in writing by the DPWLAS, the **RAS** is the agent's sole authorization to offer to purchase an uneconomic remnant.
- (G) When the DPWLAS or designated staff is notified that a request has been made for a revised instrument, or a revised instrument has been received, indicating the property owner has accepted the Department's offer to purchase the uneconomic remnant, a **RAR** shall be prepared and entered into the Department's official project parcel file to accurately reflect the last approved compensation.

4.1.17 Sign and Date RAS

The reviewer shall sign and date the **RAS**. The original **RAS**, appraisal, and related documents shall be delivered to the DPWLAS for review, distribution, and coordination of database entry, as applicable.

4.1.18 Delivery of RAS

The **RAS** should not be inserted into the appraisal report, nor given to the property owner or owner's representative as part of the appraisal unless the statement is specifically requested through a public records request, discovery request, or ordered by the court. Any such requests shall be coordinated with the OAG to monitor that the requested information has not been specifically prepared at the demand of the assigned attorney in preparation for litigation.

4.1.19 Review Appraisal Report (RAR) - General

4.1.19.1 An **RAR** is supplemental to the report(s) under review and is not intended to be a stand-alone document. **Parts A and B** of the **RAS**, see attached sample document, shall be completed for each **RAR**. A **RAR** is an appraisal and must comply with **USPAP** and the **Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal**, and requires concurrence by the DPWLAS, except for minor alterations which result in a clearly apparent, or unequivocal reason for the changes in value. A reviewer may prepare an **RAR** to avoid additional fees and costs, delays, or for other management purposes.

4.1.19.2 The reviewer shall be consistent with **USPAP** and the **Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal**, when performing an **RAR**. There may be situations where the reviewer believes that a jurisdictional exception must be disclosed. In such an instance, the reviewer must obtain the concurrence of the DPWLAS prior to the use of a jurisdictional exception.

4.1.19.3 A separate **Certificate of Value** need not be completed as the certification language on **Part A** of the **RAS** serves as the reviewer's certification.

4.1.19.4 The reviewer shall notify the appraiser of the action taken so that future updates may reflect the change. Notification is not necessary when the **RAR** is written solely to reflect the property owner's acceptance of the Department's offer to purchase an uneconomic remnant.

4.1.19.5 A **RAR** may be completed for any reason deemed valid by the DPWLAS.

4.1.20 RAR - Partial to Whole Acquisition

When the reviewer is advised that the Department elects to acquire the whole property, the reviewer will prepare a **RAR** concluding the value of the whole property. The DPWRS shall monitor that the value of the whole acquisition is properly retained in the Department's official project parcel file.

4.1.21 RAR - Significant Changes to Reported Value

Prior to making significant changes, the reviewer shall consult with the DPWRS. In arriving at an estimate of value, the reviewer may include data contained in any appraisal. Reviewers should personally verify any data and provide written analyses of the data plus reasoned justification or explanation in support of the conclusion. The **RAR** in conjunction with the report under review must contain sufficient documentation to support the opinion of value. Differences in analyses between the reviewer and appraiser or wide divergences among appraisals may necessitate a **RAR**. These differences may involve highest and best use premise, selection and analyses of approaches to value, selection of most appropriate approach to value, selection of data used, or support for the appraiser's opinion of damages.

4.1.22 Appraisal Waivers

When DPWLAS has determined that the valuation problem is uncomplicated, and it is estimated that the recommended compensation of all parcels pertaining to a single parent tract, fee, temporary and permanent easements is not expected to exceed \$25,000, a notification memorandum may be sent to the DPWRS indicating that an appraisal is not necessary for negotiations. Should the estimated value exceed \$10,000, DPW is required to inform the property owner, in writing, of their right to have the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the

Agency shall obtain an appraisal, as described in ***Right of Way Manual, Section 5.2.2, Agents Price Estimate.***

An Agent's Price Estimate is prepared pursuant to ***Right of Way Manual, Section 5.2, Negotiation Process.*** Appraisal data shall be entered into the Department's official project parcel file. The Appraisal section will make accessible any data regarding unit values for land and costs for site improvements when requested. When the appraisal waiver provision for parcels not expected to exceed \$25,000 is utilized, it is not necessary to afford the property owner the opportunity to accompany the Department employee on a property inspection unless the owner has exercised the option to have the Department appraise the property. If the parcel cannot be negotiated, the DPWRS and DPWHA shall be notified that an appraisal report and review are required in order to proceed to a Declaration of Taking hearing.

4.1.23 Value Finding Format

4.1.23.1 When considered appropriate by the Department, the value finding format can be used on vacant or land only, non-complex appraisals. The Value Finding format must comply with ***USPAP*** reporting requirements for a Restricted Use Appraisal Report. The Value Finding format, Certificate of Value, and instructions are referenced in the ***Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal.***

4.1.23.2 The scope of the assignment may be limited to analysis of available market data and a conclusion of value. Market analysis may be based on information from data books, appraisal reports or studies done by others for the Department, which are believed to be reliable.

4.1.23.3 The following are minimum requirements and may be placed in the appraiser's working file: extent of investigation, collecting, confirming and reporting data, assumptions and limiting conditions may be attached, purpose and intended use, summary and brief supporting data for appraisal procedures used, exclusion of any of the usual valuation approaches, and explanation for highest and best use. In accordance with ***USPAP Advisory Opinion 11***, the report must reference the existence of specific workfile information in support of the appraiser's opinions and conclusions. The contents of the workfile must be sufficient for the appraiser to produce a Summary Appraisal Report.

4.1.23.4 The Certificate of Value pertaining to Value Findings is to be signed and dated by the appraiser and DPWLAS, or designee, indicating Departmental administrative review. The completed Value Finding and signed Certificate of Value pertaining to Value Findings will constitute the appraisal. All other information should be placed in the appropriate Department parcel file. Retention in the Department's official project parcel file entry is required. Distribution shall be in accordance with ***Section 4.1.1 (I)***. If the parcel cannot be negotiated, the OAG assigned attorney shall provide adequate notification to the DPWLAS who will confer with OAG and determine the appropriate appraisal format for the Declaration of Taking hearing.

4.1.24 Payment of Appraisal Fees

Acceptance of an appraisal report by the DPWLAS, or designee, as meeting the terms of the contract and the ***Right of Way Manual, Section 4.2, Supplemental Standards of Appraisal***, constitutes approval for payment of the appraiser's invoice for appraisal fees in accordance with contract terms. A completed, signed ***RAS*** constitutes acceptance for payment of appraisal fees in accordance with contract terms.

4.1.25 Contract Review Appraisers

4.1.25.1 Contracted appraisal review activities will be conducted in the same manner as when a Department staff reviewer is assigned to a project, except the contract reviewer must conclude to a suggested but not recommended compensation amount.

4.1.25.2 A Department reviewer must evaluate the contract reviewer's ***RAS***, to monitor the quality of the review, and must establish recommended compensation, as appropriate, by certifying to the following:

-
- (A) I certify that, to the best of my knowledge and belief:
- (1) I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
 - (2) My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.
 - (3) I have or have not made a personal inspection of the property that is the subject of this report.
 - (4) No one provided significant professional assistance to the Department employee signing this certification.
- (B) Based on my analysis of the suggested compensation of items compensable under Territorial law, I recommend compensation in the amount of:
\$ _____, allocated as Land \$ _____, Improvements \$ _____,
Damages \$ _____.

Signature, Department Reviewer

Date

4.1.25.3 Supplemental certification statements required by professional organizations may be added on a separate, signed page.

4.1.25.4 If the Department reviewer cannot determine recommended compensation based on the contract reviewer's conclusions, the official file must show why and what action is to be taken to reach an acceptable recommended compensation.

4.1.26 Conflict of Interest; Nonparticipation in Negotiations

No appraiser or reviewer shall have any interest, direct or indirect, in the real property being appraised for the Department that would in any way conflict with the preparation or review of the appraisal report. No appraiser or reviewer shall act as a negotiator for real property which that person has appraised or reviewed, except that the Department may permit the same person to both establish an offer price and negotiate an acquisition for parcels wherein an appraisal waiver has been employed.

The DPWLAS may be delegated settlement authority except in those cases where the DPWLAS has had direct or indirect involvement in the appraisal and/or review of the parcel being negotiated.

The DPWLAS or a reviewer who is responsible for review and approval of appraisal(s) for parcel(s) which are the subject of a mediation, hearing or trial may assist in such court proceedings.

4.1.27 Administrative Reviews

The performance of an administrative review does not require compliance with **Standard 3 of the USPAP** for the Department's intended use. The following are examples of administrative reviews:

- (A) Quality Assurance Reviews.
- (B) Evaluations of appraisal reports prepared for an owner, which have been submitted to the Department for invoicing or litigation purposes.

- (C) Evaluations of contract, fee, review appraiser's report or **RAS** in order for a Department employee to determine recommended compensation in the amount suggested by the contract reviewer.
- (D) Evaluations of appraisal work products solely for the purpose of quality control monitoring, rating or preparing a critique.
- (E) Analyses of any other real estate appraisal related report.
- (F) Review of a Value Finding.
- (G) Evaluations of surplus property appraisal reports to determine compliance to **USPAP**, the adequacy of the report under review, the degree of reliance one can place on the report from which to base a business decision, and whether the report is a satisfactory appraisal.

4.1.28 Technical Reviews

The performance of a technical review must comply with **Section 4.1**, which includes compliance with **Standard 3 of the USPAP**. If the employee is a Territory of Guam registered, licensed or certified appraiser, he or she must so indicate. The following are examples of technical reviews:

- (A) Reviews for the purpose of forming an opinion as to whether the analyses, opinions and conclusions in the appraisal report under review are appropriate, reasonable, and adequately supported.
- (B) Reviews where the reviewer has the prerogative of reporting a properly developed value in lieu of the value estimated in the reviewed appraisal report.

HISTORY

Original Issue January 2011

Revision 1 - October 2017- changes in section 4.1.22.



DPW Form 4.1-1

REVIEW APPRAISER'S STATEMENT
Territory of Guam Department of Public Works

| PARCEL NO. | ITEM/SEGMENT | GU PROJECT NO. | PARCEL NUMBER | DATE |
|------------|--------------|----------------|---------------|------|
| | | | | |

Part A.

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions, and conclusions. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- I have no present or prospective interest or bias in the property that is the subject of this report, and no personal interest or bias with respect to the parties involved.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use. My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice.
- I did personally inspect the subject property and appropriate comparable sales as used in the report under review. Field inspection of the subject property took place on _____. I was accompanied during the inspection by the following named person(s) _____.
- Value estimates of items compensable under Territory of Guam law have been clearly identified below, as appropriate.
- Each appraiser's value estimate and my recommended compensation are as stated.
- Unless stated, no one provided significant appraisal, appraisal review, or appraisal consulting assistance to the person signing this certification. {If other persons provided significant professional assistance, they must be identified in Part B (attached)}.

| DESCRIPTION | 1 | 2 | 3 | 4 |
|------------------------|---|---|---|---|
| PURPOSE * | | | | |
| APPRAISER: | | | | |
| DATE OF REPORT | | | | |
| DATE OF VALUE | | | | |
| AREA OF TAKE | | | | |
| LAND | | | | |
| IMPROVEMENTS | | | | |
| DAMAGES | | | | |
| APPRAISAL TOTAL | | | | |
| LAND USE | | | | |
| REVIEWER | | | | |

*Purpose: Indicate whether DPW or Owner's report and which purpose: Negotiation, Declaration of Taking, Date of Deposit, Surplus (e.g. DPW Neg.)

**Land Use: Identify the highest and best use as vacant as reported by the appraiser.

RECOMMENDED COMPENSATION: \$ _____

Part A. (continued)
 Review Appraiser's Statement
 Parcel No.: _____

ALLOCATION: LAND: \$ _____ IMPROVEMENTS: \$ _____ DAMAGES: \$ _____

| | | | | |
|------------------------------------------------------------|--|---------------------|---------------------------------------------|-------|
| Value of Acquisition Including Uneconomic Remainder | | | Reviewer Signature: | Date: |
| Land Area: | | Partial/Whole (P/W) | Reviewer Name | |
| Land: | | \$ | <input type="checkbox"/> Adm. Reviewer: | Date: |
| Improvements: | | \$ | Comments: | |
| Damages and/or Cost to Cure: | | \$ | <input type="checkbox"/> DPWRS Concurrence: | |
| Total: | | \$ | | |

| | | |
|---------------------------------------------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Type of Appraisal* | | Indicate the amount between this recommended compensation and the previous, if any: Divergence: \$ _____ Brief reason for divergence: Relate to Real Estate Interests: Review Appraiser to check applicable statement(s): <input type="checkbox"/> Appraised amounts include all interests (including the fee owner's, easement holders, and any tenant owned improvements for this parcel.) <input type="checkbox"/> Appraised amounts exclude certain tenant owned improvements or other real estate interests for this parcel. Excluded interests are: _____ <input type="checkbox"/> This appraisal is not recommended for compensation. Leave appraisal review amounts blank in the RWMS system. Leave compensation determined date blank in RWMS system. <input type="checkbox"/> This appraisal is approved for payment only . |
| Size (SM) of Uneconomic Remnant(s), if any. | | |
| Value of Uneconomic Remnant(s), if any. | \$ _____ | |
| Complexity Scale (Optional) | | |

Note: Enter the size and value of the uneconomic remnant itself, if any. (This is not a summation of the acquisition and the remnant.) Just the remnant area and value should be shown in the RWMS data entry box. The sum of the acquisition and the remnant(s), if any should be shown on the previous page.

* Summary, Self-Contained, or Restricted Use

| DESCRIPTION | 5 | 6 | 7 | 8 |
|------------------------|---|---|---|---|
| PURPOSE * | | | | |
| APPRAISER: | | | | |
| DATE OF REPORT | | | | |
| DATE OF VALUE | | | | |
| AREA OF TAKE | | | | |
| LAND | | | | |
| IMPROVEMENTS | | | | |
| DAMAGES | | | | |
| APPRAISAL TOTAL | | | | |
| LAND USE** | | | | |
| REVIEWER | | | | |

*Purpose: Indicate whether DPW or Owner's report and which of the following purposes: Negotiation, Order of Taking, Date of Deposit, Surplus (i.e. DPW Neg.)

**Land Use: Identify the highest and best use as vacant as reported by the appraiser.

Part B. Reviewer's Statement of reasoning in conformance with current ROW Procedures:

Section 4.2

SUPPLEMENTAL STANDARDS OF APPRAISAL

TABLE OF CONTENTS

| | |
|-------------------------------------------------------------|-------|
| PURPOSE | 4-2-1 |
| AUTHORITY | 4-2-1 |
| SCOPE | 4-2-1 |
| REFERENCES | 4-2-1 |
| FORMS | 4-2-1 |
| ATTACHMENTS..... | 4-2-1 |
| 4.2.1 Compliance with USPAP..... | 4-2-1 |
| 4.2.2 Ethical Conduct..... | 4-2-2 |
| 4.2.3 Co-Signing | 4-2-2 |
| 4.2.4 Hypothetical Conditions | 4-2-2 |
| 4.2.5 Confidentiality..... | 4-2-2 |
| 4.2.6 Jurisdictional Exception..... | 4-2-3 |
| 4.2.7 Appraisal Review | 4-2-3 |
| 4.2.8 Other Appraisal Related Consulting Services | 4-2-3 |
| 4.2.9 Property Owner Contact Letter | 4-2-3 |
| 4.2.10 If Inspection Indicates Possible Contamination | 4-2-4 |
| 4.2.11 Types of Appraisals..... | 4-2-4 |
| 4.2.12 Update Reports..... | 4-2-4 |
| 4.2.13 Presentation of Report | 4-2-5 |
| 4.2.14 Clarity and Accuracy | 4-2-5 |
| 4.2.15 Numbering System for Reporting Requirements | 4-2-5 |
| 4.2.16 Data Book Requirements - Introduction..... | 4-2-5 |

| | | |
|--------|----------------------------------------------------------|--------|
| 4.2.17 | Presentation of Data Book | 4-2-6 |
| 4.2.18 | Collecting and Verifying Data in Data Books | 4-2-6 |
| 4.2.19 | Key Elements of Data Book - General | 4-2-6 |
| 4.2.20 | Data Book - Sales Data Sheet | 4-2-7 |
| 4.2.21 | Data Book - Market or Specialized Studies | 4-2-9 |
| 4.2.22 | Data Book - Use of Listings and Contracts | 4-2-9 |
| 4.2.23 | Real Property Appraisal Reporting Requirements | 4-2-10 |
| 4.2.24 | Introduction and Premise of the Appraisal | 4-2-10 |
| 4.2.25 | Presentation of Data | 4-2-13 |
| 4.2.26 | Analysis of Data and Conclusions..... | 4-2-17 |
| 4.2.27 | Description and Valuation of Part Acquired | 4-2-22 |
| 4.2.28 | Valuation of Remainder as Part of Whole..... | 4-2-22 |
| 4.2.29 | Premise of the Appraisal - the Remainder Valuation | 4-2-23 |
| 4.2.30 | Presentation of Data - the Remainder Uncured..... | 4-2-23 |
| 4.2.31 | Analysis of Data and Conclusions - the Remainder..... | 4-2-24 |
| 4.2.32 | Addenda..... | 4-2-29 |
| | HISTORY..... | 4-2-29 |

Section 4.2

SUPPLEMENTAL STANDARDS OF APPRAISAL

PURPOSE

To set forth procedures, requirements and standards for the real property appraisal and appraisal review functions for the Department of Public Works Office of Right of Way, hereinafter referred to as the Department.

AUTHORITY

5 GCA Chapter 53, Care and Protection of Highways
5 GCA Chapter 54, Highway Projects
21 GCA Chapter 61, Zoning Law

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform appraisal and appraisal review functions.

REFERENCES

5th and 14th Amendments to the U.S. Constitution
Right of Way Manual, Section 4.1, Appraisal and Appraisal Review
Right of Way Manual, Section 5.2, Negotiation Process
Right of Way Manual, Section 5.6, Eminent Domain
21 GCA Division 1, Ownership of Real or Immovable Property
21 GCA Chapter 17, Relocation Assistance Act
22 GCA Chapter 30, Real Estate Appraisers
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
Uniform Standards of Professional Appraisal Practice

FORMS

4.2-1 Summary of Values
4.2-2 Value Finding
4.2-3 Certificate of Value and Instructions
4.2-4 Property Owner Contact Letter
FNMA Form 1004-Uniform Residential Appraisal Report

ATTACHMENTS

1. Quick List of Appraisal Reporting Requirement Numbers

4.2.1 Compliance with USPAP

Each appraiser providing appraisal services for any purpose to the Department must comply with **Section 4.2** and the **Uniform Standards of Professional Appraisal Practice (USPAP)** as promulgated by the Appraisal Standards Board of The Appraisal Foundation. Statements on appraisal standards, which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through The **Appraisal Foundation**, shall also be binding.

4.2.2 Ethical Conduct

The following applies when assignments are accepted:

- (A) The appraiser is cautioned to obtain written permission from the Department of Public Works Land Agent Supervisor (DPWLAS) before proposing on or accepting an appraisal assignment from another party on property which may be on or closely related to a Department project, and on which the appraiser previously or currently has contracted with the Department to provide appraisal services.
- (B) Appraisers may accept assignments from owners or other parties, as well as from condemning agencies. However, it is considered improper for the appraiser to accept assignments within the same Department Item/Segment for which the appraiser provided appraisal services under a previous or current appraisal services contract.
- (C) Acceptance of assignment from another party may also be unethical without a prior, written release from the DPWLAS for any property in which the appraiser would use market data, trends, adjustments or other analyses which were developed for a Department contract assignment, regardless of whether a fee was paid by the Department.

4.2.3 Co-Signing

4.2.3.1 Except for written review reports prepared for the Department, it is unacceptable for any person to co-sign the report, unless specifically permitted by contract terms or prior written agreement from the DPWLAS.

4.2.3.2 Significant assistance must be acknowledged by naming the contributor in the certification. The appraiser and any assistant are cautioned to observe the confidentiality requirements.

4.2.4 Hypothetical Conditions

4.2.4.1 If the Department requires use of a hypothetical condition, such as a specific legal assumption, valuation of a contaminated property as if cleaned, etc., the Department must furnish a written statement to the appraiser for inclusion in the appraisal report which must specifically request the use of the hypothesis, and state that the hypothetical condition is required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison.

4.2.4.2 In the appraisal report, the appraiser must clearly disclose the use of the hypothesis and appropriately reference the Department's statement and include it in the Assumptions and Limiting Conditions and in the addenda. The rationale for the assumption, the nature of the hypothetical condition, and its effect on the result of the appraisal, review or consulting service must be narratively described.

4.2.4.3 If the appraiser assumes a hypothetical condition, not specifically requested by the Department, such as an assumption of a design change, pending unsupported land use, etc., the appraiser must state in the report and adequately support an opinion of the property as-is market value prior to or aside from the hypothetical condition.

4.2.5 Confidentiality

The appraiser must obtain written permission from the DPWLAS prior to submitting any parcel information to a third party, unless the parcel information has become public knowledge. Appraisers are cautioned that release of information to a professional organization's admissions review committee may be a breach of confidentiality if any litigation is pending. Confidentiality applies to review as well as appraisal work.

4.2.6 Jurisdictional Exception

4.2.6.1 Any increase or decrease in the value of any property to be acquired, which occurs after the scope of the project for which the property is being acquired is known in the market, and which is solely a result of the knowledge of the project location, shall not be considered in arriving at the value of the property acquired. For the purpose of this section, the scope of the project for which the property is being acquired shall be presumed to be known in the market on or after the Government of Guam executes a resolution which depicts the location of the project. Although the resolution date should be contained in the description of appraisal services, the appraiser should contact the DPWLAS when the date is not furnished.

4.2.6.2 To the extent that **Section 4.2** may differ from **USPAP** requirements, such differences shall be considered a jurisdictional exception. Department instructions which may lead the appraiser to conclude that a jurisdictional exception applies will be considered on a case by case basis, such as instructions based on case law.

4.2.7 Appraisal Review

4.2.7.1 All data books and appraisal reports will be reviewed either by Department staff or contract review appraisers for compliance with the **Right of Way Manual, Section 4.1, Appraisal and Appraisal Review, Section 4.2,** and **USPAP.**

4.2.7.2 The following applies to contract fee review:

- (A) All contract reviewers must be appropriately certified by the Territory of Guam to perform the work detailed in the Scope of Services.
- (B) A written review report must be prepared in accordance with the **Right of Way Manual, Section 4.1, Appraisal and Appraisal Review, Section 4.2, and USPAP.** This written report shall include the same content as outlined in the **Right of Way Manual, Section 4.1, Appraisal and Appraisal Review,** regarding the **Review Appraiser's Statement (RAS)** except for the following:
 - (1) A contract reviewer may not conclude Recommended Compensation.
 - (2) The contract reviewer must conclude to a Suggested Compensation. Only Department employees may conclude Recommended Compensation.
- (C) A Department staff review appraiser will evaluate the contract reviewer's **RAS** to monitor quality and to establish recommended compensation. A certificate will be prepared in accordance with the **Right of Way Manual, Section 4.1, Appraisal and Appraisal Review.**

4.2.8 Other Appraisal Related Consulting Services

Consulting services include, but are not limited to, market or specialized studies performed separately from appraisal report preparation, and similar services. Contracted consulting services of an appraisal nature must be performed by an appraiser appropriately certified by the Territory of Guam and include a conclusion, if required by contract. Such conclusions must be reported in compliance with **USPAP**, except that alternative courses of action must not be stated, unless required by contract. Such unauthorized statements may render the report unacceptable. Therefore, the appraiser should indicate this instruction was given and document the report accordingly.

4.2.9 Property Owner Contact Letter

The owner, or designated representative, must be given an opportunity to accompany the appraiser on the property inspection unless exempt under the provisions of an appraisal waiver. A **Form 4.2-5 Property Owner Contact Letter** is included at the end of this section. A copy of the actual letter sent to the property owner must be included in the Addenda.

4.2.10 If Inspection Indicates Possible Contamination

Immediately after a parcel inspection, the appraiser must report in writing to the DPWLAS any indications of possible contamination of the property. Contaminated property must be appraised in accordance with the ***Right of Way Manual, Section 3.1, Contaminated Parcels***. Appropriate guidance and information will be provided by the DPWLAS.

4.2.11 Types of Appraisals

4.2.11.1 The Department will accept the appraisal preparation and reporting options set forth by ***USPAP***.

4.2.11.2 Appraisals involving hypothetical conditions must be prepared and disclosed in compliance with Standard 1 of ***USPAP***.

4.2.11.3 Unless waived in writing by the DPWLAS, the appraiser must also report and adequately support an opinion of market value as-is or without regard to the assumption or limitation. Failure to do so may render the appraisal unacceptable.

4.2.11.4 Although not required, whole takes of residentially improved properties may be reported on the ***Fannie Mae (FNMA) Form 1004, Uniform Residential Appraisal Report (URAR)*** form. However, the form should not dictate the scope of the analysis. For example, if the highest and best use is no longer the existing use, an addendum with a discussion of the highest and best use must be attached. The following should also be included: Certificate of Value, land sales grid with brief explanation of direct sales comparison and adjustment support, photos and sketch, identification of fixtures and personal property included or excluded in the value opinion (severable appurtenances), property owner contact letter, vacant land and improved sales data sheets and items not covered by an existing project data book (e.g. definition of market value, qualifications of the appraiser, etc.).

4.2.12 Update Reports

4.2.12.1 Updates of an appraisal report for the Department must be consistent with ***USPAP*** and should be consistent with ***USPAP's Appraisal Standards Board, Advisory Opinion 3 (AO-3)***. Letter update appraisal reports will not be accepted if a change of value has resulted from a significant change in the nature of the appraisal problem or the market itself. In these instances, a new report, including exhibits that are current as of the date of value, is required.

4.2.12.2 Updates indicating no change in value or a change in value which was based on the application of an essentially mathematical extension should be done by letter incorporating the updated report by reference.

4.2.12.3 The owner should be contacted for any new information.

4.2.12.4 It is necessary to take photographs of the subject property for each appraisal or update. Updated appraisal reports must include, as applicable, color copies, photographs, or digital reproductions of the whole before property, the acquisition area, each major building improvement front and rear, and street scene. Each photo shall be captioned with the date taken, name of photographer, and point of reference, or relative photo location on sketch. At least one color photograph shall accompany each sale sheet in the data books and reports.

4.2.12.5 The following applies to exhibits in updated reports:

- (A) Exhibits may be photocopied. Photocopied exhibits must be clear and legible. If photographs are copied, color copies or color digital reproductions are required.

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- (B) New exhibits are required for updated appraisal reports when the cause of the change can be illustrated. Otherwise, new exhibits are not required. Examples of these type changes which may affect value include size of acquisition, number or condition of improvements, etc.

4.2.12.6 A new **Certificate of Value Form 4.2-3** is required for updated reports.

4.2.13 Presentation of Report

4.2.13.1 Each appraisal report must be on 8½ x 11 letter size paper, bound at the top of the page by an Acco type clip, unless the Department contract allows for an alternative binding style.

4.2.13.2 Narrative appraisal reports must include a table of contents with corresponding page numbers. Numbering shall begin with the **Certificate of Value Form 4.2-3** as page one, followed by the **Table of Contents**, followed by the summary of salient facts and so on. While it is not a requirement that addenda pages be numbered, a list of items in the order presented must be included just after the addenda cover page or in the **Table of Contents**. A divider page indicating the different elements within the addenda is preferred.

4.2.14 Clarity and Accuracy

4.2.14.1 Where typographical errors, math errors, and incomplete, or erroneous items are found in a report or data book, the appraiser must furnish a corrected replacement page upon discovery, or upon request of the Department.

4.2.14.2 Definitions and explanations of the approaches to value should be included in the data book or the addenda to the report, not in the body of the report. Definitions and explanations of an approach when omitted from the report are unnecessary and undesirable; however, the reason for each omission must be explained.

4.2.14.3 Extraordinary assumptions or limiting conditions should be discussed with the Department's review appraiser or DPWLAS as soon as they become apparent, and before finalization of the written report. Failure to do so may render the report unacceptable.

4.2.14.4 Rounding decisions within an appraisal report should not inadvertently result in an offset of severance damage amounts or result in a conclusion of severance damages that would not otherwise exist. Downward rounding of compensation components (land, improvements, and damages) should be avoided.

4.2.15 Numbering System for Reporting Requirements

Reporting requirements are identified in **Section 4.2.23** by a three digit number. A numbering system, as depicted herein, may be used for certain reporting requirements within the appraisal report. Numbering is not mandatory except as required by contract. However, any numbering system other than depicted herein will not be accepted. It is acceptable for the appraiser to omit inapplicable sections if the appraisal so dictates.

4.2.16 Data Book Requirements – Introduction

4.2.16.1 When an appraisal assignment involves several parcels, a project data book may be required as part of the contracted appraisal services. A data book is a compilation of real estate market information related to the project and parcels to be appraised. The data book is intended to be a living document and must be kept current by the appraiser over the period of time required to complete the appraisal services on the project, including expert witness contract services. An additional electronic copy of the data book may be required if included in the contractual **Scope of Services**.

4.2.16.2 The objectives of the data book are to:

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- (A) Present the descriptions, definitions and general market information which the appraiser considered in preparing the parcel appraisal reports;
 - (B) Present the data and explain the reasoning that supports the appraiser's analyses, opinions and conclusions drawn from the market information, and
 - (C) Eliminate unnecessary repetition of the foregoing in each appraisal report.

4.2.17 Presentation of Data Book

4.2.17.1 The **Data Book** must be printed on 8½ x 11 letter size paper bound at the top center with an Acco-type clip, unless the Department contract allows for an alternative binding style.

4.2.17.2 On the exterior cover, the heading **Data Book** shall appear followed underneath by the following line items identifying each as applicable, Item/Segment Number, Federal Aid Participation Number, Territory Road Name or Number, Parcel Number and appraiser's name.

4.2.18 Collecting and Verifying Data in Data Books

4.2.18.1 A thorough inspection of each parcel to be appraised and the appraiser's preliminary conclusion as to highest and best use of land, as if vacant, and the property as improved, will assist in identification of market data to be collected. A statement as to the extent of search, including dates and area, is to be prominently shown. When there is insufficient current market data in the project area, the search should be broadened first to the nearest similar neighborhoods for current transactions, then to older data within the project area, until sufficient data are collected.

4.2.18.2 Market data relied upon to provide a value indicator must be verified. One or more of the parties directly involved in the transaction is the preferred source. The appraiser must identify the source of verification, the verifying party's relationship to the transaction, telephone number or address, if no phone of the source of verification, name of the person who obtained the verification, appraiser or associate, and the date information was verified. The appraiser of record must personally verify all transactions relied upon when the appraisal is for use in hearings, mediations or trials.

4.2.18.3 Adjustments, trends or other analyses arrived at by analysis of confidential data must be discussed in sufficient detail to allow the reader to arrive at a conclusion similar to that of the appraiser. If a market transaction was verified on condition of confidentiality, the source of verification may indicate confidential. Confidential data must be available upon request for DPWLAS or review appraiser inspection in the appraiser's office. Such information shall be kept in confidence and should not be copied or reduced to writing by the Department representative without the written consent of the appraiser.

4.2.19 Key Elements of Data Book - General

Include the following in the data book, as appropriate:

- (A) A letter of transmittal identifying Item/Segment, Federal Aid Participation No., if applicable, and beginning and ending station numbers, if available.
- (B) A table of contents listing in order the major sections of the data book. Page numbers are unnecessary, as they would change by periodic update revisions; however, tabbed section dividers are desirable.
- (C) An area and neighborhood description and analysis as applicable to parcels in the assignment.
- (D) Maps and regulations pertinent to the project area including zoning, concurrency, flood plain, etc.

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- (E) Brief descriptions of applicable approaches to value, including definitions, such as market value, highest and best use, etc. Definitions may be included, as appropriate, in the data studies.
 - (F) A discussion of the extent of the process of collecting, confirming, and reporting data. Data studies shall also include a description of the time period and boundaries of the area(s) searched. Provide market data analysis, including support for graphs, charts and adjustments to be applied to comparable sales.
 - (G) An analysis of income data which includes development of income, expenses, and capitalization rates.
 - (H) Data used consistently throughout the assignment. References to the data book can be made in the report, eliminating duplication.
 - (I) Sales data maps and other maps deemed pertinent. Maps must be of sufficient scale size and quality to readily locate the data and show their relationship to the project location. A map showing updated data must accompany each subsequent submission. The appraiser shall mark the new data on the original sales map, so that the copy submitted includes both previously and newly submitted data.
 - (J) Index by type of transaction such as, sale, rental, etc. and property use, vacant residential, improved residential, vacant commercial, etc., listed in chronological order, by the Department of Land Management (DLM) Official Record (O.R.), book and page numbers, if unrecorded, a simple number should be assigned, date, price, size and unit price.
 - (K) Sales data sheets also used for rents, listings, etc., presented in the acceptable format described herein.
 - (L) The sales researched, but not presented in the data book, should be listed by DLM O.R. book and page or recorded document number, showing reasons why they were not presented.

4.2.20 Data Book - Sales Data Sheet

A sales data sheet must be prepared for each transaction. This way of displaying market data must also be used for rental comparables, listings, etc. No adjustments shall be made on sales data sheets. Include in the following order:

- (A) Recording data: DLM O.R. book and page or recorded document number
- (B) Grantor/Lessor
- (C) Grantee/Lessee
- (D) Date of transaction
- (E) Date inspected
- (F) Dimensions and size of land and improvements. The appraiser should state the source (e.g. actual measurement, records, survey, etc.). Reliance on records without verification should be avoided.
- (G) Consideration
- (H) Unit price and/or rental rate with other rental data
- (I) Type of instrument

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- (J) Tax Identification/Folio Number
 - (K) Address, if improved. Brief legal description or physical location description if unimproved. Distance and direction to nearest cross street. Latitude/longitude is desirable.
 - (L) Zoning, including a brief discussion of impact from land use plan and/or concurrency programs at time of transaction, if applicable
 - (M) Present use
 - (N) Highest and best use at time of transaction
 - (O) Condition of transaction
 - (P) Type of financing, terms, period of repayment, effect on price, if any
 - (Q) Encumbrances including brief discussion of those which limit highest and best use, or affected price, if any
 - (R) Type of improvements: site and building, water/sewage, paving, number of parking spaces, dimensions, units, rooms, age, condition, moveable and/or immovable furniture, fixtures, machinery, and equipment, etc., included in the transaction.
 - (S) Various on site utilities, or distance to available utilities, particularly water and sewer
 - (T) Verification information
 - (U) Motivation of parties
 - (V) Analysis of pertinent information including cash equivalency consideration
 - (W) Overall exposure time from initial asking price to time of sale
 - (X) Number of day's property was on the market. Days on market (DOM) may differ from exposure time. DOM can be less than exposure time. DOM is intended to reflect the time it took to sell after the property was exposed to the market at a reasonably acceptable price. Often, a property is exposed to the market for lengthy periods because the asking price is too high. However, once the price is reduced within a range that would induce a buyer and this time frame is calculated, more meaningful analysis of demand and other trends can occur.
 - (Y) Remarks
 - (Z) The property sketch does not have to be to scale, but should be proportional. Reproduction from a tax map, right of way map, or a carefully prepared drawing is acceptable, but must be legible and show the following, as applicable:
 - (1) Location in relationship to property boundaries, shape, and approximate size of building improvements
 - (2) Location and identification of significant site improvements, such as paving, parking spaces, signs, pumps, wells, etc.
 - (3) Location, dimensions and user/type identification of any easements, jurisdictional lines and unusual natural or man-made features affecting price

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- (4) Distance and direction of site to locatable geographical features or intersections
 - (5) North arrow
 - (6) Location of camera when photographing
 - (AA) Photographs for data book sales sheets shall be:
 - (1) Representative of the property depicted and show each major improvement,
 - (2) Captioned with date taken and by whom,
 - (3) Photographed in color with black and white photographs only used for large aerals. Copies of data books must contain color copies or color digital reproductions of sale photographs. Copies of data books with black and white photo images are unacceptable.
 - (BB) Copy of transaction instrument

4.2.21 Data Book - Market or Specialized Studies

4.2.21.1 Studies performed by the appraiser, whether included in the original data book or as a supplementary study, must comply with the intent of the *USPAP* and **Section 4.2** in that:

- (A) The purpose, scope, methodology and techniques of the study must be concisely described;
- (B) Persons, other than the appraiser, who provide significant contribution to the study must be named and identified;
- (C) Market data must be verified and the source of verification should be reported as described in sales data sheet requirements;
- (D) The appraiser's analysis of information and conclusions based on the study must be described and supported to the same extent as required herein for other appraisal conclusions.

4.2.21.2 If a specialist's study or estimate is obtained, his or her report must be included in the addenda. The appraiser's estimate of the specialty item must reflect the item's contribution to market value, which may or may not be the same as the specialist's estimate. The appraiser must explain how such an item contributes to market value.

4.2.22 Data Book - Use of Listings and Contracts

4.2.22.1 Because any current listing for sale or rent, if income property, or a pending contract of any part of the subject property must be fully discussed and considered in the appraisal, it must also be included in the comparable data compilation. Also, any open market, arm's length rental of the subject property within the past five years must be considered as one of the comparable rentals selected, and must be included in the comparable data compilation.

4.2.22.2 Listed offers to sell must not be used as direct indications of value, because they are inadmissible as evidence of value. However, a history of competitive properties being offered on the market may be considered, together with factual market data, in an analysis of market trends. Listings may provide an early warning of changes in the direction of the market, and often help establish an upper limit of value.

4.2.22.3 Current contracts for purchase may be subject to certain provisions being met before the sale becomes fact. While contracts may assist in identifying trends in the market, any indication of value by them should be supported by executed/closed, open market transactions.

4.2.23 Real Property Appraisal Reporting RequirementsAs previously mentioned in **Section 4.2.15**, a numbering system identifying certain reporting requirements may be used. Numbering is not mandatory except as required by contract. However, any numbering system other than listed herein and included in **Attachment 5 Quick List Appraisal Reporting Requirement Numbers** will not be accepted. The number of the item shall precede the heading. An additional electronic copy of the appraisal may be required if included in the contractual Scope of Services.

4.2.24 Introduction and Premise of the Appraisal

The following reporting requirements must be included in the Introduction and Premise of Appraisal, as appropriate:

- (A) **Reporting Requirement 100:** The ***Guam Department of Public Works Certificate of Value Form 4.2-3***, hereinafter referred to as the ***Certificate of Value (COV)***, must be attached as the front page, followed by the table of contents and summary of salient facts. The following requirements apply to *certificates of value*:
- (1) A ***COV Form 4.2-3*** must be used in reports contracted for by the Department and must include the language provided at the end of this section. The certificate is consistent with that stated in the ***USPAP***. A completed reproduction or copy of this document is acceptable. The certificate shall consist of one page including the signature of the appraiser. The signature must be on the same page as the certification language.
 - (2) The date the appraiser signs the ***COV*** is considered the date of the report. Prior to acquisition by the Department, the date of value is typically the same as the latest date of the property inspection. When the Department has deposited funds into the court registry pursuant to an Order of Taking, title is considered to have vested with the Department. This date of deposit shall be the date of value for appraisal purposes.
 - (3) Statements supplemental to the ***COV*** as required by membership or candidacy in a professional organization are to be described on a separate page following the table of contents and shall be signed and dated by the appraiser see ***Reporting Requirement 115***. These statements may be made a part of the certificate by reference.
 - (4) Market value allocations are limited to land, improvements, and net damages and/or cost to cure. When an Outdoor Advertising Sign (OAS) is involved, the market value allocation portion of the certificate shall state the total land value, no separation of leased fee and leasehold interests, and the total improvements value, no separation of tenant owned or billboard improvements from other real estate. The allocations to these various interests need only be shown in the body of the report as previously described in these standards.
 - (5) A letter of transmittal is not required for a Departmental report because all necessary information is contained in the ***COV***. However, if a letter of transmittal is included, it should identify the date of the report transmittal, item/segment, parcel number, date of value, other pertinent comments, and appraiser's signature.
- (B) **Reporting Requirement 110:** A table of contents must be included immediately following the ***COV*** depicting the various sections of the appraisal report with corresponding page numbers. Sections included in the addenda shall be listed.

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- (C) **Reporting Requirement 115:** State all assumptions and limiting conditions that affect the analyses, opinions, and conclusions. Assumptions and limiting conditions must not be generic, but should be applicable to the appraisal report being prepared. Statements supplemental to the **COV**, as required by membership or candidacy in a professional appraisal organization may be described and made a part of the certificate by reference.
- (D) **Reporting Requirement 120:** The summary of salient facts and conclusions of the report must contain as a minimum, a list of the name(s) and address(es) of the owner(s) of record, the location of the subject by street address or by distance from a visibly recognizable location, the property inspection date(s), the name of person(s) who accompanied the appraiser on the inspection, the extent of the inspection, and the size of the parent tract and the area to be acquired. Other significant facts may be listed at the discretion of the appraiser.
- (E) **Reporting Requirement 130:** The appraiser shall state the type of reporting option, self contained, summary, or restricted use in accordance with **USPAP**.
- (F) **Reporting Requirement 140:** The purpose of the appraisal is to develop and report an opinion of market value. The intended use of an acquisition appraisal is for the Department's staff review appraiser to use as a basis for establishing Recommended Compensation, as applicable, of the whole property, the property to be acquired, the remainder property, the damages and special benefits, if any, for acquisition by the Department for use in connection with a transportation facility. The intended user of the appraisal is the Guam Department of Public Works Office of Right of Way.
- (G) **Reporting Requirement 150:** The following market value definition is the acceptable and preferred definition of market value:

“Value’ as used in eminent domain statute, ordinarily means amount which would be paid for property on assessing date to willing seller not compelled to sell, by willing purchaser, not compelled to purchase, taking into consideration all uses to which property is adapted and might reasonably be applied.”

It is the appraiser's responsibility to determine the validity and market representation of comparable sales used in light of this definition of market value. Typically, the willing buyer and willing seller test includes consideration of the following by the appraiser: a fair sale resulting from fair negotiations, neither party acting under compulsion (this would typically eliminate forced liquidation or sale at auction), both parties having knowledge of all relevant facts, a sale without peculiar or special circumstances, and a reasonable time to find a buyer.

While there may be other good and valid definitions of market value, the cited definition must appear or be referenced in the appraisal report. If any other definition is used, prior approval from the DPWLAS is required.

- (H) **Reporting Requirement 160:** For property rights or the interest appraised, the following items must be considered:
- (1) In all appraisals the appraiser must be aware of and discuss the interests involved, and should be able to certify that such rights were considered in the appraisal. If multiple interests exist, the appraiser must consider and discuss their affect on both highest and best use and on value. If the interests have no effect on value, the appraiser should so state.

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- (2) The Department generally does not require the appraiser to provide a separate allocation of the value of the various interests in appraisals obtained for negotiation purposes except when the property is improved with a tenant owned OAS, or when tenant owned improvements are acquired or significantly affected.
 - (3) If the property is occupied by persons or entities other than the owner, the appraiser must consider and identify the interest implied by each occupancy.
 - (4) The appraiser should indicate the intent of the parties concerning removal, at end of lease term, of tenant-owned improvements. Lengthy descriptions of tenant-owned improvements should be discussed under **Section 4.2.25(C)**.
 - (5) When the appraisal involves one or more real property interests which may have been previously conveyed, such as reservations, dedications or permanent easements to the public; mineral rights reserved to the Territory; etc., the appraiser should consult with the DPWLAS and request written guidance as to the appropriate handling under current law and procedure if they were not identified by the Department prior to advertising for appraisal services.
 - (6) The appraiser is responsible for analyzing deeds, other instruments, plats, and Attachments of record and making an inquiry of the owner to determine any encumbrances.
 - (7) The appraiser must list any items of personal property which are appraised and state the reason for including them in the valuation.
- (I) **Reporting Requirement 175:** The extent of process of collecting, confirming, and reporting data shall be as follows:
- (1) In accordance with the appraisal assignment, the appraiser shall describe, state or summarize the extent of the process of collecting, confirming and reporting data.
 - (2) If a project data book was compiled, information concerning the collection and confirmation of data should be referenced. Sale of lease data used in the appraisal report must be included in the addenda in the format of the sales data sheet. When a project data book is not required, data should be presented in the format of the sales data sheet, previously described in **Sections 4.2.19 and 4.2.20**, and included in the addenda to the appraisal report.
 - (3) Market or specialized studies must comply with the intent of the **USPAP** and **Section 4.2**. Studies performed by the appraiser may be referenced in the data book. Other specialist's studies must be included in the addenda and be summarized in the project data book, if one has been compiled. The appraiser must estimate the contributory value of the specialty item, which may or may not be the same as the specialist's estimate. The appraiser must explain how such item contributes to market value.
- (J) **Reporting Requirement 180:** Discussion of the appraisal problem shall be as follows:
- (1) The appraiser must state the appraisal problem. The appraisal for eminent domain purposes may involve one or more separate and distinct appraisals under one cover. For example, an appraisal is made of the parent tract in its current condition. Any remainder(s) must be appraised presuming that the transportation improvements are in place and operating. If an improved remainder is impacted and a cost to cure is developed, the remainder is then appraised as 'uncured' to ascertain damages. A cost to cure is then estimated and the remainder is then appraised 'as cured' to

determine mitigated damages. Once the parent tract is appraised, the value of the part taken as part of the whole must be calculated and stated. This calculation must be based on the unit value(s) set forth in the reconciliation of the parent tract or "whole" before the taking. Likewise, when building or site improvement components are within the part taken, the value of such improvements must be based on the "before" value allocations. Damages, costs to cure, and special benefits which would offset damages must be considered.

- (2) Unique and unusual characteristics of the subject property relative to parent tract, area to be acquired and remainder, topography, size, shape, improvement design, property use, etc., requiring special consideration should be identified.
- (3) Appraisal problems should be discussed with the DPWLAS to obtain guidance on the Department's recommended handling of such matters. Unique or unusual problems include, but are not limited to, reservations of mineral rights, deed reservations, affected signs or billboards, replacement of fencing and other improvements in the take, valuation of landscaping or timber, etc., which may necessitate a specialist's estimate.
- (4) If a specialist's study or estimate is obtained, his or her report must be included in the addenda and the professional assistance must be acknowledged in the **COV**. The appraiser's estimate of the specialty item must reflect the item's contribution to market value, which may or may not be the same as the specialist's estimate. The appraiser must explain how such items contribute to market value.

4.2.25 Presentation of Data

The following reporting requirements must be included in the presentation of data, as appropriate:

- (A) **Reporting Requirement 200:** The appraiser shall provide the street address or other description of the subject property followed by the legal description. The description must be sufficient to physically locate the subject in the field. The legal description must be accurate and the source of that description must be stated, for example, last deed of record. The appraiser must indicate whether or not this is the property being appraised. If something other than what is described such as the abbreviated parent tract is being approved, the appraiser must so state. If the legal description is lengthy, reference can be made to a copy in the addenda.
- (B) **Reporting Requirement 220:** If a project data book was compiled, information concerning area and neighborhood should be referenced. When a project data book is not required, data should be described or summarized in accordance with the appraisal assignment.
- (C) **Reporting Requirement 230:** According to the appraisal assignment, describe or summarize pertinent features of the subject property including, but not limited to, the following:
 - (1) Property type
 - (2) Existing use
 - (3) Land, multiple tracts of the subject property should be separately described.
 - (a) area
 - (b) shape

- (c) dimensions
 - (d) ingress/egress
 - (e) topography
 - (f) flood plain data
 - (g) drainage
 - (h) soil characteristics
 - (i) utilities on site
 - (j) utilities available
 - (k) site improvements
 - (l) easements, encroachments or restrictions and their effect or limitation.
- (4) Building(s), tenant owned improvements, if any, must be identified as such and described. Multiple improvements within the subject property should be individually described. The appraiser should inspect interior and exterior of each.
- (a) construction
 - (b) quality
 - (c) condition
 - (d) physical age
 - (e) effective age
 - (f) remaining economic life
 - (g) area or volume content
 - (h) number of units
 - (i) number/kind of rooms
 - (j) fixtures
 - (k) trade fixtures and equipment to be treated and appraised as real property
 - (l) if OAS, include dimensions
 - (m) trade fixtures and equipment considered personal property

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- (5) Other pertinent features, unique and/or unusual characteristics of the subject property.
- (6) The following exhibits must be included in this section: All exhibits must be clear and legible:
- (a) Both original and updated appraisal reports must include, as applicable, color photographs of the whole/before property, the acquisition area, each major building improvement, front and rear, and street scene. Photos shall be taken anew for each updated report and inserted therein. Each photo shall be captioned with the date taken, name of photographer, and point of reference or relate photo location on sketch. Interior photographs, which may be needed for litigation, should be taken during the initial inspection as the appraiser may not be granted access to the property during litigation. Copies of the appraisal report must contain color copies or color digital reproductions of the subject.
 - (b) The parcel sketch does not have to be to scale, but should be proportional. Reproduction from a tax map, right of way map, or a carefully prepared drawing is acceptable, and should show:
 - 1. Whole property, each part to be acquired and each remainder. If partial acquisition, cross hatch each area to be acquired. A separate sketch of the remainder may be included.
 - 2. Dimensions and areas of each part from right of way map,
 - 3. Significant improvements, including location, dimensions, distance to new right of way line, significant paving drives, number and layout of parking, and known locations of septic tank(s) and drain fields. Include sketch of proposed cure in the appropriate section of the report.
 - 4. Street or road name and ingress/egress to parcel,
 - 5. Other significant natural or manmade features,
 - 6. Directional pointer,
 - 7. Location of camera when photographing,
 - 8. Location, size and user/type of any easements, whether affecting value, or not.
 - 9. The proposed site of any on-premise OAS to be relocated.
 - (c) A floor plan sketch for each significant building showing exterior dimensions, general layout of interior including all entry/exit doors, other significant or affected features.
 - (d) Other pertinent exhibits may be added.
- (7) Personal property and other items that are not real property and not considered to be a part of the appraisal problem must be identified.
- (D) **Reporting Requirement 235:** The appraiser shall briefly discuss any existing transportation facility or improvement.

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- (E) **Reporting Requirement 240:** The appraiser shall discuss the following items concerning zoning, land use plans and concurrency:
- (1) State the present zoning of the subject property and explain how the zoning regulations affect the use of the property.
 - (2) State whether the investigation revealed any probable change in zoning. If so, the probability of change and its effect on highest and best use must also be discussed if such change will affect the market value.
 - (3) State whether there are any existing land use planning, concurrency programs, or issues involving impact fee credits which affect the subject. If so, describe and discuss their impact. Appraisers must use caution in evaluating the effect on otherwise restrictive concurrency issues that may be relieved due solely to the proposed transportation facility improvement.
 - (4) If, without convincing local market documentation, the appraiser assumes a probability of change that will result in a value different from that which would be estimated if the assumption or limiting condition is not applied, the appraiser must also report, and adequately support, an estimate of market value without regard to the assumption or limitation. Failure to do so may render the report unacceptable.
- (F) **Reporting Requirement 250:** The appraiser shall identify:
- (1) The tax item/folio number,
 - (2) Assessed value, including assessor's breakdown as to land and improvements. **Note:** If the value estimate in the before acquisition situation falls below the assessed value, the appraiser should justify the difference.
 - (3) Amount of property tax,
 - (4) Year to which the tax applies, most recent year for which recorded data is available.
 - (5) Special assessments, including amount and purpose.
- (G) **Reporting Requirement 260:** For each transfer of title within the past five years, or for the last transfer of record if older than five years, identify the following, grantor, grantee, date of transaction, official record book and page or recorded document number, consideration and with whom verified, and conditions of sale. Verification and conditions of sale may be omitted if the last transaction occurred over five years ago. The subject's history is also to include any current listing activity of the property. See Reporting Requirement 345 for use/non-use of subject sale in Sales Comparison Approach.
- (H) **Reporting Requirement 270:** The appraiser shall identify the exposure time for the subject. Exposure time is defined as the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market.
- (I) **Reporting Requirement 280:** According to the appraisal assignment, the appraisal shall describe, summarize, or state any public and private restrictions affecting the subject property.

4.2.26 Analysis of Data and Conclusions

The following reporting requirements must be included in the analysis of data and conclusions, as appropriate:

- (A) **Reporting Requirement 300:** The appraiser shall comply with the following:
- (1) If a project data book was compiled, lengthy definitions of highest and best use should be referenced. When a project data book is not required, the appraiser shall define highest and best use, and in accordance with the appraisal assignment, describe or summarize the highest and best use analyses and conclusion. This analysis shall include the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.
 - (2) The appraiser must clearly explain and support the conclusion that the stated highest and best use, as vacant and as improved, meets four criteria: physically possible, legally permissible, financially feasible, and maximally productive. Failure to properly analyze, explain and support each conclusion, renders the premise inadequate. The Department considers one of the key elements to be sufficient market demand for the estimated use. Market demand must be considered and discussed as part of the feasibility and productivity analysis.
 - (3) In the case of improved property, a comparison of the highest and best use of the site, as if vacant, with the highest and best use of the property as improved, may identify obsolescence or, in the case of a legal nonconforming use, a price premium attributable to the improvements. Such obsolescence or premium must be identified and reflected in the appropriate approaches to value. The estimate of highest and best use as improved also helps identify the comparable properties.
 - (4) A brief statement, consistent with a proper neighborhood analysis, emphasizing surrounding land uses, the type, age, and condition of neighborhood improvements and the relationship to the subject property is required.
 - (5) An opinion of use that is different from the present use of the property requires a clear reporting of the extent of investigation, and an analysis of the documentation or reasoning supporting such conclusion. The appraiser must obtain written documentation from the Territorial Land Use Commission authorities saying that the differing use is legally feasible and/or that it is reasonably probable that permits will be granted. In the absence of such documentation, the appraiser shall identify steps taken to obtain such documentation and explain why the appraiser is concluding the different highest and best use is legally feasible.
- (B) **Reporting Requirement 302:** In a separate sentence or paragraph, the appraiser must state the conclusion of highest and best use of the land as if vacant and ready for such use, and if appropriate, the property as improved.
- (C) **Reporting Requirement 305:** In accordance with the appraisal assignment, identify the approaches to value used and excluded. Explain and support the exclusion of any of the usual valuation approaches.
- (D) **Reporting Requirement 310:** This section should precede the other approaches to value in the appraisal of an improved parcel. The value of the land must be appraised as if vacant and available for its highest and best use and should be estimated by directly and individually comparing competitive market, same highest and best use as subject vacant land sale properties to the subject land. For appraisal of land only, the appraiser must follow the procedures, as applicable, of the sales comparison approach.
- (E) **Reporting Requirement 315:** The appraiser shall comply with the following:

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- (1) For significant building improvements, regardless of value contribution, a statement that salvage value offsets demolition cost must be supported by a specialist's estimate. An unsupported statement that salvage value offsets demolition cost is unacceptable.
 - (2) The cost approach is often significant when appraising special purpose properties, or when comparable sales data are insufficient to develop the sales comparison and income capitalization approaches. The appraiser should refer to his or her discussion in highest and best use analysis as documentation for lack of recent market activity, and must reflect such limited or depressed market conditions in the other approaches to value.
 - (3) When significant weight is given to the cost approach in the reconciliation of final value estimate, replacement cost of improvements provided by at least two of the sources listed in **Section 4.2.26(F)**, and depreciation must be fully developed in the report.
- (F) **Reporting Requirement 320:** The appraiser shall comply with the following:
- (1) When the cost approach is one of the indications considered in reconciliation to the final value estimate, the appraiser must identify the sources from which building and major improvement costs were obtained. Acceptable sources are:
 - (a) Contractor's estimate,
 - (b) Cost data services, furnish name of service, reference to section, page and effective date. If obtained through electronic sources, the print-out must include sufficient information to identify source, effective date and calculations and,
 - (c) Cost extraction from market. Similar property's replacement cost within the past five years must be considered.
 - (2) When primary reliance is placed on the cost approach, the appraiser's final conclusion of replacement cost of building and major improvements must be derived by a reconciliation of estimates obtained from at least two of the sources listed above. For an appraisal of OAS's, a contractor's estimate is sufficient.
 - (3) All detailed cost estimates are to be included in the addenda to the appraisal report, and must identify significant quantities and unit prices considered in arriving at the total estimate.
 - (4) The DPWLAS may waive, in writing, the requirement of two estimates of a relatively low value improvement. Minor improvements such as paving, fencing, etc., do not require two cost estimates.
 - (5) Trade fixtures and equipment considered to be real property must be separately identified and their contribution to value itemized. Such items may require a specialist's estimate. Often, special use properties have moveable and/or immovable furniture, fixtures, machinery and equipment etc. These items may be pertinent to the appraisal assignment.
 - (6) Entrepreneurial profit or loss estimates must be supported. Entrepreneurial profit or loss is the difference between the cost of development, including builder's profit, and the value of a property after completion. For Departmental purposes, adequate support is the reporting of the difference between sale price of a newly constructed property and the sum of the cost new of the improvements, inclusive of builder's profit but exclusive of entrepreneurial profit, and current land value, for each sale studied. Statements of opinions or expectations of profit or loss unsupported by

sales evidence are unacceptable. Entrepreneurial profit or loss must be considered when performing the cost approach.

(G) Reporting Requirement 325: In accordance with the appraisal assignment, the appraiser must discuss the elements of accrued depreciation recognized by the market. These are physical deterioration curable, physical deterioration incurable, functional obsolescence curable, functional obsolescence incurable, and external obsolescence. Each of the five elements, or their omission, must be addressed in the report and shown in the calculations. A zero amount must be shown for any element that does not contribute to total accrued depreciation. The breakdown method is acceptable. The age-life method of estimating depreciation is acceptable only for minor buildings and structures.

(H) Reporting Requirement 330: The calculation of this figure should be summarized as follows:

| | |
|-----------------------------------------------------|----------|
| Reproduction/Replacement specify Cost New | \$50,000 |
| Less Total Accrued Depreciation | \$8,000 |
| Depreciated Value of the Improvements | \$42,000 |
| Plus Contributory Value of Site Improvements | \$5,000 |
| Plus Estimated Site/Land Value | \$10,000 |
| Indicated Value by the Cost Approach | \$57,000 |

(I) Reporting Requirement 335: Sales comparison approach, general market information, analyses and explanations presented in the data book must be incorporated by reference, not repeated, in the appraisal report.

(J) Reporting Requirement 350: When a project data book is prepared, copies of the sales data sheets and location maps of transactions used in direct comparison shall be included in the addenda in the order introduced within the appraisal report. While original color prints or color digital prints of photos are desired, color reproductions may be utilized in the report.

(K) Reporting Requirement 345: The appraiser shall comply with the following:

- (1)** The appraiser shall depict all sales used in direct comparison on a grid. Sale comparisons, adjustments and adjusted prices must be summarized in chart form, grid, in the appraisal report. Subject property information must be included on the chart.
- (2)** If relevant to current market conditions, any open market, arm's length sale(s) of the subject property within the past five years must be considered as one of the comparable sales selected, and must be included in the sales data compilation. Reasons for not using a subject sale occurring within the last five years should be explained.
- (3)** Adjustments for differences must be included in the report by percentage or dollar amounts and supported by an analysis of market data.

(L) Reporting Requirement 350: Specific comparative adjustments to sale prices should be made in the appraisal report as appropriate to each individual parcel. It is the appraiser's responsibility to assure that all data and analyses are consistent between the data book and each individual appraisal, as follows:

- (1)** On direct comparison of sales the appraiser must comply with the following:
 - (a)** Each comparable sale property selected must be directly and individually compared with the subject property. Comparable properties selected for direct comparison should be

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- those which a potential buyer would consider to be an alternative for the subject property. Units of comparison should be relatively similar and not require excessive adjustments.
- (b) Similarities and dissimilarities between each comparable property and the subject must be narratively discussed using standard elements of comparison such as financing, conditions of sale, changes in market conditions over time, location and physical and economic characteristics.
 - (c) No adjustments shall be made on sales sheets. Any adjustments shall appear on the grid and be discussed in accordance with the appraisal assignment.
 - (d) In the absence of factual data, the appraiser must fully explain his or her reasoning for each adjustment.
 - (e) Treatment of market recognized differences between comparable sale properties and the subject property must be addressed in this approach. Delay of such discussion until the reconciliation of the approach is unacceptable. Fixtures and equipment, moveable and/or immovable, are to be included, as appropriate. The improved sales and rental analysis should include line adjustments for any moveable and/or immovable item differences. Any adjustments shall appear on the grid and be discussed in accordance with the appraisal assignment.
- (2) When listings and contracts are used, the appraiser must comply with the following:
- (a) A current offering for sale, or listing of the subject property must be thoroughly discussed in relationship to the current market situation. Other listings, offers to sell, must not be considered as direct indications of value, because they are inadmissible as evidence of value. However, a history of competitive properties being offered on the market may be considered, together with factual market data, in an analysis of market trends. Listings may provide an early warning of changes in the direction of the market, and often help establish an upper limit of value.
 - (b) Current contracts for purchase may be subject to certain provisions being met before the sale becomes fact. While contracts may assist in identifying trends in the market, any indication of value by them should be supported by executed, closed, open market transactions.
 - (c) A current listing for sale, or a pending contract of any part of the subject property must be fully discussed and considered in the appraisal.
- (M) **Reporting Requirement 355:** The appraiser must provide a complete discussion of the reasoning leading to the single indication of value.
- (N) **Reporting Requirement 360:** Income must be attributable to the real property and not to the owner, manager, or the business operating on the subject property. A statement is required as to whether the subject property is leased or rented. If so, the appraiser should provide in the report:
- (1) The name of each tenant,
 - (2) A summary of the terms of each lease or rental agreement, and
 - (3) A copy, in the addenda of each instrument, if available.

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- (4) The appraiser should address any moveable and/or immoveable fixtures having an impact on the rents received.
- (O) **Reporting Requirement 365:** The appraiser must comply with the following:
- (1) Property data considered comparable in the Income Capitalization Approach must be included in the compilation of market data, and each property's information presented on a sales data sheet and summarized in chart form grid.
- (2) Any open market, arm's length rental of the subject property within the past five years must be considered as one of the comparable rentals selected, and must be included in the comparable data compilation. A current offering, listing for rent of the subject property must be thoroughly discussed in relationship to the current market situation.
- (3) When market and contract rents differ, the reason for such divergence must be discussed.
- (P) **Reporting Requirement 370:** The vacancy rate applied to the subject's gross income must be based on a study of similar properties, vacancy rates. The study should be included in the data book or addenda. It should also reflect the type and condition of the property, the financial ability of the tenant, neighborhood factors, business conditions and the remaining term of any lease.
- (Q) **Reporting Requirement 375:** Expenses experienced by comparable properties reported on a sales data sheet and compiled with other market data, must be concisely discussed in the report to support the reasonableness of the subject property's projected expenses, and to provide support for the subject's reconstructed income and expense statement. The appraiser must analyze and reconstruct an income and expense statement on an annual accrual basis for the subject property.
- (R) **Reporting Requirement 380:** The appraiser must comply with the following:
- (1) Direct capitalization of net annual income into a value indication using a market-derived rate is preferred by the Department. It is essential that comparables from which rates are calculated reflect similar physical and locational characteristics, similar ratios of income to expense, similar land to building ratios, and similar risk attributes as the subject.
- (2) A capitalization rate that is established by means other than derivation from comparable sales is acceptable provided:
- (a) The rate and any component is related to factual market data, and
- (b) The derivation is fully discussed.
- (S) **Reporting Requirement 385:** Net Operating Income is divided by an appropriately derived capitalization rate to produce a value indication by the Income Capitalization Approach. Calculations must be summarized.
- (T) **Reporting Requirement 390:** The discussion must include the appraiser's reasoning which led to the final value estimate. Indicate which approach was given the most weight, explain why, and discuss any other conditions which influence the market value estimate.
- (U) **Reporting Requirement 395:** The appraiser must comply with the following:

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- (1) The final opinion of value must be allocated between land and improvements (building and site). The allocation must indicate a total value for any improvements that are to be totally or partially acquired. The Department assignment may also require an allocation of individualized value contributions for affected improvements in this before situation in order to properly address them later in the analysis. Affected items should be accurately valued so that each component can be consistently addressed along with damages and potential costs to cure, if any. When tenant owned buildings, structures or other improvements are involved, the allocation to the various interests must be shown in the body of the report. The **COV**, however, must not reflect a separation of leased fee and leasehold interests, nor an allocation for the tenant owned interest.
 - (2) In the case of tenant owned buildings, structures other than OAS's or related improvements, the appraiser must present opinions of value reflecting these two premises and conclude to the higher:
 - (a) contributory value to the whole property as though not leased, and;
 - (b) salvage value.

4.2.27 Description and Valuation of Part Acquired

The following reporting requirements must be included in the description and valuation of part acquired, as appropriate:

- (A) **Reporting Requirement 400:** If the acquisition is of the whole property, a statement to that effect will suffice. If land, or land and improvements are partially acquired, the appraiser must:
 - (1) Describe the topography, shape, and area of land acquired in appropriate units,
 - (2) Discuss the extent of access and frontage acquired,
 - (3) Identify and describe all improvements to be acquired which are considered to be real property,
 - (4) Describe the partial acquisition of a building improvement, and
 - (5) To avoid uncertainty, identify any non-realty items which are not considered to be a part of the appraisal problem. The appraiser shall identify such items if there is any possibility that a market participant may perceive an item of personal property as realty.
- (B) **Reporting Requirement 450:** The appraiser shall report the opinion of value for the land to be acquired and also report the contributory value, even if zero, of each improvement, or part thereof, (including landscaping items, fences, etc.). The reported opinions must be based on the appropriate unit value(s) for land, building and site improvement components applicable to the parent tract as set forth in the reconciled approaches used. If the Cost Approach is not developed in the before valuation of the parent tract, a cost analysis can be performed to establish the contributory value of minor items impacted by the acquisition. This established value is appropriate for reasonable analysis and is acceptable. The appraiser shall allocate the value of any tenant owned improvements to be acquired. The total value of the part acquired must be shown.

4.2.28 Valuation of Remainder as Part of Whole

The following reporting requirement shall be included in the valuation of remainder as part of whole, as appropriate:

Reporting Requirement 500: The appraiser must show the calculation of the difference between the value of the whole property and the value of the part acquired. The result should be identified as the value of the remainder as a part of the whole property.

4.2.29 Premise of the Appraisal - the Remainder Valuation

Appraisals of the remainder cured and uncured generally are not necessary when the cost to cure represents a minor expenditure to assure continued operation or use of the remainder. It is, however, incumbent on the appraiser to consider whether the remainder after the taking would realistically recognize a loss in value or interruption of operation or use to the extent of the cost to cure. Examples of when a minor cost to cure methodology can be utilized include, but are not limited to, restriping a parking area, restoring fencing on agriculturally zoned land, restoring fencing around a residential pool, etc. As in any assignment, good judgment should be used by the appraiser when implementing this methodology. It is not appropriate to use the methodology when the existence of severance damages is not readily apparent or when feasibility for mitigation of damages in effecting the cure is not readily apparent.

Use of the cost to cure damages technique is appropriate when such cost is less than the difference between the remainder value cured and the remainder value uncured. When significant damages are involved, the appraiser must report the estimated value of the remainder as severed, before application of the cure, and the estimated value of the remainder as severed, after application of the cure.

The following reporting requirements shall be included in the premise of the appraisal, the remainder valuation, as appropriate:

- (A) **Reporting Requirement 640:** The appraiser shall explain that the appraisal of the remainder is made uncured under the assumption that the transportation facility has been completed according to the construction plans and that said facility is open for public use. The appraiser should explain further that the market value of the parent tract before the taking has been estimated, the value of the part taken has been subtracted. This results in the estimated value of the remainder as part of the whole. The purpose of the appraisal of the remainder un-cured is to estimate its market value to discover if there are any damages or special benefits caused by the taking.
- (B) **Reporting Requirement 680:** The appraisal problem shall be defined considering the following:
 - (1) As previously mentioned, the purpose of the appraisal is to estimate the market value of the remainder un-cured. This is done by appraising the remainder before any cure is applied and comparing this after value estimate with the value of the remainder as a part of the whole property to determine whether there is any reduction, damage, enhancement, or special benefit, as a result of the acquisition. The appraisal of the remainder property must be made presuming the transportation facility has been completed according to construction plans and is open for public use.
 - (2) The un-cured remainder appraisal must be supported to the same extent as the whole/before property appraisal. Although some of the information contained in the appraisal of the whole property may be applicable to the appraisal of the remainder, the intent is to appraise the remainder as a marketable entity without regard to the whole property or the acquisition.
 - (3) The appraisal problem involves considering the impact of the taking on the remainder. Identification of an abbreviated parent tract does not relieve the appraiser from consideration of the remainder as a part of the entire ownership.

4.2.30 Presentation of Data - the Remainder Uncured

The following reporting requirements shall be included in the presentation of data for the remainder uncured, as appropriate:

- (A) **Reporting Requirement 730:** It is unacceptable to describe or approach the valuation of the remainder by reference of its relationship to, or as a part of, the before tract. It must be described and considered as a separate tract. However, reference may be made to descriptive data contained in the before valuation. It is not necessary to repeat descriptions of improvements, methods of valuation, or grids.
- (B) **Reporting Requirement 740:** In accordance with the appraisal assignment, the appraiser shall describe, summarize, or state the zoning, current, existing, level of service on roadway, impact fees or impact fee credits, if appropriate, land use plan, and concurrency of the remainder as of the date of value.
- (C) **Reporting Requirement 750:** The appraiser shall briefly discuss the proposed transportation facility or improvement.
- (D) **Reporting Requirement 775:** In accordance with the appraisal assignment, the appraiser shall describe, summarize or state the effect of the acquisition on the remainder including, but not limited to the following:
 - (1) Partially remaining buildings and site improvements.
 - (2) Compliance with present zoning. Reasons for noncompliance must be discussed.
 - (3) Probability of obtaining a variance because of the threat of eminent domain.
 - (4) Change of access or circulation, if pertinent.

4.2.31 Analysis of Data and Conclusions - the Remainder

The following reporting requirements shall be included in the analysis of data and conclusions the remainder, as appropriate:

- (A) **Reporting Requirement 800:** A change in use, or a use premised on the probability of rezoning or some other occurrence requires a fully developed highest and best use analysis considering and explaining the remainder in light of the following four criteria: physically possible, legally permissible, financially feasible, and maximally productive. Market demand must also be considered in the feasibility and productivity analysis.
- (B) **Reporting Requirement 802:** In a separate sentence or paragraph, the appraiser must state the conclusion of highest and best use of the remainder land as if vacant and ready for such use, and if appropriate, the property as improved.
- (C) **Reporting Requirement 805:** In accordance with the appraisal assignment, identify the approaches to value used and excluded. Explain and support the exclusion of any of the usual valuation approaches. This item may also be included in the reconciliation of approaches or in a separately identified paragraph.
- (D) **Reporting Requirement 810:** In accordance with the appraisal assignment the appraiser shall describe, summarize or state the methodology used to value the land. If the remainder size and overall characteristics are similar as before the taking, land sales used to value the parent tract may be referenced and an indicated value shown as a line item. Repeating the sales grid is unnecessary. However, if the remainder size and overall characteristics are significantly different, a grid with accompanying analysis must be depicted illustrating comparable sales for direct comparison.

- (E) **Reporting Requirement 815:** Please refer to **Section 4.2.26(E)**.
- (F) **Reporting Requirement 820:** Please refer to **Section 4.2.26(F)**.
- (G) **Reporting Requirement 825:** Please refer to **Section 4.2.26(G)**.
- (H) **Reporting Requirement 830:** Please refer to **Section 4.2.26(H)**.
- (I) **Reporting Requirement 835:** A major consideration is identification of the market in which the remainder property would be competitive. Comparable sales and rental data must be selected from those properties which a knowledgeable buyer would consider as alternatives to the remainder property. To the greatest extent practicable, the comparables should have the same characteristics as the remainder property.

If the appraiser's analysis of the market for the remainder after an insignificant acquisition indicates that the comparable data and adjustments used in the appraisal of the whole property are also the most comparable to the remainder, it is not necessary to repeat the sales analysis and comparison in this section. Reference to the appropriate page location of the analysis must be stated, and the reasoning for such conclusion must be fully explained.

- (J) **Reporting Requirement 840:** A significant acquisition requires that the remainder be analyzed as a separate appraisal. All market data pertinent to the remainder, considering the transportation facility to be complete as per plan, must be addressed in this section. Determination of whether an acquisition is significant or insignificant must be made or concurred in by the DPWLAS.
- (K) **Reporting Requirement 845:** If additional adjustment is necessary to compare comparables used in appraisal of the whole property to the remainder, a sales grid must be included in this section with adjustments adequately supported. Adjustments necessary to compare each comparable individually to the remainder must be made using standard elements of comparison such as financing, conditions of sale, changes in market conditions over time, location, physical and economic characteristics. The remainder information must be included on the grid.
- (L) **Reporting Requirement 850:** Please refer to **Section 4.2.26(J)**.
- (M) **Reporting Requirement 855:** The appraiser must explain reasoning leading to a single indication of value. An indication of value outside the range of adjusted comparable sales generally is not acceptable without substantial support.
- (N) **Reporting Requirement 860:** Please refer to **Section 4.2.26(J)**.
- (O) **Reporting Requirement 865:** Please refer to **Section 4.2.26(O)**.
- (P) **Reporting Requirement 870:** Please refer to **Section 4.2.26(P)**.
- (Q) **Reporting Requirement 875:** Please refer to **Section 4.2.26(Q)**.
- (R) **Reporting Requirement 880:** Please refer to **Section 4.2.26(R)**.
- (S) **Reporting Requirement 885:** Please refer to **Section 4.2.26(S)**.
- (T) **Reporting Requirement 890:** The reconciliation and final value estimate shall comply with the following:

- (1) The discussion shall include the appraiser's reasoning which led to the final value estimate. The appraiser should indicate which approach was given the most weight, explain why, and discuss any other conditions which influence the market value estimate.

NOTE: The Department will compare the reasoning stated in the reconciliation of before value with that stated in reconciliation of remainder value. If there is a significant difference, such as a change in highest and best use, a different analysis of market data or conditions, a changed emphasis on approaches given most weight, etc., the reconciliation of remainder value must state or reference the reasons and support for the change of emphasis. The omission of an approach to value must be discussed, if not previously explained.

- (2) The total value estimate must be allocated to the remainder value contributions of land and improvements which were included in the Before Valuation. Tenant owned buildings, structures and other improvements and their contributory values must be separately identified.

(U) **Reporting Requirement 900:** Support for damages/no damages to the remainder shall comply with the following:

- (1) The appraiser should describe and explain the marketability of the remainder. If it is obvious no damages are indicated as a result of the acquisition, the appraiser should so state and complete a **Summary of Values Form 4.2-1**. However, if there is any question as to the non-existence of damages, the appraiser must fully explain the reasoning leading to a conclusion of no damages. This explanation shall be supported to the same extent as a finding of damages.
- (2) If damages are indicated, the amount is to be supported by market evidence to the extent reasonable and adequate. Market evidence may take several forms, such as paired sales, cost analyses, surveys, narrative discussion, etc. The best supported method is preferred.
- (3) If damages cannot be mitigated and there are no special benefits, the difference between the value of the remainder as a part of the whole property and the value of the remainder after the acquisition is the amount of total damages.
- (4) The remainder could be subject to a possible loss in value due to a cause considered legally noncompensable. Supportable evidence of effect on value from such cause must be brought to the DPWLAS attention, immediately upon discovery.
- (5) Following are examples which may represent noncompensable causes of loss in value:
 - (a) Loss in value not resulting from the acquisition.
 - (b) Circuity of travel.
 - (c) Proximity to the completed facility, noise, dust, fumes, vibration, light.
 - (d) Re-routing, diversion of traffic, or other exercise of police power.
 - (e) Conjectural damages.
 - (f) Landowner's speculative future use of property.

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- (g) Change of grade, or changes in the design of the facility within the limits of the existing right of way, which do not deprive the owner of reasonable access.
 - (h) Improper construction of the facility.
 - (i) Inconvenience to landowner.
 - (j) Loss of future profits.
 - (k) Appearance of remainder which does not affect market value.
 - (l) Temporary damages due to impairment of the use and occupancy of property incident to construction.
 - (m) Expenses related to moving personal property or trade fixtures.
- (6) If there is a doubt regarding inclusion of a cause item in the appraisal, the appraiser should ask the client DPWLAS to obtain a legal opinion addressing the issue.
- (7) When a parcel is in litigation, the Department may request the appraiser to consider a certain legal premise such as, a noncompensable loss in value and to estimate values accordingly. The appraiser must include such instructions in the report, either by copy of a letter from the attorney or by synopsis, identifying:
- (a) The person from whom received,
 - (b) The instructions and, if possible,
 - (c) The reasons for such request.
- (8) In the same way that damages may apply to building and site improvements, severance damages may apply to any remaining furniture, fixtures and equipment, both moveable and immovable, as appropriate. If the acquisition results in a total damage to the remaining improvements including the furniture, fixtures and equipment (FF&E), the salvage value of such FF&E should be addressed by either deducting it from the severance damages or including it in the remainder value.
- (V) **Reporting Requirement 910:** Analysis of cost to cure damages shall be as follows:
- (1) Use of the cost to cure damages technique is appropriate when such cost is less than the difference between the remainder value cured and the remainder value uncured.
 - (2) Appraisals of the remainder cured and uncured generally are not necessary when the cost to cure represents a minor expenditure to assure continued operation or use of the remainder. It is, however, incumbent on the appraiser to consider whether the remainder after the taking would realistically recognize a loss in value or interruption of operation or use to the extent of the cost to cure.
 - (3) When significant damages are involved, the appraiser must report:
 - (a) The estimated value of the remainder as severed, before application of the cure, and

-
- (b) The estimated value of the remainder as severed, after application of the cure.
 - (4) The independent appraisal of the remainder uncured, before application of the cure, is one of the most critical parts of the cost to cure analysis. A mathematical subtraction of estimated values is unacceptable. Undesirable marketability features, if any, of the remainder resulting from the taking must be described and explicitly detailed in the report so that each item of potential damage reflected by the reduced value of the remainder is identified.
 - (5) The valuation of remainder cured shall be as follows:

 - (a) When the valuation of the remainder uncured is complete, the expertise of a specialist may be required to determine if all or a significant portion of the damages may be cured economically, and to estimate the cost to cure. The appraiser and specialist must determine that a proposed cure is not in conflict with the Department's construction plans.
 - (b) The appraiser must determine that the cure does not create an otherwise avoidable enhancement of value which did not exist previously.
 - (c) If a cure involves reestablishment of an improvement, or portion thereof, which was paid for in the part taken, the amount paid or the proportionate share paid must be deducted from the reestablishment cost in order to calculate the amount of the net cost to cure.
 - (d) A copy of a bid detailing the work to be done, together with any architectural or plan drawings, must be referenced in the report and included in the addenda. The bid must identify significant quantities and unit prices considered in arriving at the total. The bid must be obtained from a qualified and licensed source and must include a statement indicating the time period that the bid is valid. Further, the appraiser must obtain written documentation from the Territorial Land Use Commission that the cure is legally feasible, that permits for all aspects of cure will be granted. In the absence of such documentation, the appraiser shall identify steps taken to obtain such documentation and explain why the appraiser is concluding the cure to be legally feasible.
 - (e) A cure may eliminate only a part of the monetary damages, or may result in a loss in value of the remainder. Therefore, a valuation of the cured remainder is required for comparison with the uncured remainder value to assure that compensable damages from all causes have been estimated. When a cure is applied, the appraisal report must indicate that the appraiser considered the effect of the cure on the remaining property for the purpose of determining if the cure causes additional damages to the remainder. It is improper to automatically pay for remainder land used to effectuate the proposed cure.
 - (f) A cure must not require the owner to go partially or wholly outside the remainder of the parent tract as defined in the before valuation, to effect the cure. A cure based on such premise, without specific legal instruction to the contrary, renders the appraisal report unacceptable.
 - (g) The appraiser should request from the DPWLAS, identification of the parent tract if the proposed cure will affect any portion of the property from which rights have been conveyed such as, lease, easement, etc. Legal guidance from the Attorney Generals Office may be necessary to properly assess the pertinence of court decisions which may be applicable. Identification by the appraiser of a parent tract is considered an issue of highest and best use and is a unilateral assumption.

-
- (W) Reporting Requirement 920:** Analysis of special benefits shall be as follows:
- (1)** Special benefits are the result of an enhancement in value which has advanced the market value of the remainder beyond the mere general appreciation of property in the neighborhood. The taking must be for a road, canal, levee, or water control facility right of way.
 - (2)** Special benefits may only offset damages to the subject remainder, and only if the increase is by reason of the construction or improvement made or contemplated.
 - (3)** The appraiser must support an estimate of special benefits to the same extent as required for other value conclusions. The appraiser should consult with the DPWLAS if there is any question as to type and amount of support required, or of whether a benefit is of a special or general nature.
 - (4)** If there are no special benefits, the appraiser shall so state.
- (X) Reporting Requirement 995:** The appraiser must summarize all final value estimates on a ***Summary of Values Form 4.2-1***.

4.2.32 Addenda

Information too lengthy to be included in the body of the report or of supplemental use should be placed in the addenda. A table of contents must indicate items placed in the addenda in the order in which they appear, such as:

- (A)** Lengthy legal description
- (B)** Neighborhood map, show project
- (C)** Maps of comparable sales and/or leases show project and subject
- (D)** Copies of comparable sales and/or leases data sheets used in direct comparison
- (E)** List of trade fixtures and equipment considered to be real property, both moveable and immovable, and contributory value of each item
- (F)** Contractor's or specialist's estimate
- (G)** Copy of last instrument of conveyance deed, easement, lease
- (H)** Copy of proposed deed to be furnished by the Department
- (I)** Property Owner Contact Letter
- (J)** Appraiser's Qualifications
- (K)** Interview sheet with Territorial Land Use Commission representative
- (L)** Letters pertaining to zoning variances
- (M)** Special instructions given to the appraiser

HISTORY

Original Issue January 2011

Revision 1 – October 2017 – No changes to this section



DPW Form 4.2-1

SUMMARY OF VALUES

WHOLE PROPERTY ACQUISITION: Show following:
(Omit Partial Acquisition portion)

SUMMARY OF COMPENSATION

| | |
|--------------|----------|
| LAND | \$ _____ |
| IMPROVEMENTS | \$ _____ |
| TOTAL | \$ _____ |

PARTIAL ACQUISITION: Show following: (if amount for any item marked *, is zero dollars, go to SUMMARY OF COMPENSATION)

- 1. Before Property \$ _____
- 2. Part Acquired (Land/Improvements) \$ _____
- 3. Remainder (As Part of Whole)[1]-[2] \$ _____
- 4. Remainder (Appraised, Uncured) \$ _____
- 5. Damages (Total, Uncured) [3]-[4] \$ _____*
- 6. Special Benefits \$ _____
- 7. Damages [5]-[6] \$ _____*

FEASIBILITY OF COST TO CURE DAMAGES (If Cost to Cure is MINOR,*)

- 8. Remainder (Appraised as Cured) \$ _____ or [3], whichever is less)
- 9. Remainder (Appraised, Uncured)[4] \$ _____
- 10. Damages, Curable [8]-[9] \$ _____*
- 11. Damages, Incurable [7]-[10] \$ _____
- 12. Cost to Cure (or Reestablish) \$ _____
- 13. Improvements Cured but Paid For in [2] \$ _____
- 14. Net Cost to Cure [12]-[13] \$ _____

(If [14] is equal or greater than [10], cure is not feasible; use [7] in Summary)

SUMMARY OF COMPENSATION

| | |
|---------------------------------|----------|
| Part Taken [2] | \$ _____ |
| Damages, Incurable [11] | \$ _____ |
| Cost to Cure, Net[14], or Minor | \$ _____ |
| TOTAL COMPENSATION | \$ _____ |



DPW Form 4.2-2

VALUE FINDING

Property Owner, Address of Property, Parcel Number, Item/Segment, GU Project No., Location of Subject's Legal Description, Real Property Interest Appraised: Fee Simple, Permanent Easement, Temporary Construction Easement

Brief Description of Parent Tract:

State the Highest and Best Use:

Before Value: (Land Only) Sq. Meters @ \$ / SQM = \$ Total Land \$

Brief Description of Property Being Acquired:

Land Sq. Meters @ \$ / SQM = \$ Total Land \$ Improvements* \$ Total Improvements \$

* Give Marshall Valuation Service or other reference and indicate unit values and depreciation factors. The Cost Approach is used to value site improvements that are nominal in relation to overall value.

Brief Description of the Remainder Property: (if applicable)

State Highest and Best Use:

After Value: (Land Only) Sq. Meters @ \$ / SQM = \$ Total Land \$

Brief Description of Severance Damages or Cost to Cure the Remainder Property: (if applicable)

| | |
|------------------------|-----------------|
| Before Value | \$ _____ |
| Part Taken | \$ (_____) |
| Value as Part of Whole | \$ _____ |
| After Value | \$ (_____) |
| Severance Damages | \$ _____ |
| Cost to Cure | \$ _____ |
| Total Damages | \$ _____ |

Summary of Compensation:

| | |
|----------------------------|-----------------|
| Land | \$ _____ |
| Improvements | \$ _____ |
| Damage and/or Cost to Cure | \$ _____ |
| Total | \$ _____ |

[The general data book performed for (item/segment) _____ by (Name) _____ was relied upon as the source for sales information and unit value. Refer to the data book for specifics regarding the collection, verification, and reporting of the market data. The Sales Comparison Approach is the sole approach to value utilized, as the Cost and Income Capitalization Approaches are not considered applicable to the valuation of the subject property as vacant. In lieu of data book, comparable sales data may be attached to this form. More specific data regarding the valuation of this parcel is located in the appraiser's files.

Attachments:

- Legal description of property being acquired
- Last deed of record and five year sales history
- Property Inspection Letter
- Photos
- Sketch/survey
- Other _____



DPW Form 4.2-3

CERTIFICATE OF VALUE

Parcel No.: _____ Item/Segment: _____ Road: _____ GU No.: _____

I certify to the best of my knowledge and belief, that:

- 1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are my personal, unbiased, professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property or bias with respect to the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
4. My compensation is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
5. This is an appraisal communicated in a restricted use report format.
6. I have made a personal inspection of the property on [date(s)] that is the subject of this report and I have afforded the property owner the opportunity to accompany me at the time of the inspection.
7. No persons other than those named herein provided significant real property appraisal assistance to the person signing this certification.
8. The purpose of this appraisal is to estimate market value as of the effective date of the report.
9. This appraisal has been made in conformity with appropriate Territory of Guam laws, regulations, policies and procedures applicable to appraisal of right-of-way for highway purposes; and, to the best of my knowledge, no portion of the property value entered on this certificate consists of items which are noncompensable under the established law of the Territory of Guam.
10. I have not revealed the findings or results of this appraisal to anyone other than the proper officials of the Territory of Guam or officials of the Federal Highway Administration and I will not do so until authorized by Government of Guam officials or until I am required by due process of law, or until I am released from this obligation by having publicly testified as to such findings.
11. Regardless of any stated limiting condition or assumption, I acknowledge that this appraisal report and all maps, data, summaries, charts and other exhibits collected or prepared under this agreement shall become the property of the Government of Guam without restriction or limitation on their use.
12. Statements supplemental to this certification required by membership or candidacy in a professional appraisal organization, are described on an addendum to this certificate and, by reference, are made a part hereof.

Based upon my independent appraisal and the exercise of my professional judgment, my opinion of the market value for the part taken, including damages, if any, of the property appraised as of the _____ day of _____, _____, is: \$ _____.



DPW Form 4.2-3

Market Value should be allocated as follows:

Land: \$ _____ Land Area (Sq. Meters) _____

Improvements: \$ _____ Land Use _____

Severance Damages/
Cost to Cure: \$ _____

Total: \$ _____

Date Appraiser

| Value of Acquisition Including Uneconomic Remainder | Partial/Whole P/W |
|-----------------------------------------------------|-------------------|
| Land Area: Sq. Meters | |
| Land: | \$ |
| Improvements: | \$ |
| Damages and/or Cost to Cure | \$ |
| Total | \$ |

Date

Review Appraiser
Administrative Review

Comments on Uneconomic Remnant:

VALUE FINDING FORMAT INSTRUCTIONS TO APPRAISER

- (1) The Value Finding Format may be used on vacant or land only, non-complex appraisals. The Before and After format is provided to accommodate those situations where: (1) the After value is the same unit value as the Before value (e.g. no severance damages) or (2) the After situation represents a Highest and Best Use having little or no utility to the owner or the market in general, and results in the assignment of a nominal remainder value.
- (2) Parcel sketches are necessary.
- (3) Photographs are required.
- (4) A property contact letter regarding property inspection is required.
- (5) Refer to location of subject's legal description, such as in files; attached, etc.
- (6) Briefly describe parent tract in the Before situation: A brief description of location, size, shape, access, etc., will generally suffice.
- (7) Reference source of unit values such as, Data Books or Sales Data Sheet as being attached. In the preparation of a Value Finding, it is necessary to describe the extent of the collection, confirming and reporting of data.
- (8) Briefly describe property being acquired: One or two sentences will generally suffice.
- (9) List improvements being acquired: e.g. Identify source of value estimate, reference section and page, if from a cost service manual, and list contributory value for each.
- (10) Briefly describe the remainder: A brief description of size, shape, access, utility, etc. will generally suffice. If there is no change in the unit value from the Before situation, so state. If the remainder is of a nominal use, briefly discuss why and state the nominal value.
- (11) Briefly describe damages to the remainder: One or two sentences as to the specific cause(s) of the damages will generally suffice. The provided process will accommodate both severance and cost to cure damages.
- (12) Summarize the estimate of just compensation and allocate between Land, Improvements and Damages.

The Certificate of Value Finding complies with requirements of the Uniform Standards of Professional Appraisal Practice (USPAP).

If any significant real property appraisal assistance is provided to the appraiser, the name of each individual providing significant assistance must be stated on an addendum to this certificate. If such individual is a Territory of Guam registered, licensed or certified appraiser, his or her status and license number must be stated. Documentation must be commensurate with the complexity of the valuation.



DPW Form 4.2-4

Department of Public Works

RE Parcel No.: _____
Item/Segment: _____
Territory Road: _____
GU Project No.: _____

Dear **{PROPERTY OWNER}**:

As you may be aware, the Department of Public Works (DPW) is planning construction of the above referenced roadway project. DPW has engaged me to make an appraisal of _____ located in the village of _____ Territory of Guam, which is reportedly owned by _____.

The purpose of the appraisal is to state an opinion of market value of the portion of the property needed for right of way at this particular location for **{BRIEFLY DESCRIBE PROJECT}** (e.g. *widening and improving Territory of Guam Road*)

I have scheduled a field inspection of the above described property on **{DATE}**. If you or your designated representative would like to accompany me on this inspection, please call me at **{A/C-PHONE NUMBER}** so that we can schedule a mutually agreeable time and meeting place.

Any information you can provide concerning surveys, building plans, names of tenants, leases, rents, real estate taxes, operating expenses, and factors which affect the value of the property will be helpful in estimating the market value of your property.

You may contact me at my office Monday through Friday between **{GIVE DAY AND TIME PARAMETERS}**. Should you find it necessary to call long distance, please call collect. Please advise me of your wishes at your earliest convenience.

Very truly yours,

QUICK LIST

APPRAISAL REPORTING REQUIREMENT NUMBERS

INTRODUCTION AND PREMISES OF THE APPRAISAL

| | |
|-----|------------------------------------------------------------------------|
| 100 | Certificate of Value |
| 110 | Table of Contents |
| 115 | Qualifying and Limiting Conditions |
| 120 | Summary of Salient Facts and Conclusions |
| 130 | Type of Report Format |
| 140 | Purpose, Intended Use, Intended User of the Appraisal |
| 150 | Definition of Market Value |
| 160 | Property Rights (Interest) Appraised |
| 175 | Scope (Extent of Process of Collecting, Confirming and Reporting Data) |
| 180 | Appraisal Problem |

PRESENTATION OF DATA

| | |
|-----|----------------------------------------------------|
| 200 | Identification of Property and Legal Description |
| 220 | Description of Area and Neighborhood |
| 230 | Description of Property, Photographs, and Sketches |
| 235 | Existing Transportation Facility Description |
| 240 | Zoning, Land Use Plan, Concurrency |
| 250 | Assessed Value, Taxes and Special Assessments |
| 260 | History of Property |
| 270 | Exposure Time |
| 280 | Public and Private Restrictions |

ANALYSIS OF DATA AND CONCLUSIONS

| | |
|-----|---------------------------------------------------------------------------|
| 300 | Highest and Best Use Analyses |
| 302 | Highest and Best Use Conclusion |
| 305 | Approaches to Value Used and Excluded |
| 310 | Land Valuation |
| 315 | The Cost Approach |
| 320 | Building Cost Estimate |
| 325 | Accrued Depreciation Estimate |
| 330 | Indicated Value by Cost Approach |
| 335 | Sales Comparison Approach |
| 340 | Collection of Comparable Sales |
| 345 | The Sales Adjustment Grid |
| 350 | Analyses of Comparable Sales and Explanation of Adjustments |
| 355 | Indicated Value by the Sales Comparison Approach |
| 360 | The Income Capitalization Approach |
| 365 | Gross Rent Estimate |
| 370 | Vacancy and Collection Loss |
| 375 | Expenses and Net Operating Income Estimate |
| 380 | Capitalization Rate |
| 385 | Indication of Value by the Income Capitalization Approach |
| 390 | Reconciliation of Value Indications and Final Value Opinion |
| 395 | Allocation of Land, Site Improvements, Structures, and Other Improvements |

DESCRIPTION AND VALUATION OF PART ACQUIRED

| | |
|-----|----------------------------------|
| 400 | Description of the Part Acquired |
| 450 | Valuation of the Part Acquired |

VALUATION OF REMAINDER AS PART OF WHOLE

| | |
|-----|----------------------------------------------|
| 500 | Value of Remainder as Part of Whole Property |
|-----|----------------------------------------------|

PREMISES OF THE APPRAISAL - THE REMAINDER VALUATION

| | |
|-----|---------------------------------------------------------|
| 640 | Purpose of Appraisal of Remainder after the Acquisition |
| 680 | Appraisal Problem |

PRESENTATION OF DATA - THE REMAINDER

| | |
|-----|----------------------------------------------|
| 730 | Description of Remainder Uncured |
| 740 | Zoning, Land Use Plan, Concurrency |
| 750 | Proposed Transportation Facility Description |
| 775 | Effect of Acquisition on Remainder Uncured |

ANALYSIS OF DATA AND CONCLUSIONS - THE REMAINDER

| | |
|-----|-------------------------------------------------------------|
| 800 | Highest and Best Use |
| 802 | Highest and Best Use Conclusion |
| 805 | Approaches to Value Used and Excluded |
| 810 | Land Valuation |
| 815 | The Cost Approach |
| 820 | Building Cost Estimate |
| 825 | Accrued Depreciation Estimate |
| 830 | Indicated Value by Cost Approach |
| 835 | The Sales Comparison Approach |
| 840 | Collection of Comparable Sales |
| 845 | The Sales Adjustment Grid |
| 850 | Analyses of Comparable Sales and Explanation of Adjustments |
| 855 | Indicated Value by the Sales Comparison Approach |
| 860 | The Income Capitalization Approach |
| 865 | Gross Rent Estimate |
| 870 | Vacancy and Collection Loss |
| 875 | Expense and Net Operating Income Estimates |
| 880 | Capitalization Rate |
| 885 | Indicated Value by the Income Capitalization Approach |
| 890 | Reconciliation Value Indications and Final Value Estimate |
| 900 | Support for Damages/No Damages to the Remainder |
| 910 | Cost to Cure Damages |
| 920 | Special Benefits |
| 995 | Summary of Values |

ADDENDA

Section 5.1

DONATION OF RIGHT OF WAY

TABLE OF CONTENTS

PURPOSE.....5-1-1

AUTHORITY5-1-1

SCOPE.....5-1-1

REFERENCES.....5-1-1

FORMS5-1-1

5.1.1 Donations from Government Agencies5-1-1

5.1.2 Department May Accept Donations5-1-1

5.1.3 Conditions for Acceptance5-1-2

HISTORY5-1-2

Section 5.1

DONATION OF RIGHT OF WAY

PURPOSE

The purpose of this section is to provide the Department of Public Works Office of Right of Way (Department) guidelines for acquisition by donation.

AUTHORITY

49, Code of Federal Regulations, Part 24.102
21 GCA §29101 titles to Real Estate
21 GCA §21149 Transfer by Registered Owner
21 GCA §29153 Forms of Deeds, Mortgages, Leases and Other Instruments
21 GCA § 4102 Form of grant

SCOPE

This section will be used by Department of Public Works Office of Right of Way staff and those persons contracted by the Department to perform acquisition functions. .

REFERENCES

Section 2.1, Land Title
Section 5.2, Negotiation Process
Section 5.12, Guam Territorial income Tax Reporting Requirements
Section 8.1, Inventory of Properties Acquired Through the Right of Way Process

FORMS

5.1-1 Donation of Real Property
5.1-2 Donation Deed

5.1.1 Donations from Government Agencies

This section is not applicable to right of way acquired from Federal or other Territorial governmental agencies.

5.1.2 Department May Accept Donations

In accordance with **21 GCA § 4102**, the Department may accept donations (grants) of any land, buildings or other improvements, including personal property. To the extent possible, sites which have been designated as Superfund sites or which are proposed for such designation should not be accepted, either in part or in whole as described in **Section 3.1.3.1**

5.1.3 Conditions for Acceptance

5.1.3.1 Prior to accepting a donation of property, the Department must advise the owner that he/she has the right to receive just compensation for the property being donated and reimbursement of any incidental costs associated with the transfer of the property. The Department must obtain a completed **Form 5.1-1, Donation of Real Property**, from the property owner prior to accepting a donation.

5.1.3.2 The Department is responsible for obtaining an appraisal of the donated property unless the owner releases the Department from this obligation in writing. If the owner requests an appraisal, the appraisal must be prepared by a qualified fee appraiser of which the Department is not the sole client.

5.1.3.3 The acceptable quality and quantity of title for donated real property must be as described in **Section 2.1, Land Title**.

HISTORY

Original Issue January, 2011

Revision 1 – October 2017 – No changes to this section



DPW Form 5.1-1

**AGREEMENT CONCERNING THE DONATION OF PROPERTY
TO THE GOVERNMENT OF GUAM, THROUGH THE DEPARTMENT OF PUBLIC WORKS**

TERRITORY OF GUAM §
§
ROADWAY NO. §

THIS AGREEMENT is made by and between the Government of Guam, acting by and through the Department of Public Works, hereinafter called the "Department", and _____, hereinafter called the "Donor".

WHEREAS, the Department, may accept donations for the purpose of carrying out its functions and duties; and

WHEREAS, the Donor desires to donate property more particularly described on Exhibit "A", attached hereto and incorporated herein for all purposes (the "Property"), to the Department; and

WHEREAS, acceptance of the donation of the Property will further the Department's ability to meet its responsibilities; and

CHECK ONE OF THE FOLLOWING:

WHEREAS, the Donor is not subject to Department regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment, or claim with or against the Department; and

If the preceding was not checked because the donor is subject to Department regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment or claim with or against the Department, but the following is correct, then check the following.

WHEREAS, although the Donor may be subject to Department regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment, or claim with or against the Department, acceptance of the donation will provide a significant public benefit and will not influence or reasonably appear to influence the Department in the performance of its duties:

NOW, THEREFORE, in consideration of the agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

Article 1. Donation and Use Thereof

A. The Donor has executed a Donation Deed, a copy of which is attached hereto as Exhibit B, conveying the Property to the Department. Although the Donor has given physical possession of the executed deed to the Department, Donor and the Department agree that deliverance of the deed has not occurred, and the Department has not accepted actual deliverance of the deed sufficient for title to pass. The Department hereby agrees to accept deliverance of such deed after either the Director Department of Public Works or his/her designee (for donations valued at less than \$500.00) or the Attorney Generals Office (for donations of \$500 or more) has approved Donor's donation of the Property, at which time title shall pass upon the Department's execution of this Agreement.

- B. The value of the Property donated **{choose one}**
- As determined by an appraisal prepared by _____ is \$ _____.
- OR**
- Has not been determined. Donor does not want an appraisal of the Property to be conducted, and Donor releases the Department from any obligation to appraise the Property.
- C. Donor agrees and acknowledges that Donor has been fully informed of his/her/its right to receive just compensation for the Property; however, it is the desire and intent of Donor to donate the Property to the Department.
- D. Acceptance of the donation herein described does not bind the Department to a course of action or promise of performance.

Article 2. Representations and Warranties

- A. The Donor represents and warrants that it has the ownership interest being conveyed in the attached deed.
- B. The Department does not approve and is not responsible for any representations made by the Donor for tax purposes.
- C. Donor represents and warrants to the Department that Donor has no knowledge of any current or former use, generation, storage or disposal of any hazardous material on or under the Property currently or previously in violation of any Federal or Territory of Guam governmental law or rule. Additionally, Donor represents and warrants to the Department that Donor has no knowledge of the Property being used for a gas station, auto shop, or dry cleaning service, and has no knowledge of the presence of asbestos material on the Property. Donor has not received any notice of any action or proceeding relating to any hazardous materials or any release thereof on the Property.

Article 3. Relocation, Incidental Expenses, Relationship between Donor and Department

- A. After the acceptance of the delivery of the deed and execution of this Agreement by the Department, Donor will be reimbursed for any fair and reasonable incidental expenses necessarily incurred in transferring title to the Property for use by the Department. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the real property to the Department; and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the Property. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. Donor may file a written request for review if Donor believes that the Department failed to properly determine the eligibility for or the amount of incidental expenses to be reimbursed. There is no standard form on which to request a review of a claim; however, the claim must be filed with the Department within six months after Donor was notified of the Department's determination on any claim for reimbursement.
- B. Donor acknowledges receipt of the brochure entitled "*Relocation Assistance*" and understands that relocation assistance benefits, if any, are handled entirely separate from and in addition to this transaction. Relocation benefits, if any, will be examined on a case by case basis, and will be specifically set forth in a separate agreement.
- C. There is no official relationship between the Donor and the Department. The Donor is a property owner desiring to donate Property to the Department for no benefit or gain to the Donor.
- D. This Agreement and the donation deed constitute the only promises, consideration and conditions of this conveyance, and no other promises, consideration or conditions have been signified or implied, except any benefits which Donor may or may not be entitled under the Territory of Guam Relocation Assistance Program.
- E. The Territory of Guam, without cost to the Donor, will pay the cost of recording all instruments conveying title to the Territory, and the Territory may, but is not obligated to, purchase an owner's title policy at the Territory of Guam's expense.

Article 4. Availability of Information

This agreement is public information and will be furnished to a requestor under the Public Information Act.

DEPARTMENT OF PUBLIC WORKS

By: _____

Title: _____

Date: _____

DONOR

The undersigned signatory warrants that he/she is an official representative of the owner/organization making the donation described herein and that he/she is authorized to make the donation and to enter into this Agreement on behalf of the owner/organization. The undersigned understands and agrees that the conveyance of the Property does not occur until the Department has executed this Agreement, and has thereby accepted deliverance of the deed.

By: _____

Printed name _____

Date: _____

Principal Address or Place of Business/Address:



DPW Form 5.1-2/Donation Deed

DONATION DEED

TERRITORY OF GUAM

§
§
§

That, _____ of the Territory of Guam, hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of One Dollar (\$1.00) to Grantors in hand paid by _____, Territory of Guam, receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied, have this day Donated and by these presents do Grant, Give and Convey unto the Government of Guam all that certain tract or parcel of land lying and being situated in the Territory of Guam, more particularly described in Exhibit "A," which is attached hereto and incorporated herein for any and all purposes.

SAVE and EXCEPT, HOWEVER, it is expressly understood and agreed that Grantors are retaining title to the following improvements located on the property described in said Exhibit "A" to wit: NONE.

Grantors covenant and agree to remove the above-described improvements from said land by the _____ day of _____, _____, subject, however, to such extensions of time as may be granted by Grantee, its successor and assigns, in writing; and if, for any reason, Grantors fail or refuse to remove same within said period of time prescribed, then, without any further consideration, the title to all or any part of such improvements not so removed shall pass to and vest in the Grantee, its successors and assigns, forever.

Grantors reserve all of the mineral rights in and under the land herein conveyed but waive all rights of ingress and egress to the surface thereof for the purpose of exploring, developing, mining or drilling for same; however, nothing in this reservation shall affect the title and rights of the Grantee, its successors and assigns, to take and use all other minerals and materials thereon, therein and there under.

TO HAVE AND TO HOLD the premises herein described and herein conveyed together with all and singular the rights and appurtenances thereto in any wise belonging unto _____, Territory of Guam, and its assigns forever; and Grantors do hereby bind ourselves, our heirs, executors, administrators, successors and assigns to Warrant and Forever Defend all and singular the said premises herein conveyed unto _____, Territory of Guam, and its assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of _____, _____.

ATTEST:

_____ By: _____

Acknowledgement

Territory of Guam

This instrument was acknowledged before me on _____

By: _____

Notary Public's Signature

[SEAL]

Corporate Acknowledgment

Territory of Guam

This instrument was acknowledged before me on _____

By: _____

_____,

Of _____, a _____

Corporation, on behalf of said corporation.

Notary Public's Signature

[SEAL]

Section 5.2

NEGOTIATION PROCESS

TABLE OF CONTENTS

PURPOSE 5-2-1

AUTHORITY 5-2-1

SCOPE 5-2-1

REFERENCES 5-2-1

FORMS 5-2-1

ATTACHMENTS 5-2-1

DEFINITIONS 5-2-2

5.2.1 Authorized Project 5-2-2

5.2.2 Agent’s Price Estimate 5-2-2

5.2.3 Notification to Real Property Owners 5-2-3

5.2.4 Condominium Notices 5-2-4

5.2.5 Property Owner/Business Owner Requests for Records 5-2-4

5.2.6 Binding Offers for the Purchase of Real Property 5-2-5

5.2.7 Delivery of Initial Binding Offers 5-2-5

5.2.8 Form and Content of Binding Offers 5-2-6

5.2.9 Conditional Offers for the Purchase of Real Property 5-2-6

5.2.10 Offers for Tenant-Owned Improvements 5-2-6

5.2.11 Uneconomic Remnants 5-2-6

5.2.12 Minimum Offers 5-2-7

5.2.13 Negotiations for Purchase of Real Property 5-2-7

5.2.14 Representative Authorization 5-2-7

5.2.15 Acquisition of an Entire Property 5-2-7

5.2.16 Purchase of an Entire Improvement 5-2-8

| | |
|----------------------------------------------------------------------------------|--------|
| 5.2.17 Non-Court Ordered Mediation | 5-2-8 |
| 5.2.18 Binding Agreements | 5-2-8 |
| 5.2.19 Threat of Condemnation..... | 5-2-8 |
| 5.2.20 Execution of Agreements by Less than All Landowners | 5-2-9 |
| 5.2.21 Clarifying Language Added To Agreements | 5-2-9 |
| 5.2.22 All-Inclusive Settlements | 5-2-9 |
| 5.2.23 Non-Monetary Negotiable Items..... | 5-2-10 |
| 5.2.24 Owner Retention of Improvements..... | 5-2-10 |
| 5.2.25 Holdback Warrant..... | 5-2-10 |
| 5.2.26 Inclusion of Relocation Assistance Benefits in Negotiated Agreements..... | 5-2-11 |
| 5.2.27 Administrative Settlements..... | 5-2-11 |
| 5.2.28 Settlement Approvals | 5-2-12 |
| 5.2.29 Protective Leasing..... | 5-2-13 |
| 5.2.30 Final Agency Acceptance..... | 5-2-13 |
| HISTORY..... | 5-2-14 |

Section 5.2

NEGOTIATION PROCESS

PURPOSE

To set forth procedures, requirements and standards for the negotiation process from project authorization through completion of the purchase agreement or the decision to place a parcel in suit for the Department of Public Works Office of Right of Way, hereinafter referred to as the Department.

AUTHORITY

23, CFR, Part 710
49, CFR, Part 24

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition and negotiation functions.

REFERENCES

Uniform Standards of Professional Appraisal Practice (USPAP)
Review Appraiser's Statement (RAS)
Section 3.1, Contaminated Parcels
Section 4.1, Appraisal and Appraisal Review
Section 5.4, Fees and Costs
Section 5.5, Legal Documents and Land Acquisition Closing
Section 5.11, Acquisition via Exchange
Section 7.2, General Relocation Requirements
Section 8.1, Inventory of Properties Acquired Through the Right of Way Process,
Section 8.2, Right of Way Clearing

FORMS

5.2-1 Notice to Owner
5.2-1BO Notice to Business Owner
5.2-2 Offer and Purchase Agreement
5.2-3 Representative Authorization
5.2-4 Settlement Approval
5.2-5 Right of Entry Agreement
5.2-6 Release and Right of Entry Agreement for Asbestos Survey
5.2-7 Closing Statement
5.2-8 Property Inventory

ATTACHMENTS

The Federal Highway Administration (FHWA) brochure titled **Acquiring Real Property for Federal and Federal-Aid Programs and Projects** also known as the **Acquisition Brochure** is included at the end of this Section of the Manual. This document is provided to property owners at the notification stage described in Section 5.2.3. The FHWA web site should be checked for any updates to this brochure. The FHWA web site can be accessed at <http://www.fhwa.dot.gov/realestate/>

DEFINITIONS

Administrative Settlement: An agreement to pay an amount in excess of just and full compensation or an amount greater than the Department's initial business damage counteroffer, exclusive of fees and costs, which is closed prior to finalizing an Declaration of Taking by a court deposit.

Agent's Price Estimate: An estimate by a Department Agent of the amount of just and full compensation for parcels determined by the Department of Public Works Right of Way Supervisor (DPWRS) to be noncomplex parcels with a value of \$25,000 or less.

Binding Agreement: A binding agreement will be either (1) an agreement equal to the Department's last approved just and full compensation offer, exclusive of fees and costs with no added terms or conditions, executed by the landowner as Seller and the Department or designee as Buyer or (2) an agreement that includes an administrative increase, fees, costs, business damages, or other terms or conditions not considered in the Department's last approved just and full compensation offer, executed by the landowner as Seller and the Department or designee as buyer.

Binding Offer: A binding offer is a formal written offer by the Department to a landowner for the purchase of his/her property that is binding on the Department and is available to the landowner to accept until formally withdrawn in writing or superseded by a higher formal written offer from the Department.

Conditional Offer: Conditional offers are offers made during negotiations that modify the terms or conditions of the Department's latest binding offer.

Fees and Costs: **Fees and Costs:** Reasonable costs the owner incurred due to a condemnation proceeding in accordance with **Section 5.4, Fees and Costs**.

Just and Full Compensation: For the purposes of this section, just and full compensation will be the recommended compensation established by the review appraiser in the Review Appraiser Statement (RAS); or the amount of the authorized Agent's Price Estimate; or the amount established by the DPWRS where the DPWRS, with approval from DDPW and DPWHA, determines that the recommended compensation does not provide just and full compensation. Just and full compensation is exclusive of attorney fees and costs.

5.2.1 Authorized Project

The acquisition of rights of way must be authorized by the Director of the Department of Public Works pursuant to a project resolution prepared and executed, Legislation, or otherwise authorized in writing by the Director of the Department of Public Works.

5.2.2 Agent's Price Estimate

5.2.2.1 At the discretion of the DPWRS, a Department Right of Way Agent may prepare an Agent's Price Estimate for noncomplex parcels having a value not to exceed \$25,000 as set forth in **Section 4.1, Appraisal and Appraisal Review**. For those parcels where the Agent's Price Estimate exceeds \$10,000, the land owner must be given the option of having the Department appraise the property rather than having the property valued by Agent's Price Estimate. If the landowner elects to have the Department prepare an appraisal, the Department shall obtain an appraisal to establish just and full compensation. The Departments official parcel file must be documented showing the landowner was advised of his/her right to have an appraisal prepared and of the landowner's election.

5.2.2.2 The Department Right of Way Agent shall analyze available, relevant market data prior to preparing the Agent's Price Estimate. Changes in the amount established as just and full compensation through Agent's Price Estimates must be supported by market data.

5.2.2.3 An Agent's Price Estimate must include all takings from the parent tract. For example, if there is a fee acquisition and temporary and permanent easements from a single tract, the value of all three interests combined must

not exceed \$25,000.

5.2.2.4 The DPWRS, DPWHA and DDPW must authorize the Agent's Price Estimate for negotiations. Each Agent's Price Estimate must include: "Agent's Price Estimate Authorized for Negotiation" with a signature line and date for the authorizing official.

5.2.2.5 The Department Right of Way Agent who prepares the Agent's Price Estimate may be permitted to negotiate the acquisition of the parcel.

5.2.2.6 An appraisal must be prepared when:

- (A) The landowner elects to have the Department prepare an appraisal pursuant to **Section 5.2.2.1**;
- (B) The Agent's Price Estimate will exceed \$25,000;
- (C) A proposed administrative settlement is greater than the limits established in **Section 5.2.2.7**, or
- (D) The parcel cannot be settled by negotiation, in which case an appraisal must be prepared prior to submittal of condemnation information.

5.2.2.7 The following limitations apply to administrative settlements affecting parcels valued by Agent's Price Estimate:

- (A) For parcels with Agent Price Estimates up to \$25,000, the total settlement amount shall not exceed as following:
 - 1) DPW Right of Way Acquisition Supervisor: The maximum value for an Administrative Adjustment shall be limited to 10% of the Fair Market Value (FMV), NTE \$15,000.
 - 2) DPW Highways Administrator: The maximum value for an Administrative Adjustment shall be limited to 20% of the FMV, NTE \$50,000.
 - 3) For Administrative Adjustments over \$50,000, approval by the FHWA Administrator is required.
- (B) DPWRS shall prepare a written justification including all pertinent information that leads up to the administrative settlement amount. The written justification has to be reviewed and approved by DPWHA and DDPW.
- (C) Where there are multiple takings such as, fee or temporary and/or perpetual easements from a single parent tract, the above limits apply to the combined value of all interests being acquired.

5.2.3 Notification to Real Property Owners

5.2.3.1 The Department will notify each fee owner of property needed for a project of his/her rights. The FHWA acquisition brochure included as an attachment to the this Section of the Manual should be provided to the property owner.

5.2.3.2 Notices to property owners may be delivered simultaneously with or at any time prior to delivery of the initial binding offer. Notices should be delivered at or before the time the Department gives notice to proceed to its fee appraisers or alternatively assigns staff to appraise or prepare an Agent's Price Estimate. The offer shall not be delivered prior to the notice.

5.2.3.3 The Department shall deliver property owner notices either personally or by certified mail, return receipt requested. Notices delivered by certified mail will be delivered to the owner's last known address listed on the tax roll. Notice to one owner of a multiple ownership parcel constitutes notice to all owners of the property. If the notice is delivered by certified mail, the return of the notice as undeliverable by postal authorities will constitute compliance with this section.

5.2.3.4 Property owner notices will be prepared using **Form No. 5.2-1, Notice to Owner**. The form should be used for notices sent prior to the offer or for notices sent simultaneously with the offer. Enclosures shall include a copy of the **Real Estate Acquisition Process Brochure** (FHWA Sample Brochure included at the end of this Section of the Manual), a legal description, and/or right of way map delineating the parcel, and a self-addressed stamped envelope.

5.2.3.5 If the ownership of the property changes after delivery of the **Notice to Owner**, but prior to an offer being made, the Department will provide a new **Notice to Owner**.

5.2.3.6 The Department will deliver the **Notice to Owner** directly to the property owner, not to a representative of the owner. The **Notice to Owner** is the official notice of the property owner's rights and responsibilities. The delivery date constitutes the date of official notice.

5.2.3.7 Notification is not required when acquiring property from Federal or Territorial agencies. See **Section 5.10, Acquisition of Rights of Way from Governmental Agencies**, for guidance.

5.2.3.8 The Department will notify property owners in writing when changes occur to the legal description, construction plans, or right of way maps which materially affect the owner's property such as, size of the taking, parcel boundaries, or relationship of the parcel to the project.

5.2.4 Condominium Notices

5.2.4.1 When portions of the common elements of a condominium are to be acquired, the Department shall notify all condominium unit owners that the condominium association has the authority to represent unit owners during the acquisition process and to convey the common elements of the condominium unless the unit owner objects. The notice shall be delivered by certified mail to all condominium unit owners on the current list obtained from the condominium association or the taxing authority. The timing of the delivery of this notice is at the DPWRS discretion. The notification shall contain:

- (A) The name and address of the DPW right of way office;
- (B) A written description of the property;
- (C) The public purpose for which the property is needed;
- (D) The appraised value of the property to be acquired;
- (E) A statement relating to the owner's right to object to the taking or appraised value, and/or object to the procedures and the effects of exercising those rights; and
- (F) A statement relating to the power of the association to convey the property on behalf of the condominium unit owner if no objection to the taking or appraised value is raised and the effects of this alternative on the unit owners.

5.2.4.2 Each condominium unit owner must be allowed **30 days** to respond from the date of their receipt of the notice. The Department shall negotiate with the condominium association and all unit owners who objected within the 30 days.

5.2.5 Property Owner/Business Owner Requests for Records

5.2.5.1 When requested by a property owner/business owner, or his/her authorized representative, the Department shall provide the approved appraisal, agent's price estimate, or other documentation on which the Department's offer is based. The RAS may be provided at the discretion of the DPWRS. If the property owner requests a copy of an appraisal prior to delivery of the binding offer described in **Section 5.2.6.1**, the property owner must be notified within **15 business days** after receipt of the request that a determination of the amount of the Department's offer has not been made. The property owner must be given an approximate date the offer will be made and that they will be provided a

copy of the appraisal on which the offer is based at that time.

5.2.5.2 If requested by the property or business owner, the Department shall provide copies of right of way maps and other documents depicting the proposed acquisition, and copies of construction plans showing the improvements to be constructed on the property being acquired, and any improvements to be constructed adjacent to remainder properties. The portions of the construction plans to be provided must include, but are not limited to, plan, profile, cross-section, drainage, pavement marking sheets, and driveway connection detail. Copies of right of way maps and construction plans must be provided to the extent they are prepared at the time of the property owner's request. Copies should be marked as to their status at the time they are provided. For example, if at the time of the owner's request, the right of way maps have been approved, they are complete maps and do not require any notations as to their status. If the maps have not been approved at the time they are provided to a property owner, the maps should be marked "preliminary and subject to change." The same approach should be used for construction plans.

5.2.5.3 Copies of the materials described in **Sections 5.2.5.1** and **5.2.5.2** must be provided free of charge to the property owner, business owner, or their authorized representative within **15 business days** after receipt of the request. If any of the requested materials are unavailable at the time of the request, the requestor must be notified in writing that the materials are not presently available and give the date the materials are expected to be available. This notification must be provided within **15 business days** after the Department receives the property/business owner's request. All materials provided as a result of the request must be accompanied by a written transmittal, a copy of which must be retained in the Department's official parcel file.

5.2.6 Binding Offers for the Purchase of Real Property

5.2.6.1 The Department shall provide the landowner a non-conditional binding offer to purchase his/her property in an amount not less than the Department's established just and full compensation. A subsequent binding offer shall be made to the landowner if the amount of just and full compensation changes so as to exceed the previous binding offer. Binding offers shall be available for the landowner to accept for **30 days**, until withdrawn in writing or superseded by a higher binding offer from the Department.

7.2.6.2 If the Department determines that it cannot honor a previously delivered binding offer, the offer must be formally withdrawn in writing. Examples of situations that may require the formal withdrawal of a binding offer are: reduction in the established just and full compensation due to changes in the valuation problem; substantive design changes; voiding of the parcel; or cancellation of the project. If the landowner accepts a binding offer prior to its being withdrawn, the Department shall honor the offer, enter into a purchase agreement and close the agreement.

5.2.6.3 Subsequent to a binding offer in the amount of established just and full compensation, the Department may, at the discretion of the DPWRS and with approval from DPWHA and DDPW, make another binding offer in an amount higher than the established just and full compensation. This is provided the higher amount can be justified as an administrative or legal settlement. Subsequent binding offers shall be available for the landowner to accept for **30 days** or until withdrawn in writing by the Department.

5.2.6.4 If the Department withdraws its binding offer and will not make a new offer for **120 days** or more, the Department shall pay reasonable attorney's fees and costs incurred by the landowner, which were resulting from the previous binding offer and its withdrawal as described in **Section 5.4**.

5.2.7 Delivery of Initial Binding Offers

5.2.7.1 The Department shall deliver the initial binding offer directly to the property owner. If the owner has authorized a representative, the Department should provide the representative with confirmation of the offer. If the owner desires, the representative may be present when the offer is delivered.

5.2.7.2 The Department must obtain a written acknowledgement of the property owner's receipt of the offer.

5.2.7.3 The initial binding offer should be delivered in person, if possible. However, when personal delivery is not

practical, the offer may be delivered via certified mail, return receipt requested. For offers delivered in person, the actual delivery date of the offer shall be the date of initiation of negotiations. For offers delivered by certified mail, the date of the initiation of negotiations shall be the date of delivery as shown on the return receipt. If no received date is entered on the receipt, the date the receipt is received in the Department office shall be the date of initiation of negotiations.

5.2.8 Form and Content of Binding Offers

Binding offers shall be prepared using **Form No. 5.2-2, Offer and Purchase Agreement**. The following information must be included when preparing binding offers:

- (A) Separate amounts for land, improvements, real estate damages/cost to cure, and property owner fees and costs as appropriate;
- (B) A description of the real property and the interest in the real property to be acquired;
- (C) An identification of the buildings, structures, and other improvements, including building equipment and trade fixtures, or items of personal property, if any, that are included in the offer ; and
- (D) If appropriate, an identification of any separately held ownership in the property, such as a tenant-owned improvement for which separate offers will be made.

5.2.9 Conditional Offers for the Purchase of Real Property

Conditional offers are offers made during negotiations that modify the terms or conditions of the Department's latest binding offer. Conditional offers are contingent on acceptance by the DPWRS and the DPWHA and DDPW. Conditional offers must clearly indicate all terms and conditions of the offer, be presented to the DPWRS or designee on **Form No. 5.2-2, Offer and Purchase Agreement**, and signed by the landowner as Seller.

5.2.10 Offers for Tenant-Owned Improvements

5.2.10.1 The Department must make a separate offer and negotiate for tenant owned improvements directly with the tenant provided the Department documents that the property owner claims no interest in the improvement. Documentation may be either a disclaimer of interest in the improvement signed by the property owner or a copy of a binding lease agreement between the property owner and the tenant that clearly indicates the improvement is the sole property of the tenant.

5.2.10.2 The Department shall not make a separate offer to the tenant if the property owner claims an interest in the improvement or if a dispute arises as to ownership of the improvement.

5.2.10.3 Leasehold interest value, if any, may be included in the offer for tenant-owned improvements.

5.2.10.4 The Department may settle a tenant-owned interest apart from the real property provided no duplication of compensation is made. It is recommended that all real property interests be settled at the same time.

5.2.11 Uneconomic Remnants

5.2.11.1 If a partial acquisition will leave the landowner with an uneconomic remnant, the Department shall initially make two binding offers to the property owner. One offer will include the uneconomic remnant; the other will not.

5.2.11.2 Offers that include an uneconomic remnant contaminated with hazardous materials must be contingent on the owner accepting responsibility for environmental remediation of the remnant. However, where the remediation cost for the remnant cannot be distinguished from the remediation costs for the required right of way, the offer can be made without this contingency.

5.2.11.3 Parcels with uneconomic remnants may be acquired either through voluntary negotiated settlements or

through stipulated final judgments. The uneconomic remnant may not be acquired by condemnation.

5.2.11.4 The negotiator must notify the DPWRS when an agreement is reached to purchase an uneconomic remnant. New deeds and right of way maps reflecting the change in the area being acquired must be prepared. The Attorney Generals Office (AGO) shall be copied on the notification.

5.2.12 Minimum Offers

The DPWRS may establish a Department wide minimum offer of up to \$500 per parent tract.

5.2.13 Negotiations for Purchase of Real Property

The Department shall negotiate expeditiously and in good faith with the owner of property being acquired or his/her representative. Property owners must be given at least **30 days** from the date they receive the Department's initial binding offer as described in **Sections 5.2.6** and **5.2.7** to respond to the offer before the Department files a condemnation suit. In the event the offer is made by mail and the offer is returned as undeliverable by the postal authorities, the **30 days** will begin on the date the offer is returned as undeliverable. The Department shall not file an eminent domain action prior to expiration of the **30 day** period unless the **30 days** are waived by the property owner in writing.

5.2.14 Representative Authorization

5.2.14.1 The Department shall negotiate with a property owner's properly authorized representative. Property owners may authorize a representative by providing the Department a written notification naming a representative and requesting the Department deal primarily with that representative. The representative must also agree in writing to represent the owner. **Form 5.2-3, Representative Authorization**, should be used to appoint a representative.

5.2.14.2 In order for an attorney to accept legal service on behalf of a property owner, the attorney should be a member of the Guam Bar, the property owner must notify the Department in writing that he/she wishes the attorney to accept service of process on his/her behalf and the attorney must agree in writing to accept service of process on behalf of the property owner.

5.2.14.3 In order for a representative who is not a member of the Guam Bar to accept service of process for a property owner the property owner must provide the Department a notarized letter or affidavit stating that he/she wishes the representative to accept service of process on his/her behalf and that the owner is aware that the representative is not a member of the Guam Bar. The representative must provide a notarized letter or affidavit agreeing to accept service on behalf of the property owner.

5.2.14.4 With the exception of the initial contact and offer, the Department will, to the greatest extent possible, conduct all negotiations through the authorized representative. However, if the representative is unresponsive, non-communicative, or otherwise un-cooperative, the negotiator shall advise the owner of the attempts made to contact the representative and attempt to negotiate with the property owner. A contact of this nature shall not be made by an AGO attorney representing the Department.

5.2.14.5 Property owners who have authorized a representative may in some cases wish to negotiate with the Department directly. The Department will negotiate with the owner. However, the Department will not initiate direct negotiations with the owner except as specified in **Section 5.2.14.4**. The Department should obtain a letter from the owner modifying the representative authorization. In all cases the Department shall document the Department's official parcel file as to the owner's decision.

5.2.15 Acquisition of an Entire Property

5.2.15.1 The Department may acquire an entire property as a voluntary transaction where only a partial take is needed for the project and the remainder is not an uneconomic remnant. The portion not needed for the project cannot be condemned. Acquisition of an entire property as described in this section must be in the best interest of the public and

must be justified on **Form No. 5.2-4, Settlement Approval**.

5.2.15.2 When deciding to acquire an entire property, the Department must consider the potential for environmental contamination including potential liabilities and the cost of cleanup of that portion of the property not needed for construction of the project. The requirements of **Section 3.1, Contaminated Parcels**, must be followed.

5.2.15.3 The DPWRS must be notified in writing of all changes affecting the amount of land being acquired. Revised right of way maps, legal descriptions, and conveyance documents must be prepared. The Department of Land Management (DLM) must also be notified of all changes affecting the area being acquired.

5.2.16 Purchase of an Entire Improvement

The Department may acquire an improvement located in whole or part on an owner's remainder property if the acquisition of the improvement is in the best interest of the public. The acquisition must be justified on **Form No. 5.2-4, Settlement Approval**. The owner must provide **Form No. 5.2-5, Right of Entry Agreement** and **Form No. 5.2-6, Release and Right of Entry Agreement for Asbestos Survey**, to allow the improvement to be removed and to allow asbestos surveys.

5.2.17 Non-Court Ordered Mediation

5.2.17.1 With the approval by the DPWHA and DDPW, the DPWRS may elect to use non-court ordered mediation, with concurrence of the landowner, to facilitate an agreement as to real estate and business damage compensation claims. The mediation may be held after the eminent domain action is filed.

5.2.17.2 Agreements reached as a result of non-court ordered mediation shall be subject to the requirements and approvals described in **Section 5.2.18, Section 5.2.28**, and **Section 5.2.29**. The agreement must incorporate by reference the right of way maps, construction plans, and/or other documents related to the parcel which is the subject of the agreement. Both the Department and the property owner will be bound by the written agreement as though the parcel had been acquired through eminent domain, with the maps, plans, and other documents being made part of the record.

5.2.18 Binding Agreements

5.2.18.1 Binding offers equal to the Department's last approved just and full compensation, exclusive of fees and costs with no added terms or conditions, become binding agreements when **Form 5.2-2, Offer and Purchase Agreement**, is signed by the Department's agent and the landowner and a copy of the agreement has been delivered to both parties.

5.2.18.2 Offers that include administrative settlements, fees, costs, business damages, or valuable consideration not included in approved just and full compensation, shall become binding agreements when: **Form No. 5.2-2, Offer and Purchase Agreement** is executed by the landowner, the DPWRS, DPWHA and DDPW, and a copy of the agreement has been delivered to both parties.

5.2.18.3 Except as described in **Section 5.2.18.4**, administrative settlements must be approved by the DPWRS, the DPWHA and DDPW, as described in **Section 5.2.29. The DPWRS, the DPWHA and DDPW must do this prior to the execution of Form No. 5.2-2, Offer and Purchase Agreement**.

5.2.18.4 With approval from the DPWHS and DDPW, the DPWRS or designee may negotiate and commit to binding agreements, subject to the limits in **Section 5.2.29.2**, prior to preparation and approval of **Form No. 5.2-4, Settlement Approval**. The **Settlement Approval** must be completed and approved within **ten business days** after the date of the binding agreement.

5.2.19 Threat of Condemnation

Generally, all acquisitions by the Department including advance acquisitions are under threat of condemnation where the Department has authority to acquire the parcel in question by condemnation. If property is being acquired without

threat of condemnation, the negotiating agent must strike through **Section III (e) of Form 5.2-2 Offer and Purchase Agreement**. Language similar to the following must be written or typed in **Section III of Form No. 5.2-2, Offer and Purchase Agreement**: "It is mutually understood that this property is not being acquired under threat of condemnation."

5.2.20 Execution of Agreements by Less than All Landowners

Binding Agreements must be executed by the landowner or the landowner's authorized attorney. In situations where all landowners are not available to sign the Binding Agreement, execution of the agreement by at least one landowner or the landowner's authorized attorney as seller is acceptable if:

- (A) The negotiator knows that all landowners agree with the terms and conditions of the purchase; and
- (B) The purchase is under threat of condemnation; and
- (C) There are no obligations contained in the agreement that bind the landowners after the date of closing.

5.2.21 Clarifying Language Added To Agreements

5.2.21.1 At the discretion of the DPWRS, with approval by the DPWHA and DDPW, language similar to the following may be inserted in **Form No. 5.2-2, Offer and Purchase Agreement**:

- (A) When there are no known or anticipated fees, costs, or business damage claims – "Buyer and Seller agree there are no fees, costs, or business damage claims associated with this agreement."
- (B) When all fees, costs, or business damage claims are reflected on the purchase agreement and no additional claims are anticipated – "Buyer and Seller agree all fees, costs, or business damage claims associated with this agreement are identified in this agreement."
- (C) When there are outstanding fees, costs, or business damage claims which are not reflected on the purchase agreement but will be handled on a separate supplemental purchase agreement – "Buyer and Seller agree the fees, costs, or business damage claims associated with this agreement will be handled on a separate supplemental purchase agreement."
- (D) When there is an all-inclusive settlement, which includes fees, costs, or business damages, and the actual or estimated amounts are not itemized on the purchase agreement – "Buyer and Seller agree all fees, costs, or business damage claims are included in this purchase agreement."

5.2.21.2 The Department should modify the above language to remove the business damage element for those parcels where there is no business damage claim.

5.2.22 All-Inclusive Settlements

5.2.22.1 It is often beneficial to enter into an all-inclusive settlement that includes all property owner fees and costs. This type of settlement does not detail on **Form No. 5.2-2, Offer and Purchase Agreement**, the amounts or purpose for fees and costs, but provides for a lump sum to the property owner. Prior to entering into an agreement for an all-inclusive settlement, the negotiator must analyze the particular parcel, breaking the total settlement into its applicable components, for example, land, improvements, attorney's fees, etc. If actual amounts attributed to each component cannot be documented, the negotiator must estimate a reasonable amount for each appropriate component based on available information for the parcel and known amounts for similar parcels previously settled. This analysis is necessary to determine if the settlement is beneficial to the Department and must be explained in **Form No. 5.2-4, Settlement Approval**.

5.2.22.2 All-inclusive lump sum settlement amounts may be used when completing **Form No. 5.2-2 Offer and Purchase Agreement; Form No. 5.2-7, Closing Statement**, and **IRS Form 1099-S**. An amount, either actual or estimated, must be inserted for each applicable component of the all-inclusive settlement when completing **Form No.**

5.2-4, Settlement Approval.

5.2.23 Non-Monetary Negotiable Items

Non-monetary items, such as median and curb cuts, temporary access, extended possessions, etc., must be made part of the written purchase agreement and must be approved by the DPWRS, DPWHA and DDPW. The specific contractual language to be included in the purchase agreement must be reviewed and approved by the Attorney General's Office.

5.2.24 Owner Retention of Improvements

5.2.24.1 If the property owner or tenant elects to retain improvements or other items listed in the approved appraisal, the salvage value of the retained items will be entered on **Form No. 5.2-2, Offer and Purchase Agreement**. The amount entered will be indicated as a negative number with a notation that this amount reflects the salvage value of the retained improvement(s). The amount entered will be subtracted from the purchase price.

5.2.24.2 If the property owner or tenant is retaining items at no cost, the salvage value of the items will be treated as an administrative increase and must be fully supported in **Form No. 5.2-4, Settlement Approval**. In this event, a notation will be placed in **Form No. 5.2-2, Offer and Purchase Agreement**, indicating that the owner is retaining the improvements for zero (0) consideration.

5.2.24.3 If improvements are to be retained by the property owner or tenant, an addendum must be attached to **Form No. 5.2-2, Offer and Purchase Agreement**, providing:

- (A) A description of the improvement(s) to be retained;
- (B) The date by which the owner of the improvement(s) must remove the improvement(s) from the right of way;
- (C) A statement that if the improvement is not removed on or before the date set forth in **Section 5.2.25.3(B)**, the improvement will be considered abandoned property and will become subject to demolition and removal by the Department;
- (D) A statement that the property owner or tenant agrees to provide **Form No. 5.2-5, Right of Entry Agreement**, at closing if the Department requires access to the remainder property to remove the improvement(s) if not removed by the property owner or tenant;
- (E) A statement regarding the disposition of any holdback warrant if the improvement is not removed by the property owner or the tenant;
- (F) A statement that the retained items are not eligible for relocation benefits, and
- (G) A statement that the provisions of this addendum survive the closing.

5.2.24.4 Items retained by the property owner or tenant must be documented on **Form No. 5.2-10, Property Inventory**, in accordance with **Section 8.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance**.

5.2.25 Holdback Warrant

When a property owner is obligated to conduct activities on a parcel after closing, such as vacate at the conclusion of an extended possession, remove a retained improvement, or reface a building cut as a result of the acquisition, the Department should retain a portion of the total compensation by means of a holdback warrant until the landowner has completed the required activity. The amount retained must be indicated in **Form No. 5.2-2, Offer and Purchase**

Agreement. The DPWRS, with the approval of the DPWHA and DDPW, may determine if a holdback warrant is appropriate as well as the amount and terms for delivery of the holdback warrant.

5.2.26 Inclusion of Relocation Assistance Benefits in Negotiated Agreements

If relocation benefits are included in a negotiated settlement, the Department must comply with all requirements of **Section 7.2, General Relocation Requirements.**

5.2.27 Administrative Settlements

5.2.27.1 Administrative settlements shall be submitted using **Form No. 5.2-4, Settlement Approval.** The DPWRS must provide the written explanation fully describing how the settlement is reasonable, prudent and in the best interest of the public. The extent of the explanation shall depend on the complexity of the settlement and the amount of money involved. Amounts for land, improvements, real estate damages, business damages, fees and costs, etc. must be fully explained.

5.2.27.2 The Department should consider and address the following factors as appropriate when preparing **Form No. 5.2-4, Settlement Approval:**

- (A) **Information Contained in All Available Appraisals and Business Damage Reports, Including those of the Owner:** Consider information in available reports which might create exposure to a higher value being determined at trial.
- (B) **Substantial Differences of Opinion Regarding Valuation Issues:** Consider the impact that a substantial difference of opinion between experts may have on the outcome of litigation; for example, highest and best use of a parcel.
- (C) **Complexity of Severance or Other Issues Leading to Uncertainty in Value:** Identify complex valuation issues, such as severance damages, which may have an unfavorable impact on the litigation outcome.
- (D) **Handling of Legal Issues in Approved Appraisals:** Identify any items in the approved appraisal which are not in accordance with the current assessment of relevant legal issues as interpreted by the Attorney Generals Office.
- (E) **Consideration of Time to Anticipated Title Transfer Date:** Apply a time adjustment to the amount of just and full compensation if appropriate.
- (F) **Credibility of Expert Witnesses:** Identify the strengths and weaknesses of expert witnesses for both the Department and the owner.
- (G) **Likelihood of Jury Sympathy for the Owner:** Analyze intangible items such as an owner's age, health, or public image which might influence a jury.
- (H) **Possibility of Obtaining an Unbiased Jury:** Juries are presumed to be unbiased. However, if a rare set of specific circumstances exists that is expected to create a bias against the Department, this potential bias may be considered a factor in recommending a settlement.
- (I) **Recent Court Awards for Eminent Domain Takings:** Consider recent jury verdicts for similar properties acquired by eminent domain in the same geographic area.
- (J) **Potential Cost of Litigation:** Consider the anticipated cost of supporting the eminent domain action and identify the savings expected to result from avoiding some or all of this cost. The cost of potential litigation refers to any cost that would be incurred in the future if the parcel were not settled; e.g., an estimate of additional cost beyond that already incurred. Potential cost of litigation may be used as the sole criterion for settlement if the amount of the increase on the parcel is \$10,000 or less.

- (K) **Other Relevant Information:** If there is other relevant information that would support a settlement, it should be explained in the written recommendation.

5.2.28 Settlement Approvals

5.2.28.1 Settlement approvals shall be evidenced by the appropriate signatures on **Form No. 5.2-4, Settlement Approval**.

5.2.28.2 With the approval by the DPWHA and DDPW, the DPWRS, or an employee who has been designated by the DPWRS as having general settlement authority included as a responsibility in his/her official position description, may approve:

- (A) Administrative settlements in amounts up to \$15,000 of the Fair Market Value (FMV), excluding fees and costs, with up to a 10% increase over just and full compensation.
- (B) Administrative settlements in amounts up to \$50,000 with up to a 20% increase over just and full compensation has to be approved by DPWHA.

In the absence of the DPWRS and designee, the DPWHA and DDPW may approve administrative settlements. The person who appraised or reviewed the appraisal of the parcel being settled cannot approve the administrative settlement.

5.2.28.3 Administrative settlements from \$50,000 up to \$100,000, excluding fees and costs, with increases exceeding 15% of approved just and full compensation must be approved by the Director of the Department of Public Works (DDPW) in addition to the approval identified in **Section 5.2.29.2**. In the absence of the DDPW, the individual with written signature authority of the DDPW may approve administrative settlements.

5.2.28.4 Administrative settlements exceeding \$100,000, excluding fees and costs, with increases exceeding 15% of just and full compensation must also be approved by the AGO in addition to the approval described in **Section 5.2.29.3**

5.2.28.5 Prior to approval by the DDPW, administrative settlements as described in **Sections 5.2.29.3 and 5.2.29.4** shall be forwarded to the DPWRS and AGO, for review. Documentation for review shall include legible copies of:

- (A) Marked right of way maps outlining the property to be acquired;
- (B) The offer on which the proposed settlement will be based;
- (C) **Form No. 5.2-4, Settlement Approval**, with approvals as described in **Section 5.2.29.2**;
- (D) Right of way agent contact records and correspondence;
- (E) All available Department appraisals, appraisal updates, and owner appraisals;
- (F) All Department business damage reports and review statements as applicable;
- (G) All Department review appraiser statements;
- (H) All available owner business damage claims; and
- (I) Other relevant documentation, court motions, or orders.

5.2.28.6 The DPWRS and AGO shall have **14 calendar days** from the date the settlement proposal and supporting materials are received to review the proposed settlement and provide written comments to the DPWHA and DDPW. If there are time restrictions on the agreement, the review shall be expedited to the extent possible.

5.2.29 Protective Leasing

5.2.29.1 The Department may at any time prior to closing or order of taking deposit, lease vacant residential or commercial rental units located on parcels to be acquired, provided:

- (A) The cost of the lease will be less than the anticipated cost to relocate potential tenants. This determination must be documented in the official parcel file; and
- (B) The parcel on which the rental unit to be leased is located, is scheduled for acquisition and subject to condemnation if negotiations are not successful; and
- (C) The rental unit has not been vacant for six months or more prior to the initiation of negotiations.

5.2.29.2 Protective rent agreements must be negotiated, taking the following into consideration:

- (A) The negotiated rental amount should not exceed the market rent for like units within the area; and
- (B) The rental payments to the lessor are assured; and
- (C) There will be no cleanup, painting, or improvements required prior to the lease; and
- (D) The lessor will not be responsible for maintenance, and
- (E) The rental history of the unit(s) being leased. Negotiations should begin at a rate equal to the average yearly occupancy rate multiplied by the most recent periodic rent previously paid for the unit.

5.2.29.3 With the approval of the DPWHA and DDPW, the DPWRS or designee who has settlement authority for right of way purchases, is authorized to execute protective lease agreements.

5.2.29.4 Periodic rental payments will be processed using **Form 8.6-2, Cash Receipt Form**. The last periodic payment shall be prorated to the date of closing or order of taking deposit as appropriate. Copies of the executed lease agreement and the **Lease Aging Report as per Section 8.6.9** shall be attached to **Form 8.6-6, Right of Way Deposit Transmittal**, when presented to the Department's Comptroller for payment.

5.2.29.5 Protective leasing shall be executed in accordance with **Section 8.6 Right of Way Property Leases**.

5.2.29.5 To the extent possible, acquisition of parcels subject to protective lease agreements should be expedited.

5.2.30 Final Agency Acceptance

5.2.30.1 Closings shall not be conducted prior to final agency acceptance. Final agency acceptance will be granted by the Department when the Department has obtained a binding agreement, has delivered a copy to the seller and at least **30 days** have elapsed since the date of execution of the binding agreement by all parties.

5.2.30.2 Final agency acceptance is to be granted by the DDPW, DPWHA and DPWRS, delegate, or an employee who has been designated as having settlement authority included as a responsibility in his/her position description.

5.2.30.3 Final agency acceptance may be withheld only where the Department has information that the transaction resulted from fraud, coercion, or the exercise of undue influence. If an agreement does not receive final agency

acceptance, the Department must provide the Director of the Department of Public Works, a detailed explanation of the circumstances that lead to the withholding of final agency acceptance. The Director of the Department of Public Works will coordinate with the Department and the AGO to determine the extent of any investigation or corrective actions that must be undertaken.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – changes to sections; 5.2, 5.2.2.1, 5.2.2.3, 5.2.2.4, 5.2.2.6, 5.2.2.7, 5.2.6.3, 5.2.6.4, 5.2.9, 5.2.17.1, 5.2.18.2, 5.2.18.3, 5.2.18.4, 5.2.21.1, 5.2.23, 5.2.25, 5.2.28.2, 5.2.28.6, 5.2.29.3, and 5.2.30.2.



DPW Form 5.2-1

NOTICE TO OWNER

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROAD NO.: _____
PARCEL NO.: _____

Dear :

The Department of Public Works is planning the following improvement of the above referenced transportation facility:

Our research shows you own property needed for this project. This letter, along with the enclosed brochure entitled The Real Estate Acquisition Process, explains your rights and options and the process we must follow by law in acquiring your property. The following enclosed documents identify the property that is needed:

If you no longer own this property, please notify the Department of Public Works.

We recognize that a proposed transportation project, particularly one which requires the acquisition of private property, will usually result in many questions and concerns. Please be assured you will have sufficient time to have your questions answered, to consider and understand your rights, options and responsibilities, and to make all necessary arrangements. Throughout this process we will do our best to ensure your questions are answered, that you are treated fairly and receive all of the rights you are guaranteed by law, and that you receive a fair price for your property.

Under Federal and Territory of Guam law, you are entitled to certain rights and protections when the Territory of Guam must acquire real estate from you. The following is a summary of your rights:

1. You may accompany the Department's appraiser when your property is inspected as part of the process for valuing your property.
2. You may obtain copies of the Department's appraisal, right of way maps and construction plans.
3. We will make a written offer to you to purchase your property and will negotiate with you, in good faith, to reach a mutually acceptable purchase price.
4. If we cannot agree on a purchase price, we will not file a condemnation lawsuit until at least 30 days after you receive our initial written offer.
5. You will receive no less than full compensation for the property acquired. Full compensation includes, the value of the real estate acquired together with damages, if any, to your remaining property.
6. You may be eligible for relocation assistance benefits if you are required to move or move personal possessions from the property we acquire.
7. You may receive reimbursement for reasonable attorney fees and other reasonable costs you incur for appraisal and other services associated with the Department's acquisition.

Your rights and options are more fully explained in the enclosed brochure entitled The Real Estate Acquisition Process. We encourage you to read this brochure carefully and contact us if you have any questions.

You may be contacted by attorneys, appraisers or others requesting a commitment from you to use their services in dealing with the Department. As previously mentioned, the Department will pay for certain types of services. However, by law, there are limitations placed on what the Department can pay. We encourage you to contact us and allow us to fully explain our reimbursement process. You will find a more thorough discussion of the reimbursement of fees and costs in the enclosed brochure.

Over the coming months, you will be contacted by various Department representatives who will schedule property inspections, assess your relocation needs, and negotiate with you for the purchase of your property. If you have questions about any aspect of our acquisition process or if you have information that would help us to determine a fair value for your property or help us provide service to you, please let them know. Regardless of whether we can reach agreement on the purchase of your property, we will do our best to be sensitive and responsive to your needs.

I encourage you to fill out and return the enclosed questionnaire in the postage-paid envelope provided. This information will help us begin working with you to reach a mutually acceptable settlement for your property. If you experience any problems, please do not hesitate to contact:

Sincerely,

Department of Public Works Right of Way Supervisor

Date: _____

Enclosures:

Return Envelope
Legal Description (and/or right of way map)
The Real Estate Acquisition Process Brochure

CC: Records Management

Received By: _____

Certified Mail No. _____



DPW Form 5.2-1BO

NOTICE TO BUSINESS OWNER

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROAD NO.: _____
PARCEL NO.: _____

Dear

The Department of Public Works is planning the following improvement of the above referenced transportation facility:

Our research shows you own a business located on property needed for this project. The following enclosed documents identify the property that is needed:

You may be eligible for compensation if your business is damaged as a result of this acquisition. However, there are several conditions your business must meet before you are eligible to receive a business damage payment. This letter, along with the enclosed brochure entitled **The Real Estate Acquisition Process**, explains the eligibility requirements, your rights and options, and the process you must follow in claiming business damages.

The Department recognizes that a proposed transportation project, particularly one which requires acquisition of private property, will usually result in many questions and concerns. Please be assured you will have sufficient time to have your questions answered, to consider and understand your rights, options and responsibilities, and to make all necessary arrangements. Throughout this process we will do our best to ensure your questions are answered, that you are treated fairly and receive all of the rights you are guaranteed by law.

Your receipt of this notice does not entitle you to business damages. By law, in order to qualify for business damages, your business must meet the following conditions:

1. You must hold a real property interest, in the form of a lease, deed, etc., in the portion of the property being acquired by the Department.
2. The acquisition must be a partial acquisition of the property on which your business is located. If the Department acquires all of the real estate on which your business is located, your business will not qualify for payment of damages.
3. Your business must have been in operation on the site for at least five years immediately prior to the Department's acquisition.
4. You must be able to show that any damages you are claiming result directly from the loss of property. The effects of construction activities or other effects incidental to construction are not compensable.

If your business qualifies as described above and you wish to claim business damages, you must submit a good faith written offer to settle your business damage claim to the Department no later than 180 days after you receive this notice. Your written offer must be sent by certified mail, return receipt requested to the following address:

If you do not submit your offer to settle your business damage claim within the specified time your claim may not be allowed in future condemnation proceedings.

If you share ownership of the business with others, you should coordinate with the other owners and provide only one business damage claim for the business.

Your business damage offer must include an explanation of the nature, extent and monetary amount of the damages you are claiming. The offer must be prepared by you as the business owner, a certified public accountant or a business damage expert familiar with the nature of the operations of your business. With your offer you must also provide copies of your business records substantiating your good faith offer.

Your rights and options are more fully explained in the enclosed brochure entitled **The Real Estate Acquisition Process**. We encourage you to read this brochure carefully and contact us if you have any questions.

You may be contacted by attorneys, accountants or others requesting a commitment from you to use their services in dealing with the Department. The Department will pay for certain types of services. However, by law there are limitations placed on what the Department can pay. We encourage you to contact us and allow us to fully explain our reimbursement process. You will also find a more thorough discussion of the reimbursement of fees and costs in the attached brochure.

If you have questions about any aspect of our acquisition process please give us an opportunity to answer them. Regardless of whether we can reach agreement on the amount of damages to your business, we will do our best to be sensitive and responsive to your needs.

I encourage you to fill out and return the enclosed questionnaire in the postage-paid envelope provided. This information will help us work with you if you decide to file a claim for business damages. If you experience any problems, please do not hesitate to contact:

Sincerely,

Department of Public Works Right of Way Supervisor

Date: _____

Enclosures:

- Return Envelope
- Legal Description (and/or right of way map)
- The Real Estate Acquisition Process Brochure

cc: Records Management

Received By: _____

Certified Mail Number: Date: _____



DPW Form 5.2-2

OFFER AND PURCHASE AGREEMENT

ITEM SEGMENT NO.:
GU PROJECT NO.:
ROAD NO.:
PARCEL NO.:

Seller:

Address:

Buyer: Government of Guam, Department of Public Works

Buyer and Seller hereby agree that Seller shall sell and Buyer shall buy the following described property pursuant to the following terms and conditions:

I. Description of Property

(a) Real property described as:

(b) Estate being purchased:

- Fee Simple
Permanent Easement
Temporary Easement
Leasehold

(c) Buildings, structures, fixtures, and other improvements:

(d) Personal property:

Buildings, structures, fixtures and other improvements owned by others:

These items are NOT included in this agreement. A separate offer is being, or has been, made for these items.

II. PURCHASE PRICE

(a) Real Property

Table with 2 columns: Description and Price. Rows include Land, Improvements, Real Estate Damages, Total Real Property.

(b) Total Personal Property

5. \$

(c) Fees and Cost

Table with 2 columns: Description and Price. Rows include Attorney Fees, Appraiser Fees.

| | | |
|-------------------------------------------------------------------------------------------------------|-----|----------|
| _____ | 8. | \$ _____ |
| _____ Fee(s) | 9. | \$ _____ |
| Total Fees and Cost | 10. | \$ _____ |
| (d) Total Business Damages | 11. | \$ _____ |
| (e) Total of Other Cost | 12. | \$ _____ |
| List: _____ | | _____ |
| Total Purchase Price (add lines 4, 5, 10, 11 & 12) | | \$ _____ |
| (f) Portion of total purchase price to be paid to Seller by Buyer at Closing | | \$ _____ |
| (g) Portion of total purchase price to be paid to Seller by Buyer upon surrender of possession | | \$ _____ |

III. Conditions and Limitations

- (a) Seller is responsible for all taxes due on the property up to, but not including, the day of closing.
- (b) Seller is responsible for delivering marketable title to Buyer. Marketable title shall be determined according to applicable title standards adopted by the Territory of Guam in accordance with Territorial Law subject only to those exceptions that are acceptable to Buyer. Seller shall be liable for any encumbrances not disclosed in the public records or arising after closing as a result of actions of the Seller.
- (c) Seller shall maintain the property described in **Section I** of this agreement until the day of closing. The property shall be maintained in the same condition existing on the date of this agreement, except for reasonable wear and tear.
- (d) Any occupancy of the property described in **Section I** of this agreement by Seller extending beyond the day of closing must be pursuant to a lease from Buyer to Seller.
- (e) The property described in **Section I** of this agreement is being acquired by Buyer for transportation purposes under threat of condemnation pursuant to **Territory of Guam Statutes**.
- (f) Seller agrees that the real property described in **Section I** of this agreement shall be conveyed to Buyer by conveyance instrument(s) acceptable to Buyer.
- (g) Seller and Buyer agree that a real estate closing pursuant to the terms of this agreement shall be contingent upon delivery by Seller of an executed Public Disclosure affidavit.
- (h) Seller and Buyer agree that this agreement represents the full and final agreement for the herein described sale and purchase and no other agreements or representations, unless incorporated into this agreement, shall be binding on the parties.
- (i) Other: _____

IV. Closing Date

The closing will occur no later than 60 days after Final Agency Acceptance.

V. Typewritten or Handwritten Provisions

Any typewritten or handwritten provisions inserted into or attached to this agreement as addenda must be initialed by both Seller and Buyer.

- There is an addendum to this agreement. Page ____ is made a part of this agreement.
- There is not an addendum to this agreement.

VI. Seller and Buyer hereby acknowledge and agree that their signatures as Seller and Buyer below constitute their acceptance of this agreement as a binding real estate contract.

It is mutually acknowledged that this Purchase Agreement is subject to Final Agency Acceptance by Buyer. A closing shall not be conducted prior to 30 days from the date this agreement is signed by Seller and Buyer to allow public review of the transaction. Final Agency Acceptance shall not be withheld by Buyer absent evidence of fraud, coercion, or undue influence involving this agreement. Final Agency Acceptance shall be evidenced by the signature of Buyer in **Section VII** of this agreement.

Seller(s)

Buyer

Signature Date

Government of Guam, Department of Public Works
BY:

Signature
Date

Type or print name

Type or print name

Signature Date

Type or print name under signature

VII. FINAL AGENCY ACCEPTANCE

The Buyer has granted Final Agency Acceptance this _____ day of _____, _____ .

BY: _____
Signature

Type or print name and title under signature

This document delivered by _____ Date _____

This document received by _____ Date _____



DPW Form 5.2-3

REPRESENTATIVE AUTHORIZATION

Item/Segment No.
GU Project No.
Road No.
Parcel No.

Dear Department of Public Works Right of Way Supervisor:

This is to advise you that I hereby authorize

Of
who was hired by me as of
to (indicate extent of authorization by marking one or both boxes as applicable):

- Represent me in all future dealings in the above referenced project and parcel(s).
Accept service of process in my behalf concerning any legal proceedings in eminent domain which may ensue.

OWNER(S)/TENANT(S):

Signature Date Signature Date
Printed Name Printed Name

This is to advise you that I am authorized to represent
Of

in the capacity(ies) set forth above.

- I am a member of the Guam Bar
I am not a member of the Guam Bar.
I will accept service of process.

NOTE: This document must be notarized if the agent is not a member of the Guam Bar but is authorized to accept service of process

Sworn to and subscribed before me this
day of
by
who is personally known to me
or has produced
as identification.

Representative Signature Date
Representative Printed Name
Representative Address
Representative Phone

Notary's Signature (Print, type or stamp name of notary public) [SEAL]

**INSTRUCTIONS FOR COMPLETION OF THE
REPRESENTATIVE AUTHORIZATION (DPW FORM 5.2-3)**

If a property owner or business owner chooses to be represented by an agent during negotiation, including service of legal process, a written authorization, to include the information on this form must be provided by the owner or the owner's agent to the Department prior to the Department's negotiation of the parcel with the authorized representative.

- DATE AND INSIDE ADDRESS:** Space is available for the form preparer to provide the inside address of the office where the completed form will be submitted.
- PROJECT/PARCEL IDENTIFICATION:** The following information can be located in the legal documents and/or right of way maps for each project and is required on official Department forms:
Item/Segment No.
GU Project No.
Road No.
Parcel No.
- ATTENTION:** Provide the agent or individual's name responsible for negotiation of the parcel.
- TOP PORTION OF THE FORM:** The form provides space for the following information to be provided by the owner:
The name of representative and representative's firm name, if applicable.
Date representative was hired.
Check box for capacity of representation.
Owner/Tenant signature and date of authorization.
Owner/Tenant's printed or typed name.
- LOWER PORTION OF FORM:** The form provides space for the following information to be provided by the representative:
Name of property or business owner and firm name, if applicable.
Check box indicating whether representative is a member of the Guam Bar.
Check box indicating whether representative will accept service of process.
Representative's signature and date of acceptance.
Representative's address for negotiations and service of process.
Representative's telephone number.
- NOTARY SECTION:** If the representative is not a member of the Guam Bar, the notary section must be completed by a notary.



DPW Form 5.2-4

SETTLEMENT APPROVAL

ITEM/SEGMENT NO.: _____
SUIT STYLE: _____
GU PROJECT NO.: _____
AGO ATTORNEY: _____
JUDGE: _____

PARCEL NO.: _____
LITIGANT: _____
DPW SUIT NO.: _____
DEFENSE ATTY.: _____
TRAIL DATE: _____
DOCKET NO.: _____

- Administrative Settlement
Offer of Judgment
Court Ordered Mediation
Non-court Ordered Mediation
Legal Settlement
Offer Settlement

SETTLEMENT

Land \$ _____
Improvements \$ _____
Severance/Real Estate Damages \$ _____
Move Cost \$ _____
Business Damages \$ _____
Owner/Litigant Attorney Fee \$ _____
Based on Benefit of \$ _____
Based on no monetary Benefit of \$ _____
Owner/Litigant Appraisal Fee \$ _____
Owner/Litigant Expert Fees \$ _____
Owner/Litigant Cost (specify) \$ _____
Other \$ _____
TOTAL SETTLEMENT \$ _____

SUPPORT DATA

Owner Appraisal \$ _____ Appraiser _____
Owner Claim \$ _____
DPW Approved Appraisal \$ _____ Appraiser _____
Unapproved Appraisals \$ _____ (if relevant)
Owner/Tenant Business
Damage Claim \$ _____
DPW Business
Damage Counteroffer \$ _____

JUSTIFICATION (attach additional sheets as necessary):

SUBMITTED BY: _____ **Date:** _____
 Right of Way Agent
 AGO Trial Attorney

 DPW Land Agent Supervisor **Date:** _____
 AGO General Counsel

APPROVED FOR SETTLEMENT _____ **Date:** _____
 Director Department of Public Works
 DPW Right of Way Supervisor

ADDITIONAL APPROVALS (as applicable)

APPROVED FOR SETTLEMENT _____ **Date:** _____
 APPROVED FOR SETTLEMENT _____ **Date:** _____



DPW Form 5.2-5

RIGHT OF ENTRY AGREEMENT

ITEM/SEGMENT NO.: _____
PARCEL NO.: _____
GU PROJECT NO.: _____
ROAD NO.: _____

THIS AGREEMENT, made and entered into on the _____ day of _____, _____
By and between:

Hereinafter called the "OWNER" and the Department of Public Works, hereinafter called the "DEPARTMENT".

WITNESSETH

WHEREAS, the Department has acquired the property described as Parcel _____
As right of way for the construction of the above referenced project; and

WHEREAS, there are certain improvements affected by the above referenced project which are located upon the Owner's remaining property; and

WHEREAS, it is hereby determined to be in the best interest of the Owner and the Department to remove and/or demolish these improvements.

NOW THEREFORE, in consideration of the above stated premises, the Owner and the Department hereby agree that the Department and/or its duly authorized representative shall have the right to enter upon the Owner's remaining lands for the purpose of removing and/or demolishing the above improvements. It is further understood and agreed that the Department and/or its duly authorized representative will restore the remaining lands to a safe and sanitary condition after the removal or demolition of the improvements.

OWNER:

DEPARTMENT:

Signature Date

DEPARTMENT OF PUBLIC WORKS

Print or type name

By: _____
DPW Representative Signature

Signature Date

Print or type name

Print or type name



DPW Form 5.2-6

**RELEASE AND RIGHT OF ENTRY AGREEMENT
FOR ASBESTOS SURVEY**

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROAD NO.: _____
PARCEL NO.: _____

THIS AGREEMENT is made and entered into on this _____ day of _____, _____ by the undersigned occupants at

_____, hereinafter called "OCCUPANT(S)" and the Department of Public Works, herein after called the "Department".

DEFINITIONS:

"Asbestos containing materials (ACM)" means any material which contains more than one percent (1%) asbestos by polarized light microscopy.

"Asbestos Survey" means a comprehensive physical inspection of the building, including laboratory analysis, to identify all asbestos containing material within the building.

"Friable ACM" means any material containing more than one percent (1%) asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

"Non-friable ACM" means any material containing more than one percent (1%) asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure. Note: the condition of such material may become friable by external factors (e.g., weathering, fire, natural disasters, handling).

WITNESSETH:

Code of Federal Regulations (CFR) and Guam Code allows that, " The department and its authorized agents and employees are authorized to enter upon any lands, waters and premises, upon giving reasonable notice to the landowner, for the purpose of making surveys, soundings, drillings, appraisals, environmental assessments, archeological assessments, and examinations necessary to perform its duties and functions; and any such entry shall not be deemed a trespass or an entry that would constitute a taking in an eminent domain proceeding. The department shall make reimbursement for any actual damages to such lands, water and premises as a result of such activities."

The Department is acquiring or has acquired the property described above as right of way for the construction of the above-referenced project; and there are certain improvements affected on the above-referenced project including OCCUPANT's premises; and OCCUPANT acknowledges the right to remain in possession of the property is valid consideration for OCCUPANT executing this Agreement.

OCCUPANT acknowledges that the Department has not conducted a survey of the property to determine the presence of ACM and waives the right, if any, to request a survey. the Department may, in its sole discretion, conduct a survey to determine the presence of ACM. Upon the signing of this Agreement and once the Department has taken title, OCCUPANT agrees to allow the Department, and its agents or representatives, entry into the premises for the purpose of conducting a survey for ACM. Entry shall be allowed at any reasonable time, upon adequate notice to OCCUPANT (except that no notice need be given in case of emergency). the Department agrees to leave the premises in a condition similar to the condition prior to entry.

In the event the Department conducts a survey for ACM during OCCUPANT's possession, the Department agrees to notify OCCUPANT of the findings of the survey. If non-friable ACM is found, OCCUPANT has the option to remain in

occupancy or surrender possession. If friable ACM is found, OCCUPANT or the Department has the right to terminate occupancy.

If OCCUPANT chooses to remain in occupancy after notification of the presence of either friable or non-friable ACM, OCCUPANT, for itself, its heirs, legal representatives, successors, and assigns, thereby releases the Department from any and all liability, claims, demands, actions, judgments, damages, costs and expenses of any nature whatsoever in any way arising out of the presence of ACM and the Department's abatement procedures during OCCUPANT's continued occupancy of the premises. OCCUPANT, for itself, its heirs, legal representatives, successors, and assigns, further agrees to indemnify and hold harmless the Department from any and all liability, claims, demands, actions, judgments, damages, costs, and expenses of any nature whatsoever in any way arising out of the presence of ACM during OCCUPANT's continued occupancy of the premises including, but not limited to, all third party claims and claims by employees, licensees, invitees, and their heirs, legal representatives, and assigns.

By remaining in possession after the discovery of ACM, OCCUPANT consents to any and all actions taken by the Department pursuant to statutory and administrative requirements, including but not limited to, the posting of notice of the presence of ACM and any abatement determined in the Department 's sole discretion, to be necessary. OCCUPANT waives any claim or right to claim constructive eviction for the Department 's compliance with legal requirements.

On this _____ day of _____, _____ OCCUPANT voluntarily executes this Agreement with full knowledge of its significance.

Signature of OCCUPANT: _____

Printed Name of OCCUPANT: _____

Signature of OCCUPANT: _____

Printed Name of OCCUPANT: _____

Signature of Witness: _____

Printed Name of Witness: _____



DPW Form 5.2-7

CLOSING STATEMENT

ITEM/SEGMENT NO.:
GU PROJECT NO.:
ROUTE NO.:
PARCEL NO.:

BUYER: GOVERNMENT OF GUAM, DEPARTMENT OF PUBLIC WORKS

SELLER(S):

REAL PROPERTY DESCRIBED AS:

SUMMARY OF SELLER'S TRANSACTION

CREDITS

Land
Improvements
Real Estate Damages/Cost-to-Cure
Personal Property
Business Damage
Attorney Fees
Appraiser Fees
Other (describe)
Total Credits

DEBITS

First Mortgage Payoff
First Mortgage Pre-Payment Penalty
Second Mortgage Payoff
Second Mortgage Pre-Payment Penalty
Attorney Fees
Appraiser Fees
Taxes
Other (describe)
Total Debits
Credits Less Debits
Amount Withheld
Amount Due Seller at Closing

Warrant No. Received By:

Date of Final Agency Acceptance:

Date of Closing: Closing Agent:



DPW Form 5.2-8

PROPERTY INVENTORY

REAL PROPERTY

Serial No (Item Segment/Parcel No.) _____ / _____ GU Project No.: _____

Former Owner: _____ Address: _____

Date of Inventory: _____

Date of Acquisition: _____

Date to be Vacated: _____, _____ Negotiation or Condemnation TIITF

Date of Possession: _____, _____ Partial or Whole Take

Date of Asbestos Survey: _____, _____ Right of Entry: Yes No (If yes, copy attached)

Size of Parcel: _____ Key Provided Yes No Date: _____

Size of Remainder _____ Key Received by: _____

STRUCTURES

NONE No. of structures _____

IMPROVEMENT TYPE: _____

Serial No.: A Size: _____ Condition: _____ Disposition: _____

Description: _____ Story _____ BR _____ Ba C/B Frame Metal Other

In ground pool Underground storage tank Hazardous Material

IMPROVEMENT TYPE: _____

Serial No.: B Size: _____ Condition: _____ Disposition: _____

Description: _____ Story _____ BR _____ Ba C/B Frame Metal Other

Hazardous Material

IMPROVEMENT TYPE: _____

Serial No.: C Size: _____ Condition: _____ Disposition: _____

Description: _____ Story _____ BR _____ Ba C/B Frame Metal Other

Hazardous Material

IMPROVEMENT TYPE: _____

Serial No.: D Size: _____ Condition: _____ Disposition: _____

Description: _____ Story _____ BR _____ Ba C/B Frame Metal Other

Hazardous Material

120 Day Update Due On or Before _____

Updated: _____

Inspector

Date

Comments: _____

120 Day Update Due On or Before _____

Updated: _____

Inspector

Date

Comments: _____

120 Day Update Due On or Before _____

Updated: _____

Inspector

Date

Comments: _____

Section 5.3

INCENTIVE OFFERS.

TABLE OF CONTENTS

| | |
|------------------------------------------------------------|-------|
| PURPOSE | 5-3-1 |
| AUTHORITY | 5-3-1 |
| SCOPE | 5-3-1 |
| REFERENCES | 5-3-1 |
| FORMS | 5-3-1 |
| 5.3.1 Project Selection..... | 5-3-1 |
| 5.3.2 Incentive Offers | 5-3-2 |
| 5.3.3 Establishing the Incentive Amount | 5-3-3 |
| 5.3.4 Duration of the Incentive..... | 5-3-3 |
| 5.3.5 Negotiations | 5-3-3 |
| 5.3.6 Administrative and Legal Settlements | 5-3-4 |
| 5.3.7 Effect of Incentive on Relocation Entitlements | 5-3-4 |
| 5.3.8 Eminent Domain | 5-3-4 |
| 5.3.9 Fees and Costs | 5-3-4 |
| 5.3.10 DRT Reporting..... | 5-3-4 |
| HISTORY | 5-3-4 |

Section 5.3

INCENTIVE OFFERS

PURPOSE

To set forth procedures, requirements and standards for approving and applying incentive offers for the Department of Public Works Office of Right of Way, hereinafter referred to as the Department.

AUTHORITY

23, CFR, Part 710.203 (b) (2) (ii)
49, CFR, Part 24
23, United States Code, Part 101(a) (3)

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition and incentive offer functions.

REFERENCES

Section 5.2, Negotiation Process
Section 5.6, Eminent Domain
Section 7.4, Replacement Housing Payments

FORMS

5.2-2 Offer and Purchase Agreement
5.2-4 Settlement Approval

5.3.1 Project Selection

5.3.1.1 Incentive projects must first be recommended by the Department of Public Works ROW Supervisor (DPWRS) and then approved by the Director of the Department of Public Works (DDPW) and Department of Public Works Highway Administrator (DPWHA) on a case-by-case basis. Approval will be granted upon a certification, by the DPWRS, that states the use of incentive offers is expected to reduce project time and cost, the project has a scheduled production date, and condemnation will be pursued for those parcels that cannot be negotiated.

5.3.1.2 To provide consistency and equitable treatment of property owners, the Department will administer incentive offers consistently on an entire transportation corridor. When there are multiple right of way projects included within a single project area, the area will be considered a transportation corridor for the purpose of this procedure. If incentive offers are used on the earliest right of way project, they must be used on all right of way projects on the corridor. Similarly, if they are not used on the earliest right of way project, they will not be used on later right of way projects on the corridor. Exceptions to this may be allowed when offers on a right of way project will be made one year or more after the letting date for the construction project associated with the adjacent right of way project.

5.3.2 Incentive Offers

5.3.2.1 Incentive amounts will be added to initial offers on all parcels on approved projects. All parcel acquisition shall comply with this **Manual**, except as modified herein. Incentives will be an amount of money offered above the established just and full compensation. Incentives will be applied to all parcels on the approved projects except for parcels owned by governmental entities. No incentive will be added to offers to settle business damage claims.

5.3.2.2 Parcels with uneconomic remnants identified by the review appraiser will require separate offers pursuant to **Section 5.2, Negotiation Process**. Incentives for both offers will be based on the value of the partial taking without consideration of the remnant.

Example:

| | |
|---------------------------------------|------------------|
| Appraised value of part taken | \$150,000 |
| Appraised value of uneconomic remnant | \$ 20,000 |
| Incentive (based on \$150,000) | <u>\$ 52,875</u> |
| Total Offer | \$222,875 |

5.3.2.3 Incentives for parcels affected by tenant-owned improvements, requiring a separate offer, pursuant to **Section 5.2, Negotiation Process**, will be shared between the property owner and the tenant. The incentive will be divided based on the percentage shares of the value for the whole property attributable to the owner and to the tenant respectively.

Example:

| | |
|---------------------------------------|-----------|
| Total Parcel Value = | \$200,000 |
| Value of Tenant Improvement = | \$ 40,000 |
| Percentage of Total Value to Owner = | 80% |
| Percentage of Total Value to Tenant = | 20% |
| Incentive for Whole (\$200,000) = | \$ 66,625 |
| Owner Incentive = 80% of \$66,630 = | \$ 53,300 |
| Tenant Incentive = 20% of \$66,630 = | \$ 13,325 |

5.3.2.4 When there are multiple takings from the same parent tract, for example a fee and an easement, incentives will be provided for each parcel based on the just and full compensation for each parcel.

5.3.2.5 When the established just and full compensation changes prior to filing suit, the Department must respond as follows:

- (A) If there is a change in the determination of just and full compensation resulting from an alteration of the parcel which is of such extent that the parcel has become a different parcel from that on which the original offer was made, the Department must provide the property owner a new **Form No. 5.2-2, Offer and Purchase Agreement**, with a new incentive calculation based on the revised just and full compensation.
- (B) If there is a change in the determination of just and full compensation, other than as in **Section 5.3.2.5 (A)**, and the revised just and full compensation is more than the total previous offer (just and full compensation plus the incentive), a revised offer must be made using **Form No. 5.2-2, Offer and Purchase Agreement**. No incentive will be included in the revised offer.

- (C) If there is a change in the determination of just and full compensation other than as in **Section 5.3.2.5 (A)**, and the revised just and full compensation is less than the total previous offer (just and full compensation plus the incentive) no new offer shall be made unless the previous offer had previously been formally withdrawn.

5.3.3 Establishing the Incentive Amount

Incentive amounts will be determined as follows:

Incentive Offer Computation

| Approved Compensation is | | | |
|--------------------------|--------------|------------------|----------------|
| Over | But Not Over | Incentive | of Amount Over |
| \$0 | \$1,000 | \$1,000 | |
| \$1,000 | \$2,500 | \$1,000 + 83.3% | \$1,000 |
| \$2,500 | \$5,000 | \$2,250 + 70% | \$2,500 |
| \$5,000 | \$7,500 | \$4,000 + 50% | \$5,000 |
| \$7,500 | \$10,000 | \$5,250 + 45% | \$7,500 |
| \$10,000 | \$20,000 | \$6,375 + 40% | \$10,000 |
| \$20,000 | \$30,000 | \$10,375 + 35% | \$20,000 |
| \$30,000 | \$100,000 | \$13,875 + 32.5% | \$30,000 |
| \$100,000 | \$300,000 | \$36,625 + 30% | \$100,000 |
| \$300,000 | \$513,500 | \$96,625 + 25% | \$300,000 |
| \$513,500 | | \$150,000 | |

Note: Incentive amount should be rounded to the nearest ten dollars.

5.3.4 Duration of the Incentive

Incentives will be held open to the date of filing suit. Property owners must be clearly advised of the expiration date of the incentive.

5.3.5 Negotiations

5.3.5.1 Application of incentive offers does not replace the need for aggressive negotiations. The Department must consider all property owner counteroffers.

5.3.5.2 Negotiations conducted after the Department files suit will be based on established just and full compensation without consideration of an incentive.

5.3.5.3 To the extent possible, settlements exceeding established just and full compensation plus the incentive must be avoided. Legal settlements, as defined in **Section 5.6, Eminent Domain**, exceeding just and full compensation must be avoided unless additional information or circumstances arise that would cause a change in the Department’s determination of just and full compensation, for example, a change in design.

5.3.6 Administrative and Legal Settlements

5.3.6.1 Form No. 5.2-4, Settlement Approval, is not required for those parcels settled in an amount equal to the Department's established just and full compensation plus incentive, provided the settlement is achieved prior to expiration of the incentive pursuant to **Section 5.3.4**.

5.3.6.2 All settlements above just and full compensation plus the incentive obtained while the incentive is open or which exceed the Department's established just and full compensation after expiration of the incentive, must be justified on **Form No. 5.2-4, Settlement Approval**, in accordance with **Section 5.2, Negotiation Process**. The full amount of the increase above established just and full compensation including the incentive must be supported.

5.3.6.3 If the DDPW, DPWHA and DPWRS, or the Department's representative at mediation, determine that a settlement as described in **Section 5.3.6.2** is necessary, the factors supporting the decision must be documented on **Form No. 5.2-4, Settlement Approval**, in addition to support for the amount of the increase.

5.3.7 Effect of Incentive on Relocation Entitlements

Replacement Housing Payment (RHP) calculations for residential owners who have accepted offers with incentives will be based on the amount determined to be just and full compensation. The incentive will not be considered in the calculation and will not offset the amount of the RHP. However, where settlements exceed just and full compensation plus the incentive, **Section 5.3.6** or the incentive has expired, **Section 5.3.4**, the RHP will be determined based on the requirements of **Section 7.4, Replacement Housing Payments**.

5.3.8 Eminent Domain

When parcels on the incentive projects must be acquired by eminent domain, the Department will file condemnation based on approved just and full compensation. The incentive amount will not be included. The Department should aggressively defend this value throughout the litigation process unless additional information or circumstances arise that alter the Department's determination of just and full compensation, such as a change in design.

5.3.9 Fees and Costs

The DPW will not pay any attorney fees or costs in addition to the incentive.

5.3.10 DRT Reporting

For parcels settled with incentives, the incentive amount will be included in "Gross Proceeds" when being reported to the Department of Revenue and Taxation (DRT) on IRS **Form 1099-S**.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – changes made to sections 5.3.1.1, 5.3.6.3, and 5.3.9

Section 5.4
FEES AND COSTS

TABLE OF CONTENTS

PURPOSE5-4-1

AUTHORITY5-4-1

SCOPE5-4-1

REFERENCES5-4-1

FORMS5-4-1

5.4.1 Reimbursement of Fees and Costs5-4-1

5.4.2 Expert Costs5-4-1

5.4.3 Attorney Fees.....5-4-2

5.4.4 Supplemental Purchase Agreements5-4-2

HISTORY5-4-2

Section 5.4

FEES AND COSTS

PURPOSE

To establish the procedures, requirements and standards for reimbursement of property owner and business owner fees and costs for the Department of Public Works Office of Right of Way, hereinafter referred to as the Department.

AUTHORITY

49 CFR 24.107
21 GCA §15112 Attorneys Fees and Cost

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General.

REFERENCES

Section 5.2, Negotiation Process

FORMS

5.2-2 Offer and Purchase Agreement

5.4.1 Reimbursement of Fees and Costs

5.4.1.1 The Department will not reimburse property owners and business owner's for attorney's fees and expert costs incurred as a result of the Department's acquisition of their property and/or settlement of their eligible business damage claims.

5.4.1.2 For parcels where the final judgment determined by jury verdict is that the Department cannot acquire the real property by condemnation, reasonable attorney's fees and cost shall be reimbursed. The Department will pay reasonable fees and costs directly to the property or business owner unless the owner requests in writing to the Department that fees and cost be paid directly to the owner's attorney and/or other experts.

5.4.1.3 Where a binding offer is withdrawn pursuant to **Section 5.2, Negotiation Process**, and no new offer will be delivered, or a new offer will not be delivered for an extended period of time, the Department may pay reasonable attorney's fees and costs incurred by the landowner resulting from the previously delivered binding offer and its withdrawal.

5.4.1.4 In determining reasonable amounts for fees and costs, the department shall be guided by the fees and costs the owner would normally be expected to pay if the Department were not responsible for reimbursement. The DPWRS will make the determination and recommendation to the Director of the Department of Public Works (DDPW) and the Department of Public Works Highway Administrator (DPWHA), as to reasonable fees and costs.

5.4.2 Expert Costs

5.4.2.1 For parcels and business damage claims settled prior to a jury verdict, reimbursement of appraisal, certified public accountant, business damage expert, and other expert costs should be based on an invoice which includes:

-
- (A) The nature of services performed listed by date;
 - (B) The time expended for each date of service identified in (A) above;
 - (C) The total fee, and
 - (D) The hourly rate for services.

5.4.2.2 DPW will not pay expert costs.

5.4.2.3 For parcels where final compensation for land and/or business damages is determined by jury verdict, expert costs shall be reimbursed.

5.4.3 Attorney Fees

DPW will not pay property owner and business owner attorney's fees.

5.4.4 Supplemental Purchase Agreements

If the real estate/business damage closing must take place prior to agreement on the amount of reasonable fees and costs, payment of fees and costs may be processed separately by means of a Supplemental Purchase Agreement. Supplemental Purchase Agreements must be prepared using **Form No. 5.2-2, Offer and Purchase Agreement**. Final agency acceptance is not required for supplemental purchase agreements for payment of fees and costs.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – changes to sections 5.4.1, 5.4.2.2, and 5.4.3

Section 5.5

LEGAL DOCUMENTS AND LAND ACQUISITION CLOSING

TABLE OF CONTENTS

PURPOSE 1

| | |
|-------------------------------------------------------------|-------|
| AUTHORITY | 5-5-1 |
| SCOPE | 5-5-1 |
| EFFECT OF CHAPTER ON OTHER AGENCIES..... | 5-5-1 |
| REFERENCES | 5-5-1 |
| FORMS | 5-5-1 |
| DEFINITIONS..... | 5-5-2 |
| 5.5.1 LEGAL DOCUMENT PREPARATION | 5-5-2 |
| 5.5.2 ABSTRACT OF TITLE UPDATE..... | 5-5-3 |
| 5.5.3 PHYSICAL INSPECTION..... | 5-5-3 |
| 5.5.4 PRORATION AND PAYMENT OF TAXES | 5-5-4 |
| 5.5.5 DEFERRING ENCUMBRANCES..... | 5-5-4 |
| 5.5.6 EXECUTION OF LEGAL DOCUMENTS..... | 5-5-5 |
| 5.5.7 CLOSING DUTIES | 5-5-5 |
| 5.5.8 CLOSING COSTS..... | 5-5-6 |
| 5.5.9 DELIVERY OF PAYMENTS | 5-5-6 |
| 5.5.10 RECORDING LEGAL DOCUMENTS..... | 5-5-7 |
| 5.5.11 DEPARTMENT OF REVENUE AND TAXATION REQUIREMENTS..... | 5-5-7 |
| HISTORY | 5-5-7 |

Section 5.5

LEGAL DOCUMENTS AND LAND ACQUISITION CLOSING

PURPOSE

This section prescribes the requirements for closing a negotiated real estate transaction involving the Government of Guam acting through the Department of Public Works Office of Right of Way (Department) as grantee. This includes preparation of conveyance and other closing documents, requirements for closing, and delivery of warrants.

AUTHORITY

23 CFR 130 §1.23
11 GCA, Chapter 24, Real Property Tax
21 GCA § 29101 Titles to Real Estate
21 GCA § 21149 Transfer by Registered Owner
21 GCA § 29150 Issuance of a New Certificate Where Only a Part of Land is transferred
21 GCA § 29153 Forms of Deeds, Mortgages, Leases and Other Instruments

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition and closing functions, the Department of Land Management, the Department of Revenue and Taxation, and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Section 2.1, Land Title
Section 5.2, Negotiation Process
Section 5.12, Guam Territorial Income Tax Reporting Requirements
Section 8.1, Inventory of Properties Acquired Through the Right of Way Process
Section 9.2, Warrant Control
Section 10.1, Right of Way Certification
5 GCA, Chapter 32, Article 7, Social Security Number Confidentially Act
5 GCA § 32704 General Rule

FORMS

5.2-2 Offer and Purchase Agreement
5.2-3 Representative Authorization
5.2-7 Closing Statement
5.5-1 Application for Payment of Closing Costs
5.5-2 Warranty Deed
5.5-3 Perpetual Easement
5.5-4 Temporary Easements (month's duration)
5.5-5 Temporary Easements (project duration)

5.5-6 Special Warranty Deed
Internal Revenue Service, Form 1099-S

DEFINITIONS

Closing: The step in a negotiated real estate transaction at which conveyance and related documents are executed and delivered in exchange for agreed consideration.

Closing Agent: The Department's representative at the closing. That person may be a Department employee, an Office of the Attorney General (OAG) attorney who is a member in good standing of the Guam Bar, an employee of a right of way acquisition consultant firm under contract to the Department, or a representative of a title insurance company under contract to the Department who is providing title insurance in the transaction.

Closing Date: The closing date is the date the closing is held. For a closing conducted by mail, it is the date the warrant is mailed to the grantors.

Easement: A permanent or temporary right of use over, under, or through the property of another.

Encumbrance: A claim, lien, charge, or liability attached to and binding real property, such as, a mortgage, construction lien, judgment lien, lease, security interest, easement, right of way, or accrued and unpaid taxes.

Fee (Simple) Title: Fee title is the largest estate and most extensive interest that can be enjoyed in land.

Legal Documents: Documents that create, convey, alter or extinguish real property interest, or encumbrances.

License: A privilege to go on to the premises of another for a specified purpose. A license is revocable and nontransferable and does not confer or vest any title or interest in the licensee.

Parcel: One or more lots or pieces of land under a single ownership from which a real property interest or license will be acquired and as defined in Section 2.1.

Primary Interest: The predominant estate being acquired, normally fee title, or perpetual or temporary easement, from any particular parcel.

Real Property: Land and generally whatever is erected or growing upon or affixed to land, or any rights issuing out of, annexed to, and exercisable within or about land.

Abstract of Title: A search of the public records for recorded instruments creating, or purporting to create, an interest in, a lien against, or an encumbrance on the title to the parcel of land under search.

5.5.1 Legal Document Preparation

5.5.1.1 Documents prepared by the Department for conveyance of real property or real property rights must be prepared by or under the direction of the Department of Public Works Director (DDPW), Department of Public Works Highway Administrator (DPWHA), Department of Public Works Right of Way Supervisor (DPWRS), or designee working with the OAG and the Department of Land Management (DLM). Documents prepared by a title insurance company, or attorney on behalf of the Department, are exempt from this requirement. Documents prepared by the grantor, or on behalf of the grantor, must be reviewed by the DDPW, DPWHA and DPWRS, and the OAG prior to closing.

5.5.1.2 The Department's standard form sample deeds, easements, and licenses will be approved by the OAG. The OAG or designee shall authorize changes to approved legal documents affecting single parcels, or groups of parcels. The authorization shall be in writing, include justification for the changes, and be made a part of the department's official parcel file. Changes that allow for variations of execution may be made by the DPWRS, under the direction of the OAG or designee, and upon approval by the DDPW and DPWHA.

5.5.1.3 The responsibilities of the OAG relating to preparation of legal documents are as follows:

- (A) To designate one or more attorneys to prepare or direct the preparation of legal documents. All legal documents prepared by the OAG shall carry the name of the attorney who prepared or directed the preparation of the document;
- (B) To provide sufficient guidance to the staff of the Department to provide routine title matters are handled competently;
- (C) To provide assistance to the staff of the Department and Department of Land Management (DLM) when non-routine title matters arise. Assistance must be provided in a reasonable time as agreed among the OAG, DPWRS and the DLM; and
- (D) To provide that proper legal documents are used and bear no apparent legal deficiencies. The OAG is not responsible for the accuracy of legal descriptions or the completeness of title examination. That responsibility is with the Department and the DLM.

5.5.1.4 The responsibilities of the Department and DLM relating to the preparation of legal documents are to:

- (A) Monitor the quality and accuracy of all legal descriptions;
- (B) Determine the quality and quantity of title necessary for the Department's purposes under the direction of the OAG;
- (C) Consult with the OAG when non-routine title matters arise, and
- (D) Assemble all legal documents prepared by the Department under the direction of the OAG.

5.5.2 Abstract of Title Update

5.5.2.1 The Department's closing agent shall provide that the abstract of title is updated within **24 hours** prior to closing, excluding weekends and holidays. Updates will include the latest public records available. For a closing conducted by mail, the title search must be updated within **24 hours** prior to mailing the warrant, excluding weekends and holidays.

5.5.2.2 Abstract of Title update reports must be in compliance with **Section 2.1, Land Title**.

5.5.2.3 Any activity discovered by the update, and not previously addressed, will be reported to the DPWRS in writing with supporting documentation. A closing will not be conducted until the results of the DPWRS's review are available and approved by the DDPW and DPWHA.

5.5.3 Physical Inspection

5.5.3.1 Within **24 hours** prior to closing, excluding weekends and holidays, a Department representative must perform a physical inspection of the property to verify that no one is in physical possession of the property other than those persons previously identified, and that all property to be acquired by the Department is present and has not been removed. The outcome of this inspection must be documented in the Department's official parcel file. For closings conducted by mail, the physical inspection must be performed within **24 hours** prior to the mailing of the warrant, excluding weekends and holidays.

5.5.3.2 Any interest not previously discovered will be reported to the DPWRS in writing. A closing will not be conducted until the results of the DPWRS's review are available and approved by the DDPW and DPWHA

5.5.3.3 An inspection must be performed on every fee, perpetual easement, and temporary easement parcel unless:

-
- (A) The purchase agreement amount is \$25,000 or less, excluding fees and costs, and no improvements are being acquired, or
 - (B) The DPWRS grants an exception to this requirement. Any exception must be approved by the DDPW and DPWHA, and must be documented in the Department's official parcel file. Exceptions may be granted when a danger or hazard to the agent exists or special circumstances exist as determined by the DPWRS that makes an inspection unnecessary.

5.5.3.4 A property inventory is required by **Section 8.1, Inventory of Properties Acquired Through the Right of Way Process**. The inspection and inventory may be conducted by a single agent. The results of the inventory and inspection may be documented on one form.

5.5.4 Proration and Payment of Taxes

5.5.4.1 All ad valorem property taxes, including delinquent taxes, due and payable by the grantor must be collected or paid at or before closing. Taxes paid outside of closing must be evidenced by a receipt or documentation from the tax authority indicating amounts and date received. The receipt will be maintained with **Form No. 5.2-7, Closing Statement**, in the Department's official parcel file. Payment for taxes received from the property owner at closing should be in the form of a check or money order payable to the Treasury of Guam.

5.5.4.2 The closing agent must not accept cash for the property taxes. Tax payments presented at closing must be promptly delivered to the tax authority.

5.5.4.3 The closing agent is responsible for obtaining the following information from the Director of Revenue and Taxation (DRT) for closing and documented in the parcel file:

- (A) The amount of taxes due, current and delinquent, if any;
- (B) The amount necessary to redeem any tax certificates;
- (C) The current prorated taxes due up to but excluding the day of closing;
- (D) The per diem tax rate, and
- (E) The name of the official providing the information and the date the information was provided.

5.5.4.4 In the event the DRT will not provide a proration of taxes for acquisitions occurring between November 1 and December 31, all taxes on the entire property must be collected from the property owner prior to or at closing.

5.5.4.5 On a partial taking, if the DRT property appraiser states in writing that the assessed value of the subject property will not be reduced by the acquisition, the proration of the taxes will not be necessary. This written statement shall be included in the Department's official parcel file.

5.5.4.6 If no taxes are due as a result of the DRT having adopted a minimum tax bill resolution, the Department's official parcel file must be documented accordingly.

5.5.5 Deferring Encumbrances

5.5.5.1 The DPWRS, at the time of closing, may defer clearing subordinate interests in the following manner. Each deferral, and the anticipated date of clearing the subordinate interest, must be approved by the DDPW and DPWHA and documented in the Department's official parcel file. Encumbrances deferred under this section must be acquired or released prior to right of way certification in accordance with **Section 10.1, Right of Way Certification**.

5.5.5.2 With approval from the DDPW and DPWHA, the DPWRS may defer clearing utility interests. The Public Utilities Commission Office must provide written confirmation that they will obtain the executed utility instruments, which have been deferred. The confirmation must include the anticipated date of execution and the name and title of the representatives of the utility office providing the information. The DPWRS or designee will periodically monitor the status of utility interests deferred under this section. The written confirmation and notes pertaining to periodic status updates will be maintained in the Department's official parcel file.

5.5.5.3 With the approval of the DDPW and DPWHA, the DPWRS may defer clearing subordinate interests relating to any donated parcels.

5.5.5.4 Deferrals may be granted by the Director of the Department of Public Works (DDPW) in those cases where commercial or governmental lien holders require time to process lien satisfactions or releases after receipt of payment. Execution and delivery of the satisfaction or release must be reasonably assured. In these circumstances, the Department may deliver the warrant for payment of the lien at closing in exchange for a commitment in writing that a properly executed satisfaction or release will be promptly issued. A receipt for the warrant should also be obtained at closing. Both the commitment and receipt must be placed in the Department's official parcel and project file.

5.5.5.5 Clearing encumbrances, other than those described above, may be deferred by the DDPW when in the best interest of the public. The deferral must be granted in writing and contain the reason for the deferral, a plan for obtaining the unresolved interest, and the anticipated date for clearing the interest.

5.5.6 Execution of Legal Documents

5.5.6.1 The closing agent shall provide that all parties executing closing documents are lawfully empowered to do so. The OAG or designee should be consulted in advance to determine what is required.

5.5.6.2 Representative Authorization pursuant to **Section 5.2, Negotiation Process**, does not give the representative power to convey real property of the grantors. However, this letter is sufficient to allow an attorney representing the property owner to sign **Form No. 5.2-7, Closing Statement**.

5.5.6.3 The written legal authorization for representatives, such as personal representatives, trustees, power of attorney or guardians, to act on behalf of the grantor must be recorded in the public records. Copies will be maintained in the Departments, and the DLM official parcel files.

5.5.6.4 The name of each person who executes a legal document affecting real property must be legibly printed, typewritten, or stamped immediately beneath the signature of such person. The mailing address of each such person must be legibly printed, typewritten, or stamped upon such instrument.

5.5.6.5 The name of both witnesses to the execution of the documents must be legibly printed, typewritten, or stamped immediately beneath the signature of such person.

5.5.6.6 The name of any notary public or other officer authorized to take acknowledgments or proofs whose signature appears upon the document must be legibly printed, typewritten, or stamped immediately beneath the signature of such person. The notary must affix his/her seal and the date when his/her commission expires.

5.5.6.7 The closing agent shall deliver closing warrants after execution of the conveyance documents. Delivery of the warrant will be handled in compliance with **Section 5.5.11, Delivery of Payments**.

5.5.7 Closing Duties

5.5.7.1 A closing shall take place within **60 days** after final agency acceptance has been granted by the Department unless otherwise stated in writing on **Form No. 5.2-2, Offer and Purchase Agreement**.

5.5.7.2 The negotiating agent may act as the closing agent on the same parcel with prior approval of the DDPW, DPWHA

and DPWRS. Approval is not required in those situations where the parcel is being conveyed for no valuable consideration, e.g. government transfers and donations (grants).

5.5.7.3 At or before closing, the closing agent shall deliver to the grantor a copy of **Form No. 5.2-2, Offer and Purchase Agreement**, with final agency acceptance. The Department's official parcel file shall be documented to verify delivery of the **Agreement**.

5.5.7.4 All interests and encumbrances not previously accepted by the OAG pursuant to **Section 2.1, Land Title**, must be acquired or released prior to or at closing unless deferred under **Section 5.5.5, Deferring Encumbrances**.

5.5.7.5 Form No. 5.2-7, Closing Statement, is required when valuable consideration is involved. It is recommended that a closing statement be prepared for all parcels. The closing agent will provide proper completion and execution of all documents relating to the closing including but not limited to legal documents, all supporting instruments relating to the property, and the **Closing Statement**.

5.5.8 Closing Costs

5.5.8.1 Closing costs are those expenses necessary to transfer title to the Department. The owner shall be reimbursed for all reasonable expenses necessarily incurred. Whenever feasible and with owner authorization, the Department shall pay these costs directly avoiding the need for an owner to seek reimbursement. Closing costs include:

- (A) Recording fees, mortgage prepayment penalties, transfer taxes, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses necessary to convey the real property to the Department. The Department is not required to pay costs incurred solely to perfect the owner's title to the real property.
- (B) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Department obtains title to the property.
- (C) Documentary stamp tax for parcels acquired which are not subject to condemnation. The actual consideration is the amount paid for land and improvements only.
- (D) For donated parcels, the owner's pro rata share of ad valorem property taxes may be reimbursed as a closing cost up to the amount established as recommended compensation for the parcel.

5.5.8.2 Claims for closing costs being reimbursed to the property owner, or paid to someone other than the property owner are processed on **Form No. 5.5-1, Application for Payment of Closing Costs**.

5.5.8.3 When closing costs are being reimbursed to the property owner, the property owner must complete the Grantor's Request for Reimbursement section of the application. A copy of **Form No. 5.2-7, Closing Statement**, and the receipt indicating payment must be attached to the application.

5.5.8.4 When closing costs are being processed for payment in advance of closing to someone other than the property owner or another governmental agency, the original invoice from the payee must be attached to the application. An invoice from the payee is not required for direct payment of documentary stamps, recording fees, or other incidental expenses being paid directly to another governmental agency. The property owner is not required to execute **Application for Payment of Closing Costs**, and the **Closing Statement** need not be attached to the application.

5.5.9 Delivery of Payments

5.5.9.1 The closing agent will provide that all warrants for payments by the Department at closing are available at closing.

5.5.9.2 Delivery of payments for land, improvements, severance damages, business damages, and closing costs will not be made before final agency acceptance has been granted and warranty deed has been recorded at Guam Department of Land

Management.

5.5.9.3 All warrants will be handled in accordance with **Section 9.2, Warrant Control**.

5.5.10 Recording Legal Documents

5.5.10.1 The closing agent and DPWRS will provide that all executed deeds, perpetual and temporary easements are delivered, to the DLM no later than **48 hours** after the closing, excluding weekends and holidays, for proper recording. The closing agent will provide that instruments ancillary to the documents prepared by or on behalf of the Department, such as, death certificates, affidavits, mortgage and lien satisfactions, etc., are also properly recorded. The delivery date to the DLM must be documented in the Department's official parcel file.

5.5.10.2 Death certificates should be recorded when necessary to show proof of death of a property owner. However, when a recordable death certificate cannot be obtained, an unrecorded copy shall be kept in the Department's official parcel file.

5.5.10.3 Documents recorded in the official records shall not contain social security numbers in accordance with **5 GCA, Chapter 32, Article 7**.

5.5.11 Department of Revenue and Taxation Requirements

The closing agent must provide the compliance with Department of Revenue and Taxation requirements in regard to real estate closings pursuant to **Section 5.12, Department of Revenue and Taxation Income Tax Reporting Requirements**. The closing agent will provide the **Internal Revenue Service Form 1099-S** to the property owner. The form should be delivered at closing but may be delivered by mail after closing. In no case shall the form be delivered later than December 31 of the calendar year in which the closing is held. Delivery of the form will be documented in the parcel file.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – changes to sections 5.5.1.1, 5.5.1.2, 5.5.2.3, 5.5.3.2, 5.5.3.3, 5.5.5.1, 5.5.5.2, 5.5.5.3, 5.5.7.2, and 5.5.9.2



DPW Form 5.5-1

APPLICATION FOR PAYMENT OF CLOSING COST

ITEM/SEGMENT NO.:
GU PROJECT No.:
ROAD NO.:
PARCEL NO.:

This Application is for payment or reimbursement of:

- 1. Mortgage pre-payment penalty
2. Pro-rata amount of pre-paid real property taxes reimbursement to Grantor
3. Documentary stamps
4. Other (explain fully)
5. Total

GRANTOR'S REQUEST FOR REIMBURSEMENT

I hereby request reimbursement as an owner of Real Property taken by the Territory of Guam Department of Public Works, for the reasonable and necessary closing cost(s) incurred in transferring the subject property to the Government of Guam.

Grantor's Signature Date

The Grantor's signature is necessary only reimbursement is requested. It is not necessary if payment will be made to someone other than Grantor.

RETURN FORM TO: DEPARTMENT OF PUBLIC WORKS
OFFICE OF RIGHT OF WAY
542 NORTH MARINE CORPS DRIVE
TAMUNING, GU 96913

The above statements are true to the best of my knowledge and payment in the amount set for is recommended.

Agent's Signature Date

Approved for Payment:

DPW Right of Way Supervisor Date



DPW Form 5.5-2

WARRANTY DEED

Parcel No: _____
Item/Segment No.: _____
GU Project No.: _____

THIS WARRANTY DEED, Made this _____ day of _____, _____ by _____, grantor, to GOVERNMENT OF GUAM, DEPARTMENT OF PUBLIC WORKS, grantee. (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of organizations).

WITNESSETH:

That the grantor, for and in consideration of the sum of \$1.00 and other valuable considerations, receipt and sufficiency being hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, all that certain land situate in the Territory of Guam, to wit:

(Legal description)
Water service [] is [] is not available at the subject parcel.
Sanitary sewer service [] is [] is not available at the subject parcel.
Electric power service [] is [] is not available at the subject parcel.

TOGETHER with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.
TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required)

Witness
(type/print name of witness)

Grantor
(type/print name of grantor)

Witness
(type/print name of witness)

Address of Grantor

The foregoing instrument was acknowledged before me this day _____ of _____,
_____ by _____, who is personally known to me or who has
produced _____ as identification.

(Signature of Notary Public)

(type/print or stamp name under signature)

(Affix Seal)



DPW Form 5.5-3

PERPETUAL EASEMENT

Parcel No: _____
Item/Segment No.: _____
GU Project No.: _____

THIS EASEMENT, Made this _____ day of _____, _____, by _____, grantor, to GOVERNMENT OF GUAM, DEPARTMENT OF PUBLIC WORKS, its successors and assigns, grantee. (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of organizations).

WITNESSETH:

That the grantor for and in consideration of the sum of \$1.00 and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the grantee, its successors and assigns, a perpetual easement for the purpose of constructing and maintaining a _____ in, over, under, upon, and through the following described land in the Territory of Guam, to wit:

(Legal description)

TO HAVE AND TO HOLD the same unto said grantee, its successors and assigns forever, and the grantor will defend the title to said lands against all persons claiming by, through or under said grantor.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required)

(type/print name of witness)

(type/print name of grantor)

Address of Grantor

(type/print name of witness)

The foregoing instrument was acknowledged before me this day _____ of _____,
_____ by _____, who is personally known to me or who has
produced _____ as identification.

(Signature of Notary Public)

(type/print or stamp name under signature)

(Affix Seal)



DPW Form 5.5-4

TEMPORARY EASEMENT

(For a specific period of months from the time the GOVERNMENT OF GUAM becomes the owner)

Parcel No: _____
Item/Segment No.: _____
GU Project No.: _____

THIS EASEMENT, Made this _____ day of _____, _____ by and between _____, grantor, to the GOVERNMENT OF GUAM, DEPARTMENT OF PUBLIC WORKS, its successors and assigns, grantee. (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of organizations).

WITNESSETH

That for and in consideration of the sum of \$1.00 and other valuable considerations, receipt and sufficiency of which is hereby acknowledged, the grantor hereby gives, grants, bargains, and releases to the grantee, a temporary easement for the purpose of _____, in, upon, over, and through the following described land in the Territory of Guam, described as follows, to wit:

(Legal description)

THIS EASEMENT is granted upon the condition that any work performed upon the above described land shall conform to all existing structural improvements within the limits designated, and all work will be performed in such a manner that the existing structural improvements will not be damaged.

THIS EASEMENT shall be for a period of _____ months commencing on the date the Government of Guam, Department of Public Works becomes the owner of this easement.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required)

Witness

Grantor

(type/print name of witness)

(type/print name of grantor)

Witness

Address of Grantor

(type/print name of witness)

The foregoing instrument was acknowledged before me this day _____ of _____,
_____ by _____, who is personally known to me or who has
produced _____ as identification.

(Signature of Notary Public)

(type/print or stamp name under signature)

(Affix Seal)



DPW Form 5.5-5

TEMPORARY EASEMENT

(Through the month and year construction is anticipated to be completed)

Parcel No: _____
Item/Segment No.: _____
GU Project No.: _____

THIS EASEMENT, Made this _____ day of _____, _____ by and between _____, grantor, to the GOVERNMENT OF GUAM, DEPARTMENT OF PUBLIC WORKS, its successors and assigns, grantee. (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of organizations).

WITNESSETH

That for and in consideration of the sum of \$1.00 and other valuable considerations, receipt and sufficiency of which is hereby acknowledged, the grantor hereby gives, grants, bargains, and releases to the grantee, a temporary easement for the purpose of _____, in, upon, over, and through the following described land in the Territory of Guam, described as follows, to wit:

(Legal description)

THIS EASEMENT is granted upon the condition that any work performed upon the above described land shall conform to all existing structural improvements within the limits designated, and all work will be performed in such a manner that the existing structural improvements will not be damaged.

It is understood and agreed by the parties hereto that the rights granted herein shall terminate upon completion of this transportation project, but no later than the last day of _____, _____ (Month and year the construction is anticipated to be completed).

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required)

Witness

(type/print name of witness)

Grantor

(type/print name of grantor)

Witness

(type/print name of witness)

Address of Grantor

The foregoing instrument was acknowledged before me this day _____ of _____,
_____ by _____, who is personally known to me or who has
produced _____ as identification.

(Signature of Notary Public)

(type/print or stamp name under signature)

(Affix Seal)



DPW Form 5.5-6

SPECIAL WARRANTY DEED

Parcel No: _____
Item/Segment No.: _____
GU Project No.: _____

THIS SPECIAL WARRANTY DEED, Made this _____ day of _____, _____ by and between _____, grantor, to the GOVERNMENT OF GUAM, DEPARTMENT OF PUBLIC WORKS, its successors and assigns, grantee. (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of organizations).

WITNESSETH

That the grantor, for and in consideration of the sum of \$1.00 and other valuable considerations, receipt and sufficiency being hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, all that certain land situate in the Territory of Guam, to wit:

_____ (Legal description)

- Water service is is not available at the subject parcel .
- Sanitary sewer service is is not available at the subject parcel .
- Electric power service is is not available at the subject parcel .

TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said grantor.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:
(Two witnesses required)

Witness

(type/print name of witness)

Witness

(type/print name of witness)

Grantor

(type/print name of grantor)

Address of Grantor

The foregoing instrument was acknowledged before me this day _____ of _____,
_____ by _____, who is personally known to me or who has
produced _____ as identification.

(Signature of Notary Public)

(type/print or stamp name under signature)

(Affix Seal)

Section 5.6
EMINENT DOMAIN

Table of Contents

PURPOSE 5-6-1

AUTHORITY 5-6-1

SCOPE 5-6-1

EFFECT OF CHAPTER ON OTHER AGENCIES 5-6-1

REFERENCES 5-6-1

FORMS 5-6-1

DEFINITIONS 5-6-1

5.6.1 Limitations on Condemnation..... 5-6-2

5.6.2 Information Necessary to Prepare a Lawsuit 5-6-2

5.6.3 Litigation 5-6-3

5.6.4 Appraisals..... 5-6-3

5.6.5 Expert Witness Services 5-6-4

5.6.6 Offers of Settlement..... 5-6-4

5.6.7 Mediation 5-6-4

5.6.8 Trial or Hearing..... 5-6-4

5.6.9 Legal Settlements..... 5-6-5

5.6.10 Defendant's Fees and Costs 5-6-5

5.6.11 Payment of Judgments and Orders..... 5-6-5

5.6.12 Closing Cases and Recovery of Excess Funds and/or Interest from the Superior Court of Guam 5-6-5

5.6.13 Requests to the Clerk of the Superior Court of Guam to Invest Court Deposits..... 5-6-5

5.6.14 Right of Way Records System 5-6-6

5.6.15 Taxpayer Information 5-6-6

5.6.16 Inverse Condemnation 5-6-6

HISTORY 5-6-6

EMINENT DOMAIN

PURPOSE

This section provides guidance for preparing and conducting eminent domain actions and guides the attorney/client relationship that must exist between the Office of the Attorney General (OAG) attorneys representing the Guam Department of Public Works Office of Right of Way (Department) in eminent domain actions and the Department as clients.

AUTHORITY

21 GCA § 15101 Acquisition of Property by exercise of Eminent Domain
21 GCA § 15106 Jurisdiction: Procedure

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Section 2.1, Land Title
Section 4.1, Appraisal and Appraisal Review
Section 5.2, Negotiation Process
Section 5.4, Fees and Costs
Section 5.12, Guam Territorial Income Tax Reporting Requirements
Section 7.2, General Relocation Requirements

FORMS

5.2-1 Notice to Owner
5.2.1BO Notice to Business Owner
5.2-3 Representative Authorization
5.2-4 Settlement Approval
5.6-1 Condemnation Process Checklist
5.6-2 Trial/Hearing Report
5.6-3 Request for Taxpayer Identification Number
5.6-4 Public Disclosure Notice

DEFINITIONS

Legal Settlement: An agreement to pay an amount in excess of just and full compensation (land, improvements and severance damages) or an amount greater than the Department's initial business damage counteroffer, exclusive of fees and costs, after an order of taking deposit.

5.6.1 Limitations on Condemnation

5.6.1.1 Parcels owned by Federal and Territorial agencies cannot be acquired by condemnation unless the affected agency consents to and cooperates in the condemnation.

5.6.1.2 The Department of Public Works Right of Way Supervisor (DPWRS) shall discuss parcels owned by utility companies with the Department of Public Works Director (DDPW), Department of Public Works Highway Administrator (DPWHA), and OAG before placing such parcels in suit.

5.6.1.3 The DPWRS shall discuss parcels involved in ongoing foreclosure or bankruptcy litigation with the DDPW, DPWHA and OAG before placing such parcels in suit.

5.6.1.4 The Department shall obtain concurrence from the Guam Legislature prior to initiating condemnation proceedings.

5.6.2 Information Necessary to Prepare a Lawsuit

The following information is needed to prepare an eminent domain lawsuit:

- (A) Copies of the legal descriptions for the parcels being acquired;
- (B) Certified copies of the approved right of way maps depicting the parcel(s) being acquired;
- (C) **Form No.5.6-1 Condemnation Process Checklist** identifying the Estimate of Just Compensation in addition to the Parcel No. ; Lot No. Description and area in Square Meters (SM) of the taking and the remainder and the Title Owner(s) Name(s).
- (D) The names and addresses of all persons holding an interest in the parcel and improvements being acquired, including but not limited to property owners, tenants, owners of easements, lien holders, owners of outdoor advertising signs (OAS), and holders of OAS sign permits;
- (E) If applicable, copies of completed **Form No. 5.2-3, Representative Authorization**;
- (F) A complete description of the steps taken to locate persons named in the suit for which addresses cannot be found;
- (G) A chronologic summary of all offers, counter offers and negotiation contacts;
- (H) A corporate status report from the OAG, for affected business entities required to register with the Territory;
- (I) Copies of **Form No. 5.6-3, Request for Taxpayer Identification Number**, with the property owner's tax information or documentation that taxpayer information has been requested but not received, or that taxpayer information is not necessary;
- (J) Copies of all appraisals and **Review Appraiser Statements** for each parcel;
- (K) Copies of all title searches and title search updates. Title searches shall be updated prior to suit filing or within **ten days** after suit is filed. Updates prepared after suit is filed must cover the time period up to the recording of the Lis Pendens. Title search updates must comply with **Section 2.1, Land Title**;
- (L) Copies of any unrecorded title documents affecting the parcels that were obtained during negotiations, such as conveyances, easements, leases, trust agreements, etc.;
- (M) Copies of the eminent domain parcel resolutions and recorded project resolution;

- (N) Where the acquisition includes the common elements of a condominium, notices sent to condominium unit owners and the responses received from any unit owners who objected to the condominium association representing them;
- (O) Copies of *Form No. 5.2-1, Notice to Owner*, or
- (P) Copies of *Form No. 5.2-1BO, Notice to Business Owner*;
- (Q) Documentation that a physical inspection of the property was performed prior to the parcel being placed in suit verifying that no one is in physical possession of the property other than those persons previously identified; and
- (R) Copies of *Form No. 5.6-4, Public Disclosure Notice*, for entities required to provide public disclosure and a copy of the executed *Public Disclosure Affidavit*. If the *Public Disclosure Affidavit* has not been obtained, a note stating this fact must be included in the suit package.
- (S) All documentation is to be assembled into one Master File with a separate file for each parcel identified for Condemnation. A copy of this set of files must be retained with the Department's official parcel file or project file. All documents bearing original signatures and certifications must be copied into the Master File and the originals submitted to the OAG.

5.6.3 Litigation

5.6.3.1 The DPWRS or designee shall provide litigation support to the assigned OAG attorney.

5.6.3.2 The assigned OAG attorney shall notify the DPWRS, DDPW, DPWHA and all necessary witnesses at least three business days prior to the date for order of taking, trial, mediation, or hearing for attorney's fees and costs.

5.6.3.3 The assigned OAG attorney shall communicate evidentiary issues that may affect the Department's position regarding preparation and submittal of right of way information to the DPWRS in sufficient time to allow for amended appraisals or other litigation preparation.

5.6.3.4 The assigned OAG attorney shall obtain written approval for any changes such as median and curb cuts, access changes, temporary access, etc., from the DDPW and DPWHA prior to agreeing to a legal settlement that commits the Department to such changes.

5.6.3.5 The Department may as part of a legal settlement acquire an entire property where only a portion is needed for construction of the project pursuant to **Section 5.2, Negotiation Process**.

5.6.3.6 Changes, as described in **Sections 5.6.3.4** and **5.6.3.5**, may require modifications to the Department's right of way maps or construction plans. The assigned OAG attorney shall provide a written notification to the DPWRS and DPWHA at the time a legal settlement is approved that commits the Department to a change.

5.6.3.7 For each OAS acquired, the Department shall send a copy of the declaration of taking, the certificate of deposit, and a completed outdoor advertising permit cancellation certification. The Department shall provide these items within **30 days** after the order of taking deposit or within **30 days** after the last day of any extended possession.

5.6.4 Appraisals

5.6.4.1 The DPWRS shall provide that a current approved appraisal is available for condemnation hearings.

5.6.4.2 There may be situations during the course of litigation when a new appraisal report is required. The assigned OAG attorney may request that a new or revised appraisal report be prepared. In addition to the information required in

Section 5.6.5, the request shall provide the date the report will be needed, any special instructions or corrections to comply with applicable law, and a recommendation to retain a specific appraiser, if required.

5.6.4.3 Appraisals prepared in accordance with an expert witness contract must be reviewed and approved as required by **Section 4.1, Appraisal and Appraisal Review**, before being used in court proceedings.

5.6.5 Expert Witness Services

5.6.5.1 The assigned OAG attorney is responsible for determining the need for expert witness services. The attorney shall request the DDPW, DPWHA and DPWRS's approval for expert witness services or to supplement existing expert witness contracts.

5.6.5.2 After approval by the DDPW, DPWHA and DPWRS, the assigned OAG attorney shall prepare the Expert Witness Contract or Supplemental Agreement, as appropriate. The attorney shall provide that the DDPW, DPWHA and DPWRS or designee prior to services being rendered, executes expert witness contracts or supplements.

5.6.5.3 The assigned OAG attorney shall provide that expert witness services are provided pursuant to the terms of the expert witness contract. The attorney shall approve invoices for expert witness services prior to submitting the invoice to the DPWRS for payment.

5.6.5.4 The assigned OAG attorney shall coordinate with the DDPW, DPWHA and DPWRS or designee. They shall also provide that testimony to be presented by expert witnesses complies with Department procedures and directives.

5.6.6 Offers of Settlement

5.6.6.1 Offers of settlement by the Department must be recommended for approval by the DPWRS and approved by the Director Department of Public Works (DDPW) and Department of Public Works Highway Administrator (DPWHA) prior to being tendered. Offers of settlement must include all pending claims for a particular party, exclusive of fees and costs, and specify what claims are being settled. The assigned OAG attorney shall detail and support each component of the offer on **Form No. 5.2-4, Settlement Approval**.

5.6.6.2 The assigned OAG attorney shall analyze each offer of settlement received by the Department. The attorney shall recommend to the DPWRS that the offer be accepted or rejected. Defendants' offers of settlement that are accepted by the DPWRS must be justified and approved on **Form No. 5.2-4, Settlement Approval**.

5.6.7 Mediation

5.6.7.1 The DPWRS, or designee, shall have authority to represent the Department, but must receive approval from DDPW and DPWHA before committing to legal settlements resulting from court-ordered mediation.

5.6.7.2 With the approval of the DDPW and DPWHA, the DPWRS, or designee, may delegate settlement authority for court-ordered mediation, provided the total amount of difference in contention between the parties is less than \$100,000.

5.6.7.3 The person who appraised or reviewed the appraisal of the property that is the subject of mediation shall not represent the Department at mediation.

5.6.7.4 The individual representing the Department at court-ordered mediation shall complete **Form No. 5.2-4, Settlement Approval**, as described in **Section 5.6.9** and obtain the required concurrences and approvals prior to entry of the final judgment for the parcel.

5.6.8 Trial or Hearing

The assigned OAG attorney shall document the results of a trial or hearing for attorney's fees or costs using **Form No. 5.6-2, Trial/Hearing Report**, within **ten working days** after the trial or hearing.

5.6.9 Legal Settlements

5.6.9.1 Prior to committing to a legal settlement, the assigned OAG attorney shall prepare **Form No. 5.2-4, Settlement Approval while** considering the criteria in **Section 5.2, Negotiation Process**. The attorney shall obtain concurrence from the DPWRS that the explanation adequately supports settlement prior to submitting **Form No. 5.2-4** to the DDPW, DPWHA and DPWRS for approval. The DPWRS shall provide that the written explanation complies with the requirements of **Section 5.2** prior to approving the settlement. The DPWRS shall obtain any additional approvals as may be required pursuant to **Section 5.2**. Legal settlements must be fully approved prior to entry of a final judgment.

5.6.9.2 The assigned attorney must coordinate with the DPWRS or designee concerning any relocation benefits that may be included in or affected by the legal settlement in accordance with **Section 7.2, General Relocation Requirements**.

5.6.10 Defendant's Fees and Costs

5.6.10.1 Fees and costs shall be paid in accordance with **Section 5.4, Fees and Costs**.

5.6.10.2 If the recommended legal settlement includes attorney fees that are based on non-monetary benefits, the assigned OAG attorney must quantify the benefits to the extent possible and explain the attorney fee on **Form No. 5.2-4, Settlement Approval**. To the extent possible, non-monetary benefits shall also be quantified in the stipulated final judgment.

5.6.11 Payment of Judgments and Orders

5.6.11.1 The assigned attorney shall provide the DPWRS certified copies or conformed copies certified by the assigned attorney of all court orders requiring payment.

5.6.11.2 Payment of court orders must be made within the time specified in the order. If no time limit is specified, payment must be made within **40 days** after entry of the order except for orders of taking in which case deposit must be made within **20 days** after the order is entered.

5.6.12 Closing Cases and Recovery of Excess Funds and/or Interest from the Superior Court of Guam

5.6.12.1 The assigned OAG attorney shall file a final disposition with the court within **90 days** after the last judgment or order has been completed for an eminent domain case. This pleading alerts the court that the Department does not intend to submit any further pleadings allowing the court to close the case.

5.6.12.2 The assigned OAG attorney must contact the Clerk of the Superior Court of Guam and determine if there are funds remaining in the court registry prior to filing the final disposition. If there are funds remaining in the registry, the OAG attorney must determine the ownership of the funds. If after reviewing the case files and court registry ledger or other appropriate records of the Clerk of the Superior Court of Guam, the attorney determines that the funds belong to the Department, the attorney must take the necessary actions to withdraw the funds.

5.6.12.3 Funds not clearly identifiable as belonging to the Department must be left in the court registry. When funds are left in the court registry, the assigned OAG attorney must document the case file as to the reasons funds remain in the registry.

5.6.13 Requests to the Clerk of the Superior Court of Guam to Invest Court Deposits

When making deposits into the registry of the court pursuant to an order in eminent domain, the Department shall provide the Clerk of the Superior Court of Guam a letter requesting that the Clerk invest the deposited funds.

5.6.14 Right of Way Records System

The OAG assigned attorney or designee is responsible for ensuring that all data regarding eminent domain litigation will be provided to the Department within **30 days** after the last judgment or order has been completed for retention in the Department's official parcel or project files.

5.6.15 Taxpayer Information

5.6.15.1 The assigned attorney must verify that the Department has received the defendant's Territorial tax identification information pursuant to **Section 5.12, Guam Territorial Internal Income Tax Reporting Requirements**, prior to entry of a final judgment for land, improvements, or damages. If the taxpayer information has not been received, the OAG attorney shall deliver **Form No. 5.6-3, Request for Taxpayer Identification Number**, to the property owner or the property owner's attorney and document delivery of the request in the legal file. It is recommended that the OAG attorney include a stipulation that the defendant provides taxpayer information in the final judgment. When the OAG attorney receives the executed final judgment, he/she shall transmit a copy of **Form No. 5.6-3, Request for Taxpayer Identification Number**, whether completed by the property owner or not, to the DDPW, DPWHA and DPWRS. When requesting payment for the order, this should come with the final judgment.

5.6.15.2 The assigned OAG attorney must notify the DDPW, DPWHA and DPWRS when a non-monetary benefit has been determined. This information must be reported to the Territory of Guam Internal Revenue Service as property or service received by the defendant. To the extent possible, non-monetary benefits shall also be quantified in the stipulated final judgment.

5.6.16 Inverse Condemnation

The assigned OAG attorney shall contact the DPWRS as early as possible after receipt of an inverse condemnation claim to coordinate litigation of the inverse case. The assigned OAG attorney, the DDPW, DPWHA and DPWRS shall:

- (A) Assess the merits of the case;
- (B) Identify experts and resources needed to defend the Department's position;
- (C) Identify funding;
- (D) Assign project, parcel and Department suit number(s);
- (E) Retain all available data in the Department's official parcel file; and
- (F) Have affected Right of Way maps modified to include the acquired property if the court declares a taking or the Department stipulates to a taking.

HISTORY

Original Issue Date: January 2011

Revision1 – October 2017 – changes to sections 5.6.1.2, 5.6.1.3, 5.6.3.2, 5.6.3.4, 5.6.3.6, 5.6.5.1, 5.6.5.2, 5.6.5.4, 5.6.6.1, 5.6.7.1, 5.6.7.2, 5.6.9.1, 5.6.15.1, 5.6.15.2, and 5.6.16.



DPW Form 5.6-1

CONDEMNATION PROCESS CHECKLIST
(For use throughout the Condemnation Process)

Roadway/Route No.:
Project Limits
From:

To:

GU Project No.:
Item/Segment No.:
Parcel No.:

PRIOR TO SUBMITTING CONDEMNATION REQUEST

If at any time it is verified an Attorney represents the landowner, all communications must be made to the Attorney. The Department should request verification of the Attorney's status. In certain circumstances the Attorney may authorize you to communicate with his/her client. In the case of a final offer letter you must advise the Attorney of the requirement to send this to the landowner and send a copy to the Attorney.

- Send final offer letter (each owner must receive).
- Conduct final offer letter follow-up. (If owner requests Administrative Settlement, DO NOT submit condemnation/eminent domain request until after the Administrative Settlement is disapproved.)
- Obtain an updated title commitment for eminent domain.
- Determine whether a housing supplement is involved and note this in the transmittal memo.

SUBMIT EMINENT DOMAIN REQUEST

- Submit condemnation request with two copies of *Form 5.6-1, "Condemnation Process Checklist"*.
- Obtain concurrence on the condemnation request from the Guam Legislature.
- Ensure updated appraisal is requested.
- If updated appraisal value increases, re-institute negotiations with new final offer letter.

OFFICE OF ATTORNEY GENERAL PAPERS RECEIVED

Once the Department sends the request for Condemnation to the Office of the Attorney General (OAG), all communications with the landowners, their Attorney or any party named in the case must originate from the Attorney Generals assigned attorney. Clear any requests or correspondence with the assigned OAG attorney. An exception to this procedure is the formal serving of Notices and issuance of final offer letters.

- Request title company approval of parties to the condemnation (if appropriate).
- File original Petition for Condemnation signed by the assigned OAG attorney.
- File Lis Pendens signed by a Department of Public Works Right of Way Supervisor (DPWRS) or designee and notarized.
- File Order Appointing Commissioners signed by the Judge of the Court in which the proceeding will be held.

- If the Judge allows both parties to suggest Commissioners and the OAG attorney authorizes you to do so, notify owner/attorney you are requesting appointment of Commissioners.
- Establish and coordinate date and location of hearing with:
 - Commissioners
 - Property owner/attorney
 - Appraiser
 - OAG Attorney
 - Court Reporter
 - Engineering witness
 - Any expert witness, if appropriate.
- Obtain Commissioners' signatures on Oath of Commissioners, Order Setting Hearing and Notices of Hearing.
- Obtain Commissioners' Social Security Numbers.
- File Oath of Special Commissioners.
- File Order Setting Hearing (must have Cause Number).
- Serve Notices of Hearing. (Personal service must be made no later than the **11th day** before the scheduled Hearing date.)
- Fill out Services of Notice.
- File Notice of Hearing and Services of Notice. A separate Notice of Hearing must be issued, served, returned and filed for each party joined.
- If authorized by OAG attorney, notify parties of any change in location and date of Hearing.
- Send letters to Commissioners, Court Reporter, appraiser(s), technical experts and all Department witnesses reminding them of date, time and location of the Hearing.
- Send file-marked copies of all papers filed to the OAG attorney.
- Arrange pre-hearing conference with OAG attorney and Department witnesses.
- Have exhibits requested by OAG attorney prepared and ready for use in pre-hearing conference.
- Have Commissioners view property if appropriate.
- Review Award before the Hearing. In particular, check names, dates, field notes and special clauses.

ATTEND SPECIAL COMMISSIONERS' HEARING

- Take notes during the Hearing in anticipation of filling out the *Form 5.6-6 Trail/Hearing Report*.
- Ensure Commissioners have signed the Award.
- Immediately following the Hearing, meet with the OAG attorney to discuss actions to be taken on the Award.
- Arrange for Award to be signed by the Judge.
- Ensure the Award is filed after the Judge signs.

- Ensure copies of the Award or notice of the Award has been mailed out by the Court.
- Obtain fully signed copy(s) or certified copy(s) of the Award.
- Send a fully signed or certified copy to Treasurer of Guam for payment.
- Send file-marked copy to title company and request title commitment.
- Ensure request for payment of Commissioners' Award is sent to Treasurer of Guam, along with a certified copy of Award and copy of title commitment.

IF NO OBJECTIONS

- As soon as possible after the close of business of the first Monday following **20 days**, verify no objections have been filed.
- Receive warrant and Judgment in Absence of Objections.
- Prepare Notice of Deposit (signed by a DPWRS or designee).
- Arrange for Judge to sign Judgment in Absence of Objections.
- Arrange for deposit of money and Judgment to be filed.
- Serve Notice of Deposit, by sending a copy of the Notice of Deposit via certified mail or fax to owner or Attorney of Record and other parties on the same day the money is deposited.
- Arrange for a certified copy of the Judgment to be filed in the Property Records of the Department of Land Management.
- Request title policy.
- Send file-marked copies of all documents filed to the OAG attorney and FHWA if applicable.

IF OBJECTIONS FILED

- File objections when received from the OAG attorney.
- As soon as possible after the close of business of the first Monday following **20 days**, verify if objections have been filed by the defendant.
- Order transcript if objections are filed.
- Receive warrant and prepare Notice of Deposit.
- Have appraiser take pictures and inspect property on the day money is to be deposited.
- Arrange for deposit of warrant in the Registry of the Court and file Notice of Deposit.
- Serve Notice of Deposit by sending a copy of the Notice of Deposit via certified mail or fax to owner or Attorney of Record and all other parties on the same day the money was deposited. Be sure date is filled in.
- Send file-marked copy of Notice of Deposit to the OAG attorney and FHWA if applicable.

MEDIATION

- Department receives request for mediation from OAG attorney. Encourage OAG attorney to send the mediation notice as soon as possible if Judge sets date. Mediation maybe set without Judge's order.
- Order may contain date of Mediation and name the Mediator - if not, Department coordinates with OAG attorney regarding Mediator and date.
- Department decides who will represent them at Mediation, i.e., DPW Engineer, ROW Administrator, etc., and coordinates dates with them.
- Department finalizes the mediation date with Mediator.
- Department confirms mediation date with all parties and requests dates and availability for pre-mediation conference call with the OAG attorney and the ROW Review Appraiser. Consideration should be given to the amount of time needed for personnel to prepare analysis.
- Department Mediation Coordinator sets pre-mediation and sends a letter confirming all dates to all parties.
- Department Review Appraiser prepares a written analysis of all appraisals and arrives at a suggested value for settlement. **Note: This information is discussed with Department's Mediation Representative(s).**
- The Department's appraisal analysis should be faxed to the OAG attorney prior to the pre-mediation conference.
- OAG attorney Position Statement is received and reviewed by the District's Mediation Coordinator and DPWRS or designee.
- Pre-mediation conference call is held between Department and OAG attorney.
- The Department will determine the amount of settlement authority.
- When the scheduled mediation is over, if a settlement has not been reached on all outstanding issues, the mediation is considered complete and may not be extended. Any further settlement offers will be processed in accordance with normal settlement procedures.
- Within **ten days** of the mediation, the OAG attorney shall send a post-mediation settlement memorandum detailing the events of the mediation to the Department. The Department is not expected to respond.
- If settled, the OAG attorney will prepare an Agreed Judgment and send it to the Department to be processed.
- The Department submits a payment request to the Treasurer of Guam to pay the mediator. This **cannot** be paid until after Mediation.

JURY TRIAL

- File request for Jury and pay Jury fee.
- Coordinate service of Citation (AKA precepts) with Objections to Award attached with OAG attorney.
- Respond to discovery requests by OAG attorney.
- Coordinate pretrial meetings with all State witnesses as requested by the OAG attorney.
- Ensure additional appraisers, technical experts/witnesses are contracted.
- If a Guardian or Attorney Ad Litem was required for the Special Commissioners' Hearing ensure a new one is appointed for the trial.
- Coordinate preparation of exhibits as requested by the OAG attorney.
- Attend trial and assist OAG attorney as requested.
- Take notes during the trial in anticipation of filling out *Form 5.6-6 Trail/Hearing Report*.
- File Judgment with Court.
- Obtain certified copy(s) of Judgment
 - One copy if Jury Award is the same as or less than the Award of Special Commissioners.
 - Two copies if Jury Award is greater than Award of Special Commissioners.
- If Jury Award is the same as or less than Special Commissioners' Award, file certified copy of Judgment in Property Records.
- Send file-marked copies of all documents to OAG attorney and FHWA as appropriate.
- If Jury Award is greater than Special Commissioners' Award, send certified copy of Judgment with request for additional funds to treasurer of Guam.
- Warrant is received and deposited in the registry of the Court.
- Request title policy.
- Send certified copy of Judgment and title policy to OAG attorney.
- Send file-marked copy of Notice of Deposit to OAG attorney.
- File certified copy of the Judgment in the Property Records of the County where the parcel is located.

SETTLEMENTS

- Memorandum regarding proposed settlement is received from the OAG attorney.
- Send copy of memorandum to review appraiser and ask for a review and analysis of all appraisals of the subject parcel to determine whether the proposed settlement can be supported from an appraisal viewpoint.
- Simultaneously, the DPWRS or their delegate should review the proposed settlement from an administrative viewpoint.
- Send memorandum responding to the proposed settlement to the OAG attorney.
- If proposed settlement is accepted, OAG attorney will prepare Agreed Judgment and may send it to Department to secure parties' signatures. (OAG attorney will direct this action.)
- File the Agreed Judgment in the Court record of the Court where the proceeding is pending and certified copy(s) is (are) ordered. If Judgment is equal to or less than the Award of the Special Commissioners, which has been deposited into the Registry of the Court, one copy is ordered. If the Agreed Judgment is for a greater amount, two copies are ordered.
- Warrant is received and delivered to payee shown in Agreed Judgment.
- If delivered to other than the Court, OAG attorney should send a Release (or Satisfaction) of Judgment to be signed when warrant is delivered.
- If applicable, Release (or Satisfaction) of Judgment is filed in the Court record where the proceeding is pending.
- A certified copy is ordered and filed in the Department of Land Management along with the second certified copy of the Agreed Judgment.
- Order title policy.
- Send file-marked copies of all documents filed to the OAG attorney and FHWA as appropriate.



DPW Form 5.6-2

TRIAL/HEARING REPORT

PARCEL No: _____

ITEM/SEGMENT NO: _____

LITIGANT NAME/NO.: _____

SUIT STYLE: _____

DPW SUIT NO.: _____

GU PROJECT NO.: _____

TRIAL/HEARING DATE: _____

DEFENSE ATTORNEY: _____

JUDGE: _____

OAG ATTORNEY: _____

COURT DOCKET NO.: _____

SELECT APPROPRIATE BOX

VERDICT (Trial)

COURT AWARD (Hearing)

SUMMARY OF FINAL JUDGMENT

Land \$ _____

Improvements \$ _____

Severance \$ _____

Move Cost \$ _____

Business Damage \$ _____

Interest \$ _____

Owner/Litigant Attorney Fee

Based on Benefit of: \$ _____

Based on Non-monetary Benefit of: \$ _____

Owner/Litigant Appraisal Fee \$ _____

Owner/Litigant Expert Fees \$ _____

Owner/Litigant Costs/Court Costs \$ _____

TOTAL VERDICT \$ _____

TESTIMONY

DEPARTMENT

DEFENDANT

Land/Improvements \$ _____ \$ _____

Severance \$ _____ \$ _____

Business Damage \$ _____ \$ _____

Attorney Fee \$ _____ \$ _____

Based on Benefit of: \$ _____ \$ _____

Based on Non-monetary Benefit of: \$ _____ \$ _____

TOTAL TESTIMONY \$ _____ \$ _____

DEPARTMENT WITNESSES

DEFENDANT WITNESSES

Appraisal Witness: _____

Appraisal Witness: _____

CPA Witness: _____

CPA Witness: _____

Other Witness:

Other Witness:

Name: _____

Name: _____

Testimony Type: _____

Testimony Type: _____

Name: _____

Name: _____

Testimony Type: _____

Testimony Type: _____

(ATTACH ADDITIONAL PAGES IF NECESSARY)

MAJOR LEGAL ISSUES ARGUED AT TRIAL, MOTIONS AND RULINGS OF THE COURT:

MAJOR FACTUAL ARGUMENTS TO THE JURY & DIFFERENCE IN CONTENTION BETWEEN THE PARTIES:

EXPLANATION OF THE VERDICT (most successful or damaging arguments to the jury):

RECOMMENDATIONS REGARDING APPEAL:

OTHER COMMENTS:

(ATTACH ADDITIONAL PAGES IF NECESSARY)

SUBMITTED BY: _____
OAG Trial Attorney Date

SUBMITTED BY: _____
DPW Right of Way Supervisor Date

APPELLATE RECOMMENDATIONS

- CONCUR
- DO NOT CONCUR

Attorney Generals Office Trial Attorney Date

- CONCUR
- DO NOT CONCUR

DPW Right of Way Supervisor Date



DPW Form 5.6-3

REQUEST FOR TAXPAYER IDENTIFICATION NUMBER

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

Dear Property Owner(s):

The Territory of Guam Department of Public Works will be acquiring or has acquired property owned by you for a transportation project. Federal and Territorial regulations required that we report this transaction for income tax purposes. Therefore, we must obtain your correct Taxpayer Identification Number (TIN).

If you fail to furnish your correct TIN you may be subject to penalties. Willfully falsifying certifications or affirmations may subject you to criminal penalties including imprisonment.

See the attached instructions for how to enter names and TIN's. If you have any questions please let us know.

Name:

Business Name, if different from above

Address

OWNERSHIP INTEREST

- Sole Owner
- Part Owner with _____ % interest

TAXPAYER IDENTIFICATION NUMBER (TIN)

For individuals, this is your social security number (SSN) _____ - ____ - _____

For other entities, this is your employer identification number (EIN) _____ - _____

CERTIFICATION

Under penalties of perjury, I certify that the number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me).

Signed: _____ **Date:** _____



DPW Form 5.6-4

PUBLIC DISCLOSURE NOTICE

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

I, the undersigned, under penalty of perjury, affirm that I hold the title for or represent

_____ in the capacity of
Name of corporation, trust, partnership, etc.

_____ and; my full name and address is
Affiants title (Pres., V.P., Trustee, etc.)

_____ ;

and _____
Name of corporation, trust, partnership, etc.

holds legal title to the real estate described in Attachment A to this affidavit; and (select appropriate option)

- The names and addresses of all persons who hold a beneficial interest in the real estate are listed on Attachment B
- All beneficial interest in the property are exempt from disclosure because the entity identified above as owner of the real estate is an entity registered with the Federal Securities Exchange Commission, whose interest is for sale to the general public.

Affiant's Signature

Print or Type Name of Affiant

Sworn to and subscribed before me this _____ day of _____, _____ by

_____ who is personally know to me or who has produced

_____ as identification.

Notary's Signature _____ Date _____

[Seal]

Section 5.7

PUBLIC DISCLOSURE

TABLE OF CONTENTS

PURPOSE 5-7-1

AUTHORITY 5-7-1

SCOPE 5-7-1

REFERENCES 5-7-1

FORMS 5-7-1

5.7.1 Public Disclosure 5-7-1

5.7.2 Notification 5-7-1

5.7.3 Failure to Disclose 5-7-2

5.7.4 Exceptions to Notification and Disclosure 5-7-2

5.7.5 Records 5-7-2

HISTORY 5-7-2

Section 5.7

PUBLIC DISCLOSURE

PURPOSE

This section prescribes the process for the Department of Public Works Office of Right of Way (Department) to notify property owners of the responsibility to provide public disclosure.

AUTHORITY

11 GCA, Chapter 24 Real Property
21 GCA, §104113 Publication of False Statements Prohibited

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions.

REFERENCES

Section 5.2, Negotiation Process

FORMS

5.6-4 Public Disclosure Notice

5.7.1 Public Disclosure

11 GCA, § 24308, requires persons or entities holding title to real property in the form of a partnership, limited partnership, corporation, trust or any other form of representative capacity to disclose his/her name and address and the names and addresses of every person having a beneficial interest in such real property prior to any conveyance to the state. The person providing disclosure must disclose in writing, under oath and subject to the penalties prescribed for perjury, at least 10 days prior to closing for negotiated transactions or within **48 hours** after the order of taking deposit for parcels acquired by condemnation.

5.7.2 Notification

5.7.2.1 The Department shall notify via registered mail owners of parcels who hold title in a representative capacity of their responsibility to provide public disclosure. Only those owners holding property in this capacity shall be notified. The Department will notify owners using **Form No. 5.6-4, Public Disclosure Notice**, with enclosures. Notification should be delivered at the time **Form No. 5.2-1, Notice to Owner**, is delivered to real property owners as required by **Section 5.2, Negotiation Process**. However, in no case shall the Department deliver the **Public Disclosure Notice** later than five business days after the date the Department enters into a binding agreement for the purchase of real property.

5.7.2.2 For parcels acquired by condemnation, where the disclosure affidavit has not been previously received, the Department shall deliver to the property owner via certified mail **Form No. 5.6-4, Public Disclosure Notice**, with enclosures no later than **48 hours** after entry of the Declaration of Taking. The **Public Disclosure Notice** must contain the date the Department had deposited the required monies into the Superior Court of Guam court registry.

5.7.3 Failure to Disclose

5.7.3.1 The Department shall not close a real estate purchase with an entity that is required to disclose prior to receipt of a completed **Public Disclosure Affidavit** (see **Form No 5.6-4, Public Disclosure Notice**). If the required affidavit cannot be obtained, affected parcels must be acquired by condemnation.

5.7.3.2 If condemnation is required due solely to the owner's failure to provide public disclosure, the DPWRS must inform the assigned Attorney General's Office attorney of this fact.

5.7.4 Exceptions to Notification and Disclosure

5.7.4.1 Notification and disclosure is not required for donated properties.

5.7.4.2 Notification and disclosure is not required for subordinate interests except where a tenant-owned improvement is being acquired pursuant to **Section 5.2, Negotiation Process**.

5.7.5 Records

Copies of the **Public Disclosure Notice** and **Public Disclosure Affidavits** received from owners shall be permanently maintained in the Department's official project and parcel file with the appropriate conveyance documents.

HISTORY

Original Issue January 2011

Revision 1 – October 2017 – No changes to this section

Section 5.9

BUSINESS DAMAGES

TABLE OF CONTENTS

PURPOSE 5-9-1

AUTHORITY..... 5-9-1

SCOPE 5-9-1

EFFECT OF CHAPTER ON OTHER AGENCIES..... 5-9-1

REFERENCES 5-9-1

FORMS 5-9-1

5.9.1 Notification to Business..... 5-9-1

5.9.2 Business Owner Requests for Records..... 5-9-2

5.9.3 Business Qualification and Claim Process for Business Damages..... 5-9-2

5.9.4 Department's Counteroffer for Settlement of Business Damage Claim 5-9-3

5.9.5 Payment of Business Owner's Fees and Costs..... 5-9-5

5.9.6 Coordination 5-9-5

HISTORY 5-9-5

Section 5.9

BUSINESS DAMAGES

PURPOSE

This section establishes the process the Guam Department of Public Works (Department) must follow when notifying business owners of their rights; accepting business owner offers to settle eligible business damage claims; responding to business owner offers and reviewing business damage estimates.

AUTHORITY

23, CFR, Part 710
49, CFR, Part 24

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Section 5.2, Negotiation Process
Section 5.4, Fees and Costs
Section 9.3, Right of Way Records Management

FORMS

5.2-2 Offer and Purchase Agreement
5.2-4 Settlement Approval
5.2-2BO Notice to Business Owner

5.9.1 Notification to Business

5.9.1.1 The Department must make a good faith attempt to notify each owner of a business, including lessees who operate a business located on property to be acquired, of his/her rights.

5.9.1.2 Business owner notices must be delivered simultaneous with or after the Department makes a written offer to the fee owner for purchase of the needed property. Business owner notices must not be delivered before the written offer to purchase.

5.9.1.3 The Department or consultant must conduct a detailed, door-to-door survey of each project to accurately identify all businesses operating on property being acquired. The resulting list of businesses must be checked against the records of the Business License Division, Department of Revenue and Taxation to identify any registered agents for those businesses. This check must include all business entities registered with the Business License Division, Department of Revenue and Taxation including, but not limited to, corporations, partnerships, fictitious names, etc. The survey must be current to the date the business owner notice is mailed or personally delivered.

5.9.1.4 Business owner notices will be sent by certified mail return receipt requested, to the address of the registered agent for the business. If the business does not have a registered agent, the notice must be sent by certified mail or by personal delivery to the address of the business located on the property being acquired. Notice to one owner of a multiple ownership business constitutes notice to all owners of the business. Return of the notice as undeliverable by postal authorities will constitute compliance with notice requirements. Documentation of the business owner's receipt of the notice must be maintained in the Department's official parcel file.

5.9.1.5 Business owner notices will be prepared using **Form No. 5.2-2BO, Notice to Business Owner**. Enclosures must include:

- (A) A copy of the **Real Estate Acquisition Process Brochure** (Attachment to Manual Section 5.2 Negotiation Process).
- (B) Legal description and/or right of way map delineating the parcel on which the business is located;
- (C) Business Owner Questionnaire, and
- (D) A self addressed, stamped envelope.

5.9.1.6 The Department is not required to provide notice to business owners who acquire an interest in the business subsequent to the original notification; to businesses that occupy property after the initial notice is sent to business owners; or to independent contractors. However, if the Department is aware that an independent contractor has an interest in the real property being acquired, notice must be provided.

5.9.1.7 The Department cannot file a condemnation proceeding for acquisition of the fee parcel, or an interest therein, until it has made a good faith effort to notify all businesses located on the parcel of their rights and obligations if filing a claim for business damages.

5.9.2 Business Owner Requests for Records

Upon request by the business owner, or their properly authorized representative, as described in **Section 5.2, Negotiation Process**, the Department must provide copies of those records in the manner described in **Section 5.2 Negotiation Process**.

5.9.3 Business Qualification and Claim Process for Business Damages

5.9.3.1 In order to qualify for business damages, the following criteria must be met:

- (A) The business must hold a real property interest in the property being acquired;
- (B) The acquisition must be a partial acquisition of the real property the business occupies;
- (C) The business must have been in operation on the site for at least five years prior to the Department's acquisition, and
- (D) The damages must result from the acquisition of the property and not from the proposed construction or from activities associated with construction of the project.

5.9.3.2 If the business owner wishes to claim business damages to his/her qualified business, he/she must submit a good faith written offer to settle the business damage claim. The offer should be submitted by certified mail, return receipt requested to the Department. If the business owner's offer is delivered by means other than certified mail, the Department must provide the owner a receipt documenting delivery of the offer. Documentation of the Department's receipt of the owner's offer must be maintained in the Department's official parcel file.

5.9.3.3 The offer must be delivered or postmarked within **180 days** from the business owner's receipt of the notice. However, the Department of Public Works Right of Way Supervisor (DPWRS), with the approval of the Department of Public Works Director (DDPW) and the Department of Public Works Highway Administrator (DPWHA), may agree to extend the **180 day** time frame upon agreement with the business owner. If the business owner does not submit an offer within **180 days** and no extension is agreed to between the Department and the owner, the owner's claim will be stricken in condemnation proceedings unless the business owner can show a good faith justification for failing to submit a timely offer. If the court determines that the business owner has made a good faith justification, the court must allow the business owner up to **180 days** to submit an offer to settle his/her business damage claim.

5.9.3.4 If the business owner submits an offer to settle a qualified business damage claim, the offer must include an explanation of the nature, extent, and monetary amount of the business damage. The offer must be prepared by the business owner, a Certified Public Accountant (CPA) or a business damage expert familiar with the nature of the operations of the owner's business. A business damage expert may be any expert knowledgeable about the operations of a particular business hired by the business owner to prepare an offer to settle a business damage claim.

5.9.3.5 The offer to settle a qualified business damage must be accompanied by copies of the business records used to substantiate the owner's good faith offer to settle the business damage claim. Business records include but are not limited to:

- (A) Copies of Territorial income tax returns,
- (B) Territorial income tax withholding statements,
- (C) Miscellaneous Territorial income tax statements,
- (D) Territory sales tax returns,
- (E) Balance sheets,
- (F) Profit and loss statements, and
- (G) Corporate Territorial income tax returns

5.9.3.6 Copies of the business records shall be for the **five years** preceding the notification which are attributable to the business operation on the property being acquired and any other records relied upon by the business owner to substantiate the business damage claim. Failure to submit business records does not automatically invalidate the claim or result in the claim being stricken.

5.9.3.7 All records/information provided by a business owner must be maintained as exempt records by the Department, if the business owner requests in writing such exemption. The Department must retain the request in the Department's official parcel file and maintain the exempt records in accordance with **Section 9.3, Right of Way Records Management**.

5.9.4 Department's Counteroffer for Settlement of Business Damage Claim

5.9.4.1 The DPWRS is responsible for determining the adequacy of business owner records, the amounts of any counteroffers, and recommending the Department's response to the Director Department of Public Works (DDPW) and Department of Public Works Highway Administrator (DPWHA) to a business owner's initial claim. However, the DPWRS may delegate this responsibility in writing.

5.9.4.2 The Department must perform a careful analysis and risk assessment of each business damage claim. Claims must be reviewed by a CPA, the Office of the Attorney General (OAG) attorney or other qualified Department experts. The review should consider the factors described in **Section 5.9.4.4**.

5.9.4.3 It is likely that business owners will limit the records they provide as much as possible. It is the responsibility of the

DPWRS, or delegate, after consultation with the Department's experts, to determine and recommend to the DDPW and DPWHA if a counteroffer should be made based on the records provided by the owner. Also, after considering all available information, the DDPW, DPWHA and DPWRS, or delegate, shall determine the amount of any counteroffer. If the Department determines that a reasonable counteroffer can be made based on the records originally provided, it should make the counteroffer. Support for the amount of the Department's counteroffer, which addresses the factors in **Section 5.9.4.4**, must be maintained in the Department's official parcel file.

5.9.4.4 In reviewing business damage estimates prepared for the Department or the Business Owner, the DPWRS must:

- (A) Determine if the business qualifies for damages pursuant to the criteria contained in **Section 5.9.3.1**;
- (B) Provide that there are no elements of the business damage estimate that are non-compensable under current Territory of Guam eminent domain law;
- (C) Consider the terms or probability of renewal of any applicable lease in calculating the damages;
- (D) Verify that the records included with the business owner's claim substantiate the claim and contain all of the necessary schedules and attachments;
- (E) Provide that the business owner's claim adequately documents the business' use of that portion of the property taken and describes how the denial of the use of the property impacts the business;
- (F) Consider the potential impact of any cures proposed by the Department's appraiser or CPA on the business damage;
- (G) Provide that the coordination required by **Section 5.9.6**, occurs during the review of the business damage estimate with particular emphasis on avoidance of duplication of payments, and
- (H) Provide that proper economic adjustments to the business records are made in accordance with applicable case law and generally accepted accounting principles, so as to normalize the business operations.

5.9.4.5 If the business owner has not provided adequate records to substantiate the claim, the Department must notify the business owner by letter that additional records are needed in order for the Department to make a counteroffer. The letter to the business owner should, to the extent possible identify the needed records; state that "this request is not a rejection or a counteroffer," explain that the Department will provide a counteroffer following receipt of the requested records, and provide the time frame for providing the counteroffer once the records are received. If additional records are requested, the time frame for submitting the Department's counteroffer, after receipt of the records, must be calculated by subtracting the time used by the Department to review the business owner's offer and to request the additional records from the **120 day** response time.

Example: After reviewing the business damage claim, the Department is allowed **30 days** to determine that additional records are needed and to request the records. The business takes **120 days** to provide the records. After reviewing the records, the Department must make its counteroffer within **90 days**.

5.9.4.6 If additional records beyond those provided with the offer are needed, the Department and the business owner may agree on a schedule for the owner to provide those records. This agreement must be in writing and must provide the time frames for delivery of the additional records and, for delivery of the Department's response. A copy of the agreement must be maintained in the Department's official parcel file.

5.9.4.7 If the additional records requested by the Department are not provided by the business owner and it is later determined in a condemnation proceeding that those records are necessary, the Department may make a counteroffer to the business owner within **90 days** after it receives the additional records. This counteroffer will form the basis for determining benefit for calculating attorney fees. However, if the Department does not counteroffer based on its determination that additional records are needed and those records are determined in a later proceeding to be unnecessary in substantiating the business owner's claim, the Department's offer will be deemed to be zero for calculating benefit. It is the responsibility of the

DPWRS or his/her delegate, after consultation with appropriate Attorney Generals Office attorney and Department experts, to decide if additional records are needed.

5.9.4.8 Within **120 days** after receipt of a business owner's good faith offer to settle a business damage claim, the Department must accept the offer; reject the offer; or make a counteroffer to settle the damage claim. The Department's response must be delivered by certified mail to the business owner or, if the business owner is represented, the response may be sent by certified mail to the properly authorized representative as described in **Section 5.2, Negotiation Process**, with a copy to the business owner. If the Department rejects the business owner's offer or fails to respond within **120 days**, the Department's offer will be considered to be zero for the purposes of calculating benefit for determining attorney fees. The DPWRS or his/her delegate will recommend the Department's response to the DDPW. Documentation of the business owner's receipt of the Department's response must be maintained in the Department's official parcel file.

5.9.4.9 If an agreement to settle a business damage claim is reached prior to litigation, **Form No. 5.2-2, Offer and Purchase Agreement**, must be completed in compliance with **Section 5.2, Negotiation Process**. Where negotiations with a business owner who is not the owner of the land result in an agreement, a separate purchase agreement for the business damage must be obtained from the business owner. Final Agency Acceptance does not apply to agreements to settle business damage claims.

5.9.4.10 If the Department agrees to settle a business damage claim for an amount greater than the amount of the Department's initial counteroffer, the amount over the counteroffer must be supported by a **Form No. 5.2-4, Settlement Approval**, prepared and approved in accordance with **Section 5.2, Negotiation Process**.

5.9.5 Payment of Business Owner's Fees and Costs

A business owner's fees and costs will be paid in accordance with **Section 5.4, Fees and Costs**.

5.9.6 Coordination

The Department must provide that adequate coordination is established and maintained between the Department's experts, as described in **Section 5.9.4.2**, the Department's review appraiser and the OAG assigned attorney during the analysis, risk assessment, negotiations and condemnation action, if applicable, for each business damage claim. Prevention of duplication of payments should be one of the primary focuses of this coordination. Once a condemnation suit is filed, all claims and counterclaims for settlement of business damages must be coordinated among the DPWRS, DDPW, DPWHA and the OAG.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – changes to sections 5.9.3.3, 5.9.4.1, 5.9.4.3, and 5.9.6.

Section 5.10

**ACQUISITION OF RIGHTS OF WAY FROM FEDERAL AND
GOVERNMENT OF GUAM AGENCIES**

TABLE OF CONTENTS

| | |
|-----------------------------------------------------------------------------|--------|
| PURPOSE | 5-10-1 |
| AUTHORITY | 5-10-1 |
| SCOPE | 5-10-1 |
| EFFECT OF CHAPTER ON OTHER AGENCIES..... | 5-10-1 |
| REFERENCES | 5-10-1 |
| FORMS..... | 5-10-1 |
| DEFINITIONS..... | 5-10-2 |
| 5.10.1 Acquisition from Government of Guam Entities | 5-10-2 |
| 5.10.2 Acquisition of Right of Way from Chamorro Land Trust Commission..... | 5-10-2 |
| 5.10.3 Federal Land Transfers | 5-10-5 |
| 5.10.4 Functional Replacement of Real Property in Public Ownership | 5-10-6 |
| HISTORY..... | 5-10-9 |

Section 5.10

ACQUISITION OF RIGHTS OF WAY FROM FEDERAL AND GOVERNMENT OF GUAM AGENCIES

PURPOSE

This section establishes the process the Department of Public Works (Department) must follow when acquiring right of way from Federal and Government of Guam Agencies.

AUTHORITY

23 CFR, Part 710.509
23 United States Code 107(d)
23 United States Code 317
5 GCA, Chapter 20, Article 5, Surplus Property (Federal)

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

23 United States Code 107 (d)
23 United States Code 317
Historical Preservation Act, 16 United States Code 470 (f)
National Environmental Policy Act of 1969, 42 United States Code 4332
Preservation of Parklands, 49 United States Code 1653 (f)
Right of Way Manual, Section 4.1, Appraisal and Appraisal Review
Right of Way Manual, Section 7.1, Relocation Assistance
Uniform Relocation Assistance and Real Property Acquisition Policies Act
5 GCA, Chapter 60, Land Management
5 GCA, Chapter 65, Land Management Act
21 GCA, Chapter 17, Relocation Assistance Act
21 GCA, Chapter 75, Chamorro Land Trust Commission

FORMS

None specific to this section.

DEFINITIONS

Federal Lands: All lands controlled by the Federal Government or any of its agencies, such as the U.S. Military.

Functional Replacement: The replacement of real property, acquired for a transportation facility or purpose, with lands or facilities, or both, which will provide equivalent utility. The replacement may be accomplished by construction of a new facility or renovation of an existing facility, whichever is cost effective, feasible and agreed to by the parties to the functional replacement agreement.

Government of Guam Proprietary Property: Property owned by a Government of Guam entity for a specific purpose other than a transportation facility, such as a school, office or park.

Publicly Owned Lands: Real property owned by any Government of Guam or Federal governmental entity, owning agency, except for public utilities. Governmental entities may include any Government of Guam or Federal agency or any other political subdivision.

Reasonable Prevailing Standards: Enforceable rule or criterion established by authority or by custom; regularly and widely used.

Submerged Lands: Any lands lying below the ordinary high water line of fresh waters and below the mean high water line of salt waters and any other lands defined as submerged lands.

5.10.1 Acquisition from Government of Guam Entities

5.10.1.1 The Department shall obtain a Transfer of Property Document, signed and authorized by the Governor of Guam from any Government of Guam entity holding title to real property dedicated or acquired for public use as right of way on all roads designated in the Guam Highway System. Lands and easements held by utility providers through lease or other operation of law shall be dealt with on a case by case basis through the utility provider. If the governmental agency is autonomous and governed by a board a board resolution authorizing the transfer such lands is required. Lands, easements and facilities held, owned or operated by utility providers and identified for use by the Department may be subject to the FHWA eligibility requirements of reimbursement for relocation and adjustment costs under 23CFR645.107 and other local and federal reimbursement and payment methods as applicable.

The payment of compensation is only for the taking of private property for a public purpose. Publicly owned property shall be acquired without monetary payment when the intended use is consistent with the use for which it was dedicated or acquired. If title will not be transferred to the Department, a written permission to use the right of way from the Government of Guam entity holding title to said right of way must be received by the Department.

5.10.1.2 When negotiating to acquire a parcel of property held by a Government of Guam entity in the nature of a proprietary property, the assigned negotiator shall follow all procedures applicable to the acquisition of any privately owned property. The agent shall specifically request a donation of the parcel at the initiation of negotiations.

5.10.1.3 If Federal funding will be involved in any phase of the project, whether for design, right of way, or construction, all property to be conveyed to the Department must have been acquired by the Government of Guam entity according to Federal regulations. The Department shall require a written statement from the agency confirming that all applicable Federal procedures were followed before accepting the conveyance of the property from the governmental entity.

5.10.2 Acquisition of Right of Way from Chamorro Land Trust Commission

5.10.2.1 When Chamorro Land Trust owned property is to be used for transportation purposes the provisions of **21 GCA § 75107 (c)(1)** must be considered. The Board of Trustees of the Chamorro Land Trust Commission (Commission) administers and controls certain government lands designated as available lands as per **21 GCA § 75105**.

NOTE: Lands held and controlled by the Department of Agriculture shall be dealt with on a case by case basis through the Department of Agriculture and Department of Administration.

5.10.2.2 After the determination is made that Chamorro Land Trust lands are needed for transportation purposes, the Department shall submit an application to the Commission. The following information must be included in the submittal:

- (A) The legal description for each parcel;
- (B) A marked right of way map for each parcel with ties to appropriate subdivision and section corners;
- (C) A reproducible legal size (8 1/2" X 14") drawing or map for each parcel. It must be totally legible as it will be attached to the legal description and recorded;
- (D) The name of any using agency, such as: Department of Education, University, etc;
- (E) A statement of need for the parcel or parcels.

5.10.2.3 This application requests conveyance of the necessary interests to the Department.

5.10.2.4 When this application is submitted the Department shall request written concurrence from any using agency or agencies, or seek a release or acquire the interest of the using agency including any utility easements or other rights granted by the CLTC to any utility entity.

5.10.2.5 When the Commission has reviewed and accepted the Department's application and has furnished a letter of approval, the Department of Land Management (DLM) will execute the necessary right of way document conveying adequate quality and quantity of title to support the transportation project.

5.10.2.6 When the Department identifies a valid road reservation within the area of the proposed construction, the Director Department of Public Works (DDPW) shall request transfer of the needed portion of the reservation to the Department. This procedure outlines the process for requesting the transfer. The following steps must be taken to insure the validity of the reservation:

- (A) The deed containing the reservation must be thoroughly examined to determine the extent and applicability of the road reservation.
- (B) Determination must be made that a designated road, lying within sufficient proximity of the parcel as set forth in the deed, existed on the date of the deed.
- (C) Determination must also be made on the boundaries of any other Territorial agency that might affect the reservation.
- (D) A thorough examination of the Territorial public records must be made for any release or partial release of the road reservation. While this search is within the scope of a normal title search, it is recommended that each reservation be verified by the Department before the right of way maps are transmitted to the Department of Land Management. The Department of Public Works Right of Way Supervisor (DPWRS) should attempt to verify with each property owner affected by a road reservation that the road reservation still exists and that a reservation release has not been granted.
- (E) All Chamorro Land trust lands on a project should be addressed together in a single submittal.
- (F) The following information is to be sent by the DDPW:

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- (1) A memorandum requesting the transfer of the reservation to the Department. The memo should also set forth the necessity for the transfer, such as to widen the existing facility, to use for new construction, etc.;
 - (2) A legal description of the portions of the roadway reservation to be transferred for each affected deed;
 - (3) Recordation number, a DLM Official Records book and page number is not acceptable; and
 - (4) A right of way map or drawing clearly depicting the portion of the roadway reservation being transferred.
- (G) An appraisal will not be prepared regarding the land value for right of way located within the area encumbered unless fee title is being acquired. An appraisal will not be prepared for the value of any improvements located in the area of the reservation unless the improvements are not encroachments as set forth in **Section 5.10.2.6(H)**.
- (H) If any improvements have been made to the property encumbered by the reservation after the original sale, all such improvements shall be considered to be encroachments on the Government of Guam's reservation. The encroaching improvements must be removed by their owner and no compensation for the encroaching improvements will be paid. If the encroachments are not removed by their owner, the Department shall remove the encroachments. However, if the improvements were placed upon the property before the original sale, compensation may be appropriate through the appraisal process.
- (I) There will be no negotiations conducted for improvements that are encroachments on the reservation area. However, an explanation of the Department's exercise of the reservation may be necessary.
- (J) Negotiations shall be conducted in accordance with applicable right of way acquisition procedures, with the owner(s) of improvements that are not encroachments on the reservation area. If negotiations are successful and an agreement is reached for the acquisition of improvements only, the grantor shall deliver a bill of sale to the Department to conclude the transaction. A deed is not required.
- (K) In the case of improvements on the reservation that are not encroachments, if acquisition negotiations fail, procedures for acquisition by eminent domain shall be followed.
- (L) Relocation Assistance shall be provided as applicable in accordance with the **Right of Way Manual, Section 7.1, Relocation Assistance Program**, regardless of the encroachment status of the improvements.
- (M) Relocation of utility improvements within CLTC lands under easements or other rights granted by the CLTC to the utility entity are subject to FHWA eligibility requirements of reimbursement for relocation and adjustment costs under 23CFR645.107.

5.10.2.7 An easement must be obtained before construction of any structure on such parcels.

In obtaining an easement to the required land, submerged lands can be conveyed only to the owners of the abutting upland. Therefore, the Department must acquire either fee title or a permanent easement to the abutting upland.

The following information shall be included in the application submitted to the Commission:

- (A) Legal description for each parcel. Ties to appropriate subdivisions and section corners must be shown;
- (B) A reproducible legal size (8 1/2" X 14") drawing or map of each parcel. It must be totally legible as it is

attached to prepared description and recorded after execution by the Trustees;

- (C) A statement of when title to the upland parcels will be acquired;
- (D) A statement of the need for the parcel or parcels; and
- (E) Copies of permits that are required from other agencies such as U.S. Coast Guard, and U.S. Corps of Engineers.

5.10.2.8 The following steps must be taken when acquiring a parcel that is within the Recreation and Conservation Area:

- (A) The Department shall prepare and send a memorandum to Director of Administration and Director of Parks and Recreation providing the location and design of the transportation facility that requires crossing the recreation and conservation area;
- (B) The memorandum shall clearly state that the transportation use is necessary to serve a public need;
- (C) If the land is owned by the Government of Guam, the Department shall pay fair market value for the land based upon an appraisal; and
- (D) If the lands are privately owned and are within the right of way needed for the transportation facility, acquisition shall occur following the procedures applicable to any other privately owned property.

5.10.3 Federal Land Transfers

5.10.3.1 The Department shall file an application for lands or interests in lands needed for highway purposes and owned by the United States. The application shall be filed with the Federal Highway Administration (FHWA) pursuant to **23 United States Code (U.S.C.) 107(d)** and **23 U.S.C.317**. An exception to this directive will be made for lands or interests that are managed or controlled by the Army, Air Force, Navy or Veterans Administration. In those cases the application shall be made as follows:

- (A) Army or Air Force: The application should be submitted directly to the Installation Commander and the appropriate District Engineer, Corps of Engineers, Department of the Army.
- (B) Navy: The application should be submitted directly to the Public Works Officer of the Naval District involved. The Guam Power Authority (GPA) shall be copied on any land application made to the Navy when requesting Navy-owned electrical facilities currently operated and maintained by the GPA under the GPA-Navy Customer Service Agreement Lease.
- (C) Veterans Administration: The application should be submitted directly to the Director, Veterans Administration, Washington, D.C.

5.10.3.2 All requests for Federal Land Transfers shall contain the following information:

- (A) The purpose for which the lands are to be used;
- (B) The estate or interest in the land required by Guam statute;
- (C) The Federal aid project number;
- (D) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

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- (E) The name and phone number of the contact person at the Federal agency exercising jurisdiction;
 - (F) A commitment to construct the highway on or to remove materials from the lands to be transferred within a period of not more than ten (10) years following the transfer of the lands to the Territory of Guam;
 - (G) One copy of the drawing or map of the lands to be acquired. The map must correspond with all information in the legal description. Each course and distance in the legal description must appear on the map, or be readily derived from it;
 - (H) One copy of a legal description of the land needed. A metes and bounds description is preferred by FHWA and should be used when possible;
 - (I) A statement regarding compliance with the **National Environmental Policy Act of 1969, 42 U.S.C. 4332, et seq.**, and the **Historical Preservation Act, 16 U.S.C. 470(f)** with provisions for **Preservation of Parklands, 49 U.S.C. 1653(f)**, if applicable; and
 - (J) One copy of reproducible legal size (8 1/2 " X 14") drawing or map.

5.10.3.3 The following steps are necessary for each transfer:

- (A) After FHWA concurs in the application for the transfer, the Department prepares the deed of conveyance. Before this is done, a list of special conditions for the transfer should be obtained from the agency with jurisdiction. These special conditions are incorporated in the deed of conveyance.
- (B) After the deed for the conveyance has been prepared, it along with a copy of the Department's approved right of way map is transmitted to FHWA. FHWA then reviews and concurs in the deed.
- (C) After FHWA concurs in the deed, the Department transmits the deed to the agency with jurisdiction for concurrence. A letter of concurrence is secured from the agency.
- (D) The letter of concurrence and two originals of the approved deed with maps are then transmitted to FHWA. FHWA executes the deeds and transmits them to the Department.
- (E) One of the deeds is recorded by the Department with the DLM. The other executed deed is transmitted to the agency with jurisdiction.
- (F) A copy of the recorded deed and map with the recording evidence is then transmitted to FHWA.

5.10.4 Functional Replacement of Real Property in Public Ownership

5.10.4.1 When lands, buildings, or other improvements are needed for transportation purposes, but are held by a governmental entity and utilized for public purposes other than transportation, the Department may compensate the entity for such properties by providing functionally equivalent replacement facilities. The providing of replacement facilities may only be undertaken with the agreement of the governmental entity affected.

5.10.4.2 Costs of increases in capacity and other betterments are not eligible for reimbursement except those necessary to replace utility; those required by existing codes, laws, and zoning regulations; and those related to reasonable prevailing standards for the type of facility being replaced.

5.10.4.3 When functional replacement is considered, the following conditions must be met:

- (A) The property to be replaced must be publicly owned;

- (B) The use of functional replacement must be in the public's interest. This is the consideration that the public interest is well served by the functional replacement and that the proposed solution is cost effective. There must be a clear showing that the public function to be replaced is essential to the affected community;
- (C) On projects pursuing Federal participation in right of way, FHWA must agree that functional replacement is in the public's interest and must concur with the Department's assessment of its use;
- (D) On projects pursuing Federal participation in right of way, FHWA must grant authorization to proceed with functional replacement prior to incurring any functional replacement costs;
- (E) The functional replacement must actually take place, the costs of replacement must actually be incurred; and
- (F) Replacement sites and construction must be in compliance with existing codes, laws, and zoning regulations for the area in which the facility is located.

5.10.4.4 All publicly owned real property must be identified during the project development and environmental phase of a project. When publicly owned lands must be acquired for a project, notification shall be submitted to the DPWRS at the earliest practicable time. The DPWRS, DDPW and DPWHA will make the determination of whether the acquisition of the property using functional replacement, is feasible.

5.10.4.5 During the early stages of project development, when functional replacement is being considered, the following must occur:

- (A) Representatives from the Department must meet with representatives of the owning agency to discuss the effect of a possible acquisition and potential application of functional replacement.

5.10.4.6 At the earliest practicable time, the Department will have the existing facility's real property appraised and shall establish an amount it believes to be just compensation. The parcel and the appraisal shall be reviewed in accordance with the requirements of the ***Right of Way Manual, Section 4.1, Appraisal and Appraisal Review***.

5.10.4.7 After just compensation for the parcel is established, the DPWRS shall advise the owning agency, in writing, of the amount. The owning agency shall have the option of accepting the just compensation established by the appraisal process or accepting functional replacement.

5.10.4.8 The owning agency may waive its right to have an estimate of compensation established by the appraisal process if it prefers functional replacement.

5.10.4.9 When an owning agency selects functional replacement of an existing facility, a written request for functional replacement must be provided to the Department. The Department shall be responsible for obtaining the written request of the functional replacement of the existing facility from the owning agency. This request must fully explain why functional replacement is in the public's interest.

5.10.4.10 In all cases when functional replacement is utilized the Department shall be responsible for review of the plans, specifications and estimates to demonstrate that betterments are not included.

5.10.4.11 On projects pursuing Federal participation in right of way, if functional replacement is selected, the DPWRS shall recommend submittal by DDPW and DPWHA, of a specific request to FHWA for concurrence in the use of functional replacement. The request must include the following:

- (A) The cost estimate data for the replacement;

-
- (B) Any agreements reached at meetings between the Department and the owning agency;
 - (C) An explanation of the basis for the request; and
 - (D) A statement that any replacement property will be acquired in accordance with the provisions of the **Uniform Relocation Assistance and Real Property Acquisition Policies Act** and applicable FHWA regulations.

5.10.4.12 On projects with Federal participation in right of way, the use of functional replacement requires the following reviews and approvals:

- (A) Prior to entering into the functional replacement agreement, the proposed agreement with applicable supporting documentation, which has been reviewed by the Department to demonstrate no betterment is included, must be submitted by the DDPW, to FHWA for review and approval of the agreement. This review and approval shall be solely for the purpose of ensuring that betterments are not included in the proposed facility. The following must be included in the package as applicable:
 - (1) The proposed agreement;
 - (2) Typical construction plans and specifications for the facility;
 - (3) Any documentation necessary to support the estimated costs of replacement as reflected in the agreement.
- (B) After the functional replacement agreement is properly approved and executed by all parties and prior to commencement of construction of the replacement facility, the construction plans, estimates and any modifications thereto must be submitted by the DDPW to FHWA for approval. The DPWHA and DPWRS must have reviewed and approved all of this documentation prior to submission to the DDPW. This review and approval shall be solely for the purpose of ensuring that betterments do not exist. This review is not for the purpose of approving the quality or adequacy of the design or structural or material components. The review shall, among other applicable items, compare the size of the building, including the height and square footage, and the size of the site of the existing facility with the same components of the replacement facility. Approval shall be based upon the comparability of the facilities.
- (C) This procedure requires a review of the agency's bidding and letting process. Documentation of the owning agency's bidding and letting process must be submitted by the DDPW to FHWA for approval. When the process has been reviewed and approved by FHWA, the owning agency shall utilize its procedures in the bidding and letting of the construction contract. The owning agency may provide a summary, on its letterhead, of its process for review or it may submit copies of the applicable requirements. After review and approval by the Department, this documentation must be transmitted by the DDPW to FHWA.

NOTE: In order to shorten the total time necessary for the functional replacement process, it is recommended that the documentation for the owning agency's bidding and letting process be submitted for review and approval as early as possible after the determination has been made to utilize functional replacement and prior to execution of the Functional Replacement Agreement.

5.10.4.13 Prior to the Department's and, on projects with Federal participation in right of way, FHWA's concurrence in the award for actual construction, an agreement shall be entered into by the Department and the owning agency setting forth the rights, obligations and duties of each party with regard to the facility being acquired, the acquisition of the replacement site, and the construction of the replacement facility. The executed agreement shall include, but not be limited to, the following:

- (A) An explanation of how the cost of the new facility will be shared between the parties;
- (B) The point at which the title to the parcel of the existing facility will transfer to the Department;

- (C) An explanation of how the functional replacement on a project will be funded and at what point the payment(s) will be made;
- (D) Estimated costs to replace the facility and site, if applicable;
- (E) A statement that the owning agency shall follow its bidding and construction processes if the procedures are acceptable to the Department and, on projects with Federal participation in right of way, acceptable to FHWA; and
- (F) A statement of the Department's requirement for periodic inspections during the construction of the facility.

5.10.4.14 The following Departmental approvals shall be required for Functional Replacement Agreements:

- (A) For functional replacement agreements up to \$1,000,000, approval by the DDPW, DPWHA and DPWRS is required.
- (B) For functional replacement agreements exceeding \$1,000,000, approval by the Attorney General's Office is required in addition to the DDPW, DPWHA and DPWRS.

5.10.4.15 The Department is responsible during construction of the replacement facility for periodic on site inspections to note changes from the approved plans and to demonstrate that betterments that were not approved as items in the functional replacement agreement are not included.

5.10.4.16 If, during construction, change orders are needed, the Department shall be responsible for review of the change(s) to demonstrate that betterments are not included. Additionally, on projects with Federal participation in right of way, all change orders must be transmitted to the DPWRS, for submission to DDPW, DPWHA and FHWA for review and approval.

5.10.4.17 Prior to making the final payment to the owning agency, the Department shall obtain a statement signed by an appropriate official of the owning agency certifying that the cost of the replacement facility has actually been incurred in accordance with the provisions of the executed agreement. The statement must certify that a final inspection of the facility was made by a representative of the Department and a representative of the owning agency. The statement shall also certify that the Department is released from any further responsibility.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – changes to sections 5.10.4.4, 5.10.4.11, 5.10.4.12, 5.10.4.14, and 5.10.4.16,

Section 5.11

ACQUISITION VIA EXCHANGE

TABLE OF CONTENTS

| | |
|------------------------------------------|--------|
| PURPOSE | 5-11-1 |
| AUTHORITY | 5-11-1 |
| SCOPE | 5-11-1 |
| EFFECT OF CHAPTER ON OTHER AGENCIES..... | 5-11-1 |
| REFERENCES | 5-11-1 |
| FORMS..... | 5-11-1 |
| DEFINITIONS..... | 5-11-1 |
| 5.11.1 Requirements for Exchange | 5-11-1 |
| HISTORY | 5-11-2 |

Section 5.11

ACQUISITION VIA EXCHANGE

PURPOSE

This section establishes the process the Department of Public Works (Department) must follow when acquiring right of way via exchange.

AUTHORITY

19 GCA §32101 Property Acquired, Generally

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Section 4.1, Appraisal and Appraisal Review
Section 5.2, Negotiation Process
Section 5.5, Legal Documents and Land Acquisition Closing
Section 8.5, Disposal of Surplus Real Property

FORMS

None specific to this section.

DEFINITIONS

Surplus Property: Excess property as defined in **Section 8.1, Inventory of Properties Acquired Through the ROW Process** and which has been declared by the Department of Public Works to have no present or future transportation purpose pursuant to **Section 8.5, Disposal of Surplus Real Property**.

5.11.1 Requirements for Exchange

5.11.1.1 The Department may arrange exchange of surplus property for parcels acquired for current or future transportation projects. The Department may acquire land from the Chamorro Land Trust to be used in exchange for parcels to be acquired for current or future transportation projects in agreement with the Chamorro Land Trust in accordance with **Section**

5.10 Acquisition of Rights of Way from Federal and Government of Guam Agencies. Parcels being acquired by way of an exchange shall be acquired in compliance with this manual.

5.11.1.2 Both the parcel being acquired and the surplus property being exchanged must be appraised and the appraisals must be reviewed in accordance with **Section 4.1, Appraisal and Appraisal Review**. The value of the surplus property will be treated as cash for the purpose of negotiating the purchase price for the parcel being acquired.

5.11.1.3 If the negotiated compensation for the parcel being acquired is less than the value of the surplus property, the property owner shall pay the Department the difference at closing or pursuant to the terms of the final judgment in condemnation. Payment shall be by cashier's check, money order, or other certified check.

5.11.1.4 If the negotiated compensation for the parcel being acquired (value of surplus property plus cash, if any) exceeds the established just and full compensation for the parcel, the amount over the established just and full compensation must be justified as an administrative or legal settlement pursuant to the criteria and approvals in **Section 5.2, Negotiation Process**.

5.11.1.5 The person or entity receiving surplus property must be informed of the Department's responsibility to reserve mineral rights. The reservation may be waived by the Attorney General's Office pursuant to **Section 8.5, Disposal of Surplus Real Property**.

5.11.1.6 Conveyance of surplus property by the Department will be by quitclaim deed in compliance with **Section 8.5, Disposal of Surplus Real Property**.

5.11.1.7 Payment for expenses incidental to the transfer of title shall be reimbursed to the owner in accordance with the **Section 5.5, Legal Documents and Land Acquisition Closing**, for both the parcel being acquired and the property being exchanged.

5.11.1.8 As per **21 GCA Section 60112**, the Department shall obtain approval from the Guam Legislature by duly enacted legislation, on all government-owned real property land exchanges.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – No changes to this section

Section 5.12

DEPARTMENT OF REVENUE AND TAXATION INCOME TAX REPORTING REQUIREMENTS

Table of Contents

PURPOSE 5-12-1

AUTHORITY..... 5-12-1

SCOPE 5-12-1

EFFECT OF CHAPTER ON OTHER AGENCIES..... 5-12-1

REFERENCES 5-12-1

FORMS 5-12-1

DEFINITIONS..... 5-12-1

5.12.1 REPORTING REQUIREMENT..... 5-12-2

5.12.2 OBTAINING AND VERIFYING TAXPAYER INFORMATION 5-12-2

5.12.3 ALLOCATING GROSS PROCEEDS..... 5-12-3

5.12.4 REPORTING A NON-MONETARY BENEFIT 5-12-3

5.12.5 REPORTING AN EXCHANGE 5-12-3

5.12.6 DISTRIBUTION OF FORM 1099-S..... 5-12-3

5.12.7 REPORTING INFORMATION 5-12-3

5.12.8 DATA CHANGES 5-12-4

5.12.9 CORRECTED RETURNS 5-12-4

5.12.10 MOBILE HOMES 5-12-4

5.12.11 EXEMPT VOLUME TRANSFERORS 5-12-4

HISTORY 5-12-4

Section 5.12

DEPARTMENT OF REVENUE AND TAXATION INCOME TAX REPORTING REQUIREMENTS

PURPOSE

The purpose of this section is to establish the process the Guam Department of Public Works (Department) must follow to comply with the Department of revenue and Taxation Income Tax reporting requirements for right of way acquisitions.

AUTHORITY

26 CFR, Section 1.6045

Internal Revenue Code of 1954

The Organic Act of Guam and Related Federal Laws Affecting the Government Structure of Guam, 1421i, Income Tax
11 GCA § 24101 - § 24913 Real Property Tax Law

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

26 CFR, Section 1.6045 4(d)(3)

Section 5.5, Legal Documents and Land Acquisition Closing

Section 7701(a)(18) of the Internal Revenue Code

FORMS

Internal Revenue Service **Form 1099-S**

5.2-7 Closing Statement

5.6-3 Request for Taxpayer Identification Number

DEFINITIONS

The following definitions are to be used only in the context of the **Department of Revenue and Taxation (DRT)** income tax reporting requirements in this section.

Date of Closing: The date of closing set forth on **Form No. 5.2-7, Closing Statement**, for a negotiated purchase, the date of entry of a Final Judgment by the court for parcels acquired by Declaration of Taking, or the date of deposit for parcels acquired through stipulated order of taking/final judgments.

De Minimis Acquisition: An acquisition for which the total consideration, including money and/or property, to be paid is less than \$600 in value, exclusive of fees and costs. The \$600 limitation applies to the total consideration for the parcel, not separately to each grantor/property interest holder.

Excluded Acquisitions: Excluded acquisitions include de minimis acquisitions and acquisitions from exempt transferors.

Exempt Transferor (Grantor): Exempt transferors include corporations, Federal or Government of Guam entities, foreign governments or political subdivisions thereof, international organizations as defined in **Section 7701 (a)(18), Internal Revenue Code**, and exempt volume transferors.

Exempt Volume Transferor: An exempt volume transferor is a person or entity who has provided the Department a **Certification of Exempt Status** as required by **26, Code of Federal Regulations, Section 1.6045-4(d)(3)**.

Gross Proceeds: Cash received by a fee owner/parcel interest holder for his/her ownership interest in land, improvements and real estate damages. In cases of multiple ownerships, the gross proceeds may be a proportionate part of the total consideration for the transaction.

Ownership Interest: Fee simple interests, life estates, reversions, easements and leaseholds. Leasehold interests or easements must have a remaining term of at least 30 years at the time of conveyance in order to be considered an ownership interest.

5.12.1 Reporting Requirement

The Department is required to report all non-excluded real property acquisitions to the **DRT** annually. The annual report could be generated by the Department. The Department should be responsible to obtain, verify and accurately enter taxpayer information. Comprehensive information gathering and accurate entry of data will be essential. **DRT** could impose a penalty against the Department for each improperly reported grantor/parcel interest holder.

5.12.2 Obtaining and Verifying Taxpayer Information

5.12.2.1 The Department shall request taxpayer information from each grantor/parcel interest holder of an ownership interest for all non-excluded acquisitions. **Form No. 5.6-7, Request for Taxpayer Identification Number**, shall be used to request taxpayer information. The request shall be delivered at or before the initiation of negotiations. Documentation that taxpayer information has been requested and received shall be maintained in the Department's official parcel file.

5.12.2.2 For non-excluded parcels acquired through eminent domain, prior to entry of a final judgment for land, improvements, or damages, the Office of the Attorney General (OAG) attorney shall determine if all fee owners/parcel interest holders for the parcel being acquired have previously provided taxpayer information. If taxpayer information has not been received, the OAG attorney shall provide that **Form No. 5.6-7, Request for Taxpayer Identification Number**, is delivered to all non-exempt owners of the parcel or to their attorney. Documentation that taxpayer information has been requested and received shall be maintained in the Department's official parcel file.

5.12.2.3 Individuals who were husband and wife at the time of closing are to be treated as a single owner. **Form No. 5.6-7, Request for Taxpayer Identification Number**, may be provided to either husband or wife. When acquiring non-excluded tenant-owned realty, **Request for Taxpayer Identification Number**, must be provided to the tenant and to the fee owner(s) of the land.

5.12.2.4 Upon receipt of taxpayer information, the Department shall review the information received and identify obvious omissions, errors or inconsistencies such as missing or incomplete Taxpayer Identification Number (TIN), illegible information, improper allocations, etc. Obvious problems should be reviewed with the fee owner/parcel interest holder and corrected to the extent possible.

5.12.3 Allocating Gross Proceeds

5.12.3.1 Each owner/parcel interest holder of an ownership interest being conveyed is required to indicate the percentage of ownership that he/she holds in the ownership interest. For multiple owners/parcels interest holders, the Department shall allocate gross proceeds based on the reported percentages as follows:

- (A) If non-conflicting responses are received from all fee owners/parcel interest holders and the sum of the reported percentages equal 100%, gross proceeds shall be allocated in accordance with the responses received.
- (B) If non-conflicting responses are received from some but not all fee owners/parcel interest holders and the sum of the reported percentages equal 100%, gross proceeds shall be allocated in accordance with the responses received.
- (C) If no allocation is provided, there are conflicting responses, or the sum of the reported percentages do not equal 100%, the entire consideration for land, improvements and severance shall be reported as gross proceeds for each fee owner/parcel interest holder.

5.12.4 Reporting a Non-Monetary Benefit

5.12.4.1 For those parcels affected by a non-monetary benefit determined by the court, or identified and quantified in a settlement, the Department's duty to report the benefit is limited to indicating that property or services were received by the fee owner/parcel interest holder. There is no requirement to quantify the non-monetary benefit and there is no provision to do so on **Form 1099-S**.

5.12.4.2 If the non-monetary benefit is not determined until a fee and cost hearing occurs subsequent to the Final Judgment for which the Department has previously filed a **Form 1099-S** report, the Department must amend/correct its information and provide a new **Form 1099-S** to the parcel interest holder in accordance with **Section 5.12.10**, as soon as possible.

5.12.5 Reporting an Exchange

For parcels acquired via a like kind exchange (no cash in the transaction), the gross proceeds will be zero. If the acquisition involves a combination of cash and exchanged property, enter the cash payment amount as gross proceeds; in the "Property or Services Received" field.

5.12.6 Distribution of Form 1099-S

5.12.6.1 For parcels acquired through negotiated settlements, a copy of the completed **Form 1099-S** shall be presented to the transferor pursuant to **Section 5.5, Legal Documents and Land Acquisition Closing**.

5.12.6.2 For parcels acquired by Final Judgment, a copy of the completed **Form 1099-S** shall be mailed to the transferor once the deposit has been made into the court registry or upon entry of the Final Judgment if no additional deposit is required.

5.12.6.3 Regardless of the method of acquisition, all transferors must receive copies of **Form 1099-S** for their parcel no later than **December 31** of the calendar year in which the closing or Final Judgment occurred.

5.12.7 Reporting Information

All non-exempt real estate acquisitions shall be reported to the **DRT** regardless of whether taxpayer information is obtained. Prior to submitting final data to the **DRT**, the Department of Public Works Right of Way Supervisor (DPWRS) or designee shall review and make final adjustments of data as necessary. Once adjustments have been made the Director Department of Public Works (DDPW) or designee will compile the Department wide information and electronically transmit the information to the **DRT** in **March** of each year.

5.12.8 Data Changes

Information, when available, could be changed or modified as necessary prior to submittal to the **DRT**. If a change is made, a new **Form 1099-S** reflecting the current information must be delivered to the property owner.

5.12.9 Corrected Returns

Changes or additions made to the **1099-S** data, after DDPW or designee has compiled and submitted the Department wide information to the **DRT**, should be retained in the Department's permanent parcel file and identified as a "Corrected 1099." Each parcel interest holder affected by a corrected 1099 must be provided a new **Form 1099-S** indicating the current information. In May of each year, DDPW or designee will compile and transmit to **DRT** a Department wide report of corrected **1099-S** forms. Returns may only be corrected for the calendar year being reported.

5.12.10 Mobile Homes

5.12.10.1 Mobile homes are considered to be personal property. Purchase of a mobile home as personal property would not be a reportable real estate transaction. However, where a mobile home is purchased as an improvement to real property, the purchase price of the mobile home should be included with the purchase price of the land when reporting gross proceeds on **Form 1099-S**. The **DRT** tax rolls can be used as a guide to determine whether the mobile home is personal property or real property.

5.12.11 Exempt Volume Transferors

Exempt volume transferors must provide the Department with a **Certification of Exempt Status** as required by **26, Code of Federal Regulations, Section 1.6045-4(d)(3)**, to validate their exempt status. Once the Department receives a **Certification of Exempt Status**, the transaction will be handled as an excluded transaction. The Certification must be maintained in the Department's official parcel file.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – No changes to this section

Section 6.1

ADVANCE ACQUISITION

PURPOSE 6-1-1

AUTHORITY 6-1-1

SCOPE 6-1-1

EFFECT OF CHAPTER ON OTHER AGENCIES 6-1-1

REFERENCES 6-1-1

FORMS 6-1-1

DEFINITIONS 6-1-1

6.1.1 Advance Acquisition Procedures 6-1-2

6.1.2 Use of Eminent Domain 6-1-2

6.1.3 Evaluating Advance Acquisition Opportunities 6-1-2

6.1.4 Early Acquisition 6-1-3

6.1.5 Proactive Acquisition 6-1-3

6.1.6 Protective Buying 6-1-4

6.1.7 Hardship Acquisition 6-1-4

6.1.8 FHWA Approval of Hardship Acquisition or Protective Buying 6-1-4

6.1.9 Use of Eminent Domain for Hardship Acquisition or Protective Buying 6-1-5

HISTORY 6-1-5

Section 6.1

ADVANCE ACQUISITION

PURPOSE

The purpose of this section is to establish the process the Guam Department of Public Works (Department) must follow to comply with early acquisition requirements for right of way acquisitions.

AUTHORITY

23 CFR, Section 710.501

23 CFR, Section 710.503

The National Environmental Policy Act (NEPA) [42 U.S.C. 4321 et seq.]

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Section 1.1, Right of Way Procedures Manual

Section 5.6, Eminent Domain

SAFETEA-LU Environmental Provisions Sections 6001, 6002, 6004 and 6009

FORMS

None specific to this section of the Manual.

DEFINITIONS

Advance Acquisition: The term used by the Department to describe right of way acquisition occurring prior to the year in which right of way acquisition is programmed/scheduled. This term is also used by Federal Highway Administration (FHWA) to describe Federally assisted hardship acquisitions and protective buying occurring during the National Environmental Policy Act (NEPA) process. In the context of this section, advance acquisition shall be the Department's usage. (See **Attachment 1**)

Early Acquisition: The term used by the Department to describe right of way acquisition, other than hardship acquisition or protective buying, occurring prior to completion of the NEPA process. (See **Attachment 1**)

Hardship Acquisition: The term used by FHWA to describe Federally assisted acquisition of a particular parcel or limited number of parcels occurring during the NEPA process to address health, safety or financial hardships experienced by a landowner as a result of an impending project. (See **Attachment 1**)

Proactive Acquisition: A term used by the Department to describe right of way acquisition occurring after completion of the NEPA process but prior to the year in which right of way acquisition is programmed/scheduled. (See **Attachment 1**)

Protective Buying: The term used by FHWA to describe federally assisted acquisition of a particular parcel or limited number of parcels occurring during the NEPA process to prevent imminent development that would substantially increase costs or limit future transportation alternatives. (See **Attachment 1**)

6.1.1 Advance Acquisition Procedures

All advance acquisition parcels shall be acquired in accordance with **23 CRF § 710.501** and existing policies and procedures for the acquisition of right of way with only the exception described in **Section 6.1.1.2**.

6.1.1.2 For advance acquisition parcels, delivery of relocation **Notices of Eligibility** for tenants may be deferred until such time as the Department has entered into a purchase agreement with the property owner or the Department determines that the parcel will be acquired by condemnation. The Department must contact all tenants located on advance acquisition parcels and advise them that the Department has entered or will enter into negotiations with the land owner to purchase the parcel. Tenants must be further informed that at such time as the Department obtains a purchase agreement or decides to pursue condemnation all tenants will be made eligible to receive all relocation benefits to which they are entitled. Tenant contacts should be made in writing and must be documented in the Department's official parcel file.

6.1.2 Use of Eminent Domain

Eminent domain may be used to acquire advance acquisition parcels. Where design plans are not sufficiently complete to support engineering necessity, public purpose and necessity may be demonstrated through use of typical design, construction plans or profiles, and anticipated trends in demographic and other growth patterns, land use and development patterns, traffic projections, expected utility needs, or anticipated mass transit requirements.

6.1.3 Evaluating Advance Acquisition Opportunities

The Department of Public Works Right of Way Supervisor (DPWRS) or designee should monitor real estate activity within priority corridors to identify potential advance acquisition opportunities. The Department should evaluate opportunities based on:

- (A) The importance of the corridor as determined by the Department;
- (B) The existing protection measures in place for the corridor. Parcels on corridors that have been designated in adopted Territorial Government comprehensive plans or are otherwise being protected by the Territorial Government should be considered;
- (C) The availability of funding for advance acquisition;
- (D) The existing schedule for right of way acquisition in the work program;
- (E) The status of the environmental documentation;
- (F) The status of design plans;

- (G) The estimated savings the Department would realize from advance acquisition considering the impact of time on property values, potential development, potential zoning or land use changes, etc;
- (H) The possibility that advance acquisition will advance construction of all or part of an affected project;
- (I) Developer contribution to the project; and
- (J) Whether the property being considered for advance acquisition is listed for sale or is otherwise available for purchase from a willing seller.

6.1.4 Early Acquisition

6.1.4.1 The Department may acquire parcels using Territory of Guam funds at any time funds are available to do so. Federal participation will not be available for such acquisitions except as described in **Section 6.1.4.2**. However, early acquisition costs may be used as credit towards the Department's matching share for a Federal aid project. Acquisition costs can be either the actual cost the Department incurred for land, improvements, severance damages, and business damages or the current fair market value of the land acquired through early acquisition. Early acquisition costs will be eligible for matching credit provided:

- (A) The early acquisition complies with **Section 1.1, Right of Way Procedures Manual**;
- (B) The acquired property is not **Section 4(f)** pursuant to, **SAFETEA-LU Section 6009, Parks and Recreation areas, Wildlife and Waterfowl Refuges and Historical Sites**;
- (C) The Department determines and FHWA concurs that early acquisition did not influence the environmental assessment for the project including the decision to construct the project, the consideration of alternatives, and the selection of the design or location of the project;
- (D) The project is included in the Territorial Transportation Improvement Plan (TTIP).

6.1.4.2 Federal reimbursement of early acquisition costs may be approved by FHWA provided:

- (A) There is compliance with all of the requirements in **Section 6.1.4.1**;
- (B) Prior to acquisition, the Department obtains a certification, signed by the Governor, that the early acquisition is consistent with the Territories mandatory comprehensive and coordinated land use, environment and transportation plan. A copy of this certification must be provided to FHWA;
- (C) The Department provides FHWA documentation that the Governor has determined prior to acquisition that early acquisition is consistent with the Territory's transportation planning process; and
- (D) The Department obtains written concurrence from the Guam Environmental Protection Agency in the determinations described in **Section 6.1.4.1 (C)**.

6.1.5 Proactive Acquisition

Federal participation in proactive acquisition is available where:

-
- (A) The project is included in the TTIP;
 - (B) Proactive acquisition has been authorized by FHWA pursuant to the, ***SAFETEA-LU Environmental Provisions Sections 6001 and 6002***; and
 - (C) The proactive acquisition complies with ***Section 1.1, Right of Way Procedures Manual***.

6.1.6 Protective Buying

During the NEPA process, protective buying may be approved by FHWA for single parcels or a limited number of parcels where the Department can document that the parcel(s) being proposed for protective buying are on the verge of future development or change in their physical character so as to limit future transportation choices or significantly increase future acquisition costs. Following are examples of situations where protective buying may be appropriate:

- (A) Parcels on the verge of costly development, expansion, or change in physical character by construction, excavating, flooding, dumping, etc;
- (B) Parcels with pending zoning or land use changes that will increase the value of the land; and
- (C) Parcels where existing improvements have been severely damaged and reconstruction of the improvements is pending.

6.1.7 Hardship Acquisition

During the NEPA process hardship acquisition may be approved by FHWA for single parcels or a limited number of parcels provided the Department and FHWA concur in a written assertion from the property owner(s) that due to health, safety or financial reasons continued ownership of the property poses an undue hardship on the owner(s) as compared to other owners on the project. The owner(s) must also demonstrate that because of the pending project he/she cannot sell the property at market value within a typical time period for properties not influenced by the project. Following are examples of situations where hardship acquisition may be appropriate:

- (A) Illness or advanced age within the property owner's family that causes undue economic hardship, prevents the owner from adequately maintaining their property, or requires the owner to relocate to an extended care facility or nursing home;
- (B) Financial hardship causing the property owner to be unable to continue to meet the financial obligations of ownership;
- (C) Significant reduction or loss of rental income resulting from knowledge of the proposed project;
- (D) Structural inadequacies caused by an increase in family size, special needs such as health, safety, or mobility requirements for disabled individuals or structural damage which renders the dwelling unfit for habitation.

6.1.8 FHWA Approval of Hardship Acquisition or Protective Buying

6.1.8.1 Hardship acquisition or protective buying may be approved by FHWA where:

- (A) The project is included in the TTIP;

-
- (B) The Department has complied with public involvement requirements;
 - (C) The hardship acquisition or protective buying qualifies as a Programmatic Categorical Exclusion pursuant to the, **SAFETEA-LU Section 6004, State Assumption of Responsibility for Categorical Exclusions (CE)**; and
 - (D) The Department has determined and FHWA concurs that the advance acquisition will not influence the environmental assessment for the project, including the decision to construct the project or the selection of a specific location.

6.1.8.2 Requests for FHWA approval for protective buying and hardship acquisition must be recommended by the DPWRS and supported by a written request from the Director Department of Public Works (DDPW) and Department of Public Works Highway Administrator (DPWHA). The request shall contain:

- (A) An explanation of how the proposed parcel(s) meet the requirements for hardship acquisition or protective buying in **Sections 6.1.6** or **6.1.7** as appropriate;
- (B) An explanation of how the Department has complied with the requirements of **Section 6.1.8.1**;
- (C) A description or parcel sketch for the proposed parcel(s);
- (D) A cost estimate detailing the right of way costs for the parcel(s) included in the request; and
- (E) A completed **Type 1 and Programmatic Categorical Exclusion Checklist**.

6.1.8.3 Requests for approval of hardship acquisition or protective buying shall be provided to the DDPW and DPWHA. In order to provide adequate time for review and approval, requests should be submitted **30 days** prior to the date that the Department needs FHWA financial authorization for the hardship acquisition or protective buying. Requests affecting non-interstate projects may be approved by the DDPW and DPWHA, under the delegated federal approval program. When approved by the DDPW and DPWHA, or FHWA, as appropriate, the DPWRS shall notify the Federal Aid Management Manager of the approval. The Department may request FHWA financial authorization for the hardship acquisition or protective buying upon notification that hardship acquisition or protective buying has been approved.

6.1.9 Use of Eminent Domain for Hardship Acquisition or Protective Buying

6.1.9.1 Eminent Domain should be considered in a protective buying situation if, at the end of a reasonable negotiation period, a negotiated settlement cannot be achieved. A reasonable negotiation period should be considered as **120 days** unless there are mitigating circumstances, such as owner health issues.

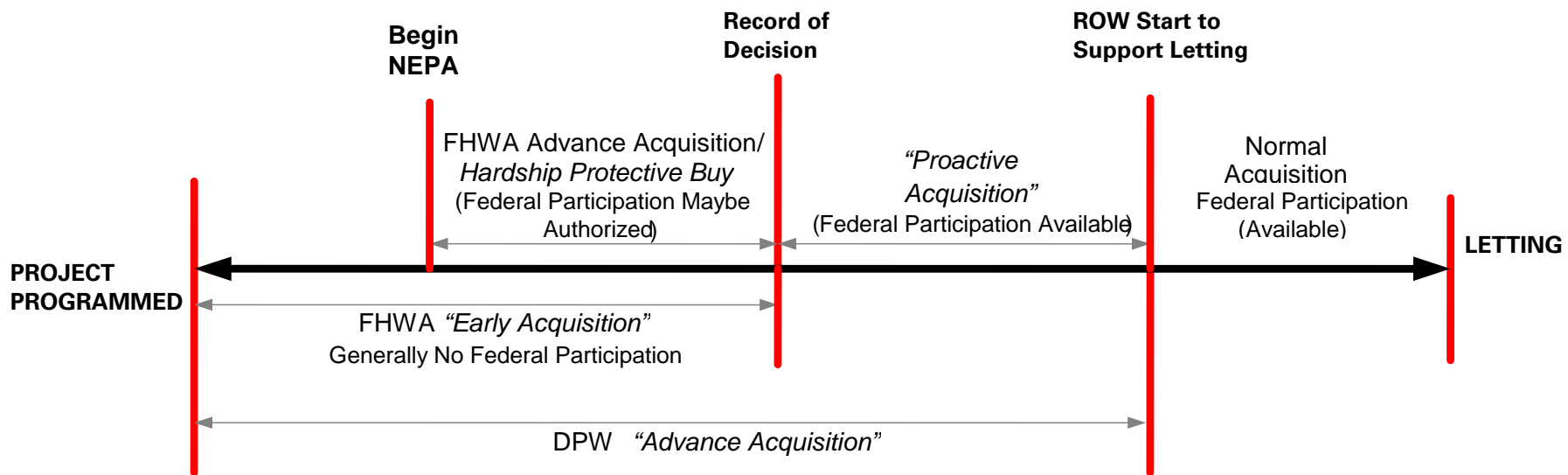
6.1.9.2 In the case of a hardship acquisition, the Department has no obligation to file condemnation earlier than the project schedule would otherwise call for. If, after good faith negotiations, an agreement cannot be obtained, the Department has no additional obligation to the owner. At the time hardship acquisition is approved by FHWA, the Department must advise the property owner(s) in writing, that if a negotiated agreement cannot be achieved, the Department will terminate negotiations and will not proceed with eminent domain until the scheduled right of way project begins. If negotiations are ended without reaching an agreement, the Department must notify the owner(s) that further negotiations and eminent domain, if necessary, will be deferred until scheduled right of way activities commence.

HISTORY

Original Issue Date: January 2011.

Revision 1 – October 2017 – changes to sections 6.1.8.2 and 6.1.8.3

Advance Acquisition



Section 7.1

RELOCATION ASSISTANCE PROGRAM

TABLE OF CONTENTS

PURPOSE 7-1-1

AUTHORITY 7-1-1

SCOPE..... 7-1-1

REFERENCES 7-1-1

FORMS 7-1-1

DEFINITIONS 7-1-1

7.1.1 Federal Program Authorization..... 7-1-6

7.1.2 Program Assurances 7-1-6

7.1.3 Relocation Program at Conceptual Stage..... 7-1-7

7.1.4 Last Resort Housing Needs at the Conceptual Stage..... 7-1-7

7.1.5 Conceptual Stage Plan Data Sources 7-1-7

7.1.6 Data to be Obtained for Conceptual Stage Plan..... 7-1-7

7.1.7 Data Responsibilities for Conceptual Stage Plan 7-1-9

7.1.8 Authority for Needs Assessment Survey..... 7-1-9

7.1.9 Planning Considerations for Needs Assessment Survey 7-1-9

7.1.10 Requirements for Needs Assessment Survey 7-1-9

7.1.11 Identification of Last Resort Housing Needs 7-1-10

7.1.12 Identification of Business Displacees 7-1-10

7.1.13 Uniform Relocation Assistance and Real Property Acquisition Report 7-1-11

7.1.14 Special Relocation Reports..... 7-1-11

7.1.15 Relocation Records..... 7-1-11

HISTORY 7-1-12

Section 7.1

RELOCATION ASSISTANCE PROGRAM

PURPOSE

The purpose of this section is to establish the process the Department of Public Works must follow to comply with the Relocation Assistance Program and provide definitions of terms.

AUTHORITY

23 Code of Federal Regulations
49 Code of Federal Regulations, Part 24
42 USC Chapter 61 Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform relocation assistance functions and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
21 GCA §17101-§17118 Relocation Assistance Act
Environmental Assessment Document
Federal Aid Highway Program Manual
Right of Way Manual, Section 5.10, Acquisition of Right of Way from Federal and Territorial Governmental Agencies
Right of Way Manual, Section 7.2, General Relocation Requirements
Right of Way Manual, Section 7.3, Payment for Moving and Related Expenses
Right of Way Manual, Section 7.4, Replacement Housing Payments
Right of Way Manual, Section 7.5, Relocation Assistance for Mobile Homes
Right of Way Manual, Section 7.6, Last Resort Housing
Section 501, Internal Revenue Code, 26 U.S.C. 501

FORMS

None specific to this section of the Manual. See Manual **Section 7.2** for relocation forms.

DEFINITIONS

30-Day Notice to Vacate: A written notice furnished to the displacee informing the owner of the date by which he or she will be required to move from the acquired site.

90-Day Letter of Assurance: A written notice furnished to the displacee explaining that he or she will not be required to move for at least **90 days** from the receipt of this notice or receipt of the Statement of Eligibility, whichever is later.

180-Day Owner: Any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. See **42 USC, Chapter 61, Sec. 4623** for additional information.

90-Day Owner: Dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition. See **42 USC, Chapter 61, Sec. 4624** for additional information.

Acquired: The time at which the Department obtains legal possession of the real property; legal possession occurs at closing in negotiated settlements and at the date of deposit in litigated cases.

Appurtenance: An item of real property accessory to, or an adjunct of, a more important property, title to which usually passes with title to the principal real property.

Business: Any lawful activity, except a farm operation, conducted:

- (A) Primarily for the purchase, sale, lease and/or rental of personal and/or real property;
- (B) Primarily for the manufacture, processing or marketing of products, commodities or any other personal property;
- (C) Primarily for the sale of services to the public;
- (D) By a nonprofit organization that has established its nonprofit status under applicable Federal and Territorial law;

Carve Out: The method used in making a typical home site determination, whereby that portion of the parent tract which is typical for residential use in the area is carved out of, or separated from, the entire tract for the purpose of the replacement housing payment computation.

Certified Post-Move Inventory: A list of items actually moved to the replacement site as a part of a relocation. Such list is prepared after the move is complete and is attested to by both the Department's representative and the displacee.

Certified Pre-Move Inventory: A list of items to be included in a move. Such list is prepared prior to the move and attested to by the displacee.

Citizen: Includes both citizens of the United States and non-citizen nationals.

Conceptual Stage Plan: A plan developed to be used in determining the final location of a project. Relocation impacts are a portion of this study, which is an evaluation of available alternate locations.

Contributes Materially: During the two taxable years prior to the taxable year in which the displacement occurs, a business or farm operation:

- (A) Had average annual gross receipts of a least \$5,000; or
- (B) Had average annual net earnings of at least \$1,000; or

-
- (C) Contributed at least 33 1/3 percent of the owner's or operator's average annual income from all sources.
 - (D) If these two years are not representative, an alternative consecutive two year period may be utilized, see the ***Right of Way Manual, Section 7.3, Payment for Moving and Related Expenses***.

Decent, Safe And Sanitary Dwelling: A dwelling which conforms to all Territorial housing and occupancy codes and conforms to the standards prescribed in the ***Right of Way Manual, Section 7.2, General Relocation Requirements***.

Density: As used in the context of replacement housing for relocation purposes, it pertains to the number of units in a multifamily dwelling or structure.

Displaced Person: Any person as defined in this procedure, which moves from the real property or moves his or her personal property from the real property:

- (A) As a direct result of the Department's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations or a written notice of intent to acquire. In the case of a partial acquisition, the Department shall determine whether the person is displaced as a direct result of the partial acquisition; or
- (B) As a result of a written order from the Department to vacate such real property for the project; or
- (C) As a result of the Department's acquisition of, or written order to vacate, or a written notice of intent to acquire, other real property for a project on which the person conducts a business, farm operation, or is a nonprofit organization. Eligibility under this definition applies only for purposes of obtaining relocation assistance advisory services as provided in the ***Right of Way Manual, Section 7.2, General Relocation Requirements*** and moving expenses as provided in the ***Right of Way Manual, Section 7.3, Payment for Moving and Related Expenses; or***
- (D) As a direct result of rehabilitation or demolition for a project.

Displacee: A displaced person. Also called a "relocatee".

Displacement Dwelling: The dwelling from which a relocatee is displaced for a project.

Down Payment Supplement: The eligible amount a displacee who purchases a replacement dwelling may receive if applied to the purchase of replacement housing, which amount is equal to the displacee's eligibility under rental assistance or \$5,250, whichever is greater.

Domicile: The place where a person has his or her true, fixed, permanent home and principal establishment and to which he or she has, when absent, the intention of returning.

Dwelling: The place of permanent or customary or usual abode, according to local custom or law, including a single family house; a single family unit in a two family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit. Further defined as domicile.

Economic Rent/Market Rent: The Department's determination of the reasonable income expectancy of a dwelling or other property if it were available for rent; and the rent justifiably payable for the right of occupancy of land and/or improvements.

Family: Two or more individuals who are living together and intend to live together at the replacement dwelling.

Farm Operation: Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Fixed Payment: A payment to a displaced person in lieu of actual moving expenses.

Household Income: Total gross income for all household members received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, social security, or the net income from a business. Income received or earned by dependent children or full time students under 18 years of age are not included.

Initiation of Negotiations: The date the initial written offer of just compensation is delivered by the Department to the owner or his/her representative to purchase real property for a project, with the following exceptions:

- (A) If the Department issues a Notice of Intent to acquire the property and a person moves after the date on that notice, but prior to delivery of the initial purchase offer, the initiation of negotiations is the date that person moved from the property.
- (B) In the case of a permanent relocation to protect the public health and welfare, the initiation of negotiations is the date of either the formal announcement of that relocation or of the Federal or Federally coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

In Lieu of Payment: See Fixed Payment.

Inventory: A list of items of personal property to be moved by the displaced person. When required, a pre-move inventory must be taken at the displacement site and compared to a post-move inventory taken at the replacement site after the move.

Last Resort Housing: The provision of replacement housing by techniques developed for such purpose, when a highway project cannot proceed to construction because suitable, comparable and/or adequate replacement sale or rental housing is not available and cannot otherwise be made available to displacees within the payment limits established by law, see the *Right of Way Manual, Section 7.6, Last Resort Housing*.

Less Than 90-Day Occupant: A displaced person who occupies the property to be acquired for less than 90 days prior to the initiation of negotiations; a displaced person who occupies the property to be acquired subsequent to the date of initiation of negotiations, see the *Right of Way Manual, Section 7.6, Last Resort Housing*.

Licenses, Permits and Certifications: Only an item which is paid periodically is considered to be license, permit or certification. These items are renewable and are valid only for a specific period of time.

Major Exterior Attribute: Any major appurtenant structure exterior to the residential dwelling, or an aesthetically valuable view which substantially contributes to the quality or standard of living of the displacee(s), see the *Right of Way Manual, Section 7.4, Replacement Housing Payments*.

Mortgage: An instrument recognized by law in which property is pledged to secure the payment of a debt or obligation; procedure for foreclosure in the event of default is established by statute. Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

Nonprofit Organization: A corporation duly registered with the Department of Revenue and Taxation (DRT) as a

Corporation Not for Profit and exempt from paying Guam Territorial income taxes under **Section 501** of the **Internal Revenue Code, (26 U.S.C. 501)**.

Owner: A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired by the Department for a project:

- (A) Fee title, a life estate, a land contract, a 99 year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or
- (B) An interest in a cooperative housing project which includes the right to occupy a dwelling; or
- (C) A contract to purchase any of the interest or estates previously described above; or
- (D) Any other interest, including a partial interest, which in the judgment of the Department warrants consideration as ownership.

Person: Includes a partnership, corporation or association, as well as an individual or family.

Personal Property: Generally, moveable items; that is, those not permanently affixed to and a part of the real estate. With some exceptions, items typically remain personal property if they can be removed without serious injury either to the real estate or to the items themselves.

Purchase Additive: The amount, if any, which when added to the acquisition price, equals the selling price of a comparable dwelling or, if lesser, the amount a displacee actually spends for a decent, safe and sanitary replacement dwelling, see the **Right of Way Manual, Section 7.4, Replacement Housing Payments**.

RHP: Replacement Housing Payment. Any of several types of payments to qualifying displaced persons, including the purchase additive, increased interest cost payment, incidental expenses, rent supplement, and down payment supplement.

Relocatee: A displaced person. Also called a "Displacee".

Relocation Assistance: Advisory and/or financial aid to persons and businesses displaced by a public program to assist them in becoming reestablished in areas not less desirable, at rents or prices within their financial means, and in dwellings that are decent, safe and sanitary.

Relocation Needs Assessment Survey: The survey performed to identify residential and business relocation needs in conjunction with the Right of Way Stage Assistance planning process, see **Section 7.1.8** and the project cost estimate see **Section 7.1.10.2**.

Relocation Specialist: A Department Relocation Specialist or other Department representative assigned by the Department to provide relocation assistance to displaced persons. A Department Relocation Specialist may be assigned property management responsibilities, or may be assigned to work as a staff assistant to the Department of Public Works Right of Way Supervisor (DPWRS). Relocation Specialist is a functional, rather than generic classification.

Salvage Value: The probable sale price of an item, if offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (e.g., not eligible for relocation assistance). Included are items for re-use as well as items with-components that can be reused or recycled when there is no reasonable prospect of sale except on that basis.

Small Business: A business operating lawfully with not more than 500 employees working at the site being acquired or displaced.

Substitute Personal Property: A personal property item, used as a part of a business or farm operation, purchased to replace an item with a comparable function, which was not moved from the acquired site to the replacement site.

Tenant: A person who has the lawful temporary use and occupancy of real property owned by another.

Typical Home site Determination: A determination, for replacement housing payment computation purposes, of the portion of a tract of land which is typical for residential use in the area.

Uniform Act: *Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, or subsequent amendments thereto (*42 USC Chapter 61 Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs*).

Unlawful Occupant: A person who occupies a property without property right, title or payment of rent or a person legally evicted, with no legal right to occupy a property under Territorial law. The Department, at its discretion, may consider such person to be in lawful occupancy.

Utility Service Cost: This term means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

7.1.1 Federal Program Authorization

7.1.1.1 On January 2, 1971, the United States Congress enacted *Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* as amended by *42 USC Chapter 61 Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs*.

Title II of the Uniform Act establishes a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

7.1.1.2 The Department is authorized to comply with the Uniform Act on Federally assisted projects by *21 GCA §17101-§17118 Relocation Assistance Act*.

7.1.1.3 *Federal Regulations 49 Code of Federal Regulations (C.F.R.), Part 24*, regulates the Department's Relocation Assistance Program on Federal and Federally assisted projects.

7.1.1.4 The Department is authorized to implement a Relocation Assistance Program on non-federal aid projects by *21 GCA § 17101-§ 17118* of the *Relocation Assistance Act*.

7.1.2 Program Assurances

7.1.2.1 In accordance with the provisions of *49 C.F.R., Part 24.4*, confirmation of compliance with Federal regulations have been submitted to the Federal Highway Administration (FHWA) and approved.

7.1.2.2 Each time the *Relocation Assistance Procedures* are revised, written confirmation of compliance will be resubmitted to FHWA by the Department.

7.1.2.3 Confirmation of compliance will be submitted with each final revision of procedures.

7.1.3 Relocation Program at Conceptual Stage

7.1.3.1 A project is in the Conceptual Stage until such time as its location and design concept acceptance is granted.

7.1.3.2 A Conceptual Stage Relocation Plan will be developed by the Department for each alternate location prior to the corridor public hearing. The information therein will be incorporated into the environmental document.

7.1.3.3 The costs incurred for securing and assembling the required information are charged to preliminary engineering for the appropriate project.

7.1.4 Last Resort Housing Needs at the Conceptual Stage

7.1.4.1 If an insufficient supply of comparable replacement housing, see ***Right of Way Manual, Section 7.2, General Relocation Requirements***, is anticipated at the time a project is expected to be underway, the Department should include potential Last Resort Housing options as part of the Conceptual Stage Plan and the environmental document.

7.1.4.2 Last Resort Housing methods, ***Right of Way Manual, Section 7.6, Last Resort Housing***, will be offered for each alternate route under study.

7.1.5 Conceptual Stage Plan Data Sources

7.1.5.1 The Conceptual Stage Plan must reference the sources of data utilized.

7.1.5.2 All data must be dated according to their original compilation date.

7.1.5.3 The Conceptual Stage Plan is intended to be a brief summary of projected relocation activity, not a detailed report. The depth of the report should be directly proportional to the scope of relocation assistance on the project.

7.1.5.4 Types of data sources:

- (A) Primary Data Sources: Any person, such as an individual, family, business, etc. located within the proposed corridor alignment.
- (B) Secondary Data Sources: All information sources other than primary.

7.1.5.5 Secondary sources should be utilized only when primary sources cannot supply the information needed.

7.1.6 Data to be Obtained for Conceptual Stage Plan

The Department will be responsible for providing the following Conceptual Stage Plan Data for inclusion in the ***Environmental Assessment Document***:

- (A) An estimate of households to be displaced, including an estimate of:
 - (1) The percentage of minority; racial, national origin, or ethnic, households to be displaced;
 - (2) The income range, in dollars, of the affected neighborhoods or communities;
 - (3) The tenure, or age, of the structures which are being displaced, taking into consideration the types and the effective and chronological ages;

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- (4) The percentage of elderly households to be displaced in relationship to the total households being displaced;
 - (5) The percentage of households containing five or more family members;
 - (6) Handicapped or disabled residential occupants for whom special assistance services may be necessary.
- (B) A comparison of available, decent, safe and sanitary, housing in the area with the housing needs of displacees. The comparison should include price ranges, size, number of bedrooms, and occupancy status of the owner/tenant.
- (C) A description of special relocation advisory services that will be necessary for identified unusual conditions or unique problems. Identify special cases such as handicapped or disabled displacees, problems of the elderly, racial and ethnic considerations, and comment on the availability of governmental and social agencies available to serve these particular needs.
- (D) A discussion of the actions proposed to remedy insufficient relocation housing, including a commitment to Last Resort Housing, if necessary;
- (E) An estimate of the number, type and size of businesses to be displaced, including special business characteristics, services to specialized clientele, or cultural orientation:
- (1) Include the approximate number of employees for each business and the general impact on the business dislocation(s) on the economy of the community, if ascertainable.
 - (2) Identify sites available in the area to which the affected businesses may relocate, likelihood of such relocation and impacts on remaining businesses, whenever possible.
- (F) A discussion of the results of early consultation with the Territorial government agencies and any early consultation with businesses potentially subject to displacement. Include planning for incentive packaging such as, tax abatement, flexible zoning, and building requirements, and advisory assistance which has been or will be furnished, along with other appropriate information;
- (G) A description of the actions proposed to remedy insufficient relocation housing including, if necessary, Last Resort Housing. If Last Resort Housing is anticipated, describe its availability.
- (H) The results of discussions with Government agency officials, social agencies and such groups as the elderly, handicapped, non-driver, transit-dependent, and minorities regarding the relocation impacts;
- (I) A statement that relocation resources are available to all relocatees without discrimination;
- (J) A summary of any potential hazardous waste concerns.
- (K) An identification of any publicly owned lands, as defined in the ***Right of Way Manual, Section 5.10, Acquisition of Rights of Way from Federal and Government of Guam Agencies***, which may require consideration for functional replacement of real property in public ownership. Discussion of the results and decisions of any meetings with property owners or jurisdictional agencies where the potential for functional replacement exists pursuant to ***23 C.F.R. 710*** and the ***Right of Way Manual, Section 5.10,***

Acquisition of Rights of Way from Federal and Government of Guam Agencies, shall be documented.

7.1.7 Data Responsibilities for Conceptual Stage Plan

The Department is solely responsible for the development and inclusion of socioeconomic data in the environmental document.

7.1.8 Authority for Needs Assessment Survey

7.1.8.1 The Department is responsible for preparing and conducting the **Relocation Needs Assessment Survey** and for implementing a plan.

7.1.8.2 The DPWRS is responsible for recommending the **Relocation Needs Assessment Survey** to the Director Department of Public Works (DDPW) and the Department of Public Works Highways Administrator (DPWHA)/ They are also responsible for preparing the Department's confirmation of compliance for submittal to FHWA by the DDPW.

7.1.9 Planning Considerations for Needs Assessment Survey

The **Needs Assessment Survey** should provide the answers to the following questions about the project:

- (A) What are the project's specific objectives?
- (B) What is the scope of the project? How many neighborhoods will be impacted? How many buildings will be affected?
- (C) How many people will be affected, both directly and indirectly? How many families and individuals will be displaced? How many businesses?
- (D) What are the special needs of those who will be displaced?
- (E) What is the most efficient and effective way to accomplish the project goals? How much lead time will be required?
- (F) Are there other projects underway in the locality that will be competing for housing resources? Is any of the needed information already available from agencies carrying out related projects?
- (G) What resources are available to provide advisory assistance? Are there needs for special services such as aid to handicapped and assistance with non-english speaking persons?
- (H) Are there any potential hazardous waste concerns on the project?
 - (1) A report must be provided to the GEPA any time the presence of hazardous waste is suspected.
 - (2) Matters pertaining to hazardous waste will be handled in accordance with the **Right of Way Manual, Section 7.3, Payment for Moving and Related Expenses**.

7.1.10 Requirements for Needs Assessment Survey

7.1.10.1 The **Needs Assessment Survey** will contain an Inventory of Individual Needs, which includes the characteristics and needs of individuals and families to be displaced, based upon the standard of comparable replacement. This information

should be obtained upon a 100% occupancy survey rather than a sampling survey.

7.1.10.2 The survey will also contain a review of needs versus resources, including the identification of potential relocation problems with regard to the lack of availability of necessary resources. Documentation will include:

- (A) The estimated amount of lead time required to carry out a timely, orderly and equitable relocation program;
- (B) Identification of resource limitations, if perceived.

7.1.10.3 Planning includes an estimate of the number of replacement sites available for businesses. When replacement sites are not expected to be available, the impacts of displacing the businesses should be considered and addressed. For those business moves which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites, the survey should include an analysis of business moving problems.

7.1.10.4 Business interviews should occur prior to, or at time of the appraisal of the property:

- (A) Obtain information regarding the business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
- (B) Document any expressed need for outside specialists that will be required to assist in planning the move, to assist in the actual move, and in the reinstallation of machinery and/or personal property.
- (C) Every effort must be made to coordinate discussion among the Department appraiser, landowner, tenant and Department relocation agent in order to identify and resolve personalty/realty issues.
- (D) Estimate the time required for the business to vacate the site.
- (E) Estimate the anticipated difficulty in locating a replacement property.
- (F) Identify any advance relocation payments required for the move, and the Department's legal capacity to provide them.

7.1.11 Identification of Last Resort Housing Needs

7.1.11.1 If research indicates the potential need for Last Resort Housing see *Right of Way Manual, Section 7.6, Last Resort Housing*. The *Needs Assessment Survey* will address the means by which it will be provided.

7.1.11.2 A comprehensive discussion of the number of individuals and/or families who will require Last Resort Housing and an estimate of available units should be incorporated into the survey, along with recommended methods for providing Last Resort Housing.

7.1.12 Identification of Business Displacees

7.1.12.1 During the relocation survey phase, business displacees must be contacted no later than the date negotiations are initiated on the project.

7.1.12.2 At the discretion of the DPWRS, DDPW and DPWHA, all business displacees will be identified and listed as owner or tenant and their potential eligibility for business damages will be noted.

7.1.13 Uniform Relocation Assistance and Real Property Acquisition Report

- (A) The DDPW or designee will submit a report annually to the FHWA.
- (B) The report will be compiled from data supplied by the Department and the data in the Department's official parcel or project file.
- (C) The report will be prepared and submitted to FHWA on or before **November 1** of each year.

7.1.14 Special Relocation Reports

7.1.14.1 If the FHWA requires a special relocation report of the Department, such request will be in writing from FHWA to the DDPW.

7.1.14.2 Each request will specify a deadline by which the report must be completed.

7.1.14.3 If the Department is unclear on the request or if the deadline cannot be met, the DDPW must contact the FHWA within **three days** of receipt of the request.

7.1.15 Relocation Records

7.1.15.1 Records of relocation activities will be kept, including:

- (A) Project and parcel identification;
- (B) Names, addresses and telephone numbers of displacees;
- (C) Payments and services offered;
- (D) Payment claim support documentation;
- (E) Contact records documenting each meeting or telephone call with the displacee(s) and involved parties;
- (F) Contact records documenting the offering of comparable replacement housing in accordance with the ***Right of Way Manual, Section 7.2, General Relocation Requirements***.

7.1.15.2 The Department is responsible for proper maintenance of these records and for assuring their availability at reasonable hours for inspection by representatives of the Federal Government, Office of the Attorney General and the public.

7.1.15.3 All records will be kept neatly, accurately, and thoroughly by the Department.

7.1.15.4 All original documentation will be placed in the Department's official permanent project file.

HISTORY

Original Issue Date: 2009

Revision 1 – October 2017 – changes to sections 7.1.8.2 and 7.1.12.2

Section 7.2

GENERAL RELOCATION REQUIREMENTS

TABLE OF CONTENTS

PURPOSE 7-2-1

AUTHORITY 7-2-1

SCOPE 7-2-1

EFFECT OF CHAPTER ON OTHER AGENCIES 7-2-1

REFERENCES 7-2-1

FORMS 7-2-1

ATTACHMENTS 7-2-2

7.2.1 Public Information 7-2-2

7.2.2 Eligibility Criteria 7-2-3

7.2.3 Relocation Advisory Services to be provided 7-2-4

7.2.4 Waivers of Relocation Assistance 7-2-4

7.2.5 Comparable Replacement Housing 7-2-5

7.2.6 Availability of Comparable Replacement Housing before Displacement 7-2-6

7.2.7 Decent, Safe and Sanitary Housing 7-2-7

7.2.8 Relocation Notices 7-2-8

7.2.9 Notice of Intent to Acquire 7-2-8

7.2.10 General Information Notice 7-2-9

7.2.11 Notice of Eligibility 7-2-9

7.2.12 Statement of Eligibility 7-2-9

7.2.13 90-Day Notice 7-2-10

7.2.14 Documentation for Relocation Payment Claims 7-2-10

7.2.15 Payment Disbursement 7-2-10

7.2.16 Advance Payments 7-2-11

7.2.17 Time for Filing Relocation Claims 7-2-11

7.2.18 Payment Claims for Multiple Occupancy 7-2-11

7.2.19 Deductions from Relocation Payments 7-2-12

7.2.20 Relocation Payments Not Income 7-2-12

7.2.21 Inclusion of Relocation Assistance in an Administrative or Legal Settlement 7-2-12

7.2.22 Denial of Claim 7-2-13

7.2.23 The Appeal Process 7-2-13

HISTORY 7-2-15

Section 7.2

GENERAL RELOCATION REQUIREMENTS

PURPOSE

The purpose of this section is to describe the process the Department of Public Works initiating Relocation of Individuals or Business must follow when relocation advisory services are offered to the public.

AUTHORITY

49 CFR, Part 24
21 GCA §17101-§17118 Relocation Assistance Act

SCOPE

The principal users of this document are Department employees and those persons contracted by the Department to perform parcel acquisition and relocation assistance functions and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Housing and Urban Development, Amendment Act of 1974
Internal Revenue Code of 1954
Right of Way Manual, Section 7.1, Relocation Assistance Program
Right of Way Manual, Section 7.3, Payment for Moving and Related Expenses
Right of Way Manual, Section 7.4, Replacement Housing Payments
Right of Way Manual, Section 7.5, Relocation Assistance for Mobile Homes
Right of Way Manual, Section 7.6, Last Resort Housing
Section 102 (c), Disaster Relief Act of 1974
Social Security Act
Title VIII of the Civil Rights Act of 1968
12 GCA, Chapter 5, Guam Housing and Urban Renewal Authority
21 GCA §66101-§66701 Building Law
21 GCA, Chapter 67, The Building Code
Uniform Relocation Assistance and Real Property Acquisition Policies Act
The Organic Act of Guam, § 1421i

FORMS

7.2-1 Statement of Eligibility for Supplementary Replacement Housing Payment for Owner
7.2-2 Replacement Housing Payment Determination - Three Comparables Method
7.2-3 30 Day Notice to Vacate
7.2-4 90 Day Letter of Assurance
7.2-5 Replacement Housing Questionnaire/Certification
7.2-6 Application and Claim for Replacement Housing Payment

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- 7.2-7 Application and Claim for Reimbursement of Moving Costs
 - 7.2-9 Relocation Payment Appeal
 - 7.2-10 Notice of Eligibility - Residential
 - 7.2-11 Notice of Claim Denial/Right to Appeal

ATTACHMENTS

The Federal Highway Administration (FHWA) brochure titled ***Your Rights and Benefits as a Displaced Person Under the Federal Relocation Assistance Program*** also known as the ***Relocation Brochure*** is included at the end of this Section of the Manual. This document is provided to property owners at the hearing described in **Section 7.2.1.2**. The FHWA web site should be checked for any updates to this brochure. The FHWA web site can be accessed at <http://www.fhwa.dot.gov/realestate/>

7.2.1 Public Information

7.2.1.1 The Department will develop, provide and have the FHWA Relocation Brochure describing available services and payments provided by the relocation program. This brochure is included at the end of this section of the Manual and will be available at all related NEPA and other public hearings.

7.2.1.2 During the Public Hearing, the following will be presented and discussed by the Department:

- (A) The availability of relocation assistance and services, eligibility requirements and payment procedures;
- (B) The estimated number and types of displacements for each alternative;
- (C) The studies that have been made and the methods that will be used to assure that displacees' housing needs will be met.

7.2.1.3 During the roadway design or combined public hearing, the following will be presented in a brochure and/or be discussed by the Department:

- (A) Services available under the Department's Relocation Assistance Advisory Program;
- (B) The address and telephone number of the Department office with the name of the Department of Public Works Right of Way Supervisor (DPWRS) or designee;
- (C) The fact that no displacee shall be required to move permanently from his/her dwelling unless at least one and preferably three or more comparable replacement dwellings have been made available to that person, see **Section 7.2.6.1**;
- (D) Eligibility requirements and payment procedures including:
 - (1) Eligibility requirements and payment limits for moving costs, replacement housing and rent supplement payments, and mortgage interest rate differentials;
 - (2) Payment of closing costs incidental to the purchase of a replacement dwelling;
- (E) The estimated number of individuals and/or families to be relocated;
- (F) The estimated number of dwelling units presently available and which will become available that meet replacement housing requirements;
- (G) The estimated time necessary for relocation;

-
- (H) The appeal process.

7.2.2 Eligibility Criteria

7.2.2.1 Relocation advisory services will be offered to:

- (A) Each displaced person as defined in the ***Right of Way Manual, Section 7.1, Relocation Assistance Program, Definitions***;
- (B) Any person occupying property adjacent to the real property acquired by the Department, if the Department determines that the person is caused substantial economic injury because of the acquisition;
- (C) Any person who has lawfully occupied the real property to be acquired, but who is later evicted for cause on or after the date of the initiation of negotiations.

7.2.2.2 The following do not qualify as displaced persons:

- (A) A person who moves before the initiation of negotiations;
- (B) A person who initially enters into occupancy after the date of its acquisition for a project;
- (C) A person who does not need to relocate permanently as a direct result of a project;
- (D) A person whom the Department determines is not displaced as a direct result of a partial acquisition;
- (E) A person who, having been issued a notice of relocation eligibility, is notified in writing that he/she will not be displaced after all:
 - (1) Providing that he/she has not yet moved;
 - (2) However, any expenses incurred by a written contract to relocate which was entered into after the date of the notice of relocation eligibility, and before receiving notice that he/she will not be displaced, will be reimbursed by the Department.
- (F) An owner/occupant who voluntarily conveys his/her property after being informed, in writing, that the Department will not acquire the property unless a mutually satisfactory agreement of sale is reached. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this procedure.
- (G) A person who retains the lifetime right to use the real property after acquisition by the Department;
- (H) A person who has occupied the property for the purpose of obtaining assistance under the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act, (Uniform Act)***.
- (I) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations or a person who is lawfully evicted. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Department to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under Territory of Guam law. A squatter who is a long standing occupant or who would suffer undue or unusual hardship because of the displacement may be considered to be in lawful occupancy. This determination will be made by the Department.

- (J) A person who is determined to be unlawfully present in the Territory of Guam. A person is determined to be unlawfully present if he/she fails to certify to the Department that he/she is a citizen or national of the United States or an alien who is lawfully present in the Territory of Guam, or his/her certification is found to be invalid. Aliens lawfully present in the Territory of Guam must provide sufficient documentation of their residency status to the Department. A person who is not lawfully present in the Territory of Guam, but can demonstrate to the Department's satisfaction, that denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the Territory of Guam, may be considered eligible to receive relocation assistance. This determination will be made by the Department.

7.2.3 Relocation Advisory Services to be provided

7.2.3.1 The Department will determine the relocation needs and preferences of each person to be displaced by means of a personal interview.

7.2.3.2 The Department representatives must explain relocation payments and other assistance offered by the Department to each potential displacee, including eligibility requirements and procedures for obtaining such assistance. Along with the explanation, the appropriate Relocation brochure will be given to each person owning; residential property, outdoor advertising sign, or business/farm/nonprofit property. Delivery of the brochure alone does not constitute explanation of services.

7.2.3.3 The Department will provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings. The following activities must be performed:

- (A) Explanation will be made that the person cannot be required to move until at least one comparable replacement dwelling is made available to him/her.
- (B) The Department shall inform the displacee in writing of the specific comparable replacement dwelling used as a basis to determine the maximum replacement housing payment and the dollar amount of the payment. This will be furnished at the initiation of negotiations or within **thirty days** from that date. Noncompliance of this activity must be documented in the relocation file.
- (C) The displacee must be informed that a replacement housing payment will not be made unless the replacement dwelling is inspected and certified to be decent, safe and sanitary, see **Section 7.2.7**.
- (D) Whenever possible, minority persons shall be given reasonable opportunities to locate to decent, safe and sanitary replacement dwellings, outside of a minority neighborhood, that are within their financial means. This does not require the Department to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.
- (E) All residential displacees shall be offered transportation to inspect housing.

7.2.3.4 The Department will provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties, and offer assistance in reestablishing such displacees.

7.2.3.5 Counseling and advice as to other potential sources of assistance will be provided by Department representatives. For example Federal and Territory housing programs, Small Business Administration programs, etc.

7.2.4 Waivers of Relocation Assistance

7.2.4.1 The Department will not request a displaced person to waive relocation assistance under the **Uniform Act**, nor will it make a waiver from the displaced person a condition of an administrative or legal settlement.

7.2.4.2 If a displaced person requests to waive relocation assistance, the waiver must be in writing and signed by the displaced person. It must clearly set out the specific entitlements available to the displaced person under the Uniform Act, including estimated monetary amounts for move costs and applicable replacement housing payments. If an owner is also waiving any right to claim move costs as an element of just compensation in eminent domain, this must be specifically stated in the waiver. Any waiver precludes payment of specified relocation assistance benefits.

7.2.5 Comparable Replacement Housing

7.2.5.1 A comparable replacement dwelling is one which is:

- (A) Decent, safe and sanitary, see **Section 7.2.7**;
- (B) Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function and provides the same utility;
- (C) Adequate in size to accommodate the occupants, see **Section 7.2.7**;
- (D) In an area that is not subject to adverse environmental conditions;
- (E) Not in a location generally less desirable in regard to public utilities and commercial and public facilities than that of the displacee's current dwelling;
- (F) Accessible to the displacee's place of employment;
- (G) On a site typical in size for residential development in the project vicinity with normal site improvements, such as landscaping;
- (H) Currently available to the displacee;
- (I) Within the financial means of the displacee as follows:
 - (1) For a **180-day** homeowner, one who was in occupancy for at least **180 days** prior to initiation of negotiations, a replacement dwelling is within his/her financial means if the homeowner is paid the full price differential of: all increased mortgage interest costs, all incidental expenses in accordance with **Right of Way Manual, Section 7.4, Replacement Housing Payments** and any amounts payable under Last Resort Housing provisions **Right of Way Manual, Section 7.6, Last Resort Housing** to which he/she is entitled.
 - (2) For a displacee who will be renting his/her replacement dwelling, it is within his/her financial means if the new monthly rent and estimated average monthly utility costs do not exceed the person's base monthly rental as described in the **Right of Way Manual, Section 7.4, Replacement Housing Payments**.
 - (a) Any rental assistance received (**Right of Way Manual, Section 7.4; Replacement Housing Payments**) must be taken into account.
 - (b) Whenever the maximum allowable replacement housing payment for purchase or rent would be insufficient to provide that a comparable replacement dwelling will be available on a timely basis to a displacee, the Department will provide additional or alternative assistance under Last Resort Housing provisions (**Right of Way Manual, Section 7.6, Last Resort Housing**).

- (c) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length of occupancy requirements, comparable replacement housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30% of such person's average gross monthly household income. The 30% determination applies if the household income amount is classified as 'low income' by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits. Payment by the Department would also apply if the total of the amounts designated for shelter and utilities of the displaced person is based upon receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities. Such rental assistance must be paid under the ***Right of Way Manual, Section 7.6, Last Resort Housing***.
- (J) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the governmental housing assistance program relating to the size of the replacement dwelling shall apply. If the government housing program is not available see ***7.4.28 Cost of Comparable Replacement Dwelling***.

7.2.6 Availability of Comparable Replacement Housing before Displacement

7.2.6.1 No person to be displaced shall be required to move from his/her dwelling until at least one comparable replacement dwelling has been made available to the person by the Department. If available in the local housing market, three comparable replacement dwellings will be made available. If three are not available, the file will be documented to indicate the number available.

7.2.6.2 A comparable replacement dwelling is considered to have been made available to a person if:

- (A) The person is informed of its location; and
- (B) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
- (C) The person is assured of receiving the relocation assistance and acquisition payment to which he/she is entitled in sufficient time to complete the purchase or lease of the property.

7.2.6.3 The above policy may be waived by the Federal Highway Administration (FHWA), or by the Department on nonfederal aid projects, if the Department demonstrate that a person must move because of:

- (A) A major disaster as defined in ***Section 102(c), Disaster Relief Act of 1974***;
- (B) A Presidential declared national emergency;
- (C) Another emergency which requires immediate vacation of the real property, if continued occupancy would constitute a substantial danger to the health or safety of the occupants or the general public.

7.2.6.4 When a person is required to relocate for a temporary period due to ***Section 7.2.6.3(C)***, the Department shall:

- (A) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling; and
- (B) Pay the actual reasonable out of pocket moving expenses and any reasonable increase in monthly

housing costs incurred because of the temporary move; and

- (C) Make available to the displacee at least one comparable replacement dwelling.
 - (1) This will be done within **fifteen days** from the date of temporary displacement, unless none are actually available.
 - (2) The date the displacee moves to the temporary dwelling is the date of displacement.

7.2.7 Decent, Safe and Sanitary Housing

7.2.7.1 A decent, safe and sanitary dwelling is one which conforms to all Territory of Guam housing and occupancy codes.

7.2.7.2 Minimum standards must be met. The dwelling must:

- (A) Be structurally sound, weather tight, and in good repair;
- (B) Contain an adequate and safe electrical wiring system for lighting and other electrical devices and be connected to an electrical power supply;
- (C) Be adequate in size with respect to the number of rooms and living space area needed to accommodate the displacee:
 - (1) Children of the opposite sex under age ten may occupy the same bedroom.
 - (2) One child under age two may occupy the parents' bedroom.
 - (3) Except for the above cases, husbands and wives, and couples living together by mutual consent, persons of the opposite sex should not be required to occupy the same bedroom.
 - (4) The number of bedrooms at the replacement dwelling should duplicate that of the acquired dwelling, unless more are needed to meet the above requirements.
- (D) Have a continuing and adequate supply of safe, drinkable water and is connected to an adequate sanitary sewer system;
- (E) Have a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet. All must be in good working order and properly connected to appropriate sources of water and to a sewage drainage system;
- (F) In the case of a housekeeping dwelling, have a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system. It must also have adequate space and utility service connections for a stove and refrigerator;
- (G) Contain unobstructed egress to safe, open space at ground level. If replacement dwelling unit is on the second floor or above, with access directly from or through a common corridor, such corridor must have at least 2 means of egress;
- (H) Be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by a displacee who is disabled.

7.2.7.3 Exceptions to decent, safe and sanitary housing standards may be granted in writing:

- (A) The DPWRS must submit a request for exception, in writing, to the Director Department of Public Works (DDPW) and Department of Public Works Highway Administrator (DPWHA) stating circumstances that dictate the exception.
- (B) For projects with no Federal aid in any phase, the DDPW and DPWHA will review the request provided by the DPWRS and render a decision.
- (C) For projects that include Federal aid in any phase, exceptions may be granted in writing by FHWA. The DPWRS will review and submit the request and recommend to the DDPW and DPWHA. The DDPW will request and submit to FHWA within **five days** from receipt.

7.2.8 Relocation Notices

All notices shall be written in plain, understandable language. Persons who are unable to read and understand the notices must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

7.2.8.1 Each notice within this section must be personally delivered by Department's personnel, unless there is:

- (A) A danger or hazard to the Department's personnel;
- (B) Temporary unavailability of the displacee or other special circumstances, as documented by the Department.

7.2.8.2 When not delivered personally, each notice must be sent by certified mail, return receipt requested.

7.2.8.3 The Department's file must be documented with the date and method of delivery, the reason for a non-personal delivery and a copy of the certified return receipt, **U. S. Postal Service Form No. 3811**.

7.2.9 Notice of Intent to Acquire

If the Department decides to establish eligibility for relocation assistance prior to the initiation of negotiations on a parcel, a written notice of the Department's intent to acquire the property, along with a copy of the relocation brochure, will be delivered. The following guidelines will apply:

7.2.9.1 If a notice of intent to acquire is issued, the date the displacee moves will constitute the date of initiation of negotiations for the parcel.

7.2.9.2 On Federally funded projects, the notice will not be issued prior to the FHWA Division Administrator authorizing the initiation of negotiations on the project or authorizing acquisition of individual parcels solely for protective buying or because of hardship.

7.2.9.3 The notice will contain the notice of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property. It will also contain how additional information pertaining to relocation assistance payments and services can be obtained.

7.2.9.4 If a notice of intent to acquire is furnished an owner, it must also be furnished to his or her tenants within **15 days**.

7.2.9.5 If a notice of intent to acquire is furnished a tenant, the owner must be simultaneously notified of such action.

7.2.9.6 The Department normally will not utilize the notice of intent to acquire unless the initiation of negotiations on the parcel is imminent.

7.2.10 General Information Notice

A person scheduled to be displaced shall be furnished with written information on the relocation program on or before the initiation of negotiations. The notice must inform the person that he/she:

- (A) May be displaced by a project and generally describe the eligibility conditions and payment(s) he/she may be eligible for, and the procedures for obtaining payment;
- (B) Will be given relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other assistance necessary for a successful relocation;
- (C) Will not be required to move without a minimum of **90 days** written advance notice, and that a minimum of one comparable replacement dwelling must have been made available;
- (D) Has the right to appeal the Department's determination as to eligibility for, or the amount of, any relocation payment for which he/she may be eligible.

7.2.11 Notice of Eligibility

7.2.11.1 All occupants of a property to be acquired must be notified by the Department, in writing, of their eligibility for relocation assistance.

An explanation of all services and payments the occupant is entitled to must be included, although the amount of such payments may be delivered at a later time. Information as to where additional information concerning relocation assistance can be obtained must be included.

7.2.11.2 For owners, this notice will be given at the initiation of negotiations. Notice will be given to owners using either a standard notification letter on Department letterhead or **Forms 7.2-1** or **7.2-10** as appropriate.

7.2.11.3 For tenants, this notice will be given no later than **14 days** from the date of initiation of negotiations; for advance acquisition projects refer to **Section 6.1. Advance Acquisition**.

7.2.11.4 If this Notice is delivered by certified mail, the displaced person must be personally contacted within **30 days** from the date of initiation of negotiations.

7.2.12 Statement of Eligibility

7.2.12.1 Each residential displaced person shall be delivered a written Statement of Eligibility. This statement shall include:

- (A) The amount of the maximum payment eligibility.
- (B) An identification of the comparable replacement housing upon which such amount is based.
- (C) A description of the procedures which the displaced person must follow in order to obtain the full amount of the payment.

7.2.12.2 The Statement of Eligibility may be delivered at the initiation of negotiations or at a time subsequent thereto.

7.2.12.3 The comparable replacement housing upon which the payment eligibility is based must be available to the displaced person at the time the Statement is delivered.

7.2.13 90-Day Notice

7.2.13.1 Each displaced person shall be delivered **Form No. 7.2-4, 90-Day Letter of Assurance** which states that the displacee will not be required to move before at least **90 days** have elapsed from the date of receipt of the notice.

7.2.13.2 The notice will either state the earliest date by which a displacee will be required to move or will indicate that the displacee will receive written notice, at least **30 days** in advance, specifying the date he/she must move.

7.2.13.3 If the **90 day** notice is delivered to a residential displacee prior to delivery of the Statement of Eligibility, the notice must state clearly that the occupant will not be required to move for at least **90 days** after comparable replacement housing is made available.

7.2.13.4 This notice must be issued by the Department at least **90 days** before the person is expected to be displaced.

7.2.13.5 If the Department determines that a **90-day** notice is impracticable because continued occupancy would constitute a substantial danger to health or safety, an occupant may be required to move prior to a full **90 days** notice. A written record of this determination, recommended by the DPWRS and approved by the DDPW and DPWHA, must be maintained in the Department's official parcel file.

7.2.14 Documentation for Relocation Payment Claims

Each relocation payment claim must be accompanied by complete documentation supporting expenses incurred, such as bills, receipts, and appraisals. The Department shall provide to each displaced person reasonable assistance necessary to complete and file any required claim for payment.

7.2.15 Payment Disbursement

Disbursement shall be made as follows:

- (A) The approval of a relocation assistance claim based on work that has been completed or eligibility requirements that have already been met will take no longer than **five working days** from the date the claim is received in the Department's office, unless otherwise stated in the claim form. **Form No. 7.2-6, Application and Claim for Replacement Housing Payment**, and **Form No. 7.2-7, Application and Claim for Reimbursement of Moving Costs**, provides for a review and approval period of **ten working days** from date of receipt. The Department is deemed to receive the claim on the date the displaced person signs the claim if the Department has failed to annotate the claim with the date the Department actually received the claim or failed at the time the claim was signed to designate a specific location to which the claim must be delivered.
- (B) The above requirement does not apply to the approval of a relocation assistance claim when it is an advance warrant request for work to be done or an eligibility requirement to be met at a future date.
- (C) If any additional documentation is needed to support the claim, the Department shall notify the claimant within ten working days from the date that the claim is received.
- (D) Approved payment packages must be submitted to the Department of Administration (DOA) within **five calendar days** from date of approval of the claim by the Department.
- (E) No person shall receive any payment under Relocation procedures that duplicates all or part of a payment received for the same purpose under Federal or Territory of Guam law.
- (F) The warrant may be delivered by the same Department employee who computed the payment or who estimated the move costs.

- (1) The person who computes the payment, estimates the move cost, or assembles the invoices shall be the one who submits the calculation form.
- (2) The reviewer of **Form No. 7.2-2, Replacement Housing Payment Determination, Three Comparables Method** is also qualified for delivering the warrant.

7.2.16 Advance Payments

Advance Payments can be made under the following conditions:

- (A) An advance payment is one that is delivered to a displacee prior to the displacee completing all conditions normally required for payment disbursement. Requesting a warrant in advance of a displacee fulfilling all requirements does not constitute an advance payment.
- (B) A displacee must demonstrate the need for an advance payment in order to avoid or reduce a hardship. An example of this may be when:
 - (1) Displacees do not currently have the funds to cover the cost(s) involved in their relocation; and
 - (2) They do not have access to the funds, for example, as in securing a loan.
- (C) The Department must approve an advance payment and the file must include supportive documentation for this decision.
- (D) Payment must be made no sooner than needed in order to safeguard against expenditures other than those involved in the relocation.

7.2.17 Time for Filing Relocation Claims

The following conditions apply:

- (A) For tenants, all claims for relocation payments must be made within **18 months** from the date of move.
- (B) For owners, all claims for relocation payments must be made within **18 months** from the date of displacement or the date of final payment for the acquisition of the real property, whichever is later.
- (C) This time period shall be waived for good cause. Such waiver shall be in writing and approved by the Department.

7.2.18 Payment Claims for Multiple Occupancy

The following conditions apply to the determination of payment claims for multiple occupancy:

- (A) If two or more occupants of the displacement dwelling maintained a single household and they move to separate replacement dwellings, each will receive a prorated share of the total relocation payment(s) allowable.
- (B) If two or more occupants of the displacement dwelling maintained separate households within the same dwelling, each is entitled to individual relocation payments.
 - (1) The replacement housing payment will be based upon housing comparable to the quarters privately occupied by each displacee plus shared community rooms.
 - (2) The Department may determine that separate households may be maintained when:

- (a) Two or more distinct family units share a dwelling;
- (b) Two or more unrelated persons divide rent and expenses on a prorated basis while maintaining lifestyles independent and exclusive of one another.
- (c) A person rents a sleeping room within a dwelling.

7.2.19 Deductions from Relocation Payments

The following conditions apply to deductions from relocation payments:

- (A) The Department will deduct the amount of any advance relocation payment(s) from the total relocation payment to which a displacee is entitled.
- (B) No portion of a relocation payment may be withheld by the Department to make payment to any other creditor.

7.2.20 Relocation Payments Not Income

Relocation payments for displaced persons are not considered as income for the purpose of:

- (A) The *Internal Revenue Code of 1954 and The Organic Act of Guam and Related Federal Laws Affecting the Governmental Structure of Guam, 1421i*;
- (B) Determining the eligibility or extent of eligibility of any person for assistance under the *Social Security Act* or any other law, except for any Federal law providing low income housing assistance.

7.2.21 Inclusion of Relocation Assistance in an Administrative or Legal Settlement

7.2.21.1 If relocation assistance available under the Uniform Act is included in a settlement, each amount paid must be supported and documented and all eligibility requirements met in accordance with the *Uniform Act; 49 Code of Federal Regulations (C.F.R.), Part 24; Rule Chapter 14-66* as follows:

- (A) A payment for move costs based on estimated amounts may be made without the submittal of receipted bills or invoices if the amount is supported with appropriate inventories, estimates or other documentation necessary to determine a reasonable payment and the method used to calculate the payment is clearly documented in the official file. The Department may elect to require this additional documentation from the displacee after the costs are actually incurred. In the case of a nonresidential fixed payment in lieu of move costs, the displaced business or nonprofit organization must furnish signed copies of income tax returns or certified financial statements.
- (B) The inclusion of a replacement housing payment in a settlement would require either the purchase and occupancy or rental and occupancy of replacement housing by the displaced person.
- (C) In the case of an administrative settlement, it is recommended that the amount of the move costs or replacement housing payment be stated on the purchase agreement as a hold back. The warrant for these payments shall be delivered when the displaced person has complied with the necessary requirements. In the case of a legal settlement, the final judgment could indicate that specified relocation assistance will be paid when necessary conditions have been met.
- (D) It is recommended that a statement regarding advisory services be made an essential and integral part of all administrative settlements that include relocation entitlements. The statement must incorporate the availability of personnel to provide the advisory services throughout the relocation process. A suggested text to include in the purchase agreement would be:

The Department and the seller/displacee understand that the inclusion of relocation assistance as a part of this administrative settlement does not preclude seller/displacee's right to advisory services related to their relocation from the project site. The Department invites and encourages the seller to take full advantage of the opportunity to use these services provided by the Department's relocation personnel.

7.2.21.2 If the Department recommends that an administrative or legal settlement include relocation assistance prior to the displaced person complying with specified entitlement requirements, the DDPW, with the recommendation of the DPWHA and DPWRS, must grant an exemption to the relocation assistance manual prior to approval of the settlement. An agreement to pay benefits prior to compliance with standard requirements should be a rare exception to the manual. The exemption requirements are as follows:

- (A) The DPWRS must submit a request for the exemption, in writing, to the DDPW and DPWHA, stating the specific circumstances that dictate the exemption and demonstrate the reason an exemption is in the best interests of the Department. The DDPW and DPWHA, shall have **fourteen days** from date of receipt of the request to approve or disapprove the exemption. If there are time restrictions on the proposed settlement, a review shall be expedited to the greatest extent possible in order to accommodate the settlement time frame.
- (B) For projects that include Federal funding in any phase, the DPWRS written request for exemption will be reviewed by DDPW and DPWHA, who will then render a decision. If the DDPW and DPWHA approve the exemption, it will then be submitted to FHWA for approval. Every effort will be made to obtain a timely response from FHWA.
- (C) For projects with no Federal funding in any phase, the DDPW and DPWHA will review the request and render a decision.

7.2.22 Denial of Claim

7.2.22.1 Prior to denial of all or part of any claim, the Department should make personal contact with the displacee to provide an explanation of such denial. At the discretion of the DPWRS, such contact may be made by certified mail. The Department's official parcel file must be documented as to the circumstances upon which the decision to use certified mail was made. The Department may disapprove all or part of a claim or may refuse to consider a claim because of untimely filing or other grounds permitted in the ***Relocation Assistance Manual***.

7.2.22.2 If a person objects to an eligibility or payment determination or all or part of a claim is denied, the Department must notify the claimant in writing within **five working days** after a determination is made, the basis for that determination, and the procedures for appealing that determination using the ***Form No. 7.2-11, Notice of Claim Denial/Right to Appeal***.

7.2.22.3 This notice must be delivered in person or sent by certified mail, return receipt requested.

7.2.23 The Appeal Process

7.2.23.1 Any person may file a written appeal with the Department using ***Form 7.2-9 Relocation Payment Appeal***, in any case in which he/she believes that the Department has failed to properly determine eligibility for or the amount of a relocation payment. The appeal will be considered without regard to its form.

7.2.23.2 Filing an appeal is a two step process as follows:

- (A) The displacee, or aggrieved person, may submit a written appeal to the DPWRS who will then conduct an administrative review of the case and advise the DDPW and DPWHA. The written appeal must be filed no later than **60 days** from the date the aggrieved person receives written notification from the Department that the claim has been denied. Failure to submit a written appeal within this time may result in a denial of the claim.

-
- (B) If the DPWRS, with the approval of DDPW and DPWHA, denies the claim, he/she will advise the aggrieved person of his/her right to appeal that decision. The person may request either a formal hearing, if he/she disagrees with the facts stated, or an informal proceeding, if he/she does not dispute the facts stated but disagrees with the Department's decision. Any request for a formal hearing or informal proceeding must be made in writing.

7.2.23.3 Payment limitations prescribed in Relocation Assistance Procedures are not appealable, such as search expenses or reestablishment expenses, which have a statutory maximum payment amount.

7.2.23.4 A person has a right to legal or other representations in connection with his/her appeal, but solely at his/her expense.

7.2.23.5 The Department will provide assistance as needed in completing the appeal form, **7.2-9 Relocation Payment Appeal** and will explain the appeal process to the displacee or aggrieved person, and will permit him/her to inspect and photocopy all but confidential materials, such as appraisals, pertinent to the appeal during the Department normal work hours.

7.2.23.6 An administrative review will be conducted by the DPWRS.

7.2.23.7 All information and justifications submitted by the displacee or aggrieved person shall be considered. The DPWRS may personally contact the displacee.

7.2.23.8 All documentation used as a basis for the Department's decision and any information requested by the DPWRS shall be promptly sent to the DDPW:

- (A) A statement of the issue under review;
- (B) Citations of applicable provisions upon which the Department's determination was based;
- (C) Copies of eligibility statements, payment computation forms, and related materials;
- (D) A statement of any extenuating circumstances pertinent to the Department's actions;
- (E) A recommendation of administrative action.

7.2.23.9 After review of all pertinent information, the following will apply:

- (A) If the DPWRS finds in favor of the displacee or aggrieved person, the appeal will be reviewed by the DDPW and DPWHA.

If the DDPW and DPWHA concur with the DPWRS, then the displacee or aggrieved person will be notified of this determination and the Department must provide the necessary claim forms and coordination assistance to process the claim.

- (B) If the DDPW and DPWHA concur with the DPWRS's determination, the displacee or aggrieved person must be notified that he/she may file an appeal for an administrative hearing:

(1) Notice must include an explanation of the basis on which the decision was made, referencing the specific procedures and rules under which the claim was denied, when such is the case.

(2) Notice must be a certified letter with return receipt requested, and response must be sent within **60 days** from receipt of appeal by the DDPW. The DDPW may, when necessary, grant written extensions of this **60-day** period.

-
- (3) The notice must advise the displacee that a hearing request must be made within **21 days** from receipt of notification from the Department.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – changes to sections 7.2.7.3, 7.2.13.5, 7.2.21.2, and 7.2.23.2, 7.2.23.9



DPW Form 7.2-1

STATEMENT OF ELIGIBILITY FOR SUPPLEMENTARY REPLACEMENT HOUSING PAYMENT FOR OWNER

ITEM/SEGMENT NO.:
GU PROJECT NO.:
ROUTE NO.:
PARCEL NO.:

This is to certify that _____ being Displaced from the residence at _____;

- Will not be eligible for a replacement housing payment because
Will be eligible for a purchase additive amount not to exceed \$ _____ in order to purchase a decent, safe and sanitary dwelling as an owner who elects to purchase.

The above amount is based upon the difference between the value of the comparable replacement dwelling offered by the Department (\$ _____) and the value of the acquired dwelling on a typical homesite as determined by the Department (\$ _____). The value of the acquired dwelling on a typical homesite represents _____% of the approved appraisal amount for your property, which is \$ _____.

The displacee may also be eligible, when applicable, for compensation of the loss of favorable financing on an existing mortgage in the financing of replacement housing and reimbursement for cost incidental to the purchase of a replacement dwelling.

The benefits will not be available until acquisition of the property to be acquired by the Department is complete or, in the case of condemnation, the owner has signed such agreements as are required by the Department.

Payments will not be made to persons who purchase a replacement dwelling until they occupy the dwelling and provide a closing statement or other acceptable documentation of the price paid for the replacement unit.

Signed;
Title:
Dated:

RECEIPT ACKNOWLEDGED BY:
On the _____ day of _____, _____



DPW Form 7.2-2

REPLACEMENT HOUSING PAYMENT DETERMINATION
THREE COMPARABLES METHOD

Form with fields: OCCUPANT & ADDRESS:, ITEM/SEGMENT NO.:, GU PROJECT NO.:, ROAD NO.:, PARCEL NO.:

DETERMINATION OF REPLACEMENT VALUE IS BASED ON THE FOLLOWING COMPARABLES WHICH ARE DECENT, SAFE AND SANITARY, FUNCTIONALLY EQUIVALENT AND SUBSTANTIALLY THE SAME AS THE ACQUIRED DWELLING, FAIR HOUSING (OPEN TO ALL PERSONS REGARDLESS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN), REASONABLY ACCESSIBLE TO PUBLIC SERVICES AND THE DISPLACEE'S PLACE OF EMPLOYMENT, IN AN EQUAL OR BETTER NEIGHBORHOOD WHICH IS NOT SUBJECT TO UNREASONABLY ADVERSE ENVIRONMENTAL FACTORS, AND IS CURRENTLY AVAILABLE ON THE OPEN MARKET WITHIN THE FINANCIAL MEANS OF THE DISPLACEE. (SEE ATTACHED COPIES OF FORM 575-040-13 "REPLACEMENT HOUSING QUESTIONNAIRE/CERTIFICATION," FOR EACH COMPARABLE LISTED BELOW.) IF NEEDED, THE DEPARTMENT WILL PROVIDE TRANSPORTATION TO DISPLACEE TO INSPECT THE REPLACEMENT DWELLINGS BEING OFFERED.

COMPARABLE NO. 1:

Form with fields: ADDRESS OR LOCATION:, DISTANCE FROM SUBJECT:, OWNER:, REALTOR:, ASKING PRICE: \$, MONTHLY RENTAL: \$

COMPARABLE NO. 2:

Form with fields: ADDRESS OR LOCATION:, DISTANCE FROM SUBJECT:, OWNER:, REALTOR:, ASKING PRICE: \$, MONTHLY RENTAL: \$

E. DOWN PAYMENT COMPUTATION:

VALUE OF REPLACEMENT DWELLING \$ _____
DOWN PAYMENT REQUIRED _____ %
AMOUNT OF PAYMENT \$ _____
(MORTGAGE AMOUNT \$ _____; INTEREST RATE _____ %; TERM IN MONTHS _____)

I UNDERSTAND THAT THIS DETERMINATION OF A REPLACEMENT HOUSING PAYMENT IS TO BE USED IN CONNECTION WITH A DEPARTMENT TRANSPORTATION PROJECT AND I CERTIFY THAT I HAVE NO DIRECT OR INDIRECT, PRESENT OR CONTEMPLATED FUTURE PERSONAL INTEREST IN THIS PROPERTY OR IN ANY BENEFIT FROM THE ACQUISITION OF THIS PROPERTY.

| | | | |
|------------|-----------|-------|-------|
| SUBMITTED: | _____ | _____ | _____ |
| | Signature | Title | Date |
| REVIEWED: | _____ | _____ | _____ |
| | Signature | Title | Date |
| APPROVED: | _____ | _____ | _____ |
| | Signature | Title | Date |

REMARKS:



DPW Form 7.2-3

30 DAY NOTICE TO VACATE

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

Dear

By previous notice you have been advised the Department would provide you with a written thirty day notice of the specific date by which you must vacate and surrender possession of the subject property.

This is to advise you that you will be required to vacate and surrender possession of the above referenced property on the _____ day of _____, _____.

Thank you for your continued cooperation.

Yours very truly,

Department of Public Works
Right of Way Supervisor

Receipt Acknowledged _____
Addressee Date



DPW Form 7.2-4

90 DAY LETTER OF ASSURANCE

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

Dear

As you are aware the Department of Public Works is in the process of acquiring right of way for the above referenced project in your area. It has been determined that you, your family, your business or farm operation, or personal property you own will need to be relocated from this real property which is needed for the construction of the transportation facility.

To ensure that you receive adequate time to relocate, the Department hereby assures that you will not be required to move from the subject property before at least ninety days have elapsed from the date of receipt of this letter. This assurance applies to you, your family, your business or farm operation, or personal property you may own. Further, you will be given a written notice which will specify the actual date by which the property must be vacated and surrendered to the Department. You will receive this notice at least thirty days prior to the date specified.

If you are a residential occupant and have not been offered a comparable replacement dwelling with this letter, you are further assured that you will not be required to move in less than ninety days from the date such dwelling is made available to you.

It is the sincere desire of the Department to assist you in your relocation necessitated by this acquisition and to answer any questions you may have. Should you desire further information please let us know.

Yours very truly,

Department of Public Works
Right of Way Supervisor

Receipt Acknowledged _____
Addressee

Date



DPW Form 7.2-5

REPLACEMENT HOUSING QUESTIONNAIRE/CERTIFICATION

ITEM/SEGMENT NO.:
GU PROJECT NO.:
ROUTE NO.:
PARCEL NO.:

Displacee Address: Comparable No.:

Number Being Relocated to this Unit: Displacee's Income:\$

Address of Property: Listed By:

Owners Name & Address: Single M/H Multi Other

Adverse Environmental Factors?

Asking Price\$ Rental\$ % Down to Purchase

Lot Size Garage Carport Number of Cars

Type of Neighborhood: Distance to Employment:

Distance to Transportation: Distance to Shopping:

Distance to School: Elementary Jr. High Sr. High

Distance to Church of Choice: Fair Housing Yes No

Exterior Appurtenances:

Total Floor Space Sq. Ft. No. Bedrooms: No. Baths:

Type of Construction Concrete Block Brick Frame Other Age:

Does Property Conform to Guam Building Code? Yes No Attach Exception List

Is there Provision for Electricity and Lighting in Each Room? Yes No

Is there an Air Conditioning System? Yes No Type: No. of Units:

Is there a Continuing and Adequate Source of Potable Water? Yes Source: No

If Well or Cistern, Date Last Tested?: Results:

Does the Kitchen Contain a Sink with Hot & Cold Water Faucets? Yes No

Does Kitchen have Utility Connections & Space for Range & Refrigerator? Yes No

Is Bathroom Well Lighted, Ventilated & Affording Privacy? Yes No

Does Bathroom Contain Lavatory, Flush Toilet & Bathtub or Shower Stall? Yes No

Are Facilities Connected to: Sewer System Septic Tank

- Is Structure Sound, Weather Tight & in Good Repair? Yes No
- Is Structure Adequately Maintained? Yes No
- Is there Means of Egress to a Safe Place at Ground Level? Yes No
- Is Structure Three or More Stories High? Yes No
- If Yes Are There Two or More Exits to Safe Open Area at Ground Level? Yes No
- Does Structure Appear to Meet Decent, Safe and Sanitary Living Requirements? Yes No

Remarks: _____

I hereby certify that I have personally inspected the above described property and the property appears to meet decent, safe and sanitary requirements. Yes No

Any determination made by the Department that a dwelling meets standards for decent, safe and sanitary housing is made solely for the purposes of determining eligibility for replacement housing payments and is not a representation or warranty for any other purpose.

Information Obtained From: _____

Agents Signature _____ Date: _____

I Certify the Above Property Occupied as of : _____

Agent's Signature: _____ **Date:** _____



DPW Form 7.2-6

APPLICATION AND CLAIM FOR REPLACEMENT HOUSING PAYMENT

ITEM/SEGMENT NO.:
GU PROJECT NO.:
ROUTE NO.:
PARCEL NO.:

Displacee Address:

Make Warrant Payable To: Warrant Amount: \$

The undersigned, herein referred to as Claimant, regardless of number, hereby makes application for replacement housing payment authorized by the Territory of Guam Department of Public Works, to wit in support of said application claimant, after first being duly sworn, disposed and says:

- 1. Claimant certifies that he/she is a legal resident of the Territory of Guam and upon Department request can provide documentation verifying legal residency.
2. That claimant Owned & Occupied Rented & Occupied the above referenced property for not less than 180 Days 90 Days prior to the initiation of negotiations with the Department for the acquisition of the property.
3. Claimant was required to move from the aforesaid property on and purchased or rented a replacement dwelling on. That dwelling being located at was occupied on.
4. That the claimant believes and is satisfied that said dwelling meets the requirements of being decent, safe and sanitary.
5. That the total number of persons, including claimant, displaced by the acquisition of the former dwelling by the Department is.
6. Claimant request that the payment in the amount of \$, applied for herein be made to (check one) Claimant Other (if payment is to be made to a person or persons other than claimant, the name and address of said payee should be written in the space provide below and the explanation for the payment given).
7. That claimant will permit representatives of the Department to inspect the replacement dwelling at reasonable times.
8. That claimant agrees that the amount of any final judgment rendered in claimant's behalf in any condemnation proceeding shall be reduced so that the judgment amount and the replacement housing payment do not exceed the cost of this comparable dwelling but in no event shall the judgment be reduced by more than the amount of the replacement housing payment. Therefore, "It is agreed and understood by the parties hereto that the sum of \$ herewith paid as relocation assistance shall be and become a lien upon that portion of any award in any condemnation suit now or hereafter pending, relating to the acquisition of the property described herein in excess of the sum of \$ which sum designated as the amount which, when added to the

replacement housing payment herewith paid, represents the average cost of replacement housing: and that the sum of \$ _____, shall be repaid and reimbursed to the Department to the extent that any such condemnation award, relating to the property herein described, shall be in excess of \$ _____.”

9. This claim will be reviewed for approval of payment within ten working days of receipt by the Department at its office.

DPW Agent Signature: _____ Date: _____

Claimant Signature: _____ Date: _____

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____ who is personally know to me or who has produced _____ as identification, and who did take an oath.

Notary Signature: _____ Date: _____

[Seal]



DPW Form 7.2-7

APPLICATION AND CLAIM FOR REIMBURSEMENT OF MOVING COST

ITEM/SEGMENT NO.:
GU PROJECT NO.:
ROUTE NO.:
PARCEL NO.:

Personal Property Only
Individual or Family
Business
Farm Nonprofit

CLAIM APPLIED FOR:

Commercial Move
Moving Related Expenses
Schedule Move Cost
Self Move
Dir Loss/Sub Prop/Bulk-Low Val
Search Expenses
Fixed Payment in Lieu of Move Cost
Reestablishment Expenses
Move Cost Estimate

TOTAL AMOUNT CLAIMED
TOTAL AMOUNT ALLOWED
DIFFERENCE

Parcel Vacate Date:
Subject Address:
Replacement Address:
Relocation Services Complete with this Claim?
Advanced Payment?
Suit Style:
No.:
Lease Storage from to
Make Check Payable to:

I HEREBY CERTIFY:

- 1. Claimant certifies that he/she is a legal resident of the Territory of Guam...
2. The above information and all other information submitted herewith are true...
3. That no reimbursement or compensation has been received...
4. If an in lieu of claim selected, the claimant has not, nor does he/she intend to amend...

5. If advanced payment is made prior to the move, the claimant will comply with the Department's procedure for payment of moving and related expenses, in the moving of personal property from the acquired property. I further certify that this payment satisfies all claims for items listed on this claim.
6. That this payment satisfies all claims for the reimbursement for items, or parts of items, as they are listed in this claim.

Claimant has been advised their claim will be reviewed for approval of payment within ten working days of receipt by the Department

CLAIMANTS NAME: _____

CLAIMANTS SIGNATURE: _____ DATE: _____

ADDRESS: _____

I HEREBY CERTIFY:

- The personal property has been removed, or work has been completed, as stated.
- The claimant is eligible for relocation moving expenses claimed

SUBMITTED: _____ DATE: _____
DPW Agent Signature

REVIEWED: _____ TITLE: _____ DATE: _____

APPROVED: _____ TITLE: _____ DATE: _____



DPW Form 7.2-9

RELOCATION PAYMENT APPEAL

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

INSTRUCTION: If you wish to exercise your appeal rights as outlined in your Notice of Claim Denial/Right to Appeal it must be in writing. Please complete the following and deliver or mail to:

Department of Public Works
Attn. Right of Way Supervisor
542 North Marine Corps Drive
Tamuning, GU 96913

This appeal form must be received by the Department no later than 60 days from the date you received your Notice of Claim Denial/Right to Appeal.

I the undersigned, hereby appeal the decision of the Department regarding my application for relocation payments. My reasons for this are (explain in detail stating all information which you believe justifies your appeal):

(Attach additional page(s) if needed)

SIGNED: _____ DATE: _____

DATE RECEIVED AT DPW : _____ REVIEWED BY: _____



DPW Form 7.2-10

NOTICE OF ELIGIBILITY RESIDENTIAL

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

Dear

As you are aware, the Department of Public Works is in the process of acquiring right of way for the above-referenced project in your area. It has been determined that either you or your personal property will be required to move from real property which is needed for the construction of this transportation facility.

Since you and/or your personal property will be displaced from the property being acquired, this notice will advise you of your eligibility for services and payments under the Relocation Assistance program. All displaced persons are eligible for reimbursement for the actual, reasonable, and necessary costs to move personal property to a replacement dwelling. You will also receive advisory services from the Department to assist in your relocation. Depending on the type and length of your occupancy, you may also be eligible for replacement housing payments indicated here:

OWNERS

- You have owned and occupied the property to be acquired as your dwelling for at least 180 days prior to the Department's written offer to purchase. If a comparable replacement dwelling costs more than the amount you are paid for your current dwelling you will receive a payment to make the replacement housing affordable to you. You may also receive compensation of the loss of favorable financing and reimbursement for costs incidental to the purchase of your replacement dwelling.
- You have owned and occupied the property to be acquired as your dwelling for at least 90 days prior to the Department's written offer to purchase. The Department will determine economic rent and average monthly utility cost for the property you are currently occupying. If the cost of rent and utilities at a comparable replacement dwelling exceeds this amount, or exceeds 30% of your average gross monthly income if the amount is classified as 'low income' by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs, you will be eligible for a payment to make the replacement housing affordable to you. You will need to provide verification of your income to the Department. You may be able to apply some or all of this payment as a down payment on a replacement dwelling.



DPW Form 7.2-11

NOTICE OF CLAIM DENIAL/RIGHT TO APPEAL

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

Dear

You have recently requested or claimed the following relocation assistance eligibility or payment from the Department of Public Works:

This letter serves as official written notification that your claim has been denied for the following reason(s):

If you disagree with the determination of your eligibility or payment amount, you have the right to file a written appeal with the Department. This is a two step process as follows:

1. You may submit a written appeal to the Department's Relocation Administrator who will conduct a review of your case. Your appeal should be directed to:

Relocation Administrator
Territory of Guam Department of Public Works
Office of Right of Way
542 North Marine Corps Drive
Tamuning, GU 96913

You must file your written appeal not later than sixty (60) days after you receive this written notification that your claim has been denied. Failure to submit your written appeal within this time may result in a denial of your claim. The Department's Relocation Administrator will review your case and may contact you for additional information. You will be notified of the outcome of this review in approximately sixty (60) days from the date of receipt of your outcome of this review in approximately sixty (60) days from the date of receipt of your written appeal by the State Relocation Administrator.

Section 7.3

PAYMENT FOR MOVING AND RELATED EXPENSES

TABLE OF CONTENTS

PURPOSE 7-3-1

AUTHORITY 7-3-1

SCOPE 7-3-1

EFFECT OF CHAPTER ON OTHER AGENCIES 7-3-1

REFERENCES 7-3-1

FORMS 7-3-1

7.3.1 Eligibility Criteria 7-3-2

7.3.2 Moves from a Dwelling 7-3-2

7.3.3 Moves from a Business, Farm or Non-profit Organization 7-3-3

7.3.4 Personal Property Only Moves 7-3-4

7.3.5 Eligible Actual Moving Expenses 7-3-4

7.3.6 Ineligible Moving and Related Expenses 7-3-6

7.3.7 Notification and Inspection 7-3-7

7.3.8 Owner Retention of Dwelling - Move Costs 7-3-8

7.3.9 Fixed Payment Residential Moves 7-3-8

7.3.10 Related Non-Residential Eligible Expenses 7-3-9

7.3.11 Multiple Occupancy 7-3-10

7.3.12 Claim for Payment 7-3-10

7.3.13 Re-establishment Expenses for Non-Residential Moves 7-3-11

7.3.14 Move Cost Estimates for Non-Residential Moves 7-3-12

7.3.15 Low Value, High Bulk Items 7-3-13

7.3.16 Direct Loss Payment, Purchase of Substitute Personal Property 7-3-13

| | |
|-------------------------------------------------------------------------------------------------------|--------|
| 7.3.17 Hazardous Waste and Substances | 7-3-15 |
| 7.3.18 Fixed Payments, Non-Residential Moves for Businesses, Farms, and Nonprofit Organizations | 7-3-16 |
| HISTORY | 7-3-19 |

Section 7.3

PAYMENT FOR MOVING AND RELATED EXPENSES

PURPOSE

The purpose of this section is to establish the process the Guam Department of Public Works must follow to administer eligibility criteria for moving cost payments and establish the process by which payment is made to a displacee.

AUTHORITY

49 CFR, Part 24
21 GCA §17101-§17118 Relocation Assistance Act

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition and relocation functions and the Office of the Attorney General.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

49 CFR, Part 24, Dislocation Allowance Schedule
Generally Accepted Accounting Principles
Resource Conservation and Recovery Act
Right of Way Manual, Section 5.4, Fees and Cost
Right of Way Manual, Section 7.2, General Relocation Requirements
Right of Way Manual, Section 7.4, Replacement Housing Payments
12 GCA, Chapter 5, Guam Housing and Urban Renewal Authority
21 GCA §66101-§66701 Building Law
Section 501 of the Internal Revenue Code (26 U.S.C. 501)
The Organic Act of Guam, § 1421i

FORMS

7.2-3 30-Day Notice to Vacate
7.2-4 90-Day Letter of Assurance
7.2-7 Application and Claim for Reimbursement of Moving Costs
7.3-1 Moving Expense Calculation and Payment Determination
7.3-2 Hazardous Substance Letter

7.3.1 Eligibility Criteria

7.3.1.1 Any displaced owner/occupant or tenant of a residence, business, farm or non-profit organization who is required to move their personal property is entitled to payment of his or her actual moving and related expenses, which the Department determines to be reasonable and necessary. A displacee will receive moving expense payment(s) for:

- (A) Moving personal property located within the right of way;
- (B) Costs incurred in moving from his/her dwelling, or from other real property not acquired when the acquisition is determined by the Department to necessitate such a move;
- (C) Moving personal property of one person from acquired real property which is owned by another, when the Department requires the personal property moved because of the acquisition.
 - (1) Only one move may be eligible for payment, except where more than one move is shown to be in the public interest and approval is obtained from the Federal Highway Administration (FHWA) Division Administrator on Federally funded projects.
 - (2) A move in and out of storage, when approved by the Department, constitutes a single move.
- (D) Provided all other eligibility criteria for payment are met, the following displacees are eligible for moving expense payments:
 - (1) Residential
 - (2) Business, including nonprofit organizations
 - (3) Farm operations
 - (4) Personal property only
- (E) Roadway Easements: Those displacees listed in **Section 7.3.1(D)** who have personal property on the portion of a parcel affected by a roadway easement reservation are eligible for moving expense payments, provided all other eligibility criteria for payment are met.

7.3.2 Moves from a Dwelling

7.3.2.1 A person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on one, or a combination of the following methods:

- (A) Commercial Move – moves performed by a professional mover.

At least two estimates from qualified commercial movers must be obtained by the displacee, the Department if the estimated cost to move exceeds \$10,000. If less than \$10,000 the Department has the discretion to obtain a single estimate or require two estimates.
- (B) Self-Move – moves that may be performed by the displaced person in one or a combination of the following methods:
 - (1) Fixed residential moving cost schedule

Any person displaced from a dwelling, seasonal residence or dormitory style room is entitled to receive this payment as an alternative to payment for actual moving and related expenses. This payment shall be determined in accordance to the Fixed Residential Moving Cost Schedule (**Section 7.3.9**) approved by the FHWA and published in the Federal Register on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by the Department at no cost to the person shall be limited to \$100.00 in accordance with the most recent edition of the Fixed Residential Moving Cost Schedule.

- (2) Actual cost move – supported by receipted bills.

When a question exists as to the reasonableness of an expense the Department may obtain estimates prepared by qualified movers. Estimated costs exceeding \$10,000 require two estimates with reimbursement being limited to the lower of the two. If the estimated cost is less than \$10,000 the Department has discretion to utilize a single estimate. Payment will be based on the lesser of the actual expenses incurred or the low estimate.

7.3.2.2 Complete documentation of actual expenses incurred, such as receipted bills, or invoices from the commercial mover must be submitted to the Department.

7.3.2.3 If unusual or complex items are to be moved, a Department representative should be present on a parcel by parcel basis to oversee that the move is performed as specified and all items in the pre-move inventory are moved.

7.3.2.4 When the Department determines monitoring is needed the following will be documented:

- (A) Any equipment used in the move with cost and time used. Equipment rental fees should be based on the actual cost of renting the equipment, but not exceed the cost paid by a commercial mover;
- (B) Persons involved in the move, type of work performed, hourly wage (should not exceed the cost paid by a commercial mover), and time period of actual work;
- (C) Amount of inventory moved during the monitoring period.

7.3.2.5 Pre-Move and Post-Move inventories are required on all types of moves except where reimbursement is based on the Fixed Residential Move Cost Schedule.

7.3.2.6 Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.

7.3.2.7 Eligible expenses for moves from a dwelling include the expenses described in paragraphs A through G of **Section 7.3.5 (Eligible actual moving expenses)**.

7.3.3 Moves from a Business, Farm or Non-profit Organization

7.3.3.1 Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods:

- (A) Commercial move – moves performed by a commercial mover.

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- (1) Reimbursement will be based on the lower of two bids or estimates prepared by a commercial mover. If the estimated cost for a low cost or uncomplicated move is believed to be less than \$10,000, the Department has the discretion to base the payment on a single bid or estimate.
 - (B) Self-move – moves that may be performed by the displacee. A self move payment shall be based on one or a combination of the following:
 - (1) The lower of two bids or estimates prepared by a commercial mover or qualified Department staff person. At the Department's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or
 - (2) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

7.3.4 Personal Property Only Moves

7.3.4.1 Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling, business, farm or nonprofit organization include those expenses described in paragraphs A through G and R of **Section 7.3.5 (Eligible actual moving expenses)**.

7.3.4.2 A displaced person's actual, reasonable and necessary moving expenses for moving personal property shall be based on the cost of one, or a combination of the following methods:

- (A) Commercial move – moves performed by a commercial mover.
 - (1) Reimbursement shall be based on the lower of two bids or estimates prepared by a commercial mover. At least two estimates from qualified commercial movers must be obtained by the displacee or the Department if the estimated cost to move exceeds \$10,000. If less than \$10,000 the Department has the discretion to obtain a single estimate or require two estimates.
- (B) Self-move – moves that may be performed by the displacee. A self move payment shall be based on one or a combination of the following:
 - (1) The lower of two bids or estimates prepared by a commercial mover or qualified Department staff person. At the Department's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or
 - (2) Costs actually incurred supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not exceed the rates paid by a commercial mover.

7.3.5 Eligible Actual Moving Expenses

Actual, reasonable moving and related expenses will be paid as follows (also refer to **Section 7.3.9**):

- (A) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 30 miles are not eligible, unless the Department determines that relocation beyond 30 miles is justified.
- (B) Packing, crating, unpacking, and uncrating of the personal property;

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- (C) Disconnecting, dismantling, removing, reassembling, and reinstalling household appliances and other personal property.
For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building.
- It also includes modifications to the personal property, including those mandated by Federal or Guam law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
- (D) Storage of personal property for a period not to exceed **12 months**, unless the Department determines a longer period is necessary.
- (E) Insurance for the replacement value of the property in connection with the move and necessary storage.
- (F) Replacement value of property lost, stolen, or damaged in the moving process (through no fault or negligence of the displacee, his/her agent or employee), where insurance covering such loss, theft or damage is not available. The Department must verify that insurance coverage is not available.
- (G) Other moving-related expenses that are not listed as ineligible as the Department determines to be reasonable and necessary.
- (H) Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be limited to the remaining useful life of the existing license, permit, fees or certification as issued through the applicable regulating agency.
- (I) Professional services as the Department determines to be actual, reasonable and necessary for:
- (1) Planning the move of the personal property;
 - (2) Moving the personal property, and;
 - (3) Installing the relocated personal property at the replacement location.
- (J) Re-lettering signs and replacing stationary on hand at the time of displacement that is made obsolete as a result of the move.
- (K) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
- (1) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Department determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling price.); or
 - (2) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a maximum moving distance of 30 miles.

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- (L) The reasonable cost incurred in attempting to sell an item that is not to be replaced.
 - (M) Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:
 - (1) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
 - (2) If the estimated cost for a low cost or uncomplicated move is believed to be less than \$10,000, the Department has the discretion to base the payment on a single bid or estimate.
 - (N) Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, as the Department determines to be reasonable, which are incurred in searching for a replacement location, including:
 - (1) Transportation;
 - (2) Meals and lodging away from home;
 - (3) Time spent searching, based on reasonable salary or earnings;
 - (4) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;
 - (5) Time spent in obtaining permits and attending zoning hearings; and
 - (6) Time spent negotiating the purchase or lease of a replacement site based on a reasonable salary or earnings.
 - (O) Low value/high bulk. When the personal property to be moved is of low value or high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the Department, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Department.

7.3.6 Ineligible Moving and Related Expenses

- (A) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under **49 C.F.R, Part 24.401(c) (2)**);
- (B) Interest on a loan to cover moving expenses;
- (C) Loss of goodwill;
- (D) Loss of profits;

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- (E) Loss of trained employees;
 - (F) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except those actual, reasonable expenses allowed as an eligible re-establishment expenses as provided in **49 C.F.R. Part 24.304(a)(6) also described in Section 7.3.13A(6)**;
 - (G) Personal injury;
 - (H) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Department;
 - (I) Expenses for searching for a replacement dwelling;
 - (J) Physical changes to the real property at the replacement location of a business or farm operation except replacement utility modifications as allowed in **49 C.F.R. Part 24.301(g)(3) and Section 7.3.7(C)** and actual; reasonable reestablishment expenses allowed in **Part 24.304(a) and 7.3.13(A)**;
 - (K) Costs for storage of personal property on real property already owned or leased by the displaced person, and
 - (L) Refundable security and utility deposits.

7.3.7 Notification and Inspection

In order to qualify for move expense reimbursement the following should take place:

- (A) The Department will inform the displaced person in writing, within fourteen (14) days from the date of initiation of negotiations, of the following, in order to be eligible for move cost expense reimbursement:
 - (1) The displaced person must provide Department with a certified pre-move inventory of the items to be moved.
 - (2) In a nonresidential move, the displaced person must provide the Department with at least seven days advance notice of the approximate date of the start of the move or disposition of the personal property.
 - (3) The displaced person must permit Department to make reasonable and timely inspections of the personal property at both the acquired and replacement sites and to monitor the move, if such is deemed necessary by the Department.
 - (4) The Department will make payments based upon the lowest move cost estimate obtained; see **Sections 7.3.2.1(B)(2), 7.3.4.1(A) & (B), 7.3.5.2(A) & (B) and 7.3.5**, without regard to the mover who actually will accomplish the move.
 - (5) The Department will not accept any move cost estimates from movers who are not provided in advance with a certified inventory, move specifications, and scope of services, as required.
- (B) The Department pre-move discussions with the owner(s) of any non-residential operation must emphasize that Department will reimburse only such costs actually incurred and allowable under these provisions and such payments will be limited to reasonable costs based upon estimates from qualified movers, see **Section**

7.3.14, certified inventories, monitoring or inspections, and receipted bills or other acceptable evidence of expenses incurred.

- (C) The displacee must be informed, prior to moving, that the Department has the right and obligation to verify all expenses claimed and that any pre-move discussions regarding moving expenses constitute a conditional amount for reimbursement.
- (D) The displacee must be informed, prior to moving, that any items considered realty in the appraisal, whether included in the Department's acquisition or retained by the owner, are not eligible for move cost reimbursement.

7.3.8 Owner Retention of Dwelling - Move Costs

7.3.8.1 When an owner retains his/her dwelling which was acquired by the Department see Right of Way Manual, Section 5.4, Fees and Cost, the cost of moving it to the remainder or to replacement land is ineligible for reimbursement.

7.3.8.2 Temporary lodging costs and meals, as set forth in **Section 7.3.5(N)**, may be claimed on an actual, reasonable cost basis.

7.3.8.3 The cost of moving the personal property is payable as a commercial move, self move, or fixed payment.

7.3.8.4 If the dwelling is used as a means of moving the personal property, the move costs are to be payable under the provisions for a fixed payment, see **Section 7.3.9**.

7.3.9 Fixed Payment Residential Moves

7.3.9.1 Only persons displaced from a dwelling, or seasonal residence may choose to receive a fixed payment in lieu of a payment for a commercial or self move.

7.3.9.2 A room is defined as either of the following:

- (A) A fully enclosed section of the interior of a structure having access through a door or doorway, exclusive of closets and bathrooms, or
- (B) An area within a fully enclosed section of a structure which has a separate and distinct function, such as the living area within a great room.

7.3.9.3 The Dislocation Allowance Schedule, 49 C.F.R., Part 24 will determine payment. A partial listing follows:

| Schedule A: | Occupant Owns Furnishings |
|-------------------------------------|--------------------------------------------------------------------|
| <u>Number of Rooms of furniture</u> | <u>Amount of moving expense and dislocation allowance payments</u> |
| 1 | \$ 550 |
| 2 | \$ 700 |
| 3 | \$ 875 |
| 4 | \$1050 |
| 5 | \$1200 |
| 6 | \$1350 |
| 7 | \$1500 |

| | |
|--------------------------------------|--------|
| 8 | \$1650 |
| Each additional room (after 8 rooms) | \$ 200 |

Schedule B: Occupant Does Not Own Furnishings

| <u>Number of Room's</u> | <u>Amount of moving expense and dislocation allowance payment</u> |
|-------------------------|-------------------------------------------------------------------|
| First room | \$450 |
| Each additional room | \$125 |

Schedule C below for situations where the tenant owns some of the furnishings and the landlord owns some of the furnishings.

Schedule C: Partially Furnished Rooms

| <u>Number of rooms of furniture Owned by landlord and tenant</u> | <u>Amount of moving expense and dislocation allowance payment</u> |
|------------------------------------------------------------------|-------------------------------------------------------------------|
| 1 | \$ 500 |
| 2 | \$ 625 |
| 3 | \$ 775 |
| 4 | \$1025 |
| Each additional room | \$ 150 |

7.3.9.4 In the case of a mixed situation, for example, the occupant owns all the furnishing in some rooms and the landlord owns all the furnishings in others; the payment should be based on the number of rooms of furnishings owned by the occupant according to **Section 7.3.9.3, Schedule A**, plus \$75 for each room of furnishings owned by the landlord or \$75 for each partially furnished room.

7.3.9.5 Modifications to the room count may be made as follows:

- (A) An enclosed area within a structure which is primarily used for storage may be counted as more than one (1) room if the quantity of personal property exceeds that which would reasonably be found in a single room.
- (B) Items of personal property stored in detached structures or in unenclosed areas around the residence may be counted as an additional room or, at the discretion of the Department, may be approved for actual cost reimbursement in addition to the room count computation for the residence.
- (C) Room count determinations shall be documented in the Department's official parcel file.

7.3.10 Related Non-Residential Eligible Expenses

7.3.10.1 The following expenses, in addition to those provided by **Section 7.3.6** for moving personal property, shall be provided if the Department determines that they are actual, reasonable and necessary:

- (1) Connection to available nearby utilities from the right of way to improvements at the replacement site.
- (2) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and

marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the Department a reasonable pre-approved hourly rate may be established.

- (3) Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Department.

7.3.11 Multiple Occupancy

When an acquired dwelling is occupied by more than one occupant, the following applies:

- (A) If two or more occupants of the displacement dwelling move to separate replacement dwellings and the Department determines only one household existed, see ***Right of Way Manual, Section 7.2, General Relocation Requirements***. Each occupant is entitled to a prorated share of any move costs that would have been made, had the occupant moved to a single replacement dwelling. The prorated amount shall be based on the personal property actually owned by the individual displacees.
- (B) If the Department determines two or more occupants maintained separate households within the same displacement dwelling, each occupant has a separate entitlement to move cost payments if they move to separate replacement dwellings.

7.3.12 Claim for Payment

7.3.12.1 A written claim for move costs must be submitted to the Department within **18 months** of the later of:

- (A) For owners, the later of:
 - (1) The date the displacee moves from real property or moves his/her personal property from real property; or
 - (2) The date of final payment for the acquisition of the real property, closing or final judgment date.
- (B) For tenants: The date the displacee moves from the real property or moves his/her personal property from real property.

7.3.12.2 The **18 month** time frame shall be waived for good cause. Such waiver shall be in writing and approved by the Department.

7.3.12.3 The claim must be submitted on the standard claim form provided by the Department, ***Form No. 7.2-7, (Application and Claim for Reimbursement of Moving Costs)***.

7.3.12.4 Payment will be made after the move is completed, unless a hardship exists, see ***Right of Way Manual, Section 7.2, General Relocation Requirements***. The following conditions apply:

- (A) In a hardship situation, advance payment may be made as per the ***Right of Way Manual, Section 7.2, General Relocation Requirements***.
- (B) When an advance payment is made, the displacee must affirm in writing:
 - (1) The payment satisfies any further claim for reimbursement of items for which that claim is intended; and

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- (2) The displacee will comply with the applicable provisions of this section in the move of his/her personal property from the acquired property.

7.3.12.5 Payment will be made directly to the displacee, unless he/she requests otherwise in writing.

- (A) A direct payment can be made to a vendor by written agreement among the displacee, the vendor, and the Department.
- (B) The claim form **Form No. 7.2-7, (Application and Claim for Reimbursement of Moving Costs)** must be accompanied by the unpaid moving expense bill or move cost estimate when ordered in advance.

7.3.13 Re-establishment Expenses for Non-Residential Moves

In addition to the payment for moving and related expenses available under **Section 7.3**, a small business, farm or nonprofit organization may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site as follows:

- (A) Eligible Expenses. Re-establishment expenses must be actual, reasonable and necessary, as determined by the Department. They may include, but are not limited to, the following:
 - (1) Repairs or improvements to the replacement real property as required by Federal or Guam law, code or ordinance.
 - (2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
 - (3) Construction and installation costs for exterior signing to advertise the business.
 - (4) Re-decoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
 - (5) Advertisement of replacement location.
 - (6) Estimated increased cost of operation during the first two years at the replacement site for such items as:
 - (a) Lease or rental charges,
 - (b) Personal or real property taxes,
 - (c) Insurance premiums, and
 - (d) Utility charges, excluding impact fees.
 - (7) Other items that the Department determines to be essential to the re-establishment of the business.
- (B) Ineligible re-establishment expenses. The following is a non exclusive listing of re-establishment expenses not considered to be reasonable, necessary or otherwise eligible:
 - (1) Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.

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- (2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
 - (3) Interior or exterior refurbishment at the replacement site which are for aesthetic purposes, except as provided in Section 7.3.15(A)(4).
 - (4) Interest on money borrowed to make the move or to purchase the replacement property.
 - (5) Payment to a part time business in the home which does not contribute materially to the household income.
 - (6) Any re-establishment expense that has already been paid to the displaced person through a business damage claim.

7.3.14 Move Cost Estimates for Non-Residential Moves

7.3.14.1 A move cost estimate is a price guarantee given by a mover to accomplish a specific move within a specific time frame as follows:

- (A) The mover must be ready, willing and able to begin the particular move within a reasonable time from notification, as determined by the Department and must sign a statement to that effect.
- (B) At the Department's discretion during industrial and commercial moves, **Form No. 7.3-1, (Moving Expense Calculation and Payment Determination)**, will be completed in detail to be valid.
- (C) A certified inventory, scope of services and, when determined necessary by the agent, a complete set of move specifications must be provided to a mover submitting a move cost estimate. Each mover must then inspect the acquired and replacement sites with a Department representative prior to submitting **Form No. 7.3-1, (Moving Expense Calculation and Payment Determination)**.
- (D) For moves requiring special handling of items to be moved, or subcontracted labor, or specialty work such as electrical or plumbing disconnecting and reconnecting, complete move specifications must be written either by the displacee or his/her designee, or the Department's representative, and approved by the Department. These specifications will then be submitted to an appropriate specialist qualified to prepare an estimate.

7.3.14.2 When the estimates are owner/tenant obtained the following will apply:

- (A) A minimum of two move cost estimates must be obtained if estimate exceeds \$10,000. If less than \$10,000, the Department has the discretion to allow a single estimate or require two estimates.
- (B) All move cost estimates must be submitted to the Department within **45 days** from the date of request.
- (C) The Department will reimburse the reasonable cost of obtaining two move cost estimates.
 - (1) At the discretion of the Department, additional estimates may be obtained.
 - (2) The invoice for preparation of each move cost estimate must include date(s) of services, time of day, and hours per day, and hourly rates for such preparation.

- (D) The Department will reimburse the reasonable cost of advertising for packing, crating, unpacking, uncrating, and transportation, when such advertisement is determined to be necessary by the Department, usually limited to complex or unusual moves where advertising is the only reasonable means of obtaining estimates. Exceptions to this are permissible at the discretion of the Department.

7.3.14.3 When the estimates are Department obtained the following will apply:

- (A) A minimum of two move cost estimates must be obtained if estimated move costs exceed \$10,000. If under \$10,000 the Department has the discretion to obtain one or more estimates as deemed necessary;
- (B) All move cost estimates should be obtained by the Department within **45 days** from the date of request;
- (C) The Department files must be documented regarding all estimates obtained; and
- (D) The Department must obtain bids or quotes for preparation of a move cost estimate by entering into contracts for such services.

7.3.15 Low Value, High Bulk Items

7.3.15.1 When the personal property to be moved is of low value and high bulk and the cost of moving the property, would be disproportionate to its value in the judgment of the Department, the allowable moving cost payment shall not exceed the lesser of: the amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business site. Examples of personal property covered by this provision include, but are not limited to stock piled sand, gravel, minerals, metals and other similar items of the personal property as determined by the Department. The Department shall:

- (A) Make a written and supported estimate, either by a qualified mover or a qualified Department employee, of the cost of moving the item;
- (B) Make a written and supported estimate of the liquidation value of the item;
- (C) Make a written determination of the cost of replacing the item at the replacement site;

7.3.15.2 Low value, high bulk items remain the property of the displacee and he/she may dispose of or abandon them.

7.3.16 Direct Loss Payment, Purchase of Substitute Personal Property

7.3.16.1 When a displacee elects not to relocate eligible tangible personal property, reimbursement for actual direct losses or purchase of substitute personal property will be offered. These payments are only payable to businesses and farms whose operations must be relocated, or are discontinued.

- (A) Payment will consist of:
 - (1) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. To be eligible for payment, the displacee must make a good faith effort to sell the personal property, unless the Department determines such effort is not necessary.
 - (2) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site.

If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a maximum moving distance of 30 miles.

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- (B) In the following scenarios:
- (1) If the operation is to be re-established and a substitute item at the new location is promptly replacing a similar item at the acquired site, payment will be the lesser of:
 - (a) The cost of the substitute item, including allowable installation costs at the new site, minus any proceeds of the sale, or trade in value, if applicable; or
 - (b) The estimated cost of moving and re-installing the replaced item at the approved replacement site, with no allowance for storage.
 - (2) If the operation is being discontinued or the item of personal property is not to be replaced at the new location, payment will be the lesser of:
 - (a) The fair market value of the item for continued use at the acquired site minus the proceeds of the sale; or
 - (b) The estimated cost of moving the item to the approved replacement site, or a distance no further than 30 miles if no move is to take place with no allowance for storage.
 - (3) When a direct loss payment is claimed for goods held for sale, the fair market value is based on the cost of the goods to the business, not on the potential selling price. The cost of goods to the business includes:
 - (a) The amount originally paid to acquire the goods,
 - (b) The current cost of upkeep, maintenance and housing of the goods.
- (C) After a bona fide effort to sell, if no offer to purchase is received and the property is abandoned, payment may not exceed the lesser of fair market value of the item for continued use, or the estimated cost of moving the item.
- (D) If no bona fide effort to sell is made and the property is abandoned, the owner of the property is not entitled to payment for move costs or direct loss.
- (E) The cost for removal of abandoned personal property for which an actual direct loss payment was claimed will not be charged against other eligible move cost payments.

7.3.16.2 Upon the Department's request, the displacee shall transfer ownership to the Department of any personal property that has not been moved, sold or traded.

7.3.17 Hazardous Waste and Substances

All non-residential displacees, shall be notified by **Form No. 7.3-2, (Hazardous Substance Letter)**, of their responsibilities under applicable Federal and Guam law relating to hazardous waste. Documentation of such notification shall be included in the Department's official parcel file.

7.3.17.1 All underground and/or above ground tanks, in service, will be emptied by the owner/operator in accordance with all applicable laws, regulations or ordinances, prior to the subject site being vacated. These tanks and their contents may not be abandoned. Abandoned means a storage system which:

- (A) Is not intended to be returned to service, or
- (B) Has been out of service for over **three years**, or
- (C) Cannot be tested.

7.3.17.2 The Department will pay the lesser of the cost of disposal or the cost to move if the displacee chooses to dispose of the tank contents. If the displacee chooses to move the tank contents to the replacement site, the Department will pay the actual, reasonable and necessary costs associated with this move.

7.3.17.3 All hazardous substances, pollutants or contaminants, which are not hazardous wastes must be disposed of, or moved to the replacement site, by the owner/operator in accordance with all applicable laws, regulations or ordinances. They may not be abandoned but must be addressed as follows:

- (A) The Department will pay the lesser of the cost of disposal or the cost to move if the displacee chooses to dispose of the material.
- (B) If the displacee chooses to move the material to the replacement site, the Department will pay the actual, reasonable and necessary costs associated with this move.
- (C) If the displacee is not permitted, under the applicable law, to move the hazardous material to the replacement site, the Department will pay for the cost of disposal and transportation to the disposal site.
- (D) If disposal of hazardous material is a part of the normal operation, the Department will not pay for the cost of such disposal. If the operation maintains a schedule for the pick-up or transportation of the hazardous material to a disposal site and is required to move the material at an unscheduled time, the Department will pay the actual reasonable and necessary costs associated with this move.

7.3.17.4 Under no circumstances is the Department to be considered the owner or shipper of any hazardous material or substance in its transportation to a replacement site or a disposal site.

7.3.17.5 Any generator of a solid waste must make a hazardous waste determination under the ***Resource Conservation and Recovery Act (RCRA)***. All hazardous waste, as defined in RCRA, must be disposed of by the generator in accordance with all applicable laws, regulations and ordinances at the sole cost of the generator before the subject site is vacated.

7.3.18 Fixed Payments, Non-Residential Moves for Businesses, Farms, and Nonprofit Organizations

A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, actual, reasonable re-establishment expenses and search expenses. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in **Section 7.3.18.1(E)(2)**, but not less than \$1,000 nor more than \$20,000.

7.3.18.1 To be eligible for a fixed payment, the Department must determine that:

- (A) The business owns or rents personal property which must be moved in connection with such displacement; and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement site;

- (B) The business cannot be relocated without a substantial loss of existing patronage, clientele or net earnings. A business is assumed to meet this test unless the Department determines that it will not suffer a substantial loss of its existing patronage.

This determination will be made using the following guidelines as applicable. The file must be documented with the reasons for this determination:

- (1) Nature of the business, business type;
 - (2) Nature of clientele, such as walk-ins, referrals, telephone contacts;
 - (3) If transaction of business occurs on the displacement site or elsewhere;
 - (4) Any other point considered relevant as determined by the Department.
- (C) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Department, and which are under the same ownership and engaged in the same or similar business activities. Other establishments will not be considered if they did not contribute materially to the income of the displaced person;
- (D) The business is not operated at the displacement dwelling or site solely for the purpose of renting the dwelling or site to others;
- (E) The business contributed materially to the income of the displaced person during the two taxable years prior to the displacement. Contributes materially means that during the two taxable years prior to the taxable year in which displacement occurs, a business or farm operation:
- (1) Had average annual gross receipts of not less than \$5,000; or
 - (2) Had average annual net earnings of not less than \$1,000; or
 - (3) Contributed at least 33% of the owner's or operator's average annual income from all sources.

7.3.18.2 Average annual net earnings means one-half of the net earnings of the operation at the acquired site, before Federal and local income taxes, during the **two taxable years** prior to the taxable year in which displacement occurs is determined as follows:

- (A) Average annual net earnings include any compensation paid by the operation to the owner, the owner's spouse, or the owner's dependents, during the two year period. In the case of a corporate owner, earnings include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation, as well as compensation paid to the owner(s) regardless of his/her percentage of ownership in the corporation. For the purpose of determining majority ownership, stock held by a person, his/her spouse and their dependent children shall be treated as one unit.
- (B) If the **two tax years** prior to displacement are not representative, the Department may approve an alternate consecutive two-year period during which the business was in operation at the acquired site.
- (C) Before using an alternate period, it must be determined that the proposed construction has already caused an outflow of residents, resulting in a decline in net income.

- (D) If this criterion creates an inequity or hardship in any given case and the displaced business can provide other appropriate documentation to show that the prior two years are not representative, the Department can approve an alternate consecutive **two-year** period during which the business was in operation at the acquired site. This alternate period must be concurred with in writing by the DDPW and coordinated with FHWA on Federally funded projects.
- (E) The displacee must furnish the Department with proof of net earnings such as signed tax returns or a financial statement that has been certified as conforming to **Generally Accepted Accounting Principles** by a Certified Public Accountant. If signed tax returns are not available, a written statement or affidavit from the displacee attesting that the unsigned tax returns are true and correct copies of the ones submitted to the Department of Revenue and Taxation will be acceptable. The statement should also express the displacee's agreement to request copies of their returns from the Department of Revenue and Taxation in cases where the Department of Public Works thinks it is necessary.

7.3.18.3 If the business or farm is in operation on the date of initiation of negotiations, but was not in operation for the full two taxable years prior to displacement, and is otherwise eligible, then the payment shall be computed by dividing the net earnings by the number of months it has operated and multiplying that amount by twelve.

A taxable year is defined as any **twelve-month** period used by the operation in filing Guam income tax returns.

7.3.18.4 In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors must be considered, including the extent to which:

- (A) The same premise and equipment are shared;
- (B) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
- (C) The entities are held out to the public, and to those customarily dealing with them, as one business;
- (D) The same person or closely related persons own, control, or manage the affairs of the entities.

7.3.18.5 A displaced farm operation owner may be eligible to choose a fixed payment in lieu of a payment for actual moving and related expenses and actual reasonable re-establishment expenses equal to the average annual net earnings of the business, but no less than \$1,000 nor more than \$20,000. The determination is as follows:

- (A) All provisions of **Section 7.3.18.1(E)** apply.
- (B) In the case of a partial acquisition of land which was a farm operation prior to the acquisition, the fixed payment shall be made only if the Department determines that:
 - (1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
 - (2) The partial acquisition caused a substantial change in the nature of the farm operation.

7.3.18.6 A displaced nonprofit organization may be eligible to choose a fixed payment of \$1,000 to \$20,000 in lieu of payment for actual moving and related expenses and actual reasonable re-establishment expenses. A nonprofit organization is a corporation duly registered with the Department of Revenue and Taxation as a Corporation Not for Profit. The corporation must also be exempt from paying Guam income taxes under **Section 501** of the **Internal Revenue Code (26 U.S.C. 501)**. The determination is as follows:

- (A) To be eligible for this payment the Department must determine that the nonprofit organization cannot relocate without a substantial loss of its existing membership or clientele. A nonprofit organization is assumed to meet this test unless the Department determines that it will not suffer a substantial loss of its existing membership or clientele.
- (B) Any payment in excess of \$1,000 must be supported with financial statements for the **two, twelve month** periods prior to the acquisition. The amount to be used for the payment is the average of **two years** annual gross revenues less administrative expenses, not to exceed \$20,000.
- (C) Gross revenues may include membership fees, class fees, cash donations, tithes, and receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expenses amounts may be verified with certified financial statements or financial documents required by public agencies.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – No changes to this section



DPW Form 7.3-1

MOVING EXPENSE CALCULATION AND PAYMENT DETERMINATION

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

- BUSINESS
- FARM
- INDIVIDUAL/FAMILY
- PERSONAL PROPERTY ONLY

Current Address: _____
New Location Address: _____
Distance of Move: _____
Description of Merchandise and/or Service Rendered: _____

A. COMMERCIAL MOVE/SELF MOVE/MOVING RELATED EXPENSES

Received Bills/Invoices Total Amount \$ _____

B. SCHEDULE AMOUNT

1. UNFURNISHED: 1 room @ \$550, 2 rooms @ \$700, 3 rooms @ \$875, 4 rooms @ \$1050, 5 rooms at \$1200, 6 rooms @ \$1350, 7 rooms @ \$1500, 8 rooms @ \$1650, plus additional rooms _____ x \$200 each = \$ _____
2. FURNISHED: 1 room @ \$450 plus addl rooms ____ x \$125 = \$ _____
3. COMBINATION: Begin with unfurnished using above amounts plus number of furnished rooms ____ x \$125 = \$ _____

C. ESTIMATE BY:

- Commercial Mover
- Department of Public Works

Man hours _____ x rate per man hour = \$ _____
Vehicle number of hours _____ x rate per vehicle hour = \$ _____
CWT _____ @ \$ _____ = \$ _____
Subcontracted Services = \$ _____

Description: _____

D. DIR LOSS/SUB PROP/BULK-LOW VAL:

1. Replacement cost of personal property \$ _____
 2. Net proceeds from sale of personal property \$ _____
 3. Move allowance if less than "C" above \$ _____
- (Business Discontinued)**
1. Depreciated value of property in-place \$ _____
 2. Net proceeds from sale of personal property \$ _____
 3. Move allowance if less that "C" above \$ _____

E. FIX PAYMENT IN LIEU OF MOVE COST (\$20,000 LIMIT)

Net earnings for 2 years proceeding taxable year business is relocated

Year: _____ Earnings: \$ _____
Year: _____ Earnings: \$ _____

Less than 2 years operation (within 2 taxable year's period)

Net earnings: \$ _____ Divide by _____ months = \$ _____
X 12 months = Total \$ _____



DPW Form 7.3-2

HAZARDOUS SUBSTANCE LETTER

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

Dear

In order to further clarify your Relocation Advisory Assistance, we are taking this opportunity to advise you of the Department's position regarding substances which may be classified as hazardous and/or of environmental concern.

If you are not presently registered as a generator of hazardous waste, it is important for you to understand that the abandonment of any hazardous material, its by-products or other related materials will constitute hazardous waste and may put you in violation of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. (RCRA) or the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq. (CERCLA or SUPERFUND) or the Florida Resource Recovery and Management Act, Section 403.708 of the Florida Statutes, Sections 403.702-403.73.

A "release" of a hazardous substance, pollutant or contaminant is defined in 42 U.S.C. S9601(22) as follows:

"...any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance or pollutant or contaminant),..."

The Department will not assume the responsibility of disposing of any substance, or containers which have held any substance that is of environmental concern.

All above-ground and/or underground tanks must be emptied prior to your vacating the subject property. All materials must be moved or disposed of in accordance with all applicable laws and regulations and cannot be abandoned at the subject site.

Your assigned Right of Way Specialist will explain eligible moving expense reimbursements related to hazardous substances and will assist you in every way possible to assure that your move is not only safe, but done to your satisfaction.

Sincerely,

Department of Public Works Right of Way Supervisor

Receipt Acknowledged

Date

Section 7.4

REPLACEMENT HOUSING PAYMENTS

TABLE OF CONTENTS

PURPOSE7-4-1

AUTHORITY7-4-1

SCOPE7-4-1

EFFECT OF CHAPTER ON OTHER AGENCIES.....7-4-1

REFERENCES7-4-1

FORMS7-4-1

7.4.1 Eligibility Criteria7-4-1

7.4.2 Occupancy Status.....7-4-2

7.4.3 Multiple Occupancy.....7-4-2

7.4.4 Partial Ownership7-4-2

7.4.5 Occupancy Requirements for Dwellings.....7-4-3

7.4.6 Applicability of Last Resort Housing7-4-3

7.4.7 Typical Homesite Determination.....7-4-3

7.4.8 Large Tract for Area7-4-3

7.4.9 Higher and Better Use Tract.....7-4-4

7.4.10 Joint Residential/Business Use7-4-4

7.4.11 Chamorro Land Trust Parcels7-4-4

7.4.12 Carve-Outs of Homesites7-4-4

7.4.13 Examples of Typical Homesite Determinations7-4-5

7.4.14 Submitting Application and Claim7-4-8

7.4.15 Written Statement of Eligibility.....7-4-8

7.4.16 Condemnation Clause7-4-9

| | | |
|--------|---------------------------------------------------------------------|--------|
| 7.4.17 | Inspection and Purchase of Replacement Dwelling | 7-4-10 |
| 7.4.18 | Payment after Death..... | 7-4-10 |
| 7.4.19 | 180-Day Homeowner Occupants - Eligibility..... | 7-4-10 |
| 7.4.20 | 180 Day Homeowner Occupants - Amount of Payment..... | 7-4-11 |
| 7.4.21 | Price Differential for a 180 Day Owner Occupant..... | 7-4-11 |
| 7.4.22 | Increased Mortgage Interest Costs for a 180 Day Owner Occupant..... | 7-4-12 |
| 7.4.23 | Incidental Expenses for a 180 Day Owner Occupant..... | 7-4-13 |
| 7.4.24 | Rental Assistance Payment for a 180 Day Owner Occupant | 7-4-14 |
| 7.4.25 | 90-Day Occupants Eligibility | 7-4-14 |
| 7.4.26 | Rental Assistance Payment for 90 Day Occupants | 7-4-15 |
| 7.4.27 | Down Payment Assistance Payment..... | 7-4-16 |
| 7.4.28 | Cost of Comparable Replacement Dwelling..... | 7-4-16 |
| 7.4.29 | Revising the Replacement Housing Payment Eligibility..... | 7-4-17 |
| 7.4.30 | Owner Retention - Purchase Additive Payment | 7-4-18 |
| 7.4.31 | Conversion of Rental Assistance Payments..... | 7-4-18 |
| 7.4.32 | Protective Rent Agreement..... | 7-4-19 |
| | HISTORY..... | 7-4-19 |

Section 7.4

REPLACEMENT HOUSING PAYMENTS

PURPOSE

The purpose of this section is to establish the process the Department of Public Works must follow to set forth the eligibility criteria for and establish the process by which replacement housing payments are made to a displacee.

AUTHORITY

49 CFR, Part 24
21 GCA § 17103 Moving and Related Expenses
21 GCA § 17104 Replacement Housing for Homeowners
21 GCA § 17105 replacement Housing for Tenants and Certain Others
21 GCA §17108 Authority for Agencies
21 GCA § 17109 Administration
21 GCA §17118 Relocation Assistance Conformity with Federal Requirements

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General staff.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Right of Way Manual, Section 7.2, General Relocation Requirements
Right of Way Manual, Section 7.6, Last Resort Housing
12 GCA, Chapter 5, Guam Housing and Urban Renewal Authority

FORMS

7.2-3 30-Day Notice to Vacate,
7.2-6 Application and Claim for Replacement Housing Payment

7.4.1 Eligibility Criteria

7.4.1.1 A displaced residential owner or tenant is eligible for a replacement housing payment if he/she is displaced from a dwelling as a result of Department acquisition and/or displacement actions.

7.4.1.2 The dwelling from which a person is displaced must be his/her domicile. A domicile is the place of his/her fixed, permanent home and principal establishment and to which place the displacee, when absent, has full intention of returning.

7.4.2 Occupancy Status

A displacee is not required to relocate to the same occupancy status, owner or tenant, as he/she was prior to acquisition, and may choose payment assistance for the alternate occupancy status, if eligible.

7.4.2.1 At the displacee's request, a dwelling which changes the owner or tenant status of the displacee will be provided, if such a dwelling is available and can be provided more economically and in accordance with **Section 7.4.24**.

7.4.2.2 The replacement housing payment may not exceed the maximum amount that would have been paid had the displacee remained in the same occupancy status.

7.4.2.3 The displacee's tenure of occupancy of the acquired property determines the type of replacement housing payment for which he/she may qualify.

7.4.3 Multiple Occupancy

(A) If two or more eligible occupants of the displacement dwelling move to separate replacement dwellings and the Department determines only one household existed in accordance with **Right of Way Manual, Section 7.2, General Relocation Requirements**, payment will be as follows:

(1) If a comparable replacement dwelling is not available and the displacees are required to relocate separately, a replacement housing payment will be computed for each person separately, based on housing which is comparable to the quarters privately occupied by each individual plus community rooms shared with other occupants.

(2) If a comparable replacement dwelling is available and the displacees elect to relocate separately, each displacee is entitled to a prorated share of the singular relocation payment(s) allowable had they moved together to a single dwelling.

(B) If two or more eligible occupants of the displacement dwelling move to separate replacement dwellings and the Department determine that separate households were maintained in the acquired property in accordance with the **Right of Way Manual, Section 7.2, General Relocation Requirements**, each occupant will be entitled to separate replacement housing payments.

The replacement housing payment computation will be based on housing which is comparable to the quarters privately occupied by each individual plus community rooms shared with other occupants.

7.4.4 Partial Ownership

When a single family dwelling is owned by several persons, but not occupied by all of the owners, the replacement housing payment for the displaced owner occupants is the lesser of the difference between the total acquisition price of the acquired dwelling and:

(A) The amount determined by the Department as necessary to purchase a comparable replacement dwelling; or

(B) The actual cost of the replacement dwelling.

7.4.4.1 If the non-occupant owners do not reinvest their share of the acquisition price in a replacement dwelling for the occupying owner(s), it may be necessary to recompute a replacement housing payment to insure the availability of an affordable comparable replacement dwelling. The provisions under the ***Right of Way Manual, Section 7.6, Last Resort Housing***, may be used, if applicable.

7.4.4.2 The displaced owner occupants may choose a rent supplement payment instead of a purchase additive. The rent supplement will be based on the Department 's determination of the fair market/economic rent of the acquired dwelling.

7.4.4.3 To receive the entire replacement housing payment, the owner occupant must purchase and occupy a replacement dwelling for an amount equal to his/her share of the acquisition payment for the acquired dwelling plus the amount of the replacement housing payment as calculated above.

7.4.5 Occupancy Requirements for Dwellings

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these procedures for a reason beyond his/her control, including:

- (A) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Department;
- (B) A delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Department.

7.4.6 Applicability of Last Resort Housing

Whenever a \$22,500 purchase additive payment under ***Section 7.4.21***, a \$5,250 down payment assistance payment under ***Section 7.4.27***, or a \$5,250 rental assistance payment under ***Section 7.4.26***, is insufficient to provide that a comparable replacement dwelling is available on a timely basis to a displacee, the Department will provide additional or alternative assistance under the provisions in the ***Right of Way Manual, Section 7.6, Last Resort Housing***.

7.4.7 Typical Homesite Determination

7.4.7.1 If the acquired dwelling is located on a tract typical in size for residential use in the area, the maximum purchase additive payment is the probable selling price of a comparable replacement dwelling on another typical tract, less the acquisition price of the acquired dwelling and the tract on which it is situated.

7.4.7.2 If an uneconomic remnant remains after a partial taking and the owner declines to sell that remnant to the Department, the fair market value of the remainder will **not** be added to the acquisition cost of the acquired dwelling for purposes of computing the replacement housing payment.

7.4.8 Large Tract for Area

If the acquired dwelling is located on a tract larger in size than is typical for residential use in the area, the maximum purchase additive payment is the probable selling price of a comparable replacement dwelling on a typical tract, less the sum of the acquisition price of the acquired dwelling on the portion of land typical in size for residential use in the area, plus any severance damages to the dwelling and/or typical homesite area.

7.4.9 Higher and Better Use Tract

If the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling on a typical tract, less the sum of the acquisition price of the acquired dwelling on the portion of land typical in size for residential use in the area, plus any severance damages to the dwelling and/or typical homesite.

7.4.10 Joint Residential/Business Use

7.4.10.1 If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

7.4.10.2 To determine what constitutes the typical homesite, a tract typical in the area for residential use must be used, even if a portion of that area, or all of that area, is occupied by any or all of the structure which is used for other than residential purposes.

7.4.11 Chamorro Land Trust Parcels

When an owner occupant resides on a parcel affected by a roadway easement reserved by the ***Chamorro Land Trust***, the value of the improvements as stated in the approved appraisal shall be the acquisition portion of the Replacement Housing Payment (RHP) calculation. If the improvements have no value the acquisition portion of the Replacement Housing Payment calculation shall be zero.

7.4.12 Carve-Outs of Homesites

To determine the typical homesite portion of the acquisition price, use the actual price paid for the portion of the homesite in the taking area plus the value of the residential improvements in the taking area plus any severance damages to either the remainder of the dwelling or homesite area.

If damages are assigned to the entire remainder without an allocation between the remainder of the homesite and the excess land remaining, the damages will be prorated between these remainders to establish the acquisition price of the dwelling, including the structure and land.

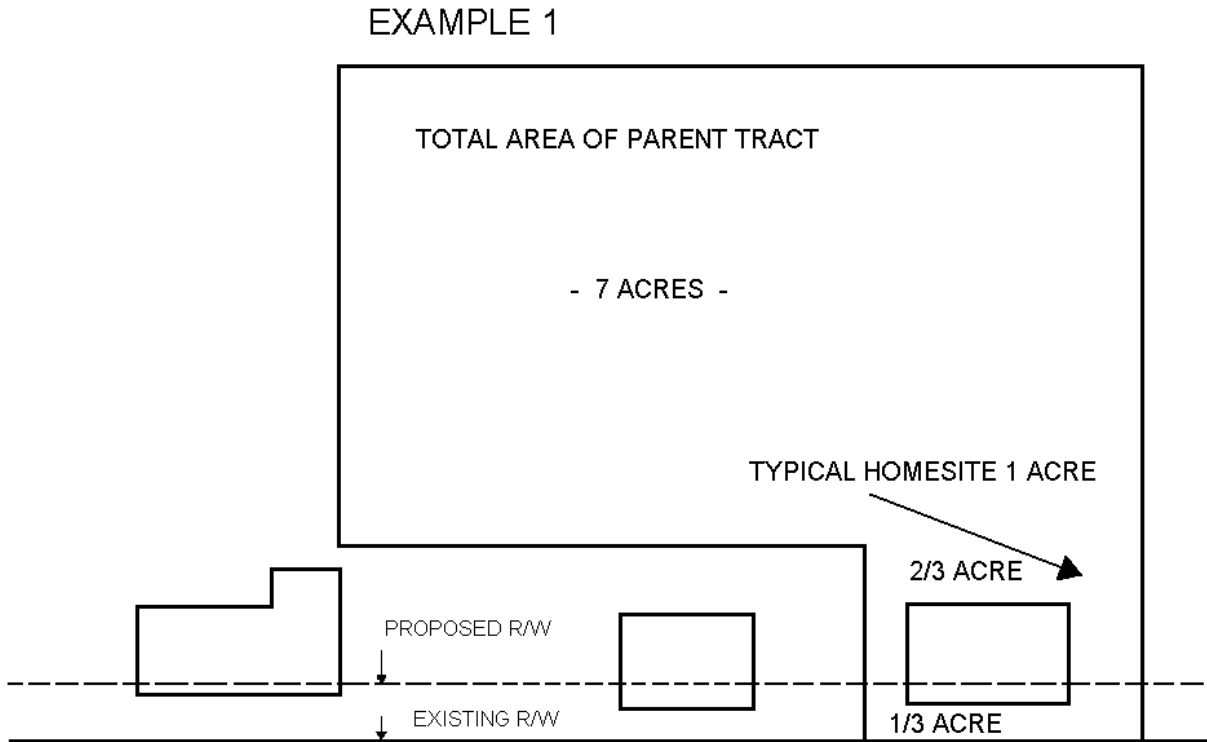
7.4.12.1 In areas where a typical homesite cannot be determined due to variances of tract sizes within a residential area, the area actually utilized for residential purposes by the displacee will be used to compute the replacement housing payment. Consideration must be given to locations of driveways and fences, outbuildings, gardens, pools, and to the area maintained, cleared and mowed, for residential usage.

7.4.12.2 If all or part of areas occupied by nonresidential structures must be included in order to create a homesite tract typical of the area, the typical homesite will be figured using whatever portion of those areas are necessary.

7.4.12.3 For replacement dwellings which are on tracts larger than typical for residential use in the area where the excess land is used for nonresidential purposes, the replacement housing payment will be calculated using the actual cost of the replacement dwelling plus the prorated portion of the site which is typical for residential use.

7.4.13 Examples of Typical Homesite Determinations

The accompanying examples are included here for instructional purposes only.

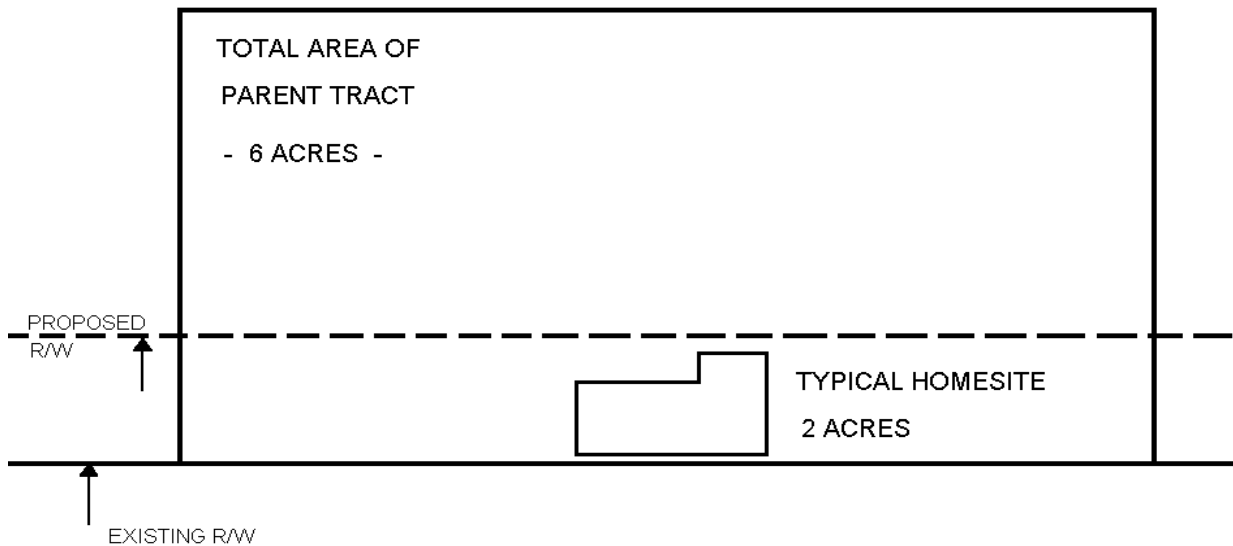


EXAMPLE 1 COMPUTATION OF RHP FOR OWNER OCCUPANT

| | |
|----------------------------------------------|---------------------|
| Value of improvements (residential dwelling) | \$60,000 |
| Appraised Value of land, per acre | \$12,000 |
| Total area of the taking | 1/3 acre |
| Typical homesite determination | 1 acre |
| Comparable dwelling on typical tract | \$72,000 |
| Comparable replacement dwelling | \$72,000 |
| LESS: Acquired dwelling | (\$60,000) |
| Value of 1/3 acre homesite area in taking | (\$4,000) |
| | <u>\$ 8,000 RHP</u> |

NOTE: While the typical homesite has been determined to be 1 acre, only 1/3 of that area is located within the taking. Therefore, the acquisition price for RHP computation purposes includes only the value of that portion (1/3) of the homesite area which lies within the taking.

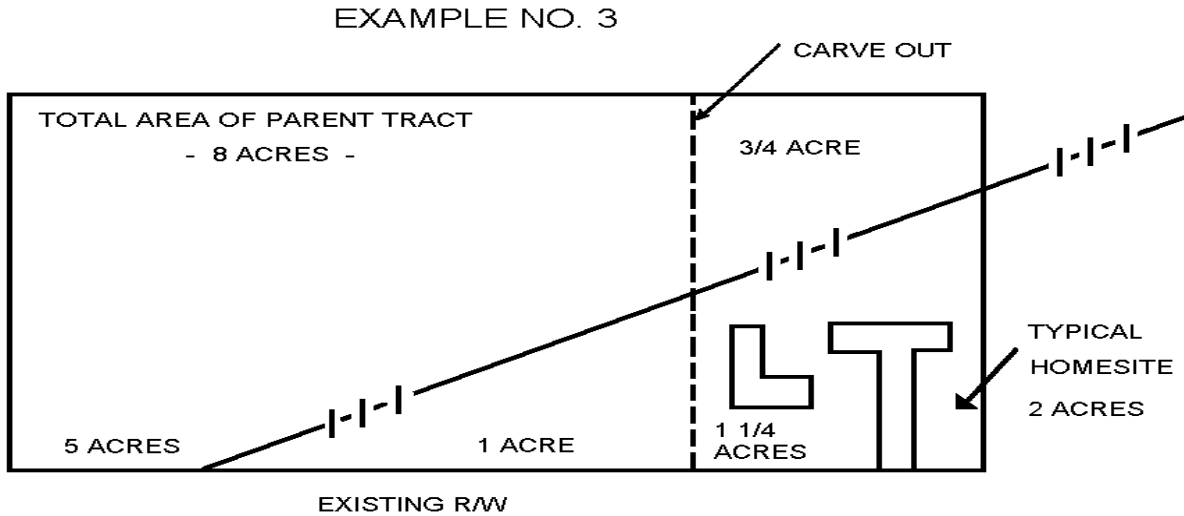
EXAMPLE NO. 2



EXAMPLE 2 COMPUTATION OF RHP FOR OWNER OCCUPANT

| | |
|-------------------------------------------------------------|-------------------|
| Value of improvements (residential dwelling) | \$60,000 |
| Appraised value of land in taking (@\$4,000 per acre) | 12,000 |
| Total area of the taking | 3 acres |
| Typical homesite determination | 2 acres |
| Comparable dwelling on typical tract | \$72,000 |
| Comparable replacement dwelling | \$72,000 |
| LESS: Acquired dwelling..... | (\$60,000) |
| Value of homesite area in taking | <u>(\$ 4,000)</u> |
| | \$ 8,000 RHP |

NOTE: While the typical homesite was determined to be 2 acres, only one of those acres actually lies within the area of the taking. Therefore, the acquisition price, for RHP computation purposes, includes only the value of the one acre of homesite area within the taking.



EXAMPLE 3 COMPUTATION OF RHP FOR OWNER OCCUPANT

| | |
|-----------------------------------------------------------------------|-----------------------|
| Value of improvements (residential dwelling) | \$60,000 |
| Appraised value of land in taking (@\$4,500 per acre) | \$10,125 |
| Area of the taking..... | 2 1/4 acres |
| Homesite determination..... | 2 acres |
| Area within the taking | 1 1/4 acres |
| Comparable dwelling on typical tract | \$75,000 |
| Damage to remainder (5 3/4 acres), loss of access & angulations | \$22,000 |
| Comparable replacement dwelling | \$75,000 |
| LESS: Acquired dwelling..... | (\$60,000) |
| Value of homesite area in taking* | (\$5,625) |
| Damages to remainder homesite area** | <u>(2,869.56)</u> |
| | \$6,505.44 RHP |

*Value of homesite area in taking access on 1 1/4 acres.

**Damages are computed for the remainder homesite area by determining the ratio, or proportion, of the remaining homesite area to the total remainder; the ratio, in this case, 3/4 acre to 5 3/4 acres. That ratio (3/4 divided by 5 3/4) is expressed in decimals as 0.1304347. Therefore:

$$\text{Damages to homesite remainder} = 0.1304347 \times \$22,000 = \$2,869.56$$

NOTE: Another method of determining the ratio of damages would be:

$$\$22,000 / 5.75 = \$3,825.08 \times 0.75 = \$2,869.56.$$

7.4.14 Submitting Application and Claim

Form No. 7.2-3, Application and Claim for Replacement Housing Payment must be submitted to the Department within **18 months** of:

- (A) For owners, the later of:
 - (1) The date of the move; or
 - (2) The date of final payment for the property acquired.
- (B) For tenants:
The date of the move.
- (C) This time period shall be waived for good cause. Such waiver shall be in writing and approved by the Department.

7.4.14.1 The claim must be submitted on **Form No. 7.2-3, Application and Claim for Replacement Housing Payment** provided by the Department.

7.4.14.2 The Application and Claim is subject to the following conditions:

- (A) In the application, the displacee must certify that the replacement dwelling:
 - (1) Is decent, safe, and sanitary;
 - (2) Is, or will be the displacees domicile; and
 - (3) That the displacee meets the applicable tenure of occupancy requirements.
- (B) The replacement housing payment will be made payable to the displacee unless written authorization assigning the payment to other parties is given by the displacee in the application.
- (C) It is specified in the application that the warrant be made payable to all eligible claimants, such as all joint owner occupants, or their assigns.

7.4.15 Written Statement of Eligibility

A displacee who qualifies for a replacement housing payment but has not yet purchased or occupied a replacement dwelling will, at his/her request, be provided with a written statement to any interested party, financial institution or lending agency, by the Department, that the displacee will be eligible for the payment of a specific sum subject to the Department's requirements.

7.4.15.1 This statement may only be provided when the proposed dwelling has been inspected by a Department Relocation Specialist and has been determined to be decent, safe, and sanitary.

7.4.15.2 If not decent, safe, and sanitary, the statement must specify that all deficiencies will require correction prior to any replacement housing payment being made.

7.4.16 Condemnation Clause

If determination of the acquisition price is delayed pending the outcome of condemnation proceedings, an advance provisional replacement housing payment can be paid.

7.4.16.1 Prior to payment, the displacee must agree, in a written condemnation clause within the Application and Claim, that:

- (A) Upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price established by the court or by stipulated settlement and the lesser of:
 - (1) A decent, safe, and sanitary replacement dwelling; or
 - (2) The cost of a comparable replacement dwelling.
- (B) If the amount awarded as the fair market value of the property acquired plus the amount of the provisional replacement housing payment exceeds the amount in **Section 7.4.16.1(A)**, the displacee will refund to the Department, from the condemnation award or stipulated settlement, an amount equal to the amount of excess.

The displacee will refund no more than the amount of the replacement housing payment advanced.

7.4.16.2 If the displacee does not agree with the above provisions, the replacement housing payment will be deferred pending final adjudication or a stipulated settlement.

7.4.16.3 The Application and Claim must be signed by all eligible owner-occupants, in the case of condemnation.

7.4.16.4 If the value of the acquired dwelling and typical homesite area, including damages to any remainder homesite or to the dwelling, is less than 100% of the acquisition price, the condemnation clause must specify the ratio of the residential area, dwelling and homesite, including appropriate damages, to the total.

Any adjustment made as a result of the court award or stipulated settlement must be made in accordance with this ratio.

EXAMPLE: Typical homesite value on the acquired property equals 75% of the Department's offer of \$100,000, 75% x \$100,000 = \$75,000 acquisition price, for price differential computation.

Comparable used for computation = \$95,000
\$95,000 - \$75,000 = \$20,000 advance purchase additive
After suit, jury awards displacee \$120,000
75% x \$120,000 award = \$90,000
\$95,000 - \$90,000 = \$5,000 actual purchase additive after award

Displacee must refund \$15,000 of \$20,000 advance purchase additive to the Department, per the condemnation clause.

7.4.16.5 In those cases when a different ratio should be applied to the homesite area to reflect the actual terms of the award or settlement (see **Section 7.4.8, 7.4.10, and 7.4.12**), the Department shall be responsible for approving the use of a different ratio. Close coordination with the Department will be required to provide files are adequately documented to reflect the reasoning why a different ratio is deemed appropriate for a particular settlement or court award. **Note:** The same responsibility applies for administrative settlements when an eminent domain lawsuit has not been filed.

7.4.17 Inspection and Purchase of Replacement Dwelling

Before making a replacement housing payment or releasing a payment from escrow, a Relocation Specialist must inspect the replacement dwelling and determine that it is decent, safe and sanitary. The following conditions apply:

- (A) If it is not, the claim will be denied until the dwelling is brought up to decent, safe and sanitary standards or the displacee occupies a replacement dwelling which is decent, safe and sanitary within the one-year time frame.
- (B) Certification of decent, safe and sanitary replacement housing will be in writing on the approved Department form.

7.4.17.1 A displaced person has met the requirement to purchase a replacement dwelling if the displacee:

- (A) Purchases a dwelling;
- (B) Purchases and rehabilitates a substandard dwelling;
- (C) Relocates a dwelling which the displacee owns or purchases;
- (D) Constructs a dwelling on a site the displacee owns or purchases; or;
- (E) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.
- (F) Currently owns a previously purchased dwelling and site. The valuation of such dwelling shall be the current fair market value.

7.4.18 Payment after Death

A replacement housing payment is personal to the displacee and upon his/her death, the undisbursed portion of any such payment will not be paid to the heirs or assigns, with the following exceptions:

- (A) The amount attributable to the displacee's period of actual occupancy of the replacement housing will be paid.
- (B) The full payment will be disbursed whenever a member of a displaced family dies and other family members continue to occupy the replacement dwelling in accordance with relocation procedures.
- (C) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of the deceased shall be disbursed to the estate.

7.4.19 180-Day Homeowner Occupants - Eligibility

A displaced person is eligible to receive replacement housing payments as a **180-day** homeowner-occupant if the person:

- (A) Has owned and occupied the displacement dwelling, domicile, for not less than **180 days** immediately prior to the initiation of negotiations;

- (B) Purchases and occupies a decent, safe and sanitary replacement dwelling within **one year** after the later of:
 - (1) The date the owner receives final payment for the displacement dwelling or, in condemnation cases, the date the full amount of the estimate of just compensation is deposited in the court; or
 - (2) The date a comparable replacement dwelling is made available to the displaced person.
 - (3) This time period may be waived for good cause. Such waiver shall be in writing and approved by the Department.

7.4.20 180 Day Homeowner Occupants - Amount of Payment

The total replacement housing payment may not exceed \$22,500. The payment will be the sum of:

- (A) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, in accordance with **Section 7.4.21**; and
- (B) The increased interest costs and other debt service costs incurred by the mortgage(s) on the replacement dwelling, in accordance with **Section 7.4.22**; and
- (C) The reasonable expenses incidental to the purchase of the replacement dwelling, in accordance with **Section 7.4.23**.

7.4.21 Price Differential for a 180 Day Owner Occupant

7.4.21.1 A price differential, or purchase additive, is the amount, not to exceed \$22,500, which must be added to the acquisition cost of the displacement dwelling and site to provide a total amount equal to the lesser of:

- (A) The reasonable cost of a comparable replacement dwelling, the **Right of Way Manual, Section 7.2, General Relocation Requirements**; or
- (B) The purchase price of the decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person.

7.4.21.2 At least three comparable replacement dwellings should be documented, if available, in accordance with the **Right of Way Manual, Section 7.2, General Relocation Requirements**, for each purchase additive computed, with the one most comparable to the displacement dwelling used to compute the price differential.

7.4.21.3 In accordance with the **Right of Way Manual, Section 7.6, Last Resort Housing**, the cost new method to construct a comparable dwelling may be used to determine the maximum purchase additive, when no other comparable replacement dwelling is available or when it is most cost effective to do so. The following conditions apply:

- (A) From qualified home builders and contractors, obtain estimates of the cost to construct a decent, safe and sanitary dwelling in a comparable area and functionally similar to the displacement dwelling.
- (B) Any variation in size between the acquired and replacement dwellings must be fully explained and documented.

- (C) The **Form No. 7.2-3, 30-Day Notice to Vacate**, may not be delivered unless newly constructed housing will be available for occupancy within **30 days**, or existing comparable housing became available for purchase at the same amount or less and was made available prior to the displacee's commitment on a new construction.
- (D) If a displacee chooses to construct a replacement dwelling when existing comparable replacement dwellings are available, the amount of the payment cannot exceed the amount that would have been paid had the comparable used in the replacement housing payment eligibility computation been purchased.

7.4.21.4 To avoid duplication of payment, any insurance proceeds a displacee receives in connection with a loss to the displacement dwelling due to a catastrophe; fire, flood, etc., will be included in the acquisition cost of that dwelling when computing the price differential.

7.4.22 Increased Mortgage Interest Costs for a 180 Day Owner Occupant

7.4.22.1 The amount payable as increased mortgage interest costs is the sum of:

- (A) An amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as for the mortgage(s) on the acquired dwelling, mortgage reduction amount, and,
- (B) Other debt services costs not paid as incidental expenses, **Section 7.4.23**.

7.4.22.2 Computation rules are as follows:

- (A) Payment is based on the unpaid balance of all mortgages which:
 - (1) Were valid liens on the property for a minimum of **180 days** prior to the initiation of negotiations, and;
 - (2) Had a fixed interest rate lower than the interest rate on the replacement dwelling. If the acquired property is secured with an adjustable rate mortgage, utilize the interest rate that is current on the property as of the date of acquisition.
- (B) The term used for computation shall be the remaining term of the mortgage on the acquired dwelling, or the term of the new mortgage, whichever is shorter.
 - (1) If the term of the new mortgage is the same as or greater than the term of the existing mortgage, use the monthly payment of the existing mortgage(s) to compute the number of months actually necessary to pay off the existing mortgage.
 - (2) If the term of the new mortgage is less than the term of the existing mortgage(s), use the term of the new mortgage to compute the monthly payment necessary to pay off the existing mortgage using the shorter term.
- (C) The interest rate on the new mortgage shall be the actual rate paid under the mortgage on the replacement dwelling, **except** when the mortgage is an adjustable rate mortgage or when the interest rate exceeds the prevailing fixed rate for conventional mortgages in the area. In such cases, the rate used shall be the prevailing fixed rate for conventional mortgages in the area of the replacement dwelling.

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- (D) Debt Services Costs that may be included for payment are purchaser's points and loan origination or assumption fees provided that
- (1) They have not been paid as incidental expenses,
 - (2) They do not exceed rates normal to similar real estate transactions in the area,
 - (3) The Department has determined them to be necessary, and
 - (4) The computation of points and fees is based on the mortgage balance as defined in **Section 7.4.22.2 (A)**, less the mortgage reduction amount. Seller's points are not included in the payment.

7.4.22.3 The payment amount under this section shall be computed as follows:

Step 1 -- Holding the term and interest rate as defined in **Section 7.4.22.2 (A) and (B)**, and using the monthly payment on the current mortgage, as specified in **Section 7.4.22.2 (B)**, calculate the amount which could be financed under these conditions, present value.

Step 2 -- Subtract the amount determined in Step 1 from the balance as defined in **Section 7.4.22.2 (A)**. The result is the mortgage reduction amount, unless step 3 below is applicable.

Step 3 -- If the amount financed on the replacement dwelling is less than the sum of the current balances on all mortgages existing on the acquired dwelling, the mortgage reduction amount must be adjusted. To do this, divide the amount financed on the replacement dwelling by the sum of the current balances on the acquired dwelling less the mortgage reduction amount calculated in Step 2 above. Multiply the mortgage reduction amount from Step 2 by the resulting factor. The result is the new mortgage reduction amount.

Step 4 -- Add the amount of debt services costs as defined in **Section 7.4.22.2 (D)**, if any, to the mortgage reduction amount. The result is the total payment for increased interest costs.

7.4.22.4 The displaced person shall be advised of the approximate amount of this payment as soon as the facts relative to the current mortgage(s) are known. Payment shall be made available at the time of closing on the replacement dwelling. The displaced person may elect to have payment made direct to the lender or to him or herself.

7.4.23 Incidental Expenses for a 180 Day Owner Occupant

7.4.23.1 Incidental expenses are those necessary and reasonable costs actually incurred by the displaced person due to the purchase of a replacement dwelling and customarily paid by the buyer, including:

- (A) Legal, closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;
- (B) Lender, FHA, or VA application and appraisal fees;
- (C) Loan origination or assumption fees that do not represent prepaid interest and are normal to real estate transactions in the vicinity of the replacement dwelling, when a mortgage existed on the acquired dwelling;
- (D) Professional home inspection Certification of structural soundness, and termite inspection;
- (E) Credit report;

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- (F) Owner's and mortgagee's evidence of title, such as title insurance, not to exceed the costs for a comparable replacement dwelling;
 - (G) Escrow agent's fee;
 - (H) Territory revenue or documentary stamps, sales or transfer taxes, not to exceed the costs for a comparable replacement dwelling;
 - (I) Mortgage default insurance;
 - (J) Other costs as the Department deems incidental to the purchase.

7.4.23.1 Reimbursable expenses which are incurred by the origination of a new mortgage for the replacement dwelling will be based upon the lesser of the balance of the mortgage on the acquired dwelling or the balance of the new mortgage on the replacement dwelling. Eligible expenses are reimbursable regardless of the length of time a mortgage has been in effect on the acquired dwelling.

7.4.23.2 In order to be reimbursed for eligible incidental expenses, the displacee must provide the Department with valid copies of the closing statement and/or other documented evidence of expenses incurred.

7.4.24 Rental Assistance Payment for a 180 Day Owner Occupant

7.4.24.1 A **180-day** homeowner-occupant who is eligible for a replacement housing payment may opt to rent a replacement dwelling instead.

7.4.24.2 When electing to rent rather than purchase, a rental assistance payment may be computed and disbursed in accordance with **Section 7.4.26**.

7.4.24.3 The rental assistance payment to a **180 day** owner-occupant is based on determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. Although the payment would be computed in the same manner as for **90 day** occupants, the limits of the **90 day** occupant would not apply and under no circumstance would the rental amount exceed the amount that could have been received under **Right of Way Manual, Section 7.4.20** had he/she elected to purchase and occupy a comparable replacement dwelling.

7.4.25 90-Day Occupants Eligibility

A tenant or owner-occupant displaced from a dwelling, domicile, is entitled to a payment not to exceed \$5,250 for rental assistance, in accordance with **Section 7.4.26**, or down payment assistance, in accordance with **Section 7.4.27**, if such displaced person:

- (A) Has lawfully and actually occupied the displacement dwelling for at least **90 days** immediately prior to the initiation of negotiations; and
- (B) Has rented, or purchased, and occupied a decent, safe and sanitary replacement dwelling within **one year** after:
 - (1) For a tenant, the date the tenant moves from the displacement dwelling; or
 - (2) For an owner-occupant, the later of:

- (a) The date the displacee receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or
 - (b) The date the displacee moves from the displacement dwelling.
- (3) This time period may be waived for good cause. Such waiver shall be in writing and approved by the Department.

7.4.26 Rental Assistance Payment for 90 Day Occupants

7.4.26.1 An eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment, or rent supplement, not to exceed \$5,250.

7.4.26.2 This payment will be computed by subtracting the base monthly rental for the displacement dwelling from the lesser of:

- (A) The monthly rent and estimated average monthly utility service cost for a comparable replacement dwelling; or
- (B) The monthly rent and estimated average monthly utility service cost for the decent, safe and sanitary dwelling actually occupied by the displaced person; and multiplying the result by 42.

7.4.26.3 In calculating the estimated average monthly utility service cost for the displacement dwelling use actual utility service cost paid by the displaced person. For the replacement dwelling refer to the utility service cost schedule utilized by a utility company in the area of the replacement dwelling or use a utility company's past utility service cost history for the replacement dwelling, if available.

7.4.26.4 The base monthly rental for the displacement dwelling is the lesser of:

- (A) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Department. (For an owner/occupant who elects to relocate as a tenant, use an economic or fair market rent. Fair market rent should also be used when the tenant provides a service in lieu of paying rent, the rent paid does not represent an arm's length transaction between the tenant and landlord or the tenant pays little or no rent, unless its use would result in a hardship because of the person's income or other circumstances); or
- (B) Thirty percent of the person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Salary of Income Limits for the Public Housing and Section 8 Programs*. . The base monthly rental shall be established solely on the criteria in **Section 7.4.26.4(A)** for persons with incomes exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. Income should be documented through a verifiable source, such as pay stubs, signed income tax returns, a statement from the employer, or a bank statement. If complete information cannot be obtained in this manner, the Department may supplement the information provided with a signed statement from the displacee certifying the amount and source of income, A full-time student or resident of an institution may be assumed to be a dependent unless the person demonstrates otherwise; or
- (C) The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

***NOTE: The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on the FHWA's website at <http://www.fhwa.dot.gov/realstate>. Under "Real Estates Topics of Special Interest", click on "Low Income Calculations".**

7.4.26.5 The base monthly rent for the displacement dwelling for a **180-day** owner-occupant who rents rather than purchases a replacement dwelling will be the economic or fair market rent and average monthly utilities service cost. Monthly income is not a factor in the calculation of this rental assistance eligibility amount.

7.4.26.6 The monthly rent for a comparable replacement dwelling will be computed by the three comparables method in accordance with **Section 7.4.21**.

7.4.26.7 The rental assistance will be paid in a lump sum, unless the Department determines on a case-by-case basis that the payment will be made in quarterly installments.

Installments will be made if requested by the displaced person and the file is documented as such.

7.4.27 Down Payment Assistance Payment

7.4.27.1 Any displaced person eligible for a rental assistance payment under **Section 7.4.26**, may choose to use that payment as a down payment supplement, including incidental expenses, to purchase a replacement dwelling. A displacee eligible to receive a replacement housing payment for a **180-day** homeowner-occupant under **Section 7.4.19**, is not eligible for this payment.

7.4.27.2 If the required down payment on the replacement dwelling exceeds \$5,250 and:

- (A) The rental assistance payment allowable does not exceed \$5,250; the down payment supplement will be limited to \$5,250;
- (B) The rental assistance payment allowable exceeds \$5,250, the full amount of the rental assistance payment will be used as the down payment supplement under the provisions of the **Right of Way Manual, Section 7.6, Last Resort Housing**.

7.4.27.3 The full amount of the down payment assistance payment must be applied to the purchase price of the replacement dwelling and related incidental expenses and must be shown on a signed closing statement or similar documentation.

7.4.27.4 The payment to a **90-day** owner-occupant shall not exceed the amount the owner would receive as a purchase additive under **Section 7.4.21**, if the displacee met the **180-day** occupancy requirement.

7.4.27.5 Should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling, the payment will be limited to the cost of the dwelling and related incidental expenses.

7.4.28 Cost of Comparable Replacement Dwelling

The upper limit of a replacement housing payment will be based on the cost of a comparable replacement dwelling.

7.4.28.1 At least three comparable replacement dwellings will be documented for each replacement housing payment computed, unless there are not three available, with the one most equal to, or better than, the displacement dwelling used to compute the payment.

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- (A) When a dwelling is not reflective of the market, it should not be offered as a comparable.
 - (B) If the comparable replacement dwelling used for the computation is similar to but lacks major exterior attributes of the displacement dwelling, such as a garage, pool, outbuilding, or waterfront or golf course lot, a separate computation may be made, as in **Section 7.4.28.1 (B)(3)**.
 - (1) A major exterior attribute is any appurtenant structure of substantial value which is exterior to the residential dwelling, or an aesthetically valuable view, or a valuable location which contributes to the value of the property and to the quality or standard of living of the displacee.
 - (2) The following guidelines are to be used in determining whether an adjustment to payment computations needs to be made:
 - (a) The attribute must be currently in use by and part of the lifestyle of the displaced residential owner-occupant.
 - (b) The attribute must be used by the displaced residential owner-occupant solely for personal, non-commercial non-profit purposes.
 - (c) The attribute must have contributory value of \$100 or more.
 - (3) When the comparable replacement dwelling used for computation purposes is functionally similar to the displacement dwelling, but lacks major exterior attributes which follow the above guidelines, the Relocation Specialist will use the contributory value of those attributes as determined in the approved appraisals and subtract that amount from the acquisition cost of the displacement dwelling when working computations.
 - (C) Comparable replacement dwellings will be selected from the neighborhood of the displacement dwelling, whenever possible, or in nearby or similar neighborhoods where housing costs are the same or higher than the displacement dwelling.

7.4.29 Revising the Replacement Housing Payment Eligibility

When replacement housing, similar in price and comparability to the dwelling used in the initial RHP computation, is no longer available, the Relocation Specialist will revise that offer and refer the displacee to comparables currently available on the market.

No revised offer is necessary when comparables similar in price and comparability to the original comparable used in the RHP computation are available on the market to the displacee.

7.4.29.1 The revised offer may not be less than the original offer because a less expensive comparable becomes available.

7.4.29.2 A replacement housing payment offer will be revised and may be less than the original offer if:

- (A) The appraisal is updated and the acquisition offer is increased;
- (B) In condemnation cases, the OAG legal representative settles for an amount greater than the initial acquisition offer;
- (C) In the case of an administrative settlement, the initial acquisition offer is increased.

7.4.29.3 If the displacee has not obtained replacement housing prior to issuance of the **30-Day** Notice to Vacate, the RHP offer must be updated and the displacee informed of any revision.

- (A) New referrals to comparable replacement housing, if any, will be provided to the displacee.
- (B) The revised offer at this stage will be the last, unless:
 - (1) The displacee is permitted to lease and remain at the acquired site beyond the expiration date of the **30-Day** Notice to Vacate; or
 - (2) Comparable replacement housing similar to that used in the RHP computation is no longer available at the expiration of the **30-Day** Notice to Vacate.

7.4.30 Owner Retention - Purchase Additive Payment

If an owner elects to retain the displaced dwelling and relocate it to a replacement site, the purchase additive payment will be based on the current fair market value, or retention value, of the dwelling plus costs to reestablish the dwelling in its new site and, if necessary, bring it up to decent, safe and sanitary standards, less the current fair market value of that dwelling, including its displacement homesite. This amount must not exceed the cost of a comparable dwelling and site.

7.4.30.1 The costs to reestablish the dwelling are:

- (A) The cost to move the retained dwelling;
- (B) The cost of repairs necessary to make the dwelling decent, safe and sanitary;
- (C) The cost of a homesite, including any necessary landscaping, driveways, wells, septic systems, etc;
- (D) The cost of restoring the dwelling to a condition comparable to that before the move.

7.4.30.2 If the dwelling is moved onto the displacee's remainder land, the current fair market value of that homesite will be used to compute the purchase additive payment.

7.4.31 Conversion of Rental Assistance Payments

A displacee who initially rents a replacement dwelling and receives a rent supplement payment under the provisions of these procedures may subsequently choose to purchase a dwelling.

7.4.31.1 If the displacee meets the eligibility criteria described in **Section 7.4.19** or **7.4.25**, the displacee is eligible to receive:

- (A) A replacement housing payment, including:
 - (1) A purchase additive as provided in **Section 7.4.21**;
 - (2) Mortgage interest differential payments as provided in **Section 7.4.22**;
 - (3) Incidental expenses as provided in **Section 7.4.23**; or
- (B) A down payment supplement as provided in **Section 7.4.27**.

7.4.31.2 Any portion of the rental assistance payment that has been disbursed will be deducted from the replacement housing or down payment supplement payments, as applicable.

7.4.32 Protective Rent Agreement

Vacant property scheduled to be acquired by the Department or property which is vacated after initiation of negotiations on the parcel, either residential or non-residential, may be rented by the Department when doing so will be less costly than relocating a potential tenant. Refer to **Section 5.2.29 of the Right of Way Manual** for guidance in the execution of a protective rental agreement.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – No changes to this section

Section 7.6

LAST RESORT HOUSING

PURPOSE 7-6-1

AUTHORITY 7-6-1

SCOPE 7-6-1

EFFECT OF CHAPTER ON OTHER AGENCIES..... 7-6-1

REFERENCES 7-6-1

FORMS..... 7-6-1

7.6.1 Determining Need..... 7-6-2

7.6.2 Basic Rights of Displacees 7-6-2

7.6.3 Planning for Last Resort Housing 7-6-2

7.6.4 Methods of Providing Replacement Housing..... 7-6-3

7.6.5 Super Supplement Payments for 180 Day Owner Occupants..... 7-6-3

7.6.6 Super Supplement Payments for 90 Day Occupants 7-6-4

7.6.7 Less Than 90 Day Occupants Eligibility Criteria 7-6-4

7.6.8 Replacement Housing Payment Computation for Less Than 90 Day Occupants 7-6-5

HISTORY 7-6-5

Section 7.6

LAST RESORT HOUSING

PURPOSE

The purpose of this section is to establish the process the Guam Department of Public Works must follow to administer the provisions governing last resort housing.

AUTHORITY

49 CFR, Part 24
21 GCA § 17103 Moving and Related Expenses
21 GCA § 17104 Replacement Housing for Homeowners
21 GCA § 17105 Replacement Housing for Tenants and Certain Others
21 GCA §17108 Authority for Agencies
21 GCA § 17109 Administration
21 GCA §17118 Relocation Assistance Conformity with Federal Requirements

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General staff.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Right of Way Manual, Section 7.2, Right of Way General Relocation Requirements
Right of Way Manual, Section 7.4, Replacement Housing Payments
12 GCA, Chapter 5, Guam Housing and Urban Renewal Authority
Public Law 91-646, (Uniform Act), as amended by:
42 USC Chapter 61 - Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs

FORMS

None specific to this section.

7.6.1 Determining Need

Replacement Housing of Last Resort will be used to assure that comparable decent, safe, and sanitary housing will be made available to a displaced person when such housing can not otherwise be provided within the person's financial means. The determination may be made on a case-by-case or project-wide basis.

7.6.1.1 The Department is authorized to provide replacement housing of Last Resort to displacees when it is determined that:

- (A) The maximum replacement housing payment under the **Right of Way Manual, Section 7.4, Replacement Housing Payments** will not be sufficient to provide a comparable replacement dwelling on a timely basis; or
- (B) The housing market does not contain comparable replacement housing that is available to the displacee on a timely basis.

7.6.1.2 The determination of the need for Last Resort Housing shall be in writing and approved by the Department. Each determination shall include consideration of:

- (A) The availability of comparable replacement housing in the project area.
- (B) The resources available to provide comparable replacement housing.
- (C) The individual circumstances and needs of displaced persons such as, family size, handicaps, or age.

7.6.1.3 Once a comparable replacement dwelling has been offered under this procedure, or assistance has been given by the Department necessary to provide such a dwelling, obligation to provide at least one comparable dwelling is made available to a displacee will have been met.

7.6.2 Basic Rights of Displacees

7.6.2.1 All rights of a displaced person under the provisions of **Public Law 91-646, (Uniform Act)** as amended by **42 USC Chapter 61**, are preserved under the provisions of this procedure.

7.6.2.2 The Department or Department cannot require any displacee to accept a dwelling provided by Department under **Section 7.6** unless Department, the department and the displacee have entered into a contract to do so in lieu of any acquisition or relocation payment for which the person is eligible.

7.6.3 Planning for Last Resort Housing

7.6.3.1 The Department of Public Works Right of Way Supervisor (DPWRS), with the Director Department of Public Works (DDPW) and Department of Public Works Highway Administrator (DPWHA) concurrence, has authority to determine methods to provide sufficient comparable replacement housing:

- (A) When additional Last Resort Housing situations other than those addressed in the Needs Assessment Survey occur during the project; or
- (B) If unforeseen circumstances alter a payment computation.

7.6.3.2 When techniques other than super supplement payments as defined in **Section 7.6.5** are to be used in either of the above referenced situations, the Department Relocation Administrator must approve them.

7.6.4 Methods of Providing Replacement Housing

The use of cost effective means of providing comparable replacement housing is implied throughout this procedure. **Section 7.6** permits variations from the usual methods of obtaining comparable replacement dwellings, however, these variations should not result in an involuntary lowering of housing standards or quality of living style for the displacee.

7.6.4.1 When comparable replacement housing, as described in the **Right of Way Manual, Section 7.2, General Relocation Requirements**, is not available to a displacee, such housing may be provided, either directly or through third parties, by:

- (A) Rehabilitation of and/or additions to an existing replacement dwelling;
- (B) Construction of a new replacement dwelling. If Department is to construct replacement dwellings, the Department must coordinate with the Department Administrator. Construction of replacement dwellings on projects with Federal aid in any phase must be coordinated with Federal Highway Administration (FHWA).
- (C) A replacement housing payment which exceeds the maximum payment amounts set forth in the **Right of Way Manual, Section 7.4, Replacement Housing Payments**.
 - (1) Payments exceeding the maximum limits are known as "super supplement payments".
 - (2) When using super supplement payments, the Department's official parcel file must be documented with all information showing a search for replacement sites considered suitable for relocation was performed.
 - (a) Consideration must be given to the displacee's commuting distance currently traveled and proximity to place of employment, schools, medical facilities, and churches.
 - (b) Other potential neighborhoods considered must be listed, including any adversities or benefits these might cause the displacee.
- (D) The relocation and, if necessary, rehabilitation of a dwelling;
- (E) The purchase of land and/or replacement dwelling by Department which then sells it to, leases it to, or exchanges it with a displaced person;
- (F) The removal of barriers to the displacee with a disability.
- (G) The provision of a direct loan which requires regular amortization or deferred repayment. The loan may be unsecured or secured by real property. The loan may bear interest or be interest free.

7.6.4.2 The above methods are not limitations; other modified methods may be approved by the DPWRS and DPWHA.

7.6.5 Super Supplement Payments for 180 Day Owner Occupants

7.6.5.1 If the purchase additive exceeds the \$22,500 maximum, it is considered a super supplement payment.

7.6.5.2 If the replacement housing payment exceeds the applicable \$22,500 maximum because of the reimbursement of incidental expenses or a mortgage interest differential, it is considered a super supplement payment.

7.6.5.3 The purchase additive super supplement payment will be made in a lump sum payment to the displacee. Department may determine on a case-by-case basis that, for good cause, the payment will be made directly toward the purchase of the replacement dwelling, or made in quarterly or periodic installments to the displacee.

7.6.5.4 For an owner who rents rather than purchases replacement housing the computed rent supplement payment shall not exceed the calculated purchase additive payment. The rent supplement payment will be considered last resort if it exceeds the \$22,500 maximum applicable to a purchase additive for the **180-day** owner.

7.6.5.5 When an owner must rent rather than purchase due to an inability to obtain financing, health, handicap, or other physical or financial hardship, the rent supplement can exceed \$5,250, even if the calculated purchase additive, incidental expenses and increased interest do not exceed \$22,500. However, a bona fide hardship beyond the control of the displacee must exist and the only manner in which comparable replacement housing can be obtained by the displacee is by renting. The file must be so documented. The computed rent supplement may not exceed the calculated purchase additive payment.

7.6.6 Super Supplement Payments for 90 Day Occupants

If the rental assistance payment exceeds the \$5,250 maximum, it is considered a super supplement payment.

7.6.6.1 The rental assistance super supplement payment will be made in a lump sum payment to the displacee. Department may determine on a case-by-case basis that, for good cause, the payment will be made in quarterly or periodic installments to the displacee.

7.6.6.2 The down payment supplement may exceed the \$5,250 maximum if the rental assistance payment calculated according to the ***Right of Way Manual, Section 7.4, Replacement Housing Payments*** exceeds the \$5,250 maximum. The following conditions apply:

- (A) The rent supplement may be used as a down payment supplement, including incidental expenses.
- (B) The full amount of the down payment supplement must be applied to the purchase of the replacement dwelling.
- (C) Incidental expenses are reimbursable, but the amount used as a down payment plus incidental expenses cannot exceed the calculated rent supplement.

7.6.6.3 All files will be documented with the method of payment and reason for other than a lump sum payment, if applicable.

7.6.7 Less Than 90 Day Occupants Eligibility Criteria

Payments provided as Last Resort Housing payments will be made to the following, if eligible:

- (A) Displacees who have occupied the property to be acquired for less than **90 days** prior to the initiation of negotiations;
- (B) Displacees who have occupied the property to be acquired subsequent to the date of the initiation of negotiations.

7.6.7.1 All displaced persons who are less than **90-day** occupants are eligible to receive advisory assistance and move cost reimbursement.

7.6.7.2 All displaced persons who are less than 90 day occupants may be eligible for a replacement housing payment provided they meet all of the following criteria:

- (A) They are in occupancy at the time the Department obtains legal possession of the property or they meet the occupancy requirement determined as necessary by Department and the Department;
- (B) They cannot rent and occupy a replacement dwelling without the monthly rent and utilities of the replacement dwelling exceeding the base monthly rent and utilities of the displaced dwelling, when calculated in accordance with the *Right of Way Manual, 7.4.26.4(B), Replacement Housing Payments*.
- (C) They rent or purchase and occupy a decent, safe and sanitary replacement dwelling within the **one year** time period specified in the *Right of Way Manual, Section 7.4, Replacement Housing Payments*.

7.6.7.3 Department shall inform a less than **90 day** occupant that it is his/her obligation to provide verification of income. No such displacee shall be determined to be eligible for a replacement housing payment unless he/she documents income through a verifiable source, such as pay stubs, signed copies of income tax returns, an employer's statement or a bank statement.

7.6.8 Replacement Housing Payment Computation for Less Than 90 Day Occupants

Payment shall be 42 times the amount obtained by subtracting the base monthly rent (**7.4.26.4 Rental Assistance Payment**) amount from the lesser of:

- (A) The monthly rent and estimated average monthly utilities for a comparable replacement dwelling, or
- (B) The monthly rent and estimated average monthly utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displacee.

7.6.8.1 The displaced person may choose to apply this payment as a down payment supplement. See *Right of Way Manual, Section 7.4, Replacement Housing Payments*.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – changes to sections 7.6.3.1 and 7.6.4.2.

Section 8.1

**INVENTORY OF PROPERTIES ACQUIRED THROUGH THE RIGHT OF WAY PROCESS;
RODENT CONTROL INSPECTIONS; MAINTENANCE**

TABLE OF CONTENTS

PURPOSE8-1-1

AUTHORITY8-1-1

SCOPE8-1-1

EFFECT OF CHAPTER ON OTHER AGENCIES.....8-1-1

REFERENCES8-1-1

FORMS.....8-1-1

DEFINITIONS.....8-1-2

8.1.1 Performing an Inventory Upon Acquisition8-1-2

8.1.2 Assigning Serial Numbers8-1-3

8.1.3 Documenting Disposition8-1-3

8.1.4 Maintenance and Rodent Control8-1-4

8.1.5 Inventory of Excess and Surplus Real Properties8-1-5

HISTORY.....8-1-5

Section 8.1

INVENTORY OF PROPERTIES ACQUIRED THROUGH THE RIGHT OF WAY PROCESS; RODENT CONTROL INSPECTIONS; MAINTENANCE

PURPOSE

To establish uniform procedures for conducting an inventory of all real property acquired by the Department of Public Works, Office of Right of Way (Department) and property interests, personal property, structures and severable items acquired through the right of way process, and to provide a process for determining the need for rodent control and maintenance on right of way acquisitions.

AUTHORITY

23 CFR, 710.103
5 GCA § 22702 Property Survey
21 GCA § 60110 Reports to Director
21 GCA § 60112 Legislative Action Required

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel inventory and inspection functions.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Right of Way Manual, Section 5.5, Legal Documents and Land Acquisition Closing
Right of Way Manual, Section 8.2, Right of Way Clearing
Right of Way Manual, Section 8.5, Disposal of Surplus Property
Right of Way Manual, Section 8.7, Asbestos Management
5 GCA § 20605 Duties of Agency Head
Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j))

FORMS

5.2-8 Property Inventory

DEFINITIONS

For the purpose of establishing uniformity in preparing inventories, the following shall apply:

Excess Property: Territory of Guam-owned property, of any value, located outside of the current operating right of way limits and not needed to support existing transportation facilities. This may include uneconomic remnants, excess property created when design or construction requirements change after acquisition, and excess property resulting from a voluntary acquisition of a remainder property. This property may be needed for future transportation purposes.

Fixtures: Articles that are not real property, are permanently attached to a structure and are ordinarily considered to be legally part of it. Examples of fixtures are ceiling fans and garage door openers.

Personal Property: Any property that is not real property is generally moveable and is not attached to the land or improvements such as furniture.

Personal Property: Any property that is not real property is generally moveable and is not attached to the land or improvements such as furniture.

Physical Possession: The date of vacancy or surrender of keys by the former occupant.

Real Property: Land, buildings or other improvements permanently affixed to the land. Throughout this procedure, real property may be referred to as "property".

Severable Items: Items with a salvage value in excess of \$1,000 and shall include fixtures and trade fixtures.

Structures: Real property in the nature of any building attached to the land. Normally, a structure is considered to be permanently affixed to such land.

Surplus Property: Excess property that the Department of Public Works Right of Way Supervisor (DPWRS) or authorized designee has declared, in writing, to have no present or future transportation purpose.

Trade Fixtures: Fixtures attached to a leased building by the tenant to be used in conjunction with the tenant's use of the leased property. These trade fixtures generally are removable without material injury to the premises. They are usually retained by the tenant and do not become part of the real property. The lease agreement, or other written agreement executed by the owner and the tenant, should set forth those items which are the tenant's property. Examples of trade fixtures are display counters and soft drink dispensers.

8.1.1 Performing an Inventory Upon Acquisition

8.1.1.1 Form No. 5.2-8, Property Inventory shall be prepared for all fee parcels and permanent easements acquired and shall include a description of the real property and all structures. Additionally, all severable items and any items of personal property acquired through purchase or abandoned by the owner with a salvage value in excess of \$1,000 per item shall be included on this inventory. Do not inventory abandoned used clothing or other insignificant items.

8.1.1.2 For negotiated settlements, the initial inventory should be made during the final walk through, in accordance with this **Section** and the **Right of Way Manual, Section 5.5, Legal Documents and Land Acquisition Closing** and updated within **three business days** of physical possession.

8.1.1.3 If the initial inventory is not performed during the final walk through in a negotiated settlement, or if the parcel is acquired by an Order of Taking, the inventory shall be conducted within **three business days** of physical possession.

8.1.2 Assigning Serial Numbers

Serial numbers must be assigned for all items listed on the inventory form. The serial numbers are assigned as follows:

- (A) The serial number for the real property shall be the Item/Segment and Parcel numbers.
- (B) The serial numbers for structures shall be the Item/Segment and Parcel numbers plus an alphabetic extension. If more than one structure per parcel is identified, the extension for each shall be ordered beginning with "A", for example: XXXXXXX, 100 A, 100 B, 100 C, etc.
- (C) The serial number for all severable and personal property items shall be assigned by the party conducting the inventory. The manufacturer's identification number should be used for identification whenever one is present on an item. Serial numbers shall be prefaced by "T" when an item is owned by a tenant of the property, rather than the previous land or property owner. The location of each severable item, by building, shall also be documented on the form.

8.1.3 Documenting Disposition

8.1.3.1 Form No. 5.2-8, Property Inventory shall be documented by writing the final disposition of each item in the appropriate place on the form within **three business days** from the date of disposition. The following items shall be maintained within the Department's official parcel file with the inventory form:

- (A) For owner retained items, salvage value estimates and evidence of holdback warrants in accordance with the **Right of Way Manual, Section 8.2, Right of Way Clearing**;
- (B) Cash Receipt for items which are sold;
- (C) For items retained by the Department, Cash Receipt, showing the fair market value and signed by the receiving office. Additionally, a note shall be placed on the cash receipt stating: The receiving office shall immediately report this transfer to the Director Department of Public Works (DDPW).
- (D) For items transferred to other agencies, acknowledgment of receipt from such agency;
- (E) For items cleared by demolition and removal contracting, the demolition or asbestos abatement contract number shall be written on **Form No. 5.2-8, Property Inventory**;
- (F) Items which will remain for clearing and grubbing shall be so documented on **Form No. 5.2-10, Property Inventory**; and
- (G) For items lost, stolen or vandalized, a memorandum from the DPWRS stating this occurrence and, for items valued over \$1,000, a police report. The estimated value of the items shall be documented in the Department's official parcel file.

8.1.3.2 Any items of personal property abandoned by the owner or occupant shall also be listed (if valued in excess of \$1,000) on **Form No. 5.2-8, Property Inventory**, with the exception of used clothing or other insignificant items. The disposition of such property shall be documented on the form.

8.1.3.3 For items to be disposed of by demolition and removal or clearing and grubbing, the inventory shall be updated a minimum of every **120 days** after the date of physical possession until these activities have occurred. This may be documented by a memo to the Department's official parcel file, contact record or by providing a brief explanation in the appropriate place on **Form No. 5.2-8, Property Inventory**, with the commenter's signature and date of update.

8.1.3.4 Prior notice shall be provided to the Department of Public Works Building Permits Section (BPS) when outdoor advertising signs are to be removed. Notice shall also be provided to the BPS if an outdoor advertising sign has been removed.

8.1.4 Maintenance and Rodent Control

8.1.4.1 Maintenance services are required to prevent or correct problems such as illegal dumping or disposal of rubble, debris and garbage on right of way, rodent or pest infestations, vagrancy and vandalism.

8.1.4.2 Inspections to determine the need for maintenance and rodent and pest control shall be performed once every **120 days** at a minimum, or more often if a particular parcel requires it.

NOTE: Maintenance and rodent control inspections are not required for easements unless improvements were acquired, in which case inspections are required until improvements have been cleared from the right of way. Rodent control inspections are not required on vacant fee parcels in rural or urban locations unless they are dumps or landfills; however, maintenance inspections must be performed on improved fee parcels.

8.1.4.3 The first inspection shall be conducted within **two weeks** from the date of acquisition (the date of closing in a negotiated settlement or the date of deposit in an order of taking) of the first fee parcel or the first easement with an improvement on a project. The initial inspection for each subsequently acquired parcel on a project may be conducted in conjunction with the reinspections of the first fee parcel or the first easement with an improvement. This will allow inspections to be performed and documented on a project basis.

8.1.4.4 The date of the initial acquisition entered in the appropriate place on **Form No. 5.2-8, Property Inventory**. Inspections, other than the initial inspection, may be documented by a memo to the Department's official parcel file, or a contact record.

8.1.4.5 All inspections shall continue until the letting of the construction contract or the Department's disposal of the property. The date of the letting or disposal shall be documented in the Department's official parcel file.

8.1.4.6 If an Operations and Maintenance Plan (O&M Plan) is in effect for a particular structure pursuant to the **Right of Way Manual, Section 8.7, Asbestos Management**, inspections required by that plan may be conducted at the same time as maintenance inspections, with the asbestos file so documented. The person conducting these inspections shall have at least **two hours** of asbestos awareness training. The minimum time frames for inspections required by the O&M Plan shall still be met.

8.1.4.7 Building repairs, yard care, fire hazard prevention, security of buildings, rodent and pest control and other safety and sanitary measures should be followed to comply with public health, safety or other community standards. The persons conducting these measures shall be notified, in writing with the Department's official parcel file so documented, of the presence or potential presence of asbestos containing materials (ACM) in the structures.

8.1.4.8 If the Department lacks the manpower or expertise to perform any needed maintenance services, the DPWRS may request the use of a contractor to perform the needed services. The contract shall be executed in accordance with the applicable sections of, **5 GCA, Chapter 5, Guam Procurement Law**.

8.1.4.9 If maintenance services require performing work on or in a building in which an asbestos survey determines ACM is present and the possibility exists that the ACM might be disturbed, the contractor performing the work shall provide proof of having completed **sixteen hours** of asbestos awareness training for maintenance workers.

8.1.4.10 If it is determined that rodent control is required, the Department may request the use of an extermination company to perform the needed services. When rodent control is required, the extermination services shall be completed prior to demolition and removal of the improvements, with the Department's official parcel file so documented.

8.1.5 Inventory of Excess and Surplus Real Properties

8.1.5.1 A separate inventory of all excess and surplus real properties held by the Department in trust for and on behalf of the Government of Guam shall be maintained to provide an accounting of these properties. The Department must identify the properties in order to manage them.

8.1.5.2 The inventory is to include the following information:

- (A) Property description, including the item/segment and parcel number, if applicable. A legal description is not necessary;
- (B) GU Project Number, if applicable;
- (C) If known, the value of the property and the date of valuation. For all other property, report whether the value is greater than or less than \$10,000;
- (D) Whether each property has officially been declared surplus pursuant to the ***Right of Way Manual, Section 8.5, Disposal of Surplus Real Property***. This inventory shall be updated at the time the property is declared surplus;
- (E) The reason for retaining excess property and not declaring it surplus.

8.1.5.3 The following documentation shall be retained in the Department's official parcel file:

- (A) Each memorandum to the DDPW requesting property be declared surplus with approval signature or response denying approval; and
- (B) Opinions of value and/or appraisals for excess and surplus properties.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – No changes to this section

Section 8.2

RIGHT OF WAY CLEARING

TABLE OF CONTENTS

RIGHT OF WAY CLEARING.....8-2-1

PURPOSE8-2-1

AUTHORITY.....8-2-1

SCOPE8-2-1

EFFECT OF CHAPTER ON OTHER AGENCIES.....8-2-1

REFERENCES8-2-1

FORMS.....8-2-1

DEFINITIONS.....8-2-2

8.2.1 Disposal of Improvements and Severable Items.....8-2-2

8.2.2 Owner Retention.....8-2-3

8.2.3 Retention by DPW and Transfer.....8-2-3

8.2.4 Negotiated Sale8-2-3

8.2.5 Sealed Bids.....8-2-4

8.2.6 Sale of Severable Items/Improvements through the Demolition and Removal Contracting Process.....8-2-4

8.2.7 The Sale Closing8-2-4

8.2.8 Demolition and Removal Contracting8-2-5

8.2.9 Advertising for Demolition and Removal Contracting.....8-2-5

8.2.10 Preparation for Bid Proposal.....8-2-5

8.2.11 Opening Sealed Bids and Bidder Selection.....8-2-5

8.2.12 Contracts8-2-5

8.2.13 Bid Security and Performance Bonds.....8-2-6

8.2.15 Extension of Time, Supplemental Agreements, and Authorization for Additional Work.....8-2-7

| | |
|-------------------------------------|-------|
| 8.2.16 Payment on Contracts | 8-2-8 |
| 8.2.17 Required Documentation | 8-2-8 |
| HISTORY | 8-2-9 |

Section 8.2

RIGHT OF WAY CLEARING

PURPOSE

To establish uniform procedures for clearing of all improvements, personal property, and severable items prior to construction letting for a transportation facility of all real property acquired by the Department of Public Works, Office of Right of Way (Department) and compliance with procurement regulations, construction contracting laws and regulations for effective removal of improvements from the right of way.

AUTHORITY

23 CFR, Part 710.103
29 CFR, Parts 1 and 3
5 GCA § 5001 Purpose, Rules of Construction

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel right of way clearing functions.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

29 CFR, Subpart 3, Copeland Regulations
29 CFR, Subtitle A, Part 1, Davis/Bacon Act
49 CFR, 24.2 (s)
49 CFR, 29.510
Federal Wage Rate Table, Exhibit A
5 GCA, Chapter 5, Guam Procurement Law
10 GCA §76104 Powers and Duties
Right of Way Manual, Section 5.2, The Real Property Negotiation Process
Right of Way Manual, Section 8.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance
Right of Way Manual, Section 8.7, Asbestos Management
Right of Way Manual, Section 9.3, Right of Way Records Management

FORMS

5.2-6 Release and Right of Entry Agreement for Asbestos Survey
5.2-8 Property Inventory

DEFINITIONS

Items or improvements acquired in the right of way acquisition process are defined in the *Right of Way Manual, Section 8.1 Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance.*

Clearing and Grubbing: This term is used specifically to refer to the clearing of rights of way. It relates to situations where remaining items, normally trees, stumps, roots, other protruding objects, and possibly buildings, structures, appurtenances, abandoned personal property, and existing pavement, are removed under the construction contract.

Improvements: Structures erected permanently on a site, including but not limited to subsurface improvements, buildings, fences, driveways, and retaining walls.

Minus (or Negative) Bids: These pertain to minus contracts which are those requiring an expenditure of funds by the Government of Guam.

Negotiated Sale: The direct sale to the public of property acquired by the Department and owned by the Government of Guam and determined to be surplus. For a negotiated sale, the sales price is reached by agreement between the Department and the purchaser.

Official File: Documentation required to be maintained in the Department's Office in a central location pursuant to the **Right of Way Manual, Section 9.3, Right of Way Records Management.**

Plus (or Positive) Bids: Bids requiring payment by the bidder to the Government of Guam in order to perform the demolition or removal work.

Retention of Improvements: Takes place when the property owner elects to retain possession of severable improvements, including houses, which can be moved or demolished. This term refers to both real and personal property.

Salvage Value: The probable sales price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis per **49 C.F.R. 24.2(s).**

Transfer of Improvements or Severable Items: Occurs when the Government of Guam obtains possession of improvements or severable items and conveys ownership of these items to between governmental agencies.

8.2.1 Disposal of Improvements and Severable Items

8.2.1.1 The Department shall attempt to sell improvements or severable items acquired during acquisition of right of way when these items are not needed by the Department for the construction, operation, or maintenance of transportation facilities or are not transferred to other governmental agencies. The potential sale of severable items should always be considered before including them in demolition and removal or clearing and grubbing activities when sale proceeds would exceed the cost of selling the items in a demolition contract.

8.2.1.2 Items can be sold by negotiation, competitive bid, or through the demolition and removal contracting process. See **Section 8.2.6.**

8.2.1.3 Actions for disposal of severable items that will not be disposed of by clearing and grubbing shall be initiated within **120 days** of possession except in the event the parcel is leased or an asbestos survey has yet to be obtained. Disposal is not required during the period of such lease.

8.2.1.4 Properties acquired by advance acquisition are temporarily exempt from **Sections 8.2.1.2 and 8.2.1.3.** The intent of this exemption is to allow severable items to remain with the structure for future leasing purposes. Periodic inspections must be performed for security and maintenance purposes. If not leased, inspections must be conducted not less than every **120 days.**

8.2.1.5 The Department of Public Works Right of Way Supervisor (DPWRS) or designee shall review inventory updates of properties which are not leased to determine if vandalism is occurring. If vandalism occurs, the DPWRS shall take necessary measures to make sure the building is secure from further entry. If the property continues to be vandalized or becomes a public hazard, the remaining severable items should be disposed of. **Nine months** before construction is scheduled to begin, **Sections 8.2.1.1 through 8.2.1.4** will become effective for all advance acquisition properties which are within the right of way limits for the project, unless vandalism occurs prior to this time.

8.2.2 Owner Retention

8.2.2.1 The property owner may elect to retain an improvement(s) or other item(s) identified in the approved appraisal used for acquisition that may be lying partially or entirely in the right of way acquired by the Department. A survey to determine the presence of asbestos, pursuant to the **Right of Way Manual, Section 8.7, Asbestos Management**, is required for that portion of a structure affixed to the property acquired by the Department. Additionally, since the Government of Guam is the legal owner to all structures or parts of structures affixed to lands acquired by the Department (even if the Department allows owner retention of a structure(s)), the Government of Guam is responsible for meeting all Federal and Guam requirements for the removal of all asbestos containing materials. The former owner may perform a cut and reface of a building and contract for asbestos removal; but the Government of Guam, as the legal owner acting through the Department is responsible for assuring that all appropriate notifications are made and for paying all fees in accordance with all applicable laws.

8.2.2.2 In accordance with the **Right of Way Manual, Section 5.2, Negotiation Process**, owner retention may be offered during the course of negotiations. The retention value, equal to the salvage value, of the improvement(s) or other item(s) shall be established by an estimate prepared or approved by the Department, pursuant to **Section 8.2.4.2**. The retention, salvage, value estimate shall be signed, dated, and retained in the Department's official parcel file.

8.2.2.3 The Department shall provide a time frame in the purchase agreement or court order for removal of the improvement(s) or other item(s) by the owner. The property shall be inspected to provide removal within **one week** after the date given by the Department. If the improvement(s) has not been removed, the Department shall initiate removal of the improvement(s) in accordance with the original agreement. However, at the option of the DPWRS, with concurrence by the DDPW and DPWHA, the owner may be given additional time to remove the improvement(s). If the improvement is still not removed at the end of this extended time period, the Department shall, dependent upon the written terms and conditions, either pursue enforcement of the purchase agreement by court order or shall initiate removal of the improvement(s) in accordance with this Section.

8.2.3 Retention by DPW and Transfer

- (A)** If there is a need by the Department or a request is received from another agency, severable items may be retained by Department to the requesting governmental entity. If the property to be transferred to another governmental entity is to be used for a public purpose the transfer may be transacted without consideration, with the Departments official parcel file so documented. However, if the property to be transferred is to be used for other than a public purpose by the governmental entity, then the provisions of **Sections 8.2.4 and 8.2.5** shall apply. If a request is received which requires extension of this time frame, the Department's official parcel file must be so documented.

8.2.4 Negotiated Sale

8.2.4.1 Negotiated sales are permitted only when the estimated salvage/retention value for any severable item on a parcel is \$10,000 or less.

8.2.4.2 The negotiated sales price of a severable item shall not be less than the estimated salvage value.

- (A)** The salvage value is estimated by visual inspection, by comparison to similar improvements previously sold as salvage, and by reviewing the approved appraisal used for acquisition. When comparing improvements, consider the type of area, urban or rural, size, condition, quality, type of construction, and the marketability of the improvement. Three or more comparable sales should be used, if available. The salvage value estimate must be well documented, dated, signed by the evaluator, and retained in the Department's official parcel file.

- (B) If an item has no salvage value, a salvage value estimate of zero dollars (\$-0-) shall be prepared to document this.

8.2.5 Sealed Bids

8.2.5.1 When a determination by the Department has been made to dispose of surplus severable items, the Department may sell these items by sealed bid after duly advertising as required by 5 GCA § 5211. The invitation to bid shall run in a newspaper of general circulation a reasonable time prior to bid opening. The advertisement shall state the date, time, and place of the bid opening, a brief description of the procurement, and where more information may be obtained. The sealed bid opening shall be held at the location specified in the advertisement.

8.2.5.2 A minimum bid may be specified but may not be less than the current established salvage value. If a minimum bid amount is specified, it shall appear in the advertisement as well as a statement that the Government of Guam reserves the right to withdraw the property if the specified minimum bid is not received. If the minimum bid or the estimated salvage value amount is not obtained, the Department or authorized designee, may approve the highest bid received. Otherwise, the item must be disposed of by negotiated sale under the requirements of **Section 8.2.4**.

- (A) If the specified minimum bid or the estimated salvage value amount is not obtained at the first sealed bid opening, the Department may advertise a second time. A second advertisement is optional.
- (B) If the specified minimum bid or estimated salvage value amount is not obtained, the Department, or authorized designee, may approve the highest bid obtained during the bid opening.

8.2.5.3 When the Department receives an invoice from the newspaper, it shall be processed in accordance with that agencies procedure.

8.2.6 Sale of Severable Items/Improvements through the Demolition and Removal Contracting Process

8.2.6.1 If it is determined not to be feasible or practical to dispose of severable items through the negotiated sale or sealed bid process, removal of improvements may be incorporated into the terms of the demolition and removal contract.

8.2.6.2 Circumstances which warrant this method of disposal are: the Department is not able to store and dispose of the items independent of the sale for demolition and removal; or the removal, storage and disposal costs are not economically feasible.

8.2.6.3 A record of the disposition of these improvements shall be documented pursuant to **Right of Way Manual, Section 8.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance.**

8.2.7 The Sale Closing

8.2.7.1 With the approval of the Director Department of Public Works (DDPW) and Department of Public Works Highway Administrator (DPWHA), the Right of Way Supervisor (DPWRS), or an authorized representative, shall conduct the closing

8.2.7.2 The Department shall receive from the purchaser the payment due on the sale in the form of a cashier's check or other non-cancellable instrument. No personal checks or cash will be accepted.

8.2.7.3 The purchaser is to receive a receipt.

8.2.7.4 The following is to be forwarded to the selling agencies records:

- (A) Documentation showing the deduction of any appropriate sales tax;
- (C) Copy of the receipt
- (D) Payment or payment balance received from the purchaser.

8.2.8 Demolition and Removal Contracting

8.2.8.1 If improvements are not sold, removed by the owner, or retained or transferred to another governmental entity, the Department may let a contract for demolition and removal by acceptance of sealed bids after duly advertising in accordance with **5 GCA, Chapter 5, Guam Procurement Law**. Procurement of demolition and removal services shall be in accordance with **5 GCA, Chapter 5**. Demolition and removal of the improvements to clear the right of way takes place after the conclusion of any asbestos survey and abatement/removal work, if required. Refer to **Right of Way Manual, Section 8.7, Asbestos Management**.

8.2.8.2 When minus bids have been submitted, the Department may opt to clear improvements by clearing and grubbing. **Right of Way Manual, Section 8.7, Asbestos Management**, must be complied with prior to clearing and grubbing, and the DPWRS, or authorized designee, with approval from DDPW and DPWHA, must give written approval of the use of this method.

8.2.8.3 If the improvement is occupied, a written statement must be obtained from the occupant stating there is no objection to advertising for demolition and removal contract bids. The requirement for a written statement may be waived by the DPWRS, when in the public interest, provided no demolition activity is to be initiated before all occupants have vacated the property. The waiver should substantiate the reason for such a waiver and will usually be implemented to avoid a project delay. For example, it would be especially helpful when dealing with apartment buildings with numerous tenants.

8.2.8.4 On projects with federal aid, minus contracts exceeding \$2,000 require compliance with **29 C.F.R., Subtitle A, Part 1, Davis/Bacon Act**, regarding the payment of predetermined minimum wages to certain employees and **29 C.F.R., Subpart 3, Copeland Regulations**, regarding the submission by the contractor of payrolls and payroll information. The Department shall be responsible for determining that wages are paid at acceptable levels and for reviewing payroll records submitted to the Department to provide compliance with requirements of these regulations.

8.2.9 Advertising for Demolition and Removal Contracting

8.2.9.1 No advertisement for bids on a particular parcel(s) shall be published and no bid solicitation notice shall be provided until title to all necessary rights of way and easements for the parcel(s) covered by such advertisement has vested in the Government of Guam and utility agreements have been executed for such parcel(s). Title to all necessary rights of way shall be deemed to have been vested in the Government of Guam when such title has been dedicated to the public or acquired by prescription.

8.2.9.2 The invitation to bid shall run in a newspaper of general circulation in Guam a reasonable time prior to bid opening. The advertisement shall state the date, time, and place of the bid opening, purpose of the bidding, and where more information may be obtained.

8.2.10 Preparation for Bid Proposal

8.2.10.1 Invitation for bids shall be in accordance with 5 GCA § 5211(b) requirements. Public notice of invitation to bid shall be in accordance with 5 GCA § 5211(c) requirements.

8.2.11 Opening Sealed Bids and Bidder Selection

8.2.11.1 Bid opening shall be in accordance with 5 GCA § 5211(d) requirements. Bid acceptance and bid evaluation shall be in accordance with 5 GCA § 5211(e) requirements. Bidder selection and contract award shall be in accordance with 5 GCA § 5211(g) requirements.

8.2.12 Contracts

8.2.12.1 All contract terms shall be previewed by Office of the Attorney General (OAG) Counsel and final legal approval shall be secured before execution of the contract by the Department and after execution by the contractor. Provisions for the erection of berms, fences, or signs to discourage dumping may be included in the demolition contract at the discretion of the Department. No demolition shall begin prior to execution of the contract. If work is to be performed after the contract expires, an extension of contract shall be submitted. See **Section 8.2.15**. All contracts shall:

-
- (A) Have all blanks on the contract form completed;
 - (B) Have, as consideration, a dollar amount equal to the bid amount plus any applicable tax (for plus bids), unless the contractor provides a tax exemption number;
 - (C) Contain verified item/segment and parcel numbers;
 - (D) Contain the contractor's social security number or federal identification number on page one of all copies;
 - (E) Contain the name of the contractor on page one of all copies, such name being consistent with the signature of execution. Signatures shall be as follows:
 - (1) An individual shall sign for himself/herself or attach a power of attorney if the instrument is executed by an agent;
 - (2) Any member of a partnership may sign the contract. The partnership name shall appear above the signature, and the person signing should denote himself/herself as a partner;
 - (3) If the contractor is a corporation, the president, vice president, or chief executive officer shall sign the contract. The name of the corporation shall appear above the signature. The signature shall be attested by the secretary or assistant secretary, and the corporate seal shall be affixed; or
 - (4) When a contract, bid proposal, or surety is executed for an unincorporated firm operating under a fictitious name, the words "Not Inc." shall appear after the name. The name of the person signing for the firm shall be noted.
 - (F) The Department shall reserve the right to cancel the contract at any time without liability to the Government of Guam. In the event of cancellation the contractor shall be compensated for any work completed satisfactorily at the time of cancellation.

8.2.12.2 Contracts involving underground storage tanks shall have appropriate **Special Provisions for Underground Fuel Storage Tank Removal** attached. This supplement to the contract relates to requirements of the Guam Environmental Protection Agency.

8.2.12.3 Contracts are assigned a number by the Department.

8.2.12.4 For minus bids, where the selected bid requires some expenditure by the Department, the department shall complete an Encumbrance Memo to the DDPW. Upon receiving approval from the DDPW, the Department may proceed with the signing of the Contract. After execution, one original fully executed contract and one copy of the approved contract, or the contract status change form, shall be submitted to the DDPW.

8.2.12.5 After selection of a responsive bidder for plus bids, where the selected bid requires some payment of funds to the Government of Guam, the DDPW may proceed with the signing of the Demolition and Removal Contract.

8.2.13 Bid Security and Performance Bonds

8.2.13.1 A bid security shall be required when the total price is estimated to exceed \$25,000. The bond may be a surety bond by a surety company authorized to do business in Guam, an equivalent cash bond or otherwise supplied in a form satisfactory to the Government of Guam. The requirement for such bonds on procurement of supplies or services totaling less than \$25,000 may be required and such requirement will be included in the invitation to bid solicitation package.

8.2.13.2 There is no requirement for a performance bond. The bid security held until completion of the contract is deemed to be satisfactory to adequately protect the best interest of the Government of Guam.

8.2.13.3 For all procurement contracts, the bid security amount shall be equal to 15% of the total amount bid.

8.2.14 Performance of Demolition and Removal

8.2.14.1 The successful bidder may not begin work until he/she receives the Notice to Proceed (NTP). This notice shall be sent to the bidder by Certified Mail, Return Receipt Requested or hand delivered. The return receipt shall be placed in the Department's official parcel file. If this document is hand delivered to the successful bidder, a signed receipt shall be obtained and placed in the Department's official parcel file.

8.2.14.2 In order to facilitate the disconnection of utilities, the Department shall notify the utility companies of the date on which demolition and removal services are scheduled to begin and request disconnection. If no utility disconnections are necessary, the Department's official parcel file shall be so documented.

8.2.14.3 The Department shall be responsible for providing the required notification to the Guam Environmental Protection Agency (GEPA), in accordance with the **Right of Way Manual, 8.7, Asbestos Management**. The contractor shall begin work on the date specified in the notice.

8.2.14.4 Monitoring of the demolition or removal contract by the Department shall be documented in writing and maintained in the Department's official parcel file. Photographs may be used to support written documentation.

8.2.14.5 A contractor shall complete a Contract Completion Report, upon satisfaction of the contract as determined by the Department.

8.2.14.6 Upon satisfactory completion of services and completion of the Contract Completion Report, the cash bond shall be returned to the contractor, or the surety company shall be notified to terminate the bond.

8.2.15 Extension of Time, Supplemental Agreements, and Authorization for Additional Work

8.2.15.1 In the contract, the Department shall give the contractor sufficient time to complete the required services. Failure to complete the contractual obligations on time may constitute default. The contractor may be liable for liquidated damages if the contractor is delinquent in completing his/her contractual obligations. Additional penalties and daily liquidated damages may be assessed for failure to timely complete solely Territory-funded jobs. These shall be fully addressed in the contract.

8.2.15.2 An extension of time may be granted only upon the full execution of a supplemental contract.

- (A)** The Director of the Department of Public Works (DDPW) and Department of Public Works Highway Administrator (DPWHA) shall be notified in writing by the DPWRS, of any proposed extension, with a brief explanation of the circumstances.
- (B)** Any supplemental agreement modifying any item in the original contract shall be approved and executed by the DDPW and DPWHA.
- (C)** All supplemental agreements shall receive the OAG Counsel's approval prior to execution by the Department.

8.2.15.3 If a change or addition is needed and a verbal agreement has been reached with the contractor, the Department shall prepare the appropriate document for execution by the contractor and the DDPW. A written supplemental agreement or contract shall be executed prior to authorizing the additional services except when the change does not exceed 5% of the original contract amount. Additional work shall be approved only in instances where time considerations are critical to a project. All supplemental agreements for additional work shall be approved, in writing, by the DDPW prior to execution. The approval shall include justification as to why the additional work is necessary in relation to the time frame for completion of the clearing of the parcel.

8.2.15.4 Any change or addition to the contract which will cause any additional expenditure by the Department will require fund approval from the Bureau of Budget and Management Research prior to execution of the supplemental agreement by the Department.

8.2.15.5 If the supplemental contract increases the contract amount, it may be necessary to obtain additional security bonding. The bond shall, at all times, cover 15% of the amount of the total contract. The bonding agency shall sign any

supplemental contract.

8.2.16 Payment on Contracts

8.2.16.1 For ***Demolition and Removal Contract Plus Contract***, payment by the contractor shall be sent, immediately upon complete execution of the contract, to the GSA Chief Procurement Officer with one fully executed contract for processing by the GSA Chief Procurement Officer. Neither cash nor personal or business checks are acceptable. Payment shall be by cashier's check or other non-cancelable instrument and accompanied by a cash receipt.

8.2.16.2 For ***Demolition and Removal Contract Minus Contract***, a request for payment shall be made to the GSA Chief Procurement Officer for processing by the Treasurer of Guam.

8.2.16.3 The request shall include:

- (A) An original and two copies of the Contract Completion Report, which contains the affidavit certifying the work was completed;
- (B) Original and three copies of the contractor's invoice;
- (C) Contract Invoice Transmittal (C.I.T.); and
- (C) Bid Tabulation Sheet.

8.2.16.4 The warrant shall be sent directly to the contractor unless other arrangements have been made.

8.2.16.5 Costs are not to be billed for any work performed prior to the execution date of the contract or for any work performed subsequent to the expiration date of the contract or contract extension.

8.2.17 Required Documentation

8.2.17.1 The following documentation shall be retained in the Department's official parcel file when documenting salvage value estimates and sale, retention or transfer of improvements:

- (A) Retention or salvage value estimate with three comparable sales, if available, dated and signed by the evaluator;
- (B) Copy of Cash Receipt;
- (C) ***Release and Right of Entry Agreement for Asbestos Survey, Form No. 5.2-6***, if applicable;
- (D) ***Property Inventory, Form No. 5.2-8***; and
- (E) Payment or payment balance received from the purchaser.

8.2.17.2 The following documentation shall be retained in the Department's official parcel file when a bid package is used:

- (A) Advertisement and verification of publication;
- (B) Information bulletin, bid specifications;
- (C) Notice of protest rights;
- (D) Letter(s) to utilities or documentation that such is not needed;
- (E) Special provisions, if applicable;
- (F) Affidavit, from the successful bidder stating that the bidder had not participated in collusion or bid rigging;

- (G) Certification from the successful bidder regarding worker's compensation, if applicable and liability insurance coverage along with the current insurance certificates;
- (H) Certification from the successful bidder regarding vehicle registration;
- (I) Bid Tabulation Sheet;
- (J) The successful bidder's bid proposal;

8.2.17.3 Additional documentation needed for the Department's official parcel file is:

- (A) One executed contract or photocopy including supplemental agreements, authorizations for additional work, and executed Affidavit or photocopy of a Non-Collusion Declaration and Compliance with **49 C.F.R. 29** statement or photocopy for Federal Aid parcels, if any;
- (B) Performance Bond, documentation of review and approval by the OAG Counsel, and power of attorney for a surety bond or Cash Receipt if a cash bond;
- (D) Cash Receipt, if a plus contract;
- (E) Contract Completion Report, ;
- (F) Contractor's invoice, if a minus bid;
- (G) Encumbrance memo, if a minus contract; and
- (H) Monitoring documentation.

HISTORY

Original Issue Date: January 2011

Revision 1 – October 2017 – changes to sections 8.2.2.3, 8.2.7.1, 8.2.8.2, and 8.2.15.2.

Section 8.5

DISPOSAL OF SURPLUS REAL PROPERTY

TABLE OF CONTENTS

PURPOSE8-5-1

AUTHORITY.....8-5-1

SCOPE8-5-1

EFFECT OF CHAPTER ON OTHER AGENCIES.....8-5-1

REFERENCES8-5-1

FORMS.....8-5-2

DEFINITIONS.....8-5-2

8.5.1 Disposal Overview and Excess/Surplus Property Inventory Management.....8-5-3

8.5.2 Negotiated Sale8-5-6

8.5.3 Public Auction or Sealed Bids.....8-5-8

8.5.4 Public Purpose Conveyance.....8-5-10

8.5.5 Disposal of Nuisance Properties.....8-5-10

8.5.6 Disposal of Property Originally Acquired as Replacement Housing8-5-11

8.5.7 Disposal of Buildings and Acceptance of Replacement Buildings as Compensation.....8-5-11

8.5.8 Concurrence by the Federal Highway Administration (FHWA).....8-5-12

8.5.9 Sale Closing.....8-5-12

8.5.10 Disclaimers8-5-14

8.5.11 Requirements for Disposal of Surplus Properties.....8-5-14

HISTORY.....8-5-14

Section 8.5

DISPOSAL OF SURPLUS REAL PROPERTY

PURPOSE

To establish uniform procedures for the disposal of real property owned by the Government of Guam through acquisition by the Department of Public Works Office of Right of Way (Department) that is not needed for the present or future construction, operation, maintenance, or mitigation of a transportation facility; processing a disclaimer renouncing the Department's interest, if any, in property for which it has no actual interest; transferring property to another governmental entity. that was acquired for a transportation purpose but is no longer used or needed for that purpose; and the disposal of buildings when the Department accepts the construction of a replacement building totally or partially in lieu of cash.

AUTHORITY

23 CFR, Part 710, Subpart D
5 GCA § 22702 Property Survey

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform right of way management functions will utilize this Section.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

23 CFR, Part 771
23 CFR §403(d)(1)
40 CFR, Part 745
5 GCA, Chapter 20, Article 5 – Surplus Property
5 GCA, Chapter 22, Article 7 – General Property Control
21 GCA §15104 – Reversion for Failure to Make Public Use
EPA Pamphlet, Protect Your Family From Lead in Your Home
Right of Way Manual, Section 2.1, Land Title
Right of Way Manual, Section 4.1, Appraisal and Appraisal Review
Right of Way Manual, Section 5.5, Legal Documents and Land Acquisition Closing
Right of Way Manual, Section 5.11, Acquisition Via Exchange
Right of Way Manual, Section 8.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance
Right of Way Manual, Section 9.1, Funds Management
Right of Way Manual, Section 9.3, Right of Way Records Management

FORMS

5.2-7 Closing Statement
8.5-1 Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning
IRS Form 8282, Donee Information Return

DEFINITIONS

Agent's Price Estimate: An estimate by the Department or designee of the amount of just and full compensation for a noncomplex, low value parcel, of \$2,500 or less.

Appraisal: The report of a value estimate prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and found to be a report which can be used to make a prudent business decision. This can include a Value Finding for non-complex, vacant land appraisals in accordance with **Section 4.1, Appraisal and Appraisal Review**.

Disclaimer: A legal instrument, which states that the Department claims no interest in a property. A disclaimer is used primarily to clear a cloud(s) on a title. The name of a grantee or consideration is not required to validate this document. An appraisal is not necessary and no compensation is paid to the Government of Guam for the disclaimer.

Excess Property: Department-acquired property, of any value, located outside of the current operating right of way limits, but which the Department of Public Works Right of Way Supervisor (DPWRS) or designee has not determined a future transportation use. This may include uneconomic remnants, remnants created when design or construction requirements change after acquisition, and remnants resulting from a voluntary acquisition of a remainder property.

Governmental Entity: A Federal, Government of Guam or any other entity that independently exercises any type of Federal, or local governmental function. This term does not include nonprofit organizations.

High Value Properties: For inventory purposes, properties, whether stand-alone, (e.g., capable of independent development) or useful only to an abutting property owner, that may return relatively high revenues upon disposal.

Inequitable: Unfairly or unjustly affecting an abutting property owner's ultimate or present use of real property to the extent it will hinder or prevent its use for such purposes.

Low Value Properties: For inventory purposes, properties, whether stand alone or useful only to an abutting property owner, that have little or no value due to their limited utility because of unusual shape or size, etc.

Negotiated Sale: The direct sale to the public of surplus property owned by the Government of Guam where the sale price is reached by agreement between the Department and the purchaser.

Nuisance Properties: Properties that require substantial maintenance (for example: mowing, trash removal, security, etc.) or expose the Government of Guam to a significant risk of liability.

Official File: Documentation required to be maintained by the Department of Public Works Right of Way Office in a central location pursuant to **Right of Way Manual, Section 9.3, Right of Way Records Management**.

Public Purpose Conveyance: A conveyance by the Department to another governmental entity for a social, economic, or environmental purpose which would benefit the general public.

Real Property: Land, including buildings, or other improvements permanently affixed to the land. Throughout this procedure, real property may be referred to as "property."

Surplus Property: Department-acquired property, of any value, located outside of the current operating right of way limits, which has no present transportation purpose and which the DPWRS or authorized designee has determined, in writing, has no future transportation purpose.

Transportation Corridor: Any land area designated by the Government of Guam which is between two geographic points and which area is used or suitable for the movement of people and goods by one or more modes of transportation and may include areas necessary for management of access and securing applicable approvals and permits. Transportation corridors shall contain, but are not limited to, the following:

- (A) Existing publicly owned rights of way;
- (B) All property or property interests necessary for future transportation facilities, including rights of access, air, view, and light, whether public or private, for the purpose of securing and utilizing future transportation rights of way, including, but not limited to, any lands reasonably necessary now or in the future for securing applicable approvals and permits, borrow pits, drainage ditches, water retention areas, replacement access for landowners whose access could be impaired due to the construction of a future facility, and replacement rights of way for relocation of utility facilities.

Transportation Facility: Any means for the transportation of people and property from place to place that is constructed, operated or maintained in whole or in part from public funds.

Uneconomic Remnant: A property which, as a result of a partial taking, has little or no utility or value to the owner, as determined by the review appraiser.

8.5.1 Disposal Overview and Excess/Surplus Property Inventory Management

8.5.1.1 If real property is not needed for the present or future construction, operation, maintenance, or mitigation of a transportation facility, and is not located within a transportation corridor and access to and from the property will not create a danger to the traveling public, The Department should dispose of the property by its own means. Such disposals shall be performed pursuant to this procedure and **5 GCA Chapter 22, Article 7, General Property Control**. If real property is located within a transportation corridor, such property shall not be disposed of until right of way limits for the corridor have been established.

8.5.1.2 Before the disposal of property acquired by eminent domain the previous property owner should be given the opportunity to repurchase the property at the same price received from the Department during the eminent domain acquisition process. This requirement should be applicable if less than **ten years** have elapsed since the property's acquisition date. Properties other than those described in a filed petition of condemnation are exempt from the **ten year** ownership requirement and may be offered to the original owner whenever the property is determined to be surplus. Other exceptions to the **ten year** requirement could be granted when the purchaser is providing:

- (A) Common carrier services;
- (B) Roads or other rights of way open to the public for transportation, at no charge or for a toll;
- (C) Transportation related services or business;
- (D) Public or private utilities;
- (E) Public infrastructure; or
- (F) Uses that occupy, pursuant to a lease, an incidental part of a public property or public facility for the purpose of providing goods and services to the public.

8.5.1.3 Prior to declaring real property surplus, the Department shall investigate the title to the extent necessary to establish that the Government of Guam has title to the property. After title has been established, the Department shall submit the parcel file for review by all appropriate Department of Public Works and other offices, for review of potential needs for, drainage, maintenance, access management, environmental management and Department of Land Management (DLM) surveying and mapping to determine the need to retain ownership of the property. Comments from the reviewing offices shall be forwarded to the Department of Public Works Right of Way Supervisor (DPWRS) or authorized designee with a request for surplus declaration. Real property is declared surplus, in writing, by the Director Department of Public Works (DDPW) or authorized designee on the **second Monday of each quarter**. The Department may then initiate actions to dispose of the Government's interest in such real property

8.5.1.4 On properties acquired with Federal participation, the environmental consequences of disposal of the property must be considered in accordance with **23 CFR, Part 771**.

8.5.1.5 Following the property's official declaration as surplus, the Department shall distribute a listing of surplus property, to each Government of Guam department or agency. Any department or agency may request transfer of the surplus property at no cost to that department or agency.

8.5.1.6 Real property acquired by the Department which has been owned for **ten** or more years and is not located within a transportation corridor, or the right of way of a transportation facility, shall be evaluated as follows to determine the need for retaining:

- (A) The DPWRS or designee shall track the length of time a parcel has been owned by the Department and not used for a transportation purpose. Tracking shall commence within two weeks after the Department certifies the date the transportation facility is complete.
- (B) Within three months after the tenth anniversary date of the acquisition of the property, the DPWRS shall submit the parcel file to all appropriate Department of Public Works offices, for review of potential needs for, drainage, maintenance, access management, environmental management and surveying and mapping, to determine the need to retain ownership of the property. If the property is not required for a present or future transportation purpose, including mitigation, the DDPW and DPWHA may declare the property surplus.
- (C) The property should then be disposed of in accordance with this Section.

8.5.1.7 On a recurring basis, the Department shall review and evaluate its inventory of excess and surplus real properties, maintained pursuant to **Right of Way Manual, Section 8.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance**, to determine if the properties should be retained for a present or future transportation purpose. This evaluation shall be performed in accordance with the following time frames associated with each of the below listed categories of excess and surplus real property:

- (A) Properties Leased to the Public or Used by Consultants; Upon expiration of the lease or vacancy by the occupant.
- (B) Nuisance Properties; **Once a year**.
- (B) High Value Properties; At least once **every three years**.
- (D) Low Value Properties; At least once **every five years**.

- (E) Properties Needed for Future Use; At least once **every five years**.

8.5.1.8 Documentation of the decisions made for each property in the inventory shall be as follows:

- (A) If the DPWRS determines that the property should be retained, the reason for retention should be approved by the DDPW and DPWHA and documented and maintained in the Department's official files.
- (B) If the property is not needed for a present or future transportation purpose, documentation shall be maintained with the inventory and the property should be declared surplus and disposed of in accordance with this procedure. Property not needed for a current or future transportation purpose should not be retained longer than the time necessary to initiate the disposal process.

8.5.1.9 To assist in the marketing and disposal of surplus properties, the Department may contract with a real estate broker. If a broker is used, payment terms shall be established in advance.

8.5.1.10 Surplus real property may be disposed of by public auction, sealed bid or public purpose conveyance as described in **5 GCA, Chapter 22, Article 7, Property Control**. Interested parties shall be informed of the property's current minimum permissible access, and that no additional commitments to access will be made as a condition of the sale.

8.5.1.11 No property, with the exception of those listed below, may be offered for sale to the public without first offering it to each department or agency within the Government of Guam. The following conditions shall apply:

- (A) The Government of Guam department or agency shall have **ten business days** to respond to the DDPW if it wants to acquire the property. If the Government of Guam department or agency wants to acquire the property, the DDPW shall halt all other actions until an agreement can be reached with the requesting department or agency or until it becomes evident that an agreement will not be reached. If an agreement is not reached, the property should be disposed of in accordance with this procedure.
- (B) If the requesting Government of Guam department or agency identifies a public purpose for the property, the property may be conveyed for no consideration pursuant to **Section 8.5.4**.
- (C) If cost of repair has been incurred, then the acquiring agency shall pay such cost.
- (D) The following properties are exempt from this provision:
 - (1) Property, where public sale would be inequitable to an abutting owner, may be sold by negotiation to the abutting owner who reaches agreement with the Department.
 - (2) Property acquired for use as a borrow pit, and no longer needed, may be sold by negotiation to the present owner of the abutting property from which the borrow pit was originally acquired.
 - (3) Property which has not been transferred, traded or sold after **60 days** may be donated to a local charitable, social or civil association on a first come first served basis, or disposed of in any other way possible.
 - (4) Property donated to the Government of Guam for transportation purposes and the facility has not been constructed for a period of at least **five years** and no plans have been prepared for construction of the facility and the property is not located in a transportation corridor, may be reconveyed for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives.

Note: If any portion of donated property is sold within **two years** from the date the property was received, the Department or designee must file the **IRS Form 8282, Donee Information Return**, with the Department of Revenue and Taxation. A copy of the completed form must be provided to the donor of the property.

- (5) Property acquired specifically to provide replacement housing for persons displaced by transportation projects may be sold by negotiation to those displaced persons for whom the specific property was acquired.

8.5.1.12 On properties acquired with Federal funds and to be sold by public auction or sealed bid and the Department determines that the property has a potential use for parks, conservation, recreation or related purposes it shall afford Government of Guam and Federal agencies the opportunity to acquire the property before selling the property.

8.5.1.13 The requirements of **5 GCA, Chapter 22, Article 7**, shall be met, as applicable.

8.5.2 Negotiated Sale

8.5.2.1 Real property may be sold by negotiation under the following conditions:

- (A) If the fair market value of the property at time of disposal is less than \$500 it may be sold for a fixed price in accordance with **5 GCA, Chapter 22, Article 7**. If the property has a market value over \$500 the property shall be sold to the highest bidder in accordance with **5 GCA, Chapter 22, Article 7**.
- (B) If public sale would be inequitable to the abutting owner. The DDPW or authorized designee, shall make the inequity determination.
- (C) If property acquired for use as a borrow pit is no longer needed and will be sold to the present owner of the parcel of abutting land from which the borrow pit was originally acquired.
- (D) If property was acquired specifically to provide replacement housing and will be sold to a displaced person for whom the property was specifically acquired, see **Section 10.5.6**.
- (E) If property is being disposed of as a result of an exchange, the exchange shall be conducted in accordance with **Right of Way Manual, Section 5.11, Acquisition Via Exchange**.

8.5.2.2 If the property will be sold under the conditions described in **Section 8.5.2.1 (B) or (C)** the purchaser must provide evidence of title at his or her own cost. This evidence of title shall be in the form of the last conveyance of record and an affidavit signed by the owner attesting to the fact that he or she is the owner of the abutting property. The affidavit shall be dated no more than **six months** prior to the date of execution of the conveyance document.

8.5.2.3 For those properties sold under conditions described in **Section 8.5.2.1 (B) or (C)** the negotiated sale price shall not be less than market value as determined by an independent appraisal. In situations involving **Section 8.5.2.1(D)**, the Government of Guam shall receive no less than its investment or market value, whichever is lower.

8.5.2.4 If the estimated property value is \$500 or less, the Department may use an agent's price estimate in lieu of an appraisal pursuant to **Right of Way Manual, Section 4.1, Appraisal and Appraisal Review**, except in those cases described in **Section 8.5.2.1 (B) or (C)**. While such property may be negotiated for less than its estimated price with FHWA approval and in accordance with **23 CFR §403(d)(1)**, it is recommended that efforts be directed toward obtaining, at a minimum, the property's estimated price. Negotiations should be conducted to secure the best possible price for the property.

If an agreement cannot be reached through negotiation, public auction or bid processes should be initiated in accordance with **5 GCA §22702**.

8.5.2.5 The following appraisal and appraisal review requirements shall apply when a prospective purchaser initiates the disposal action:

- (A) When the property has been officially declared surplus by the Department or designee, the DDPW or an authorized designee, will determine whether the estimate of market value will be obtained by the Department or the prospective purchaser. The Department shall provide the prospective purchaser with a written notice stating who is responsible for obtaining the estimate of market value and that the prospective purchaser must pay for it. The written notice must advise the prospective purchaser that if he or she is to obtain the estimate of market value it must be an appraisal, which must be prepared by qualified appraiser and that Department retains the right to obtain a second estimate of market value. Except in cases of inequity or property acquired as a borrow pit and sold to the abutter, both defined in **Section 8.5.2.1**, the Department may decide to have the estimate of market value prepared by a the Department's staff appraiser, or designee for which there will be no charge to the prospective purchaser.
- (B) The appraisal's date of valuation shall reflect a current estimate of market value as of the date of execution of the conveyance document. If the appraisal needs to be updated the Department shall pay for an updated appraisal unless the update is required due to the prospective purchaser's failure to perform.
- (C) The appraisal shall be reviewed in accordance with **Section 4.1.9.3**.
 - (1) The appraisal reviewer shall return the appraisal to the Department and provide written documentation of the results of the review.
 - (2) The Department shall consider all appraisals in its negotiations. The negotiated sales price shall be no less than the lowest acceptable appraisal. However, the sales price may be negotiated higher than that value. There is no requirement for the Department to sell the property.
 - (3) If an appraisal is not acceptable, the appraisal reviewer shall return it to the Department with a memorandum citing the area(s) of the appraisal that do not comply with USPAP. If the appraisal was obtained by a prospective purchaser, the Department shall return the appraisal, with the memorandum to the prospective purchaser. If the prospective purchaser's appraisal is determined not to be an acceptable appraisal, then it shall not be considered in the disposal process. The Department may allow the prospective purchaser an opportunity to submit corrections and changes to the appraisal in order to make it acceptable.

NOTE: The review appraiser shall not issue instructions to, or require corrections and/or additional support from, the prospective purchaser's appraiser.

- (D) If the prospective purchaser has obtained an appraisal and negotiations do not result in a sale to the prospective purchaser, the prospective purchaser shall forfeit the cost of the appraisal, unless the property is subsequently sold to another party. In that case, the cost of all acceptable appraisals shall be reimbursed by the acquiring party. If the Department decides not to dispose of the property after notifying the prospective purchaser to obtain an appraisal, the cost of the prospective purchaser's appraisal shall be reimbursed by the Department.

8.5.2.6 The following appraisal and appraisal review requirements shall apply when the Department initiates the disposal action:

-
- (A) The Department shall obtain an estimate of market value from a qualified estimator. However, the Department must use an independent appraiser for disposals defined in **Section 8.5.2.1 (B) and (C)**.
 - (B) The appraisal's date of valuation shall reflect a current estimate of market value as of the date of execution of the conveyance document. If the estimate of market value needs to be updated the Department shall pay for the update.
 - (C) The appraisal shall be technically reviewed by a qualified Department employee.
 - (1) The appraisal reviewer shall provide a copy of the appraisal to the DPWRS with written documentation of the result of the review.
 - (2) If the appraisal is determined not to be acceptable, the appraisal reviewer shall obtain corrections and/or additional support from the staff or fee appraiser to ensure an acceptable appraisal is obtained.

8.5.2.7 The purchaser shall pay all costs associated with the closing, including the appraisal, if prepared by a fee appraiser. The Department shall prepare the necessary closing documents. If the Department agrees to use closing documents prepared by the prospective purchaser, the AGO Counsel shall review and approve all such documents and the legal description in the deed must be reviewed by the DPWRS or designee, and approved by the DDPW and DPWHA.

8.5.3 Public Auction or Sealed Bids

8.5.3.1 If the property is not sold by negotiation pursuant to Section 8.5.2.1, it shall be sold by public auction or sealed bid to the general public after compliance with *Section 8.5.1.11*.

8.5.3.2 The Department may dispose of surplus property by public auction or sealed bid after duly advertising.

- (A) The advertisement shall run at least **one day**, not less than **ten calendar days** prior to the date of the auction or bid opening. This time period is a minimum requirement. More notice may be afforded. The advertisement shall run in a newspaper of general circulation in the area in which the property is located and shall state the date, time, and place of the auction or bid opening, a brief description of the property, the property's current minimum permissible access, the statutory requirement to reserve oil, gas and mineral rights and where to obtain additional information. The cost of obtaining any estimate(s) of market value shall be included in the advertisement which shall also state that the cost of obtaining any estimate(s) of market value shall be in addition to the bid price. The cost of obtaining any estimate(s) of market value shall be supported by an invoice.
- (B) The auction or bid opening shall be held at the location specified in the advertisement. Every bidder shall have the opportunity to inspect the property before the auction or bid opening. The auction or bid opening shall be conducted by the Department or an authorized representative.
- (C) Sale of surplus property by public auction or sealed bid is a competitive bidding process. All bidders shall be notified of their right to file a bid protest.
- (D) The bid package shall include a statement that the successful bidder shall pay all costs to record the conveyance of the property and provide a copy of the recorded deed, showing the book and page number and date of recordation, to the Department within **thirty days** of the closing date. Alternatively, the Department may collect all costs to record the conveyance of the property with the Department of Land

management, and record the conveyance document within **thirty days** of the closing date.

- (E) A minimum bid may be specified. If specified, it shall not be less than the estimate of market value. If specified, the minimum bid amount shall appear in the advertisement with a statement that the Government of Guam reserves the right to withdraw the property if the minimum bid is not received. If the minimum bid is not obtained at the auction or bid opening, the Department or authorized designee may approve the highest bid received which will be considered the market value for the property or may decline all bids and advertise a second time.
- (F) At the option of the Department, if the minimum bid is not obtained at the first auction or bid opening, they may advertise a second time and hold a second auction or bid opening. A second advertisement and auction or bid opening is optional.
- (G) If a specified minimum bid is not obtained at the second auction or bid opening, the Department or authorized designee may approve the highest bid received which will be considered the market value for the property.
- (H) A nonrefundable deposit of at least ten percent of the bid amount, shall be required of the successful bidder in the form of a cashier's check, money order or other noncancellable instrument at the time of the award of the bid. Personal or business checks shall not be accepted. Full payment shall be made by the purchaser at closing with a cashier's check, money order or other noncancellable instrument for the remaining amount owed on the sale. Closing should occur within **thirty calendar days** from acceptance of the bid award. All payments, including the deposit, shall be deposited according to **Section 8.5.9.9** before the close of business on the **next business day** after receipt of the payment.

8.5.3.3 The successful bidder shall pay all costs associated with the closing including the cost of the appraisal if prepared by a fee appraiser. The Department shall prepare all necessary closing documents.

8.5.3.4 If a prospective purchaser initiates a disposal action that requires the property be sold by public auction or sealed bid, the appraisal and review requirements of **Section 8.5.2.45 (A-C)** shall apply. The following requirements shall also apply:

- (A) The successful bidder shall pay the cost of the acceptable appraisal(s).
- (C) If the Department decides, for any reason, not to dispose of the property after notifying the applicant to obtain an appraisal, the cost of the prospective purchaser's appraisal shall be reimbursed by the Department.
- (C) If advertised and the minimum bid is not obtained, the prospective purchaser will forfeit the cost of the appraisal unless the Department accepts a lower bid or elects to re-advertise and the re-advertisement results in a sale of the property.

8.5.3.5 If the Department initiates a disposal action by public auction or sealed bid, the appraisal and review requirements of **Section 8.5.2.5 (A-C)** and **Section 8.5.2.6** shall apply. The following requirements shall also apply:

- (A) If a fee appraiser is used, the cost of the appraisal shall be paid by the Department.
- (B) If the public auction or sealed bid results in a sale, the successful bidder shall refund the cost of the fee appraisal to the Department. Therefore, the cost of the appraisal shall be included in the advertisement which shall also state that the appraisal cost shall be in addition to the bid price.

8.5.4 Public Purpose Conveyance

8.5.4.1 Real property may be conveyed by the Department to a local charitable, social or civil association without monetary consideration unless legislation or bond provisions provide otherwise.

8.5.4.2 When transfers are made to a local charitable, social or civil association for no consideration, the local charitable, social or civil association shall furnish a letter identifying the public purpose for the property from the association letterhead, or, if the entity consists of a group requiring consensus to take such action, a copy of the resolution confirming such consensus. The Department must obtain this documentation at any time prior to conveyance of the property.

8.5.4.3 If the land to be conveyed was acquired with federal participation, the requirements of **Section 8.5.8** shall apply.

8.5.4.4 On disposals at less than fair market value of property acquired with Federal participation, the Department must clearly show that disposal for less than fair market value is in the public interest for a social, environmental or economic purpose. This can be accomplished by a statement of the public use of the property and the expected resulting benefit to the public.

8.5.4.5 All public purpose conveyances for property acquired with federal funds require a reverter clause in the conveyance document unless market value for the property is obtained. At the Department's discretion, for property acquired with Government of Guam funds the public purpose conveyance document may include a reverter clause, except in those cases when full market value for the property is obtained and a reverter clause would not be required or appropriate. When a public purpose conveyance document includes a reverter clause, an appraisal is not required. If the property is acquired with Federal funds and a reverter clause is not included in the public purpose conveyance document, an appraisal or estimate of value is required and market value must be obtained.

8.5.4.6 If real property is conveyed for a public purpose, the acquiring entity shall pay all costs associated with the closing. The Department shall prepare all necessary closing documents.

8.5.4.7 The reverter clause shall cause all property rights to revert to the Government of Guam if the property is used by the acquiring entity for other than a public purpose.

8.5.4.8 Public Purpose Conveyance Report: The Department shall prepare an annual report of property conveyed for public purpose during the reporting period. The report shall include an identification of each property by item/segment number, parcel number(s), estimated value and size (in acres).

8.5.5 Disposal of Nuisance Properties

8.5.5.1 The Department shall determine whether the property will require significant costs to be incurred for maintenance or if continued ownership of the property exposes the Government of Guam to significant liability risks.

8.5.5.2 If a property is determined to be significantly costly to maintain or a significant liability risk to the Government of Guam, the DPWRS may use the projected maintenance costs over the next **five years** to offset the market value in establishing a value for disposal of the property, even if the value is zero.

8.5.5.3 The Department's official parcel file shall be documented to include:

- (A) Estimate of market value;
- (B) Memorandum prepared by a qualified Department employee documenting the result of a review performed in compliance with **Right of Way Manual, Section 4.1, Appraisal and Appraisal Review**, when applicable;

and

- (D) Written documentation establishing the property's significant liability risk to the Government of Guam and the projected five year maintenance costs. If no significant liability risk exists but maintenance costs are significant, the projected **five year** maintenance costs should be established.

8.5.6 Disposal of Property Originally Acquired as Replacement Housing

8.5.6.1 Property originally acquired specifically to provide replacement housing for persons displaced by transportation projects under **42 USC, Chapter 61 Sec 4626** may be sold to the original displacee for either the current market value or the Department's investment in such property, whichever is less.

8.5.6.2 The Department shall receive no less than market value if the sale is to anyone other than the displaced person. Market value should be established in accordance with **Section 8.5.1.5**.

8.5.6.3 The cost of the appraisal if any, shall be borne by the displaced person. If someone other than the displaced person purchases the property, any cost of the appraisal shall be reimbursed to the displaced person by the purchaser. Reference should also be made to **Section 8.5.3.4** regarding payment for the appraisal.

8.5.7 Disposal of Buildings and Acceptance of Replacement Buildings as Compensation

8.5.7.1 When selling a building, the Department may accept the construction of a replacement building totally or partially in lieu of cash.

8.5.7.2 This type of disposal/replacement requires the approval of the Governor prior to any advertisement for public auction or sealed bid. The request for approval shall be sent by the Department to the Governor.

8.5.7.3 Approval by the Governor is subject to the notice, review, and objection procedures outlined below:

- (A) Notice of action to be taken, either approval of disposal or replacement by the Governor shall be provided, in writing, to the Legislature at least **fourteen calendar days** prior to the action referred to, unless a shorter period is approved in writing by the chair.
- (B) If the chair of the Legislature timely advises, in writing, the Governor that the action exceeds the delegated authority of the Governor or is contrary to legislative policy or intent, the Governor shall void such action and instruct the Department to change immediately its spending action or spending proposal until the Legislature addresses the issue. The written documentation shall indicate the specific reasons that an action or proposed action exceeds the delegated authority or is contrary to legislative policy and intent.

8.5.7.4 The public auction/sealed bid requirements of this procedure shall apply. The advertisement or bid specification package shall disclose that an asbestos survey and Operations and Maintenance (O & M) Plan, if applicable, for the government's building have been prepared and are available for review prior to the public auction or bid opening.

8.5.7.5 The replacement building shall be consistent with the current and projected needs of the Government of Guam, and shall be of equal value, as determined by an appraisal, with the government's building or supplemented with cash to equal the appraised value. The appraisal and appraisal review requirements of this procedure and **Right of Way Manual, Section 6.1, Advance Acquisition**, shall apply.

8.5.8 Concurrence by the Federal Highway Administration (FHWA)

8.5.8.1 On properties acquired with FHWA participation, written concurrence to dispose of the property shall be obtained from FHWA prior to advertising or negotiating for the disposal. This concurrence is required on properties located within the right of way lines on the approved right of way maps or when a change in the access control line will occur. Requests, including complete supporting documentation, shall be submitted to the FHWA Right of Way Administrator, Property Management, for FHWA concurrence. Concurrence is not required when the property to be disposed of is an uneconomic remnant that has not been incorporated within the approved right of way limits. The request for concurrence requires the following:

- (A) This request for concurrence shall be in accordance with **23 CFR, Part 710, Subpart D** in reference to final acceptance of the project and shall be sent to the FHWA Right of Way Administrator, Property Management
- (B) **23 CFR Part 710, Subpart D** applies when the disposal involves a change in the access control line.

8.5.8.2 Requests for FHWA Concurrence shall include the following documentation.

- (A) Federal-aid number;
- (B) An explanation as to why the property is not needed;
- (C) A right of way map marked to show the location of the property to be disposed. (**NOTE:** The map must provide enough detail to allow the property to be physically located, or additional maps may be submitted to help locate the property.);
- (D) When available, marked construction plans which show the property in relation to construction features and remaining right of way (photographs and other methods of depicting or explaining the construction features in relation to the subject property may be used if construction plans are not available);
- (E) Documentation of the offices included in the routing and comments made by the offices with the resolution of the comments and declaration of surplus by the DDPW or authorized designee;
- (F) Documentation of the determination of market value except for public purpose disposals with required reverter clauses in the conveyance documents;
- (G) If the disposal is for a public purpose for less than market value, a copy of the resolution signed by the DDPW. If the resolution has not been executed, submit a copy of the language of the resolution; and
- (H) If the disposal is for a public purpose for less than market value, a copy of the form quit claim deed which includes the reverter clause.

8.5.9 Sale Closing

8.5.9.1 The deed must be prepared in accordance with the requirements of **Right of Way Manual, Section 5.5, Legal Documents and Land Acquisition Closing**, as applicable. The Department or designee shall conduct the closing as follows:

- (A) Prepare and have executed a deed to convey the property. The deed shall not contain any warranties of title to the conveyed property, for example a warranty deed shall not be used.

-
- (B) The deed shall be executed for the Department, by the AGO and the Governor. The seal of Guam shall be affixed to the deed.
 - (C) Obtain reservation of mineral interests as follows:
 - (1) The deed, for conveyances as in conveyance of property donated for transportation purposes, or public purpose conveyances, shall include a reservation of mineral interests to the Government of Guam, unless such reservation is waived as described below.
 - (2) If the applicant petitions for the waiver of the reservation, and provides written justification, the waiver may be approved, in writing, by the DDPW or authorized designee.
 - (3) Notice of the reservation shall be made in the advertisement for public auction or sealed bids or at the start of negotiations. The language reserving the interests shall be embodied in the deed unless the reservation waiver request has been approved.

8.5.9.2 At closing, the DDPW or designee shall receive from the purchaser the balance due on the sale in the form of a cashier's check, money order, or other noncancellable instrument. Personal or business checks shall not be accepted. Funds received shall be deposited according to **Section 8.5.9.9**.

8.5.9.3 If the property to be disposed of includes one or more buildings, either prior to or at closing, the purchaser shall be provided with and acknowledge receipt of **Form No. 8.5-1, Radon Gas Notification and Disclosure of Lead Based Paint**.

8.5.9.4 If the property being disposed of was constructed prior to 1978, at least **ten days** prior to closing, the purchaser shall be provided with and acknowledge receipt of **Form No. 8.5-1, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning**, and a copy of the **EPA Pamphlet, Protect Your Family from Lead in Your Home** in accordance with **40 CFR, Part 745**. Additionally, the purchaser shall have the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint or to waive that right on the form. A copy of this form shall be retained in the Department's official file.

8.5.9.5 At closing, the purchaser shall be provided:

- (A) A deed; and
- (C) A copy of the signed **Form No. 8.5-1, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning**.

8.5.9.6 If **Form No. 5.2-7, Closing Statement** is used, it shall be prepared in accordance with **Right of Way Manual, Section 5.5, Legal Documents and Land Acquisition Closing**

8.5.9.7 The Department of Public Works in collaboration with the Department of Revenue and Taxation shall create a new fund which will be separate and apart from all other funds of the Government of Guam. The fund shall not be made a part of the Government of Guam General Fund and shall be kept in separate bank account under the purview of the Public Auditor. All monies from the sale of surplus properties or income from the rental or lease of real property owned by the Government of Guam through acquisition by the Department of Public Works Office of Right of Way (Department) shall be deposited into this fund as per instructions from FHWA. All eligible funds are required to be credited to the federal highway fund account to be used in future Title 23 eligible projects during the fiscal year they were generated as per **23 USC § 156**.

8.5.9.8 Credit to federal funds is not required. **Form No. 8.6-6, Right of Way Deposit Transmittal**, shall be clearly marked

“DO NOT CREDIT FEDERAL FUNDS”.

8.5.9.9 All revenue collected shall be deposited into a special trust fund established for the Department of Public Works to deposit all revenues collected from the leasing or sale of the Department of Public Works property not needed for transportation purposes in accordance with ***Right of Way Manual, Section,9.1.4, Revenues.***

8.5.9.10 A copy of the conveyance document shall be forwarded to the DLM Office. If not contained in the conveyance document, the Item/Segment Number, and parcel number shall be included.

8.5.10 Disclaimers

8.5.10.1 When a property owner requests the Department to disclaim any interest in real property, the Department shall determine if the Government of Guam holds or has ever held a real property interest in the property that is the subject of the request for disclaimer. If no evidence of a Government of Guam interest in the subject property is found, the Department may execute either a disclaimer or a quitclaim deed to the property.

8.5.10.2 If it is determined that the Government of Guam has had an interest in the property that is no longer valid (such as an expired temporary easement), the Department or designee should provide a quitclaim deed to the property that is the subject of the property owner’s request.

8.5.10.3 If it is determined that the Government of Guam has a current interest in the property that is the subject of the property owner’s request for a disclaimer, the DPWRS shall review and recommend to the DDPW and DPWHA, who will then determine if it should release the interest. If the interest is to be released, the Department shall comply with the disposal requirements of this section.

8.5.11 Requirements for Disposal of Surplus Properties

8.5.11.1 As per ***21 GCA Section 60112***, the Department shall obtain approval from the Guam Legislature by duly enacted legislation, on all government-owned real property land sales.

HISTORY

Original Issue Date: January, 2011.

Revision 1 – October 2017 – changes to sections 8.5.1.6, 8.5.1.8, 8.5.2.7, and 8.5.10.3.



DPW Form 8.5-1

RADON GAS NOTIFICATION AND DISCLOSURE OF LEAD-BASED PAINT HAZARDS WARNING

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____

- FOR LEASING OF GOVERNMENT OF GUAM OWNED REAL PROPERTY**
- FOR SALE OF GOVERNMENT OF GUAM OWNED REAL PROPERTY**

I, _____, the undersigned do hereby acknowledge that I have received a copy of this Radon Gas Notification and information concerning lead-based paint listed on this form.

Name Printed

BUYER/LESSEE IS HEREBY NOTIFIED:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and Territorial guidelines have been have not been found in buildings in Guam

LEAD PAINT: This dwelling was built or may have been constructed prior to 1978 and may contain lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. A risk assessments or inspection for possible lead-based paint hazards is recommended prior to purchase.

DEPARTMENT'S DISCLOSURE

- The Department has no knowledge of lead-based paint and;
- The Department has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

PURCHASER'S/LESSEE'S Acknowledgment (initial this section)

- Purchaser/Lessee has received the pamphlet Protect Your Family from Lead in Your Home. Purchaser has (check one item only):
 - Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
 - Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

CERTIFICATION OF ACCURACY: The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

BUYER/LESSEE:

DEPARTMENT OF PUBLIC WORKS:

NAME PRINTED

REPRESENTATIVE NAME PRINTED

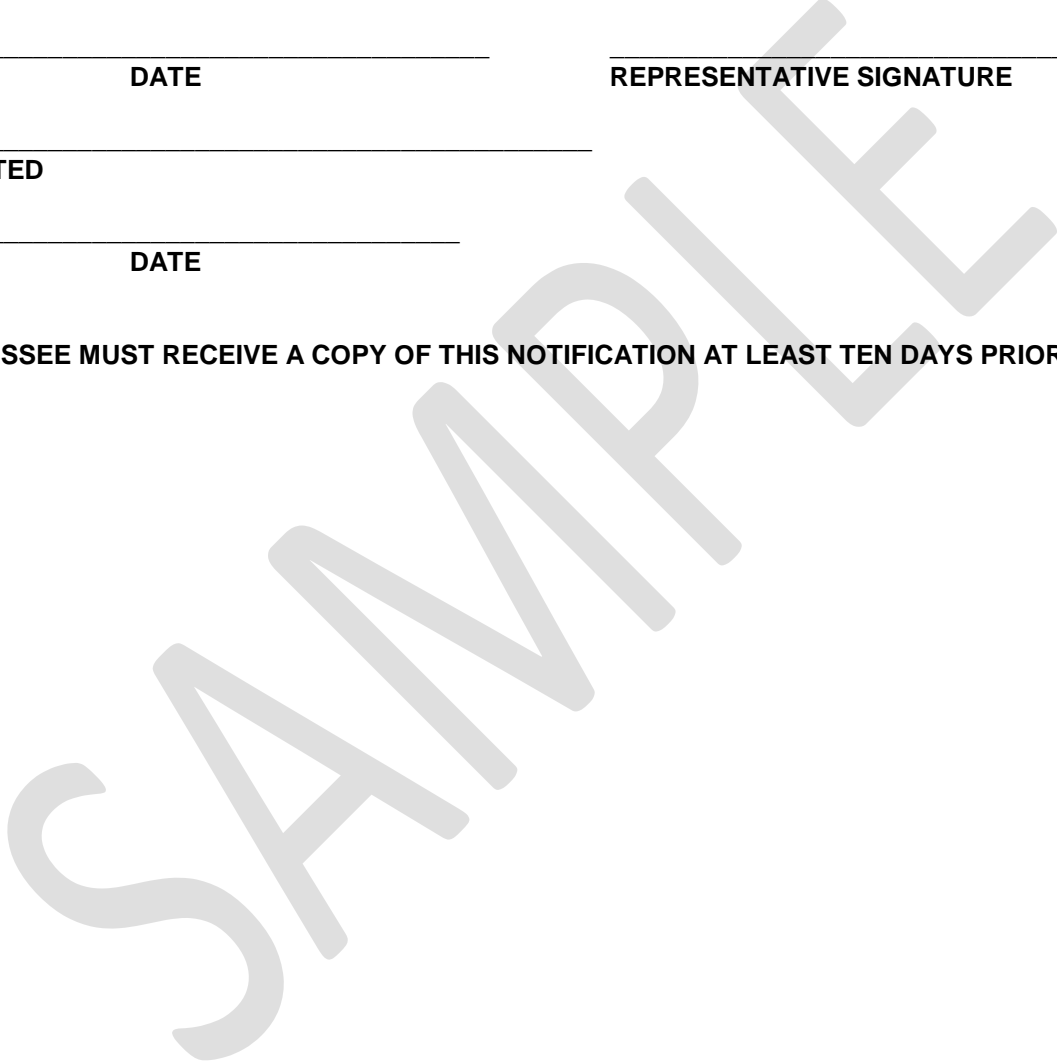
SIGNATURE DATE

REPRESENTATIVE SIGNATURE DATE

NAME PRINTED

SIGNATURE DATE

BUYER/LESSEE MUST RECEIVE A COPY OF THIS NOTIFICATION AT LEAST TEN DAYS PRIOR TO CLOSING



Section 8.6

RIGHT OF WAY PROPERTY LEASES

TABLE OF CONTENTS

PURPOSE..... 1

AUTHORITY 1

SCOPE..... 1

EFFECT OF CHAPTER ON OTHER AGENCIES 1

REFERENCES..... 1

FORMS 2

DEFINITIONS 2

8.6.1 General Leasing Provisions 3

8.6.2 Collection of Rental Funds and Evictions..... 4

8.6.3 Payment on Leases 5

8.6.4 Leases by Sealed Bids..... 6

8.6.5 Negotiated Leases 7

8.6.6 Leasebacks 7

8.6.7 Public Purpose Leases 8

8.6.8 Concurrence by the Federal Highway Administration (FHWA)..... 8

8.6.9 Reporting Requirements 9

HISTORY 10

Section 8.6

RIGHT OF WAY PROPERTY LEASES

PURPOSE

To establish uniform procedures for the leasing of real property owned by the Government of Guam through acquisition by the Department of Public Works Office of Right of Way (Department), or any part thereof, not presently needed for the construction, operation, maintenance, or mitigation of a transportation facility. The Department of Public Works hereafter will be referred to as the Department.

AUTHORITY

23 Code of Federal Regulations (CFR) Part 710.101, 710.105
23 Code of Federal Regulations (CFR) Part 710.401, Subpart D
23 Code of Federal Regulations (CFR) Part 710.407
49 Code of Federal Regulations (CFR) Part 24.102 (m) Appendix A
21 GCA Chapter 1, Property in General
21 GCA Chapter 4, Article 1, Mode of Transfer
21 GCA Chapter 29, Land Title Registration

SCOPE

This section will be utilized by appropriate the Department's Right of Way staff, and consultants employed by the Department for title work and the Office of Attorney General (OAG).

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

23 Code of Federal Regulations Part 710
23 Code of Federal Regulations Part 710, Subpart D
40 Code of Federal Regulations Part 745
Right of Way Manual, Section 6.1, Appraisal and Appraisal Review
Right of Way Manual, Section 7.2, General Relocation Requirements
Right of Way Manual, Section 10.5, Disposal of Surplus Property
Right of Way Manual, Section 8.7, Asbestos Management
Right of Way Manual, Section 9.1, Funds Management
Right of Way Manual, Section 9.3, Right of Way Records Management
7 GCA Chapter 11, Time for Commencing Actions
5 GCA Chapter 5, Article 5, Procurement of Construction, Architect-Engineer and Land Surveying Services Procurement of Commodities and Contractual Services
5 GCA Chapter 32, Article 7, Social Security Number Confidentially Act
21 GCA §29101 Titles to Real Estate

21 GCA §29149 Transfer by Registered Owner
21 GCA §29150 Issuance of a New Certificate Where Only a Part of Land is Transferred
21 GCA §29153 Forms of Deeds, Mortgages, Leases and Other Instruments
21 GCA Chapter 39, Marketable Title Act

FORMS

5.2-6, Release and Right of Entry Agreement for Asbestos Survey
8.5-2, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning
8.6-1, Airspace Agreement
8.6-2, Cash Receipt Form
8.6-3, Collection Form
8.6-4, Lease Agreement
8.6-5, Proposed Lease Notification
8.6-6, Right of Way Deposit Transmittal
8.7-4, Release and Notice of Non-Friable Asbestos Containing Materials (ACM)
8.7-5, Release and Notice of Friable Asbestos Hazard

DEFINITIONS

Agent's Estimate of Market Rent: The estimate of rent on a leaseback that is determined by a DPWLAS, at the discretion of the DPWRS, DDPW and DPWHA on non-complex and relatively low value rental estimates. The estimate is determined, as applicable, by considering prevailing market conditions, the terms of the proposed lease, the level of service and maintenance required by the lease, the amount of rent currently being paid by a tenant on the subject property or for a leaseback to a fee owner, the market rent estimated in the approved appraisal, and any other support that may be available.

Airspace Agreement: An instrument conveying the leasehold interest of any property within the right of way after final acceptance of the project by the Federal Highway Administration (FHWA). This includes the lease of any Department owned properties which are located on federal-aid projects.

Appraisal: The report of a value estimate prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and found to be a report which can be used to make a prudent business decision. This can include a Value Finding for non-complex, vacant land appraisals in accordance with Section 4.1, Appraisal and Appraisal Review.

Governmental Entity: A federal, Government of Guam, or any other entity that independently exercises any type of federal, territorial, or local governmental function. This term does not include non-profit organizations.

Inequitable: Unfairly or unjustly affecting an abutting property owner's ultimate or present use of real property to the extent it will hinder or prevent its use for such purposes.

Leaseback: A lease of Department owned property to a former owner or tenant where construction is scheduled or pending and the former owner or tenant has not been relocated from the property.

Negotiated Lease: The direct leasing to the public of property owned by the Department, where the rental amount is reached by agreement between the Department (lessor) and the lessee.

Public Purpose Lease: A lease by the Department to another governmental entity for a social, economic, or environmental purpose which would benefit the general public.

Temporarily Surplus Property: Real property owned by the Government of Guam, through acquisition by the Department of Public Works Office of Right of Way (Department), as determined by the DDPW in writing, to be available for lease.

8.6.1 General Leasing Provisions

8.6.1.1 Upon approval by the DDPW, or authorized designee, the Department may convey a leasehold interest in any land, building or other property owned by the Department which is not presently needed for proposed or anticipated transportation facilities. Before leasing property acquired through the eminent domain process, the previous property owner must be given the opportunity to repurchase the property at the same price received from the Department during the eminent domain acquisition process. This requirement is applicable if less than ten (10) years have elapsed since the property's acquisition date. Properties other than those described in a filed petition of condemnation are exempt from the ten (10) year ownership requirement. Other exceptions to the ten (10) year requirement may be granted when the purchaser is providing:

- (A) Common carrier services;
- (B) Roads or other rights of way open to the public for transportation, at no charge;
- (C) Transportation related services, business opportunities;
- (D) Public or private utilities;
- (E) Public infrastructure; or
- (F) Uses that occupy, pursuant to a lease, an incidental part of a public property or public facility for the purpose of providing goods and services to the public.

8.6.1.2 Department owned property may be leased by negotiation (including leasebacks), sealed bids, or public purpose lease. Except in the case of a leaseback, the property shall be declared temporarily surplus by the DDPW or authorized designee prior to execution of the lease following the process outlined in the ***Right of Way Manual, Section 8.5, Disposal of Surplus Real Property***.

8.6.1.3 The Department may convey a leasehold interest in Department owned property to:

- (A) The owner from whom the property was acquired (leasebacks);
- (B) The holders of leasehold estates (i.e., tenants) existing at the time of the Department's acquisition (leasebacks);
- (C) The general public; and
- (D) Governmental entities.

8.6.1.4 The Department shall not lease any acquired building where an asbestos survey has identified the presence of friable asbestos containing materials (ACM) unless action has been taken to remove, encapsulate, or enclose the materials or, in the case of a leaseback, the occupant(s) has signed Form No. 8.7-5, Release and Notice of Friable Asbestos Hazard. If the Department grants the lessee the right to construct improvements, the lease agreement shall state that ACM shall not be used. A certification by the contractor attesting to this shall be submitted to the Department.

8.6.1.5 No lease, unless for a public purpose or as described in Section 8.5.1.1, shall be for a period of more than five (5) years. DPW may extend the lease for an additional five (5) year term. At the conclusion of two five-year terms, the lease process may commence again.

8.6.1.6 Form 8.6-4, Lease Agreement, shall be used for all leases. (**NOTE:** The public liability insurance requirement outlined in Article 7 of 8.6-4, Lease Agreement, applies only to non-residential leases). **Form 8.6-1, Airspace Agreement**, shall be used for all leases of property located within the right of way on federal-aid projects.

8.6.1.7 All lease agreements shall be executed by an authorized representative of the lessee, under attestation, and approved by the Office of Attorney General, prior to execution by the Director of the Department of Public Works.

8.6.1.8 The following information shall be compiled prior to execution of the lease agreement:

- (A) Complete name and address of lease applicant(s);
- (B) A written declaration by the Director of the Department of Public Works or authorized designee that the property is temporarily surplus and therefore available for lease. Leasebacks are excluded from this requirement;
- (C) A right of way map which identifies the proposed lease area;
- (D) A legal description of the proposed lease area;
- (E) An estimate of value of the proposed lease area in accordance with the requirements in **Right of Way Manual, Section 8.5, Disposal of Surplus Real Property** or, at the discretion of the DPWRS on leasebacks, an agent's estimate of market rent.

8.6.1.9 If the property to be leased includes one (1) or more buildings, prior to signing the lease, the lessee shall be provided with and acknowledge receipt of **Form No. 8.5-2, Radon Gas Notification and Disclosure of Lead based Paint Hazards Warning**.

8.6.1.10 If the property to be leased is a residential structure and includes one (1) or more buildings constructed prior to 1978, prior to signing the lease, the lessee shall be provided with and acknowledge receipt of **Form No. 8.5-2, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning**, and a copy of the **E.P.A. Pamphlet, "Protect Your Family from Lead in Your Home"**, in accordance with **40 Code of Federal Regulation (CFR) Part 745**.

8.6.1.11 On properties acquired with federal participation, the environmental consequences of leasing must be considered in accordance with **23 CFR, Part 771**. Leasing of excess real property is a Programmatic Categorical Exclusion, and must be addressed activity in accordance with and documented by the Guam Environmental Protection Agency (GEPA). A copy of the completed **"Programmatic Categorical Exclusion Checklist"** shall be included in the district R/W leasing file for the property.

8.6.1.12 As per **21 GCA Section 60112**, the Department shall obtain approval from the Guam Legislature by duly enacted legislation, on all government-owned real property leases.

8.6.2 Collection of Rental Funds and Evictions

8.6.2.1 The Department shall develop and implement a billing system for tracking all rental funds owed to the Department.

8.6.2.2 All rental funds are due on or before the date(s) specified in **Form 8.6-4, Lease Agreement**, or **Form No. 8.6-1, Airspace Agreement** and must include the territorial sales tax. **NOTE:** The above tax will only apply to non-residential leases.

8.6.2.3 Rental funds not received within ten (10) days of the date due, as described in the lease or airspace agreement, are considered past due.

8.6.2.4 If rental funds are not received within 20 days of the date due, the lessee shall be notified by certified mail, return receipt requested, using **Form No. 8.6-3, Collection Form**, that rental payments are past due and must be remitted within three (3) business days following receipt of notice. The notice shall include the dollar amount of any penalties, as outlined in the **Lease Agreement, Form 8.6-4** or **Form No. 8.6-1, Airspace Agreement**, which have accrued due to late payment.

8.6.2.5 If rental funds are not received within 25 days of the date due, all outstanding rental amounts, including penalties, shall be turned over to the Guam Office of Attorney General for collection and possible eviction. The Guam Office of Attorney General shall be furnished with copies of all correspondence and receipts evidencing attempts made by the Department to contact the lessee for payment.

8.6.2.6 If rental funds are not received within 45 days of the date due and eviction proceedings have not been initiated, the DDPW or designee shall notify the Guam Office of Attorney General to begin the eviction process as set forth in **§ 21104 of 21 GCA Real Property, Ch. 21 Forcible Entry and Detainer**.

8.6.2.7 If the Department is unable to collect delinquent rental payments, at the discretion of the DDPW, the Department may write off the outstanding balance, or forward to the Department's contracted collection agency.

NOTE: The DDPW may elect to waive the late fee. If this option is selected, a justification for this waiver must be maintained in the file.

8.6.3 Payment on Leases

8.6.3.1 Cashier's, personal or business checks are acceptable and shall be made payable to the Department. Cash payments may also be accepted. The Department shall ensure that all applicable federal and local sales taxes are collected and properly entered on **Form No. 8.6-6, Right of Way Deposit Transmittal**.

8.6.3.2 If a check paid to the Department is stopped by the lessee or returned due to insufficient funds, a cashier's check or other noncancellable instrument shall be required for the current payment and all future payments.

8.6.3.3 The DPWRS shall process the payment and prepare the following documents in accordance with the **Right of Way Manual, Section 9.1, Funds Management**:

- (A) Lease payment, if applicable;
- (B) **Form No. 8.6-6, Right of Way Deposit Transmittal**; and
- (C) **Form No. 8.6-2, Cash Receipt**.

8.6.3.4 All items required by **Section 8.6.3.3** shall be forwarded to the Office of the Director of Revenue and Taxation.

8.6.3.5 The Department of Public Works in collaboration with the Department of Revenue and Taxation shall create a new fund which will be separate and apart from all other funds of the Government of Guam. The fund shall not be made a part of the Government of Guam General Fund and shall be kept in separate bank account under the purview of the Public Auditor. All monies from the sale of surplus properties or income from the rental or lease of real property owned by the Government of Guam through acquisition by the Department of Public Works Office of Right of Way (Department) shall be deposited into this fund as per instructions from FHWA. All eligible funds are required to be credited to the federal highway fund account to be used in future Title 23 eligible projects during the fiscal year they were generated as per **23 USC § 156**.

8.6.3.6 Credit to federal funds is not required. **Form No. 8.6-6, Right of Way Deposit Transmittal**, shall be clearly marked "DO NOT CREDIT FEDERAL FUNDS".

8.6.3.7 All revenue collected shall be deposited into a special trust fund established for the Department of Public Works to deposit all revenues collected from the leasing or sale of the Department of Public Works property not needed for transportation purposes in accordance with **Right of Way Manual, Section, 9.1.4, Revenues**.

8.6.4 Leases by Sealed Bids

8.6.4.1 Unless otherwise addressed in this procedure, all leases shall be awarded by sealed bid. All leases of property on federal aid projects shall comply with the provisions of **23 CFR, Part 710, Subpart D**. The Department may lease by sealed bid after duly advertising. All advertisements and bid documents shall reserve the Department's right to reject any and all bids. The following shall apply to the bid process:

- (A) The advertisement shall run at least one (1) day, not less than fourteen (14) calendar days prior to the date of the bid opening. This time period is a minimum requirement. More notice may be afforded. The advertisement shall run in a newspaper of general circulation in the area in which the property is located and shall state the date, time, and place of the bid opening, a brief property description, the property's current permissible access, and where to obtain additional information. Every bidder shall have the opportunity to inspect the property prior to the day of the bid opening.
- (B) The bid opening shall be held at the location specified in the advertisement and conducted by the Department or an authorized representative.

8.6.4.2 A minimum bid may be specified in the advertisement. If specified, it shall not be less than the property's estimated market rent as determined by a qualified estimator. If specified, the minimum bid amount shall appear in the advertisement with a statement that the Department reserves the right to withdraw the property if the minimum bid is not received. If the minimum bid is not obtained at the bid opening, the DDPW or authorized designee may approve the highest bid received.

8.6.4.3 If the minimum bid is not obtained at the first bid opening, the Department may advertise a second time and hold a second bid opening. A second advertisement and bid opening is optional.

8.6.4.4 If a specified minimum bid is not obtained at the second bid opening, DDPW or authorized designee may approve the highest bid received.

8.6.4.5 Leasing of property by sealed bid is a competitive bidding process. All bidders shall be notified of their right to file a bid protest pursuant to **5GCA § 5425**.

8.6.4.6 When the Department receives the advertisement invoice from the newspaper, the following shall be sent to the DPWRS for processing in accordance with **Right of Way Manual, Section 9.1, Funds Management**:

- (A) Original and three (3) copies of the invoice;
- (B) Original and three (3) copies of the proof of publication; and

8.6.5 Negotiated Leases

8.6.5.1 The Department may negotiate a lease for not less than the property's current market rent as determined by a qualified appraiser. The lease may be negotiated with the owner from whom the property was acquired (leaseback) or with holders of leasehold estates existing at the time of the Department's acquisition (leaseback) or with an abutting owner if public bid would be inequitable. For a leaseback to an existing tenant, the amount the tenant was paying to the previous owner from whom the Department's acquired the property should be considered in determining market rent.

8.6.5.2 If public bidding would be inequitable, as determined by the DDPW or authorized designee, the Department may enter into a lease with an abutting owner. The abutting property owner shall provide evidence of ownership at his or her own cost. This evidence shall be in the form of the last deed of record and an affidavit signed by the owner attesting to the fact he or she is the owner of the abutting property. The affidavit shall be dated no more than six (6) months prior to the date of execution of the lease agreement. This evidence of ownership requirement does not apply to leasebacks to owners from whom the property was acquired or with the holders of leasehold estates existing at the time of the Department's acquisition. If negotiating directly with an abutter, the following notification is required:

- (A) All abutting property owners shall be notified, by certified mail, of the Department's intent to lease the property. The notice shall be made using **Form No. 8.6-5, Proposed Lease Notification**.
- (B) For the purpose of notifying all abutting owners of Department's intent to lease, the Department of Revenue and Taxation tax rolls may be used to determine ownership(s).

8.6.6 Leasebacks

8.6.6.1 The Department may enter into a leaseback with the owner from whom the property was acquired or the holders of leasehold estates (i.e. tenants) existing at the time of the acquisition. The evidence of ownership requirement does not apply to leasebacks. This provision applies where construction is scheduled or pending, and former owners or tenants have not been relocated from the property. All leasebacks shall be approved by the DDPW or authorized designee.

8.6.6.2 A written lease agreement shall be required when the lease period extends beyond the expiration of **Form No. 7.2-3, 30 Day Notice to Vacate** or beyond the expiration of **Form No. 7.2-4, 90 Day Letter of Assurance**, whichever is later. After expiration of the **30 Day Notice to Vacate** or the **90 Day Letter of Assurance**, the written lease agreement is required to ensure the Department's control of the property, including the ability to terminate occupancy by the tenant.

8.6.6.3 Lease agreement shall include the applicant's name and address and any special stipulations agreed to by the parties (e.g., late payments, provisions for utility and sewer charges, etc.).

8.6.6.4 When the Department acquires property and the occupant desires to continue occupancy of such property beyond the expiration of the established date to vacate, the occupant(s) shall sign **Form No. 5.2-6, Release and Right of Entry Agreement for Asbestos Survey**. This agreement releases the Department of any liability regarding the possible presence of asbestos in the building and also provides written notice that an asbestos survey may be performed and the occupant(s) will permit entry to the Department and its authorized agents for this purpose. This agreement shall be signed and submitted no later than the day of closing. If the occupant(s) refuse(s) to sign, occupancy beyond the established date to vacate will be denied.

8.6.6.5 If an asbestos survey indicates that asbestos containing materials are located in the building, the occupant shall receive notice that asbestos containing materials have been identified. The notice shall set forth any special treatment or handling instructions regarding the materials. The occupant(s) will be required to sign a release of liability, either **Form No. 8.7-4, Release and Notification of Non-Friable Asbestos Containing Materials (ACM)** or **Form No. 8.7-5, Release and Notification of Friable Asbestos Hazard** depending on whether the asbestos containing material is friable or not, if the

occupant(s) intend(s) to remain in occupancy after notification that asbestos is present in the building. If the occupant(s) refuse(s) to sign, further occupancy shall be denied.

8.6.6.6 The timeframe for vacancy specified in notices to terminate the lease, shall not terminate prior to the time periods allowed by the **Relocation Assistance 90-day Letter of Assurance** and the **30-day Notice to Vacate**, as applicable, as required in the **Right of Way Manual, Section 7.2, General Relocation Requirements**.

8.6.6.7 On leasebacks, the DPWRS must receive approval by the DDPW and DPWHA when deciding the method of determining the market rent.

8.6.6.8 The rental rate charged shall be the market rent as determined by a qualified real estate agent or a certified appraiser. The estimate of market rent shall consider the terms of the proposed lease agreement, the level of service and maintenance to be provided, and the rental amount paid by the occupant to the previous owner (if applicable).

8.6.6.9 Leasebacks may extend until such time as the Department determines the property is needed for a transportation use. Any extension of leasebacks shall require the approval of the DDPW or designee.

8.6.7 Public Purpose Leases

8.6.7.1 Upon request, the Department may convey a leasehold interest in property to a governmental entity for a public purpose without monetary consideration, unless legislation or bond provisions provide otherwise. Such purposes can include a fair, art show, or other educational, cultural or fund raising activity on property which is owned by the Department and not presently needed for transportation facilities. If the governmental use is a business-like venture producing income and profit, the market rental requirements shall apply. Public purpose leases may be for any specified length of time (the five year term limitation does not apply). If the leasehold interest is to be conveyed for no monetary consideration, an appraisal is not required. The following are requirements for public purpose leases at less than market rent on property with federal participation:

- (A) The Department must clearly show that leasing for less than market rent is in the public interest for a social, environmental, or economic purpose. This can be accomplished by a statement of the public use of the property and the expected resulting benefit to the public; and
- (B) If the property ceases to be used for the public purpose, then the lease must be terminated or the lessee must pay market rent to continue leasing the property.

8.6.7.2 **Form No. 8.6-1, Airspace Agreement**, shall be used for all leases of property located within the right of way on federal aid projects. **Form No. 8.6-4, Lease Agreement**, shall be used for all other leases.

8.6.7.3 The Department shall obtain an adopted resolution from the governmental entity or school board, or a written request from the agency head of a state agency, stating the public purpose. If the governmental entity cannot adopt the resolution prior to the Department's declaration of temporarily surplus, the Department may accept the documentation of the adopted resolution any time prior to the execution of the lease.

8.6.8 Concurrence by the Federal Highway Administration (FHWA)

8.6.8.1 FHWA Concurrence - With the exception of leasebacks, all property acquired for the Federal Aid Highway System and located within the right of way line on the approved right of way map, requires written FHWA concurrence for its leasing. This concurrence must be obtained prior to negotiating, advertising and executing the lease.

8.6.8.2 The leasing of all property must be approved by the DDPW and DPWHA prior to negotiating, advertising, and executing the lease. Requests, including complete supporting documentation, shall be submitted by the DPWRS for the

Director's approval.

8.6.8. For requests to the FHWA or the DDPW and DPWHA, concurrence shall be submitted for review by the DPWRS and shall include the following documentation:

- (A) GU Project Number;
- (B) An explanation as to why the land is not presently needed;
- (C) A right of way map marked to show the location of the property to be leased.
NOTE: The map must provide enough detail to allow the property to be physically located, or additional maps may be submitted to help locate the property.
- (D) When available, marked construction plans which show the property in relation to construction features and remaining right of way (photographs and other methods of depicting or explaining the construction features in relation to the subject property may be used if construction plans are not available);
- (E) Completed routing sheets as applicable and the Declaration of Temporarily Surplus by the DDPW, or authorized designee;
- (F) Documentation of determination and amount of market rent, except for public purpose leases for no consideration;
- (G) If the lease is for a public purpose for no consideration, a copy of the resolution from the governing body or letter signed by the head of the agency requesting the public purpose lease. If the resolution has not been executed, submit a copy of the language of the resolution;
- (H) The district must clearly show that leasing for less than market rent is in the public interest for a social, environmental, or economic purpose. This can be accomplished by a statement of the public use of the property and the expected resulting benefit to the public;
- (I) A copy of the proposed **Airspace Agreement, Form No. 8.6-1**; and
- (J) A copy of the **Categorical Exclusion Checklist**.

8.6.8.4 Concurrence is not required when the property to be leased is an uneconomic remnant that has not been incorporated within the approved right of way limits.

8.6.8.5 Refer to **23 CFR Part 710, Subpart D** if the lease involves a change in the access control line.

8.6.8.6 If FHWA or the DDPW does not concur, the department shall not negotiate, advertise or execute the lease.

8.6.9 Reporting Requirements

The DPWRS shall prepare a **Lease Aging Report** on the first week of each quarter for all real property leased by the Department. The DPWRS ensure that all entered lease information is accurate, current, complete and entered in accordance with current business practices. The report shall include the following:

- (A) The name of the Lessee;

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- (B) The terms of the lease, including the amount and frequency of payments agreed upon, and the period covered by the lease;
 - (C) The amount due and the amount paid;
 - (D) Whether the account is current or past due, the number of days payment is past due, and the actions taken by the Department to collect any past due amounts.

HISTORY

Original Issue Date January 2011.

Revision 1 – October 2017 – changes to sections 8.6 - Definitions, 8.6.6.7, 8.6.8.2, and 8.6.8.3.

Section 8.7

ASBESTOS MANAGEMENT

TABLE OF CONTENTS

PURPOSE8-7-1

AUTHORITY8-7-1

SCOPE8-7-1

EFFECT OF CHAPTER ON OTHER AGENCIES.....8-7-1

REFERENCES8-7-1

FORMS8-7-2

DEFINITIONS8-7-2

8.7.1 Obtaining Asbestos Surveys.....8-7-3

8.7.2 Asbestos Surveys/ Management8-7-4

8.7.3 Asbestos Abatement Operations8-7-6

8.7.4 Wet Demolition8-7-7

8.7.5 Specifications for Surveys/O&M Plans/Abatement.....8-7-8

8.7.6 Consultant Monitoring of Abatement/Demolition Activities8-7-8

8.7.7 Notice of Asbestos Renovation or Demolition to GEPA (NESHAP)8-7-8

8.7.8 Disposal of Regulated Asbestos Containing Material.....8-7-9

8.7.9 File Documentation.....8-7-10

HISTORY:.....8-7-11

Section 8.7

ASBESTOS MANAGEMENT

PURPOSE

To establish uniform procedures for managing asbestos survey and abatement activities for all buildings acquired by the Department of Public Works Office of Right of Way (Department) on properties required for transportation rights of way.

AUTHORITY

29 CFR Parts 1910, 1915, 1917, 1926, 1928,
40 CFR Subpart E, Part 763.91 (AHERA)
40 CFR Subpart M, Part 61 (NESHAP)
10 GCA § 32112 Hazardous Substance Testing Offered
10 GCA ,Chapter 49, Air Pollution Control

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform asbestos management functions.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

29 CFR, Part 1910.1001
29 CFR, Part 1910.134
29 CFR, Part 1926.1101
29 CFR, Part 1926.58 (OSHA)
40 CFR, Subpart M 61.150 (a)
40 CFR, Subpart M 61.150 (d)
40 CFR, Subpart M 61.145
40 CFR, Subpart M 61.150 (NESHAP)
40 CFR, Subpart M 61.154
40 CFR, Subpart M, Part 61
40 CFR, Subpart M 61.150(a)(3)
21 GCA § 70103 Powers and Duties of Board
10 GCA, Chapter 32, Hazardous Substances
Right of Way Manual, Section 7.2, General Relocation Requirements
Right of Way Manual, Section 8.2, Right of Way Clearing
Right of Way Manual, Section 8.6, Right of Way Property Leases
Right of Way Manual, Section 9.3, Right of Way Records Management

FORMS

- 5.2-6 Release and Right of Entry Agreement for Asbestos Survey
- 7.2-3 30 Day Notice to Vacate
- 7.2-4 90-Day Letter of Assurance
- 8.7-1 Asbestos Abatement Contract
- 8.7-2 Release and Notice of Non-Friable Asbestos Containing Materials for Temporarily Leased or Occupied Facilities
- 8.7-3 Affidavit "Asbestos Abatement"
- 8.7-4 Release and Notice of Non-Friable Asbestos Containing Materials (ACM)
- 8.7-5 Release and Notice of Friable Asbestos Hazard
- 8.7-6 Initial Building Survey Review
- 8.7-7 Initial Abatement Technical Specification Review
- 8.7-8 Notice of Asbestos Renovation or Demolition aka National Emissions Standards for Hazardous Air Pollutants (NESHAP)

DEFINITIONS

Asbestos Abatement: The removal, encapsulation, or enclosure of asbestos.

Asbestos Consultant: A person licensed and certified by the Guam Contractors License Board pursuant to **21 GCA, Chapter 70, Contractors**, who conducts surveys relating to asbestos containing materials, prepares asbestos abatement specifications or supervises abatement operations.

Asbestos Containing Materials (ACM): Any materials which contain more than one percent (1%) asbestos as determined by polarized light microscopy (PLM).

Asbestos Contractor: A person who engages in the business of removing, encapsulating, and enclosing asbestos containing materials and disposing of asbestos waste and who is licensed and certified by the Guam Contractors License Board pursuant to **21 GCA, Chapter 70, Contractors**.

Asbestos Survey: A comprehensive physical inspection of the building, requiring destructive sampling of potential asbestos containing materials and laboratory analyses, to identify all asbestos containing materials located within the building.

Building Asbestos Contact Person: A person appointed by competent authority to manage and coordinate asbestos related activities for specific Government of Guam owned buildings. This person shall be capable of identifying existing and potential asbestos hazards in the building and have authority to take timely corrective action. The Director Department of Public Works (DDPW), or designee, shall appoint a person to serve in this position.

Category I Nonfriable Asbestos Containing Material: Asbestos containing packing, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent (1%) asbestos as determined using PLM per **40 Code of Federal Regulations (C.F.R.), Subpart M, Part 61**.

Category II Nonfriable Asbestos Containing Material: Any material, excluding Category I nonfriable ACM, containing more than one percent (1%) asbestos as determined by using PLM that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure per **40 C.F.R., Subpart M, Part 61**.

Demolition: The wrecking or taking out of any load supporting structural member of a facility together with any related handling operations or the intentional burning of any facility, per **40 C.F.R., Subpart M, Part 61**.

Friable Asbestos Material: Any material containing more than one percent (1%) asbestos as determined using PLM that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than ten

percent (10%) as determined by a method other than point counting by PLM, the asbestos content shall be verified by point counting using PLM, per **40 C.F.R., Subpart M, Part 61**.

Non-Friable Asbestos Containing Material: Any material containing more than one percent (1%) asbestos as determined by PLM, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure, per **40 C.F.R., Subpart M, Part 61**. **Note:** The condition of such material may become friable by external factors such as weathering, fire, natural disasters, or handling.

Official File: Any file as described in and pursuant to the **Right of Way Manual, Section 9.3, Right of Way Records Management**.

Operation and Maintenance Plan (O&M Plan): A set of procedures undertaken to clean up previously released asbestos fibers, prevent future release of fibers, minimize disturbances or damage to asbestos containing materials, and monitor the condition of the asbestos containing materials.

Regulated Asbestos Containing Material (RACM) includes:

- (A) Friable asbestos material;
- (B) Category I nonfriable ACM that has become friable;
- (C) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or;
- (D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation per **40 C.F.R., Subpart M, Part 61**.

Remove: Take out RACM or facility components that contain or are covered with RACM from any facility per **40 C.F.R., Subpart M, Part 61**.

Renovation: Altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. **Note:** Operations in which load supporting structural members are wrecked or taken out are demolitions, as opposed to renovations, per **40 C.F.R., Subpart M, Part 61**.

Threshold Amount of Regulated Asbestos Containing Material: At least 260 linear feet on pipes, or at least 160 square feet on other facility components, or at least 35 cubic feet on facility components where the area could not be measured prior to demolition.

Working Day: Monday through Friday including holidays that fall on any of the days Monday through Friday per **40 C.F.R., Subpart M, Part 61**; as opposed to a business day which does not include holidays.

8.7.1 Obtaining Asbestos Surveys

8.7.1.1 Asbestos Consultant Contracting:

- (A) Prior to demolition or removal of Government of Guam acquired buildings (including any building cut-off, any building being leased back to the previous occupant or prior to leasing a Government of Guam owned building to the public or for use by Department of Public Works employees, the Department shall contract in accordance with **10 GCA § 32112(b) Hazardous Substance Testing Offered** for the services of a qualified asbestos consultant to perform asbestos surveys. An area-wide contract may be used.

8.7.1.2 Asbestos surveys shall be performed on all buildings or parts of buildings that are owned by the Government of Guam, are to be removed or demolished or which are located on transportation corridors, with the following exceptions:

- (A) The Department is not required to have a survey performed on prefabricated or small structures that do not have floors or utilities, such as storage sheds, if a Department employee or licensed asbestos consultant has inspected the structure and determined that no suspect ACM is present. As documentation, the inspector shall provide a number of color photographs taken of the exterior and interior of the building as well as a detailed description of the building materials and type of construction such as frame, metal, block, pole barn, etc. The employee making the determination must have received Environmental Protection Agency (EPA) certification as an asbestos building inspector and have a current certification at the time of inspection.
- (B) When a building cut-off is required as a result of right of way acquisition and the total amount of building materials consists of less than 160 square feet, 260 linear feet, or 35 cubic feet, a Department employee or licensed asbestos consultant may inspect the cut-off to determine if any potential ACM exists. If no suspect ACM exists, a survey does not need to be performed, but documentation as described in **Section 8.7.1.2 (A)** must be provided. The employee making the determination must have received EPA certification as an asbestos building inspector and have a current certification at the time of inspection.
- (C) If an acquired structure will remain unoccupied after being vacated and the structure is conveyed together with the underlying land, or the structure is conveyed and relocated with no demolition or renovation activities taking place on Government of Guam property, no survey is required. However, the Department shall notify the purchaser, in writing, that no survey was performed and ACM may be present in the building.

8.7.2 Asbestos Surveys/ Management

8.7.2.1 If the asbestos survey or Department inspection does not detect ACM within the building, no asbestos management is necessary and the Department may proceed to demolition after first providing proper notice in accordance with **Section 8.7.7** or removal of the building

8.7.2.2 If, however, the asbestos survey does indicate ACM is present in a building, the following actions shall be taken, depending on the occupancy status and intended use of the building:

- (A) For unoccupied structures to be demolished, sold or removed, no Operations and Maintenance (O&M) Plan is necessary, and inspection and maintenance as well as abatement operations shall be performed as follows:
 - (1) The building shall be secured as necessary to prevent entry by unauthorized persons within **thirty calendar days** of physical possession of the property by the Department;
 - (2) The building shall be posted with appropriate warning signs alerting persons to the asbestos hazard contained therein within **fifteen calendar days** of the later of the date of physical possession of the property by the Department or identification of the ACM;
 - (3) A periodic inspection of the building for breach of security shall be performed every **thirty calendar days** after physical possession of the property by the Department. Appropriate documentation will be maintained of all events, repairs and security efforts; and
 - (4) Abatement or removal, required by **40 C.F.R., Subpart M, Part 61.145**, shall be performed prior to demolition.
- (B) For occupied structures to be demolished, removed or sold:

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- (1) In negotiated settlements:
 - (a) If the occupancy is to continue more than **30 days** beyond the date of closing, **Form No. 5.2-6, Release and Right of Entry Agreement for Asbestos Survey**, must be signed by the occupant to release the Government of Guam of any liability regarding the possible presence of asbestos in the structure. This form also provides written notice that an asbestos survey will be performed and that the occupant will permit entry to the Department or its authorized agent for this purpose. The form must be signed as a condition for granting extended occupancy.
 - (b) If the occupant refuses to sign, extended occupancy shall not be permitted. If no **30-Day Notice to Vacate, Form No. 7.2-3**, was issued, one must be delivered at the time of refusal to sign **Form No. 5.2-6, Release and Right of Entry Agreement for Asbestos Survey**. If more than **30 days** notice is needed to provide the occupant has received the **90-Day Letter of Assurance, Form 7.2-4**, pursuant to the **Right of Way Manual, Section 7.2, General Relocation Requirements**, then the minimal notice to vacate needed to comply with this requirement shall be given.
 - (2) Where the Department obtains title through condemnation but the Court indicates it will permit extended possession, the Department shall have the Office of the Attorney General (OAG) counsel request the Court to require the occupant to indemnify the Government of Guam. The requested indemnification is to be imposed as a condition of extended possession and should indemnify the Government of Guam from any and all liability to the occupant incurred as a result of ACM existing on the referenced property. Also, the Court shall be requested to provide the Department with a right of entry for the Department and its authorized agent to survey the improvements for the presence of ACM.

8.7.2.3 The Department shall be responsible for the preparation and implementation of a brief O&M Plan for structures for which the established vacate date is within **180 days** from the date of the asbestos survey. The brief O&M Plan shall be developed by a licensed asbestos consultant and shall simply and briefly address the location and type of ACM present and summarize any special material handling requirements. If the structure will not be vacated within **180 days** from the date of the survey, an O&M Plan must be developed. The O&M Plan shall address the fact that the facility is to be vacated and demolished and should consider such factors as the length of extended occupancy; the number of occupants; the type of facility; the amount, location, condition, and type of ACM present; and reinspection requirements.

8.7.2.4 A copy of the Department-approved O&M Plan shall be provided to the appropriate occupant within **five business days** of receipt by the Department. If a brief O&M Plan is being used, it shall include a letter prepared by the asbestos consultant to the occupant(s) who provides a short, simple explanation of the location of the ACM and any special handling provisions.

8.7.2.5 If nonfriable asbestos is discovered, the occupant shall be given written notice of the presence of asbestos using **Form No. 8.7-4, Release and Notice of Non-Friable Asbestos Containing Material**. The Department may permit continued occupancy.

- (A) Notice shall be given within **ten business days** from the date of the survey report.
- (B) The notice shall be acknowledged by signature of the occupant or sent by certified mail, return receipt requested.

8.7.2.6 The Department shall not permit the leasing of any structure for which the survey report indicates friable asbestos with a hazard assessment score of five or higher. Only as a result of an Order of Taking wherein the Department does not control continued occupancy will an occupant be allowed to remain in occupancy. In these instances, there must be coordination with the OAG counsel to petition the court to require that the occupant indemnify the Government of Guam, releasing the Government of Guam from any and all liability to the occupant incurred as a result of ACM existing on the referenced property. In all instances, the occupant must be given written notice of the presence of friable asbestos using **Form No. 8.7-5, Release and Notice of Friable Asbestos Hazard**.

- (A) Notice will be mailed within **ten business days** from receipt of the asbestos survey.
- (B) The notice shall be acknowledged by signature of the occupant or sent by certified mail, return receipt requested.
- (C) Written notice shall also be posted on the property and delivered to employees of the occupant, if any, no later than five business days after such notice has been delivered to the occupant(s). This notice shall state the nature of the potential hazard and a warning against disturbing or damaging the ACM. The notice shall also identify the Department's building asbestos contact person as the individual to be contacted for additional information or in the event of an emergency.
- (D) The Department shall take immediate action to abate if air samples taken during the survey indicate the permitted exposure limit, as currently defined by OSHA in **29 C.F.R. 1926.1101**, is exceeded during periods of normal activity.

8.7.2.7 For unoccupied structures to be temporarily leased or temporarily occupied by the Department personnel prior to being demolished, sold or removed:

- (A) No occupant will be allowed in a building to be demolished, sold or removed that was unoccupied at time of acquisition (the date of closing in a negotiated settlement or the date of deposit in an order of taking) or has become unoccupied since acquisition if friable ACM has been found.
- (B) If the asbestos survey identifies non-friable ACM, which has little chance of becoming friable as determined by a licensed asbestos consultant or by an Department employee who has current certifications as a building inspector and a management planner, then the building may be temporarily leased in accordance with the **Right of Way Manual, Section 8.6, Right of Way Property Leases** or occupied by Department personnel. Prior to allowing occupancy, **Release and Notice of Non-Friable Asbestos Containing Materials for Temporarily Leased Facilities, Form No. 8.7-2**, must be signed by the lessee or occupant if other than Department personnel.
- (C) The Department shall be responsible for the preparation and implementation of an O&M Plan. The O&M Plan shall be developed by a licensed asbestos consultant.

8.7.2.8 For structures to be retained by the Government of Guam for leasing purposes, the Department shall be responsible for the preparation and implementation of an O&M Plan. The O&M Plan shall be developed by a licensed asbestos consultant.

8.7.3 Asbestos Abatement Operations

8.7.3.1 If, in the asbestos survey, the asbestos consultant identifies ACM in a building and determines abatement or removal work is warranted, the Department shall monitor that this is properly accomplished.

8.7.3.2 Asbestos abatement specifications must be developed by a licensed asbestos consultant in accordance with all applicable Federal, and Government of Guam regulations and requirements for the removal of regulated ACM from Government of Guam-owned buildings scheduled for demolition. This includes, but is not limited to, **40 C.F.R. 61.145 and 61.150 (NESHAP), 29 C.F.R. 1910.1001, 1926.1101 and 1926.58 (OSHA)**, and any other appropriate agency guidelines or recommendations. Primary consideration shall be given to using the wet demolition method as set forth in **40 C.F.R., Subpart M, Part 61**.

8.7.3.3 The abatement work shall be performed by an asbestos abatement contractor licensed pursuant to **21 GCA §70103 Powers and Duties of Board**, in accordance with the abatement specifications, which shall be attached as an addendum to the **Asbestos Abatement Contract, Form No. 8.7-1**.

8.7.3.4 Typically, for structures to be demolished, abatement is contracted as follows:

- (A) Proceed with bids to cover asbestos abatement and subsequent demolition or removal of the improvement;
or
- (B) Use an abatement contractor under an existing Department area-wide contract.

8.7.3.5 In the event the structure is not to be demolished (for example, it is to be leased), abatement services may be contracted.

8.7.3.6 After completing asbestos removal and prior to dismantling containment barriers, which were installed during abatement, a post abatement inspection by the consultant shall be performed for evidence of incomplete abatement work. The containment barriers shall not be removed until the asbestos consultant certifies the abatement work is complete and approves removal.

8.7.4 Wet Demolition

Structures may be demolished by a demolition or abatement contractor by keeping the ACM adequately wet during demolition. This could occur where the ACM is not removed prior to demolition because of one of the following reasons:

- (A) It is Category I nonfriable ACM that is not in poor condition;
- (B) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed to demolition;
- (C) It was not accessible for testing and not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. The exposed material and any asbestos contaminated debris must be treated as asbestos containing waste and kept adequately wet at all times until disposed of;
or
- (D) It is Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized or reduced to powder during demolition. The resulting asbestos containing waste materials must be kept adequately wet at all times after demolition and during handling and transport to a disposal site. These materials do not have to be sealed in leak tight containers or wrapped but may be transported and disposed of in bulk. Local landfill policies need to be determined prior to contracting for wet demolition to determine if the landfill will accept such waste as normal construction debris. Compliance with OSHA **29 C.F.R. 1910.134 and 29 C.F.R. 1926.58**, is required, as applicable.

8.7.5 Specifications for Surveys/O&M Plans/Abatement

8.7.5.1 Each survey, O&M Plan and set of abatement specifications submitted to the Department by an asbestos consultant must be reviewed by or under the direction of the Department. The *Initial Building Survey Review, Form No. 8.7-6* and the *Initial Abatement Technical Specification Review, Form No. 8.7-7*, are to be completed for each survey, O&M Plan and set of abatement specifications.

- (A) The individual completing the checklist for an asbestos survey must have received EPA certification as an asbestos building inspector and have a current certification at the time of completing the checklist.
- (B) The individual completing the checklist for an O&M Plan or abatement specifications must have received EPA certifications as an asbestos building inspector and as a management planner and have current certifications at the time of completing the appropriate checklist.

8.7.5.2 If the review reveals the survey was improperly performed or the report was improperly prepared, the report is to be returned to the asbestos consultant to rectify the problem. Similarly, if the O&M Plan or abatement specifications were not prepared correctly, they are to be returned, as well.

8.7.5.3 Only a survey, O&M Plan or set of abatement specifications that has been properly prepared will be acceptable for the Department's purposes. The checklist shall be retained in the Department's official project and parcel file to document that a proper review was performed.

8.7.6 Consultant Monitoring of Abatement/Demolition Activities

To provide that appropriate OSHA and NESHAP requirements are being met, an asbestos consultant shall provide daily monitoring of all asbestos abatement and wet demolition activities. This individual must hold current certification as an asbestos supervisor, and shall:

- (A) Identify, resolve and document any discrepancies in asbestos abatement activities which are not in compliance with the asbestos abatement or demolition contract and abatement specifications;
- (B) Verify appropriate abatement workers' training and medical documents;
- (C) Monitor use of the appropriate techniques and equipment and compliance with applicable federal, and local regulations;
- (D) Conduct asbestos air monitoring activities;
- (E) Conduct a final clearance visual inspection and air sampling; and
- (F) Submit to the department a Visual Inspection/Final Clearance Certification Letter which includes a signed statement by the asbestos consultant that the abatement project was performed and completed in compliance with all abatement specifications.

8.7.7 Notice of Asbestos Renovation or Demolition to GEPA (NESHAP)

8.7.7.1 Notification must be submitted by certified mail, return receipt requested or hand delivered to the Guam Environmental Protection Agency (GEPA). Notification of the renovation or demolition of a facility must be made in the following manner:

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- (A) Notification must be made using the **Notice of Asbestos Renovation or Abatement, Form No. 8.7-8**, also known as a **National Emission Standards for Hazardous Air Pollutants (NESHAP) Form**. The form may be downloaded from the internet or the use of a scanned reproduction of the **NESHAP Form** is allowable; however, using any other type or variation of this form is prohibited and will result in fines being imposed against the Department by GEPA.
- (B) Notification must be postmarked or delivered as follows:
- (1) A minimum of **ten working days** prior to starting demolition or renovation; or
 - (2) No later than the **following working day** after an emergency renovation operation or ordered demolition.
- (C) Notification by facsimile transmission (fax) is not permitted. The demolition, renovation or abatement must begin on the date specified as the start date on the NESHAP notice. Activities taken to prepare for the demolition or abatement are not to be considered when identifying the start date. No Government of Guam agency has the authority to waive this Federal requirement.
- (C) When demolition or abatement is to commence on a date other than that specified in the original written notice, renotification must be made in accordance with **Sections 8.7.7.1 (A) and (B)** above, and as follows:
- (1) Renotification may be made by telephone to GEPA of the new start date if the new start date is later than that specified in the original notice. This must be followed by written notice which must be sent prior to the original start date.
 - (2) Written renotification shall be made to GEPA of the new start date at least **ten working days** prior to asbestos removal or stripping (renovation) or demolition if the new start date is earlier than that specified in the original notice. Renotification must also be made, in writing, when the amount of asbestos increases or decreases by at least twenty percent from what was originally reported.
 - (3) Renotification may be made by fax.

8.7.7.2 The Department is responsible for ensuring payment of a fee calculated pursuant to GEPA's Fee Schedule

8.7.7.3 The Department is responsible for ensuring payment after an invoice has been received from GEPA. The invoice amount will be based on the amount of the RACM listed in the notification. No payment is to be sent with the notification.

8.7.8 Disposal of Regulated Asbestos Containing Material

8.7.8.1 Asbestos containing waste material must be kept adequately wet during handling and transport to the disposal site to minimize visible emissions to the outside air pursuant to **40 C.F.R., Subpart M, Part 61.150(a)**. All such materials are to be sealed in leak tight containers while wet, unless the abatement specifications provide otherwise. If additional breaking of such materials would be required, the materials may be wrapped leak tight. During transport, the containers or wrapped materials are to be labeled with the Department listed as the waste generator and the location where the waste was generated. Transport vehicles are to be marked in conformance with **40 C.F.R., Subpart M, Part 61.150**.

8.7.8.2 Waste shipment records are to be maintained with the information required by **40 C.F.R., Subpart M, Part 61.150(d)** for a period of **three years**.

8.7.8.3 The waste disposal site used is to be operated according to **40 C.F.R., Subpart M, Part 61.154** or shall be an GEPA-approved site that converts RACM and asbestos containing waste material into asbestos free material.

8.7.9 File Documentation

The following items are to be retained in the Department's official project and parcel file:

- (A) Asbestos survey report and the checklist, **Initial Building Survey Review, Form No. 8.7-6**, to substantiate the report was reviewed and found to be correct;
- (B) Documentation by a certified Department employee or consultant that no potential ACM existed in prefabricated or small structures or for building cut-offs with support photos, as applicable;
- (C) **Release and Right of Entry Agreement for Asbestos Survey, Form No. 5.2-6**, if applicable;
- (D) Copies of **NESHAP Forms** sent to GEPA with certified mail acknowledgment attached, and any other documentation supporting delivery;
- (E) O&M Plan, including documentation verifying the occurrence of activities required by the plan, and checklist to demonstrate that the plan was completed correctly;
- (F) If abatement is needed, the following items are to be completed in compliance with the **Right of Way Manual, Section 8.2, Right of Way Clearing**:
 - (1) Bid package which includes:
 - (a) An **Affidavit "Asbestos Abatement" Form No. 8.7-3** from the successful bidder stating the bidder has not participated in collusion or bid rigging and that he/she has no financial or other interest in the consultant(s) who prepared the survey report, O&M Plan or the abatement specifications;
 - (b) Certification from the successful bidder regarding worker's compensation insurance coverage along with the current insurance certificate, if applicable. The Department shall verify that the contractor has liability insurance with a pollution endorsement against claims or claim expenses arising from any abatement project;
 - (c) Bid tabulation sheet; and
 - (d) The successful bidder's bid proposal;
 - (2) **Performance Bond (Surety)** and power of attorney for a surety bond;
 - (3) Abatement specifications and checklist, **Initial Abatement Technical Specification Review, Form No. 8.7-7**, demonstrating that specifications were prepared correctly;
 - (4) Executed **Asbestos Abatement Contract, Form No. 8.7-1**; and
 - (5) Documentation of the asbestos consultant's abatement final clearance report;

- (G) If extended occupancy, ***Release and Notice of Non-Friable Asbestos Containing Material, Form No. 8.7-4*** or ***Release and Notice of Friable Asbestos Hazard, Form No. 8.7-5***;
- (H) If leased pursuant to ***Section 8.7.2.7, Release and Notice of Non-Friable Asbestos Containing Materials for Temporarily Leased/Occupied Facilities, Form No. 8.7-2***; and,
- (I) Copies of all waste shipment records originally sent to the waste disposal site, as well as those signed and returned by the waste disposal site owners acknowledging receipt, are to be maintained by the Department in the official project and parcel file for at least three years.

HISTORY:

Original Issue Date: January 2011.

Revision 1 – October 2017 – No changes to this section



DPW Form 8.7-1

ASBESTOS ABATEMENT CONTRACT

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____
BID LETTING OF: _____

1. This contract is made between the Department of Public Works, herein referred to as "Department", and

Whose address is:

Herein referred to as "Contractor". For the consideration and upon the conditions hereinafter expressed, the "Department" hereby grants Contractor a license to enter upon the following real property "hereinafter" referred to as "subject parcel(s)":

| PARCEL NUMBER | ADDRESS | BID AMOUNT | BOND AMOUNT |
|---------------|---------|------------|-------------|
|---------------|---------|------------|-------------|

To perform the services described herein.

2 Contractor will remove from the subject parcel(s) all asbestos containing materials (ACM) as defined and identified in the specification for Asbestos Abatement prepared by: _____ (Exhibit "A") attached hereto and by their reference made a part hereof. The removal work shall be accomplished in accordance with 40 CFR Parts 61.145, 61.150 and Exhibit "A".

3. Contractor will furnish all labor, equipment, supplies, expertise and other things necessary to carry out this agreement.

4. Contractor will, at its own expense, obtain all required permits.

5. The Department will pay to Contractor the sum of dollars \$_____ upon the completion by the Contractor of all work required to be performed under the terms of this contract and acceptance of the work by the Department. Contractor understands and agrees that the work provided herein shall not be considered complete until the final TEM clearance air samples indicate presence of 0.01 or less asbestos structures per cubic centimeter in accordance with the monitoring requirements prescribed by rules of the Department of Labor and Employment Security. Bills for fees or other compensation for services and expenses shall be submitted to the Department in detail sufficient for a proper pre-audit and post-audit thereof.

Exhibit "B" attached hereto and made a part hereof is the Schedule of Prevailing Wage Rates for Mechanics and Laborers on Construction for Federal Aid projects. This exhibit provides the federal mandate, by county, of the prevailing hourly wage rate. No payment shall be made to the contractor pursuant to the terms of this agreement until such time as all work required to be performed under this agreement is complete. Further, no payment shall be made to the contractor until such time as the Department receives a copy of the waste shipment record received and signed by the disposal waste site owner or operator from the contractor. All construction contracts exceeding \$2,000 on Federal-aid participation jobs are subject to provisions of the Davis-Bacon Act, 29 CFR, Parts 1, 3 and 5. Contractor shall comply with applicable provisions of Federal-aid construction contracts, FHWA 1273, Exhibit "B" (attached).

6. Removal work of ACM hereby agreed to be performed by the Contractor licensed pursuant to Territory of Guam Statutes, shall not begin prior to receiving a notification to proceed from the Department, which notice shall on or before _____, _____ and all work shall be completed within _____ calendar days after receipt of such notice.

7. Liability Insurance (Check and complete as appropriate):

The Contractor shall carry and keep in force during the period of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in the Territory of Guam, affording public liability insurance with combined bodily injury limits of at least \$ _____ per person and \$ _____ each occurrence, and property damage insurance of at least \$ _____ each occurrence, for the services to be rendered in accordance with this Agreement. Such liability insurance shall have a pollution endorsement against claims or claim expenses arising from any abatement.

The Contractor shall have and maintain during the period of this Agreement, a professional liability insurance policy or policies or submittal of proof of membership of the Professional Liability Risk Management Trust Fund, or an irrevocable letter of credit established with a company or companies authorized to do business in the Territory of Guam, affording professional liability coverage for the professional services to be rendered in accordance with this Agreement in the amount of \$ _____. The Contractor shall maintain professional liability coverage for a minimum professional liability coverage for a minimum of three years after completion of the services rendered

Contractor agrees that it will indemnify, defend and hold harmless Department and all of Department's officers, agents, and employees from any and all claims, suits, and judgments against the Department for personal injury or damage to real or tangible personal property caused directly or indirectly by the negligent or tortuous conduct of the contractor, it agents, employees, or subcontractors during the performance of this Agreement, provided the Department notifies Contractor in writing of any claim. In no event, however, will Contractor be liable for (a) any damages caused by the Department's failure to perform the Department's responsibilities, or for (b) any lost profits, or for (c) any claim against the Department by any other party, except as provided in the hold harmless provision of this paragraph.

Contractor's obligation to indemnify and defend, or at the Department's option , to participate and associate with the Department in the defense and trial of any damage claim or suit and any related settlement negotiations shall be triggered by the Department's notice of claim for indemnification to Contractor. Contractor's inability to evaluate liability or its evaluation of liability shall not excuse its duty to defend and indemnify within seven days after such notice by the Department is given by registered mail. Only an adjudication or judgment after highest appeal is exhausted specifically finding the Department solely negligent shall excuse performance of this provision by Contractor. Contractor shall pay all costs and fees related to this obligation and its enforcement by the Department.

8. If the Contractor employs one (1) or more employees, worker's compensation insurance coverage must be carried.

9. The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the contract or contracts or any portion thereof, or his right, title or interest therein, without prior written consent of the Department. With the Department's written consent the Contractor will be permitted to sublet a portion of the work but shall perform with his own organization work amounting to not less than fifty (50%) percent of the total contract amount less the total amount for those contract items designated as specialty items. The assignee must be qualified as a licensed asbestos contractor. The Contractor agrees to pay any and all subcontractors and suppliers having an interest in this agreement their pro rata share of the payment for all work completed and materials furnished. These payments shall be made within thirty (30) days of receipt of payment to the Contractor by the Department.

10. Time is of the essence with respect to this agreement and all work or other obligations hereby agreed to be performed by the Contractor shall be completed on or before _____, _____, all in accordance with the Contractor's proposal. Failure by the Contractor to complete the work or other obligations will constitute a default and liquidated damages will be paid to the Department by the Contractor in the amount of \$ _____ per calendar day for each parcel in default. Contracts on Government of Guam roads which are not Federal-aid projects shall include an additional penalty.

11. In addition to the liquidated damages provided for in paragraph 10:

(a) For a solely Government of Guam-funded project:

The Contractor shall pay a penalty for failure to begin or complete the work within the time stipulated. This penalty shall be in the same dollar amount per calendar day as that set forth in paragraph 10.

(b) For those contracts involving federal funds the following supersedes paragraph (a): If a penalty for failure to timely begin or complete a project is prohibited with respect to any contract by federal law or regulation, the Department shall assess additional daily amounts as liquidated damages to cover anticipated costs of project-related delays or inconveniences to the Department or the public. Road user costs, costs resulting from retaining detours for an extended time, and similar costs may be included in the additional amounts assessed. The additional daily assessment under this paragraph may not exceed an amount equal to the daily liquidated damage charge set forth in the contract.

12. Upon the failure of the Contractor to comply with any of the terms and conditions of this Agreement, the Department shall have the right to cancel this contract. With adequate notice, the Department may cancel this contract in whole or in part at any time the interest of the Department requires such cancellation. In the event of such cancellation, the Contractor will be paid fair value for work satisfactorily performed. The Department shall have the right to unilaterally cancel this Agreement upon refusal by the Contractor to permit public access to all documents, papers, letters or other materials made or received by the Contractor in conjunction with the Agreement.

13. The Government of Guam's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

14. If any portion of this contract should be found illegal or unenforceable that portion shall be severable, and all other portions of the contract shall remain in full force and effect.

15. In the event Contractor encounters on the site material defined below as Type I and/or Type II conditions, Contractor shall immediately stop work in the area affected and report the condition in writing to the Department as well as to the Department's asbestos consultant who developed the attached specifications for removal. The work in the affected area shall not thereafter be resumed except by written direction by the Department and/or the Department's asbestos consultant referred to herein if in fact the material is as described herein under

Type I and/or Type II conditions. In the event either party is required to provide such written notice, notice shall be delivered within twenty-four (24) hours of identification of such differing site conditions by the contractor and within the next business day by the Department to notify contractor to resume such work. Written notice is herein defined as notice in writing signed and may be a facsimile of the original.

The contract may be extended for a reasonable period of time as determined by a representative of the Department upon the representative's inspection of the subject parcel. This reasonable delay shall not then be construed as a delay or suspension provided Type I and/or Type II conditions are determined to be present on the subject parcel by the representative of the Department.

16. The differing site conditions are defined as follows: Type I -A condition which is at variance with the conditions indicated in the contract documents; or conditions which differ materially from those indicated in the contract documents. Type II-Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract documents.

17. Contractor covenants and agrees it will comply with all current Federal and Guam safety and health requirements. Applicable requirements include but are not limited to the following:

40 Code of Federal Regulations (CFR), Subpart M, Part 61 (NESHAPS);
40 Code of Federal Regulations (CFR), Part 763.91 (AHERA);
29 CFR Parts 1910, 1915, 1917, 1926 and 1928, OSHA (Occupational Safety and Health Administration).

18. Contractor will provide a notarized affidavit stating all motor vehicles he operates or causes to be operated are registered in compliance with Territory of Guam statutes.

19. Contractors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Treasurer of Guam. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

20. If a payment is not available within 40 days, a separate interest penalty at the rate per day will be due and payable, in addition to the invoice amount, to the Contractor. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. Invoices which have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

21. (a) Bills for travel expenses specifically authorized in this Agreement shall be submitted and paid.

(b) Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after the final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the Contractor's general accounting records and the project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

(c) In any legal action related to this Agreement, instituted by either party, Contractor hereby waives any and all privileges and rights it may have relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded in convenience. Any such legal action may be brought in the appropriate Court chosen by the Department and in the event that any such legal action is filed by the Contractor,

Compliance with federal law

1. COMPLIANCE WITH REGULATIONS

Contractor will comply with the regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulation), which are herein incorporated by reference and made a part of this Agreement.

2. NONDISCRIMINATION

With regard to the work performed by the Contractor after award and prior to completion of the work, Contractor will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of subcontractors including procurements of materials and leases of equipment. Contractor will not participate either directly or indirectly in the including employment practices when the contract covers the program set forth in Appendix B of the Regulation.

3. SOLICITATIONS FOR SUBCONTRACTS INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT
In all solicitations made by competitive bidding or by negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the Contractor of the Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, color, religion, sex or national origin. The subcontractor must meet all requirements for qualification of a licensed asbestos consultant.

4. INFORMATION REPORTS

Contractor will provide all information and reports required by the Regulation, or orders and instructions pursuant thereto, and will permit access to the Contractor's books, records, accounts or other sources of information, and its facilities as may be determined by the Department or the U.S. Department of Transportation, to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall certify to the Contractor as appropriate, and will set forth what efforts he has made to obtain the information.

5. SANCTIONS FOR NONCOMPLIANCE

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Department will impose such contract sanctions as it or the U.S. Department of Transportation may determine to be appropriate, including, but not limited to:

- (a) Withholding of payments to the Contractor under the contract until Contractor complies, and/or
- (b) Cancellation, termination or suspension of the contract, in whole or in part.

6. The Contractor certifies that it and its principals are not presently debarred, suspended, proposed for debarment, declared negligible or voluntarily excluded from covered transactions by any Federal department or agency and it has not been convicted or had civil judgment rendered of in past three years.

7. INCORPORATION OF PROVISIONS

Contractor will include the provisions of paragraph 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, orders or instructions issued pursuant thereto. Contractor will take such action with respect to any subcontract or procurement as the Department or the U.S. Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or a supplier as a result of such direction, the Contractor may request the Department to enter into such litigation to protect the interests of the Government of Guam. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

In witness whereof, the parties have executed this Agreement, this _____ day of _____, _____

Name of Contractor

By: _____
Authorized Signature

TITLE:

Department of Public Works

BY:

TITLE:

LEGAL REVIEW: _____
Signature Date



DPW Form 8.7-2

RELEASE AND NOTICE OF NON-FRIABLE ASBESTOS CONTAINING MATERIALS FOR TEMPORARILY LEASED OR OCCUPIED FACILITIES

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
PARCEL NO.: _____
OCCUPANT NAME: _____
BLDG./APT. NO.: _____

THIS AGREEMENT is made and entered into on this ____ day of _____, _____ by and between _____ and _____ hereinafter called "LESSEE(S)" OR "OCCUPANT(S)" and the Department of Public Works, hereinafter called "DEPARTMENT".

DEFINITIONS:

"Asbestos containing materials (ACM)" means any material which contains more than one percent (1%) asbestos by polarized light microscopy.

"Asbestos survey" means a comprehensive physical inspection of the building, including laboratory analysis, to identify all asbestos containing materials within the building.

"Friable asbestos materials" means any material containing more than one percent (1%) asbestos, which, when dry can be crumbled, pulverized, or reduced to powder by hand pressure.

"Non-friable asbestos containing materials" means any material containing more than one percent (1%) asbestos, which, when dry cannot be crumbled, pulverized or reduced to powder by hand pressure. Note: the condition of such material may become friable by external factors (e.g., weathering, fire, natural disasters, handling).

WITNESSETH:

WHEREAS, the DEPARTMENT has acquired the property described above as right-of-way for the construction of the above-referenced project; and

WHEREAS, there are certain conditions affecting the improvements upon the referenced property, and

WHEREAS, the DEPARTMENT has surveyed the referenced property for asbestos containing materials (ACM) and the result of such survey indicates asbestos containing materials are located on the property. These asbestos containing materials are in non-friable condition and, therefore, are not considered to present a health hazard to LESSEE or OCCUPANT. Friable ACM is that which, when dry, may be crumbled or reduced to powder by hand pressure and which may present a health hazard to LESSEE or OCCUPANT. It should be noted non-friable ACM may become friable by causes such as burst pipes, leaky roofs, fire, collisions, explosions, and natural disasters.

WHEREAS, LESSEE or OCCUPANT requested to lease or extend occupancy of the referenced property notwithstanding acknowledged presence of non-friable asbestos containing materials.

NOW, THEREFORE, in consideration of the above stated premises, the DEPARTMENT and LESSEE or OCCUPANT hereby agree that LESSEE or OCCUPANT will be granted the right to lease or occupy said premises under a separate document which contains the terms and conditions of continued occupancy.

Since the DEPARTMENT has allowed LESSEE or OCCUPANT to reside on such property at LESSEE'S or OCCUPANT'S request, Lessee/Occupant hereby releases the DEPARTMENT from any and all liability to LESSEE or OCCUPANT incurred as a result of the asbestos containing materials located on the referenced property. LESSEE or OCCUPANT hereby agrees that he/she is residing on the referenced property at his/her own risk and has been informed that an asbestos hazardous condition exists.

FURTHER, LESSEE or OCCUPANT assumes all liability for rendering existing non-friable ACM friable through negligence or lack of reasonable maintenance.

SIGNED AND DELIVERED IN THE PRESENCE OF:

(LESSEE OR OCCUPANT)

(WITNESS)

(WITNESS)

(LESSEE OR OCCUPANT)

(WITNESS)

(WITNESS)

DEPARTMENT OF PUBLIC WORKS _____

By: DPW Agent (Purchaser)



DPW Form 8.7-3

**AFFIDAVIT
"Asbestos Abatement"**

ITEM/SEGMENT NO.: _____
GU PROJECT NO.: _____
ROUTE NO.: _____
CONTRACT NO.: _____
PARCEL NO.: _____

Before me, the undersigned authority, personally appeared _____, who being duly sworn, disposes and says he is _____ of _____

Title

Name of Firm

Located at _____, the bidder

Submitting the attached Proposal for Asbestos Abatement work covered therein on the above referenced Parcel Number, located in the Territory of Guam.

Affiant further certifies that such bidder has not, either directly or indirectly, entered into any such agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the attached bid on said land or improvements.

Affiant further certifies that such bidder has no financial interest in the asbestos consultants who performed the survey, developed the operation and maintenance management plan, prepared the asbestos abatement specifications or will provide monitoring for the buildings concerned with the asbestos abatement project.

WARNING: Affiant understands and acknowledges that making false statements on this affidavit may result in perjury charges being brought against the contractor.

Signature _____

Sworn to and subscribed before me this ____ day of _____, _____ by

Name of affiant.

He/She is personally known to me or has provided _____
Type of identification
as identification.

Notary's Signature

Notary's printed name

[seal]

**THE ABOVE AFFIDAVIT IS REQUIRED TO BE EXECUTED AND ATTACHED
TO EACH ASBESTOS ABATEMENT BID PROPOSAL**



DPW Form 8.7-4

RELEASE AND NOTICE OF NON-FRIABLE ASBESTOS CONTAINING MATERIALS (ACM)

ITEM/SEGMENT NO.: _____

GU PROJECT NO.: _____

ROUTE NO.: _____

PARCEL NO.: _____

THIS AGREEMENT is made and entered into this _____ day of _____, _____ by and between _____ and _____, herein after called "OCCUPANT(S)" and the Department of Public Works, herein after called "DEPARTMENT".

DEFINITIONS:

"Asbestos containing materials (ACM)" means any material which contains more than one percent (1%) asbestos by polarized light microscopy.

"Asbestos survey" means a comprehensive physical inspection of the building, including laboratory analysis, to identify all asbestos containing materials within the building.

"Friable asbestos materials" means any material containing more than one percent (1%) asbestos, which, when dry can be crumbled, pulverized or reduced to powder by hand pressure.

"Non-friable asbestos containing materials" means any material containing more than one percent (1%) asbestos, which, when dry cannot be crumbled, pulverized or reduced to powder by hand pressure. Note: the condition of such material may become friable by external factors (e.g., weathering, fire, natural disasters, handling).

WITNESSETH:

WHEREAS, DEPARTMENT has acquired the property described above as right-of-way for the construction of the above-referenced project; and

WHEREAS, there are certain conditions affecting the improvements upon the referenced property, and

WHEREAS, it was determined to be in the best interest of OCCUPANT(S) and DEPARTMENT to survey the referenced property for asbestos containing materials (ACM) and the result of such survey indicates asbestos containing materials are located on the property. These asbestos containing materials are in non-friable condition and , therefore, are not considered to present a health hazard to OCCUPANT. Friable ACM is that which, when dry may be crumbled or reduced to powder by hand pressure and which may present a health hazard to OCCUPANT. It should be noted non-friable ACM may become friable by causes such as burst pipes, leaky roofs, fire, collisions, explosions, and natural disasters.

WHEREAS, OCCUPANT has resided on the referenced property since _____ and has requested to continue to reside on the referenced property notwithstanding the acknowledged presence of non-friable asbestos containing materials.

NOW, THEREFORE, in consideration of the above stated premises, DEPARTMENT and OCCUPANT hereby agree that OCCUPANT will be granted the right to continue to occupy said premises until _____ or until DEPARTMENT deems it necessary to terminate such occupancy. DEPARTMENT agrees to provide minimum of fifteen (15) days notice of termination, if a month-to-month tenancy, and thirty (30) days notice of termination, if a quarter-to-quarter tenancy.

Since DEPARTMENT has allowed OCCUPANT to continue to reside on such property at OCCUPANT'S request, DEPARTMENT will be released from any and all liability to OCCUPANT incurred as a result of the asbestos containing materials located on the referenced property. OCCUPANT hereby agrees that he/she is continuing to reside on the referenced property at his/her own risk and has been informed that an asbestos hazardous condition exists.

FURTHER, OCCUPANT assumes all liability for rendering existing non-friable ACM friable through negligence or lack of reasonable maintenance.

SIGNED AND DELIVERED IN THE PRESENCE OF:

(LESSEE OR OCCUPANT)

(WITNESS)

(WITNESS)

(LESSEE OR OCCUPANT)

(WITNESS)

(WITNESS)

DEPARTMENT OF PUBLIC WORKS _____

By: DPW Agent (Purchaser)



DPW Form 8.7-5

RELEASE AND NOTICE OF FRIABLE ASBESTOS HAZARD

ITEM/SEGMENT NO.: _____

F.A.P. NO.: _____

ROUTE NO.: _____

PARCEL NO.: _____

NOTICE TO OCCUPANT(S):

There are certain conditions affecting the improvements upon the referenced property and it was determined to be in the best interest of OCCUPANT and THE DEPARTMENT to survey the referenced property for asbestos containing materials (ACM). The results of such survey indicate friable ACM is located on the property. Friable ACM is that which, when dry, may be crumbled or reduced to powder by hand pressure and which may resent a health hazard to OCCUPANT. Asbestos contamination in buildings poses serious health risks. Various diseases have been linked with concerns about exposure to asbestos in non-industrial settings. Data indicates the risks of asbestosis, lung cancer, and mesothelioma decrease in direct proportion to a decrease to in total asbestos dose. Estimates indicate only a small proportion of people exposed to low levels of asbestos will develop asbestos-related diseases.

DEFINITIONS:

"Asbestos containing materials (ACM)" means any material which contains more than one percent (1%) asbestos by polarized light microscopy.

"Asbestos survey" means a comprehensive physical inspection of the building, including laboratory analysis, to identify all asbestos containing materials within the building.

"Friable asbestos materials" means any material containing more than one percent (1%) asbestos, which, when dry can be crumbled, pulverized or reduced to powder by hand pressure.

"Non-friable asbestos containing materials" means any material containing more than one percent (1%) asbestos, which, when dry cannot be crumbled, pulverized or reduced to powder by hand pressure. Note: the condition of such material may become friable by external factors (e.g., weathering, fire, natural disasters, handling).

THIS SERVES AS A WARNING AGAINST DISTURBING OR DAMAGING THE ACM, which was located in the following areas(s):

Since the DEPARTMENT has allowed OCCUPANT to continue to reside on such property at OCCUPANT'S request, the DEPARTMENT will be released from any and all liability to OCCUPANT incurred as a result of the asbestos containing materials located on the referenced property. OCCUPANT hereby agrees that he/she is continuing to reside on the referenced property at his/her own risk and has been informed that an asbestos hazardous condition exists.

FURTHER, OCCUPANT assumes all liability for rendering existing non-friable ACM friable through negligence or lack of reasonable maintenance.

SIGNED AND DELIVERED IN THE PRESENCE OF:

(LESSEE OR OCCUPANT)

(WITNESS)

(WITNESS)

(LESSEE OR OCCUPANT)

(WITNESS)

(WITNESS)

DEPARTMENT OF PUBLIC WORKS _____

By: DPW Agent (Purchaser)



DPW Form 8.7-6

INITIAL BUILDING SURVEY REVIEW

Building Identification:

Item/Segment No.: _____

Route No.: _____

Parcel No.: _____

Consultant: _____

Lic.No.: _____

Firm: _____

Signed: _____

Survey Dates: _____

Date Rcvd for Review: _____

Does the building contain Asbestos? Yes No

Is there an asbestos hazard in the building requiring immediate abatement action? Yes No

Documentation

- Title Page completed Yes No
- Form 1 completed Yes No
- Form 2 completed Yes No
- Form 3 completed Yes No
- Floor plan diagrams present and complete Yes No
- Function spaces identified, sample locations shown Yes No
- ACM homogeneous areas delineated w/priority ranking Yes No
- Photos complete, including each sample # & location Yes No
- Laboratory analytical data sheets complete Yes No
- Chain of custody record Yes No
- Credentials of: Consultant Yes No
- Inspector Yes No
- Laboratory Yes No

NOTE: All credentials must be current

Report organized in above order? Yes No Report signed by consultant? Yes No

Survey Contents Indicate That:

- Each room was visually inspected by consultant Yes No
- Appropriate # of random samples taken Yes No

(Surfacing: <1000sf= 3+ samples; 1000-5000sf = 5+ samples;>5000sf = 7+ samples; plus 1 add'l sample for each add'l 10,000sf up to 9 samples; 1+ sample for patched areas

TSI: <6sf/lf of patched material = 1+ sample; =>6sf/lf = 3+ samples; valve material, hanger, elbow mud for each insulated line of varying diameter/appearance = 1+ sample

Misc.: 100sf of ceiling & floor tiles, linoleum or vinyl floor coverings, baseboards, similar materials & their adhesives = 1 + sample; 100-5000sf of same = 3+ samples, plus 1 add'l sample for each add'l 5000sf up to 9 samples; roofing = 3+ samples of each layer up to 10,000sf up to 9 samples, plus 1 add'l sample for each add'l 10,000sf up to 9 samples; 100sf of exterior siding = 1+ sample; 100-10,000sf of same = 3+ samples, plus 1 add'l sample for each add'l 10,000sf up to 9 samples; fire doors & partitions = assume to be ACM)

Analytical quality assurance followed (1 QC sample per 20 samples - minimum of 1 sample per bldg)
 Yes No

Air sample was conducted and documented
Appropriate # of samples taken (5 + per each homogeneous area)

Yes No N/A
 Yes No

Consistency

Is there consistency between drawings, data tables, and hazard assessment?
If no, explain:

Yes No

Abatement Alternatives

Are abatement alternatives given? Yes No Do they agree with recommendations? Yes No
Are cost estimates included (per response action, including replacement costs of ACM to be removed)? Yes No
Do they include the O & M function? Yes No

Comments:

Approved: Yes No

Date Signature



DPW Form 8.7-7

INITIAL ABATEMENT TECHNICAL SPECIFICATION REVIEW

Building Identification:

Item/Segment No.: _____
Route No.: _____
Parcel No.: _____
Consultant: _____ Lic.No.: _____
Firm: _____ Signed: _____
Survey Dates: _____
Date Rcvd for Review: _____

Summary of Work:

Contract Elements

Coordination w/others [] Yes [] No Temporary plumbing, electric, etc. addressed [] Yes [] No
GEPA notification [] Yes [] No Conflict of Interest Affidavit included [] Yes [] No
Air monitoring before/during described [] Yes [] No

Worker Protection Elements

PPE (clothing) specified [] Yes [] No PPE (respiratory) specified [] Yes [] No
Hygiene facilities specified [] Yes [] No
Worker training certifications, medical evaluations addressed [] Yes [] No

Engineering and Work Practice Elements

Perimeter danger signs specified [] Yes [] No Sealing critical areas specified [] Yes [] No
Building to be unoccupied for work? [] Yes [] No If not, valid explanation of why is not necessary:

Pressure differential specified [] Yes [] No Pre-removal cleaning/decon specified [] Yes [] No
Furniture, etc. moving/sealing specified [] Yes [] No Electrical de-energization addressed [] Yes [] No
HVAC shut down/sealing addressed [] Yes [] No Regulated area/enclosure specified [] Yes [] No
Work area isolated? [] Yes [] No If not, valid explanation of why not necessary:

Wet method specified? [] Yes [] No If not, valid explanation of why is not necessary:

Work methods/procedures specified Yes No
Project closeout/final clearance Yes No
Post abatement cleaning included Yes No
Post removal project decon Yes No

Post removal encapsulant Yes No
Waste disposal/labeling Yes No

Comments and additional essential or unique provisions:

Approved: Yes No

Date

Signature



DPW Form 8.7-8

NOTICE OF ASBESTOS RENOVATION OR DEMOLITION

TYPE OF NOTICE (CHECK ONE ONLY): ORIGINAL REVISED CANCELLATION COURTESY

TYPE OF PROJECT (CHECK ONE ONLY): DEMOLITION RENOVATION

IF DEMOLITION, IS IT AN ORDERED DEMOLITION? YES NO

IF RENOVATION:

IS IT AN EMERGENCY RENOVATION OPERATION? YES NO

IS IT A PLANNED RENOVATION OPERATION? YES NO

1. Facility Name _____
Address _____
Site _____
Consultant Inspecting Site _____
Building Size _____ (Square Feet) # of Floors _____ Age in Years _____
Prior Use: School/College/University Residence Small Business Other _____
Present Use: School/College/University Residence Small Business Other _____

2. Facility Owner _____ Phone _____
Address _____

3. Contractor's Name _____ Phone _____
Address _____
Guam License No. _____

4. Scheduled Dates: (Notice must be postmarked 10 working days before the project start date)
Asbestos Removal (mm/dd/yy) Start: _____ Finish: _____
Demo/Renovation (mm/dd/yy) Start: _____ Finish: _____

5. Procedures to be Used (Check All That Apply):

| | | | | | | | |
|--------------------------|-------------------|--------------------------|-------------|--------------------------|-----------|--------------------------|---------------|
| <input type="checkbox"/> | Strip and Removal | <input type="checkbox"/> | Glove Bag | <input type="checkbox"/> | Bulldozer | <input type="checkbox"/> | Wrecking Ball |
| <input type="checkbox"/> | Wet Method | <input type="checkbox"/> | *Dry Method | <input type="checkbox"/> | Explode | <input type="checkbox"/> | Burn Down |
| OTHER: _____ | | | | | | | |

***MUST OBTAIN PRIOR DEPARTMENT APPROVAL BEFORE USING A DRY METHOD**

6. Procedures for Unexpected RACM: _____

7. Asbestos Waste Transporter: Name _____
Phone _____
Address _____

8. Waste Disposal Site: Name _____ Class _____
Address _____

9. Amount of RACM or ACM

- _____ square feet surfacing material
- _____ linear feet pipe
- _____ cubic feet of RACM off facility components
- _____ square feet cementitious material
- _____ square feet resilient flooring
- _____ square feet asphalt roofing

10. Fee Invoice Will Be Sent to Address Below: (Print or Type)

I certify that the above information is correct and that an individual trained in the provisions of this regulation (40 CFR Part 61, Subpart M) will be on-site during the demolition or renovation and evidence that the required training has been accomplished by this person will be available for inspection during normal business hours.

(Signature of Owner/Operator)

(Date)

DEP USE ONLY

Postmark/Date Received

ID#

INSTRUCTIONS

The Government of Guam asbestos removal program and the renovation or demolition notice requirements of the **National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M**, are included on this form.

Check to indicate whether this notice is an original, a revision, a cancellation, or a courtesy notice (i.e., not required by law). If the notice is a revision, please indicate which entries have been changed or added.

Check to indicate whether the project is a demolition or a renovation.

If you checked demolition, was it **ordered** by the Government of Guam? If so, in addition to the information required on the form, the owner/operator must provide the name of the agency ordering the demolition, the title of the person acting on behalf of the agency, the authority for the agency to order the demolition, the date of the order, and the date ordered to begin. A copy of the order must also be attached to the notification.

If you checked renovation, is it an **emergency renovation operation**? If so, in addition to the information required on the form, the owner/operator must provide the date and hour the emergency occurred, the description of the sudden, unexpected event, and an explanation of how the event caused unsafe conditions or would cause equipment damage or an unreasonable financial burden. If you checked renovation and it is a **planned renovation operation**, please note that the notice is effective for a period not to exceed a calendar year of January 1 through December 31.

1. Complete the facility information. This section describes the facility where the renovation or demolition is scheduled. This address will be used by the Department inspector to locate the project site. Provide the name of the consultant or firm that conducted the asbestos site survey/inspection. For "prior use" check the appropriate box to indicate whether the prior use of the facility is that of a school, college, or university; residence, as residential dwelling; small business, or other. If "other" is checked, identify the use. Please follow the same instructions for "present use."
2. Complete the facility owner information.
3. Complete the contractor information; however, a Guam license number or disclosure of that number is not required to comply with the notice requirements.
4. List separately the scheduled start and finish dates (month/day/year) for both the asbestos removal portion of the project and the renovation or demolition portion of the project.
5. Check the methods and procedures to be used. (Note: The NESHAP for asbestos, requires obtaining Department approval prior to using a dry removal method.)
6. Describe the procedures to be used in the event unexpected RACM is found or previously nonfriable asbestos material becomes crumbled, pulverized, or reduced to powder after start of the project.
7. Complete the asbestos waste transporter information.
8. Complete the waste disposal site information.
9. List the amount of RACM or ACM of each type of asbestos to be removed. (Note: A volume measurement of RACM off facility components is **only** permissible if the length or area could not be measured previously.)
10. Provide the address where the Department is to send the invoice for any fee due. Do not send a fee with the notification. The fee will be calculated by the Department.

Sign the form and mail the original to the Guam Environmental Protection Agency (GEPA) (**DO NOT FAX**). The correct address can be obtained by contacting the Department of Public Works Right of Way Supervisor at 542 North Marine Corps Drive, Tamuning, GU 96913.

Section 9.1

FUNDS MANAGEMENT

TABLE OF CONTENTS

PURPOSE 9-1-1

AUTHORITY 9-1-1

SCOPE 9-1-1

EFFECT OF CHAPTER ON OTHER AGENCIES..... 9-1-1

REFERENCES 9-1-1

FORMS..... 9-1-1

DEFINITIONS 9-1-1

9.1.1 Invoice Transmittals for Right of Way Payments 9-1-2

9.1.2 Expenditures..... 9-1-2

9.1.3 Deposit Transmittal..... 9-1-3

9.1.5 Federal Participation in Right of Way Costs..... 9-1-4

9.1.6 Coding of Invoice Transmittals 9-1-5

HISTORY 9-1-5

Section 9.1

FUNDS MANAGEMENT

PURPOSE

The purpose of this section is to establish the process the Department of Public Works Office of Right of Way (Department) must follow to process invoice transmittals, deposit transmittals, and coding for Federal aid participation.

AUTHORITY

23 CFR, Parts 710.201 and 710.203
5 GCA, Chapter 4, Program Budgeting and Financial Management
5 GCA, Chapter 22, General Fiscal Policies and Controls

SCOPE

This section will be utilized Department of Public Works (Department) Offices of Right of Way. Other affected offices include the Department's Fiscal Section liaison with the Department of Administration and Bureau of Budget and Management Research. The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel funds management functions and the Department's Fiscal Liaison with the Department of Administration and Bureau of Budget and Management Research Staff.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Right of Way Manual, Section 5.2, The Real Property Negotiation Process

FORMS

None specific to this section.

DEFINITIONS

Department Liaison: Unless otherwise stated, refers to the Department of Public Works Fiscal Section (DPWFS) with the Department of Administration (DOA) and Bureau of Budget and Management Research (BBMR).

Expenditure: A created or incurred legal obligation to disburse money.

Interest: Payment made in excess of the original invoice amount as directed by a court order or settlement agreement

Right of Way Invoice Transmittal (RIT): A method for transmitting the vendor invoice or other supporting documentation to the Department requesting a warrant for payment of right of way expenditures detailed in **Section 9.1.2, Right of Way Manual**.

Right of Way Contract Invoice Transmittal (R/W CIT): A method for transmitting the vendor invoice or other supporting documentation to the Department requesting a warrant for payment of right of way contractual services.

Right of Way Deposit Transmittal: A method used for processing right of way payments received for leasing of right of way, refunds and rebates and warrant cancellations.

Vendor Invoice: An itemized statement of goods or services received from a vendor which reflects the date, terms, method of shipment (if applicable), quantity, price and any other pertinent details.

Warrant Request Package: A packet of documents consisting of a transmittal, vendor_invoice (as applicable) and supporting documentation necessary to request a warrant for right of way expenditures from the Department of Administration (DOA).

9.1.1 Invoice Transmittals for Right of Way Payments

9.1.1.1 A vendor invoice should be submitted to the DPWFS no later than **twenty business days** after receipt of the invoice and receipt and inspection and approval of the goods or services by the Department of Public Works Right of Way Supervisor (DPWRS), Director of the Department of Public Works (DDPW) and Department of Public Works Highway Administrator (DPWHA).

9.1.1.2 Inspection and approval of goods or services shall take no longer than **five business days** after receipt of such goods or services, unless the bid specifications, purchase order, or contract specify otherwise.

9.1.1.3 The Department shall provide payment in sixty (60) days and in accordance with Title 5, Guam Code Annotated Section 22503 for all services performed to reasonably satisfactory standards. Incomplete or inaccurate invoices will be returned to the Consultant for correction and resubmittal. If the Department disputes any portion of amount due to the Consultant, the Department shall notify the Consultant in writing of disputed charges within thirty (30) days of submittal of the Consultant's invoice.

9.1.1.4 The Department shall be responsible for ensuring invoices are processed and warrants issued in the required time limit, so that the Government of Guam will not be required to pay interest to the vendor.

9.1.2 Expenditures

9.1.2.1 The following right of way expenditures will be handled by the Department and records retained in the Department's official files:

- (A) Land and severance damages, includes improvements listed on appraisal;
- (B) Mobile home purchase;
- (C) Sign purchase, nonconforming outdoor advertising signs;
- (D) Business damages;
- (E) Land owner CPA fees;

- (F) Land owner attorney fees;
- (G) Land owner appraiser fees;
- (H) Other land owner expert fees or costs;
- (I) Closing costs;
- (J) Interest;
- (K) Other court ordered fees and costs;
- (L) Relocation assistance costs including move costs and replacement housing payments.

This list is not an all-inclusive list of expenditures that the Department is responsible for handling. The method of procurement, how a commodity or service is obtained, as well as the amounts paid, dictate the necessary form of payment. If the amount paid annually to a single vendor (other than governmental units) exceeds the statutory threshold for competitive bids, then the Guam Chief Procurement Officer (GCPO) will seek bids and issue a purchase order/contract. The Department should consult with the GCPO or designee to obtain appropriate technical procurement information regarding other expenditures.

9.1.3 Deposit Transmittal

9.1.3.1 The following must be processed and submitted on the Department's Deposit Transmittal form:

- (A) Salvage credit for sale of severable items, personal property, signs, etc;
- (B) Lease or rental income;
- (C) Credit for refunds;
 - (1) Court Registry refund;
 - (2) Overpayments;
 - (3) Duplicate payments;
 - (4) Warrant Cancellations.

9.1.4 Revenues

9.1.4.1 The Department of Public Works in collaboration with the Department of Revenue and Taxation shall create a new fund which will be separate and apart from all other funds of the Government of Guam. The fund shall not be made a part of the Government of Guam General Fund and shall be kept in separate bank account under the purview of the Public Auditor. All monies from the sale of surplus properties or income from the rental or lease of real property owned by the Government of Guam through acquisition by the Department of Public Works Office of Right of Way (Department) shall be deposited into this fund as per instructions from FHWA. All eligible funds are required to be credited to the federal highway fund account to be used in future Title 23 eligible projects during the fiscal year they were generated as per **23 USC § 156**.

9.1.4.2 All revenue collected shall be deposited into a special trust fund established for the Department of Public Works to deposit all revenues collected from the leasing or sale of the Department of Public Works property not needed for transportation purposes in accordance with this section of the Right of Way Manual.

9.1.4.3 Credit to federal funds is not required. **Form No. 8.6-6, Right of Way Deposit Transmittal**, shall be clearly marked "DO NOT CREDIT FEDERAL FUNDS".

9.1.4.4 Specific revenue object codes should be established for tracking purposes and used in conjunction with the Department revenue organization code when processing the revenue payments.

- (A) Joint Public-Private Development – A specific object code should be developed for each instance of revenue generated through a lease.
- (B) All Other Parcels

9.1.5 Federal Participation in Right of Way Costs

9.1.5.1 Any costs incurred by the Department, which are compensable under Guam law, are generally eligible for Federal participation.

9.1.5.2 For right of way costs, the following costs are normally ineligible for Federal participation on right of way projects.

- (A) Any costs where Federal participation was not requested by the Department or not authorized by the Federal Highway Administration (FHWA);
- (B) All property owner fees and costs;
- (C) Business damages and all fees and costs pertaining to business damages;
- (D) Clerk of the Guam Superior Court fees for disbursement of nonparticipating court deposits;
- (E) Any interest associated with a nonparticipating item, or as a result of noncompliance.
- (F) All costs, including appraisal, acquisition, demolition, relocation or court costs necessary to acquire property marked nonparticipating on right of way maps.
- (G) Noise damages;
- (H) Department costs that were not project related;
- (I) Expert witness fees if the expert witness was hired to testify concerning a nonparticipating item;
- (J) Land purchase agreements. Any amount over the initial approved appraisal.

9.1.5.3 This section applies retroactively for all projects that:

- (A) Have not been closed out by FHWA; and
- (B) Were authorized prior to January 20, 2000; and

(C) Had costs incurred after January 20, 2000.

9.1.5.4 Credit to Federal funds is not required on income received by the Government of Guam for real property owned by the Government of Guam through acquisition by the Department of Public Works Office of Right of Way (Department) on projects with Federal participation in acquisition costs.

9.1.6 Coding of Invoice Transmittals

9.1.6.1 To correctly bill for Federal aid participation, the DPWRS, or authorized designee, shall review and provide the proper coding of invoice transmittals for Federal aid eligible or ineligible costs. Those costs will require the approval of the DDPW and DPWHA.

9.1.6.2 The DPWFL, DOA and BBMR shall be responsible for pre-auditing each warrant request package for accuracy, documentation completeness, and correct Federal aid participation coding.

9.1.6.3 The Department will be responsible for ensuring the coding and invoice is correct

HISTORY

Original Issue Date: January 2011.

Revision 1 – October 2017 – changes to sections 9.1.1.1, 9.1.1.3, 9.1.6.1, and 9.1.7 -deleted.

Section 9.3

RIGHT OF WAY RECORDS MANAGEMENT

TABLE OF CONTENTS

PURPOSE 9-3-1

AUTHORITY 9-3-1

SCOPE 9-3-1

EFFECT OF CHAPTER ON OTHER AGENCIES..... 9-3-1

REFERENCES 9-3-1

FORMS..... 9-3-1

DEFINITIONS..... 9-3-1

9.3.1 Right of Way Records Filing System 9-3-2

9.3.2 Retention Schedule 9-3-2

9.3.3 Employee/Agent Responsibilities..... 9-3-2

9.3.4 Social Security Numbers 9-3-3

9.3.5 Appraisals, Offers, and Counteroffers 9-3-4

9.3.6 Title Information..... 9-3-4

9.3.7 Construction Plans..... 9-3-4

9.3.8 Business Records Provided to the Department..... 9-3-4

HISTORY 9-3-4

Section 9.3

RIGHT OF WAY RECORDS MANAGEMENT

PURPOSE

The purpose of this section is to establish the process the Department of Public Works, Office of Right of Way (Department) must follow to maintain right of way records including information that is exempt from inspection, examination, and duplication.

AUTHORITY

23, CFR, Part 710.201
5 GCA, Chapter 20, Article 6, Records Management Act

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel records management functions and the Office of the Attorney General (OAG) Counsel.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

5 GCA, Chapter 32, Article 7, Social Security Number Confidentiality Act
Right of Way Manual, Section 5.5, Legal Documents and Land Acquisition Closing
Right of Way Manual, Section 9.4, Right of Way Project Closing

FORMS

5.6-3 Request for Taxpayer Identification Number
9.3-1 Request for Vendor Identification Number

DEFINITIONS

Commercial Activity: An activity that provides a product or service that is available from a private source.

Custodian: The official responsible for maintaining right of way records. The Director, Department of Public Works (DDPW), is the custodian for Department records.

Exempt Records/Information: Exempt records are records that include (1) social security numbers, (2) appraisals, agent price estimates, and other reports relating to value, offers, counteroffers, and all title information including names and addresses of property owners whose property is subject to acquisition by purchase or through the power of eminent domain, until such time as a purchase agreement has been conditionally accepted by the Department or at the conclusion of condemnation proceedings, (3) construction plans maintained in right of way records depicting structures, such as bridges,

causeways, approaches, etc., and (4) business information provided by the owner of a business as part of an offer to settle business damages if the owner requests in writing that the information be held exempt.

Legitimate Business Purposes: Legitimate business purposes for a commercial entity requesting social security numbers includes verification of the accuracy of personal information received by a commercial entity in the normal course of business and for use in civil, criminal or administrative proceeding; for insurance purposes; for use in law enforcement in the investigation of crimes; for use in identifying and preventing fraud; for use in matching, verifying or retrieving information and for research activities.

Official Parcel Files: The files containing all records pertaining to valuation, negotiation, acquisition, relocation, condemnation, and property management activities associated with each individual right of way parcel.

Official Project File: The file containing general project information that is not parcel specific.

Public Records: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material regardless of the physical form, characteristics or means of transmission made or received pursuant to law or ordinance, or in connection with the transaction of official business by any agency.

Redaction: The careful editing of a document to remove protected information such as social security numbers.

Verified Written Request: A document verified signed or executed by a person stating under oath or affirming that the facts or matters stated or recited in the document are true or verified by written declaration.

9.3.1 Right of Way Records Filing System

9.3.1.1 The Department shall establish and maintain official project and parcel files in a manner that provides that all records are accessible for review, inspection and/or copying upon **72 hours** notice.

9.3.2 Retention Schedule

9.3.2.1 The following documents must be maintained permanently in the Departments official parcel file:

- (A) All copies of original executed deeds, perpetual easements, and temporary easements;
- (B) Copies of Orders of Taking, Petitions, Certificates of Deposit, Final Judgments, and all other court orders pertaining to eminent domain actions, and
- (C) Title insurance policies.

9.3.2.2. All information contained in project and parcel files shall be retained for **three years** following either the date of the final voucher to the Federal Highway Administration (FHWA) for projects with Federal aid in Right of Way or the closing of the project as defined in **Section 9.4, Right of Way Project Closing**. Following the mandatory retention period, documents other than those identified in **Section 9.3.2.1** can be destroyed after scanning.

9.3.3 Employee/Agent Responsibilities

9.3.3.1 All exempt records/information as defined in this section shall be maintained as confidential by all Department employees or agents of the Department until disclosure of such information is authorized by the department of Public Works Right of Way Supervisor (DPWRS) or is otherwise subject to disclosure under the law.

9.3.3.2 Disclosure of exempt records/information may subject the employee or agent who discloses the exempt records/information to criminal penalties under the law. If a question arises the OAG Counsel should be contacted for advice.

9.3.4 Social Security Numbers

9.3.4.1 All social security numbers held by the Department, its agents or contractors, are confidential and exempt from disclosure under **5 GCA, Chapter 32, Article 7**, except as provided for in **Sections 9.3.4.7** and **9.3.4.8** of this *Manual*.

9.3.4.2 Social security numbers shall not be collected by the Department except when provided as part of the records substantiating a business damage claim when provided as part of the records verifying income relating to a relocation assistance claim, or when needed for Department of Revenue and Taxation income reporting and/or for use in identifying payees as vendors. Social security numbers shall not be collected for any other purposes.

9.3.4.3 Social security numbers other than those provided as part of a business damage claim or for the purpose of verifying income relating to a relocation assistance claim, shall be collected using either **Form No. 5.6-3, Request for Tax Payer Identification Number**, or **Form No. 9.3-1, Request for Vendor Identification Number**. **Form No. 5.6-3** will be used to collect taxpayer identification numbers from persons receiving payments for real estate and real estate damages. All other taxpayer identification numbers collected to identify payees for items such as payments for business damages, fees and costs, goods or services provided as a vendor directly to the Department, relocation assistance payments to non-property owner displacees, or closing costs shall be collected using **Form No. 9.3-1**.

9.3.4.4 Prior to requesting **Form No. 9.3-1, Request for Vendor Identification Number**, the Department should verify whether the payee has a current vendor identification number. If a vendor number exists, no form is required.

9.3.4.5 Social security numbers shall be included only on the following right of way forms: **Form No. 5.6-3, Request for Tax Payer Identification Number**, **Form No. 9.3-1, Request for Vendor Identification Number**.

9.3.4.6 The Department may redact social security numbers from title searches, original business records provided by a business owner, or relocation income verification records provided by a relocatee at the time such records are received in the Department and maintain those records as is customary in the Department.

9.3.4.7 Pursuant to **5 GCA, Chapter 32, Article 7**, social security numbers contained in any document maintained in Department records must be redacted prior to making the document available for inspection, examination or duplication pursuant to a public records request.

9.3.4.8 Social security numbers may be disclosed to another governmental entity or its agents, employees or contractors if disclosure is necessary for the receiving entity to perform its duties or responsibilities. Documents containing social security numbers may also be provided to consultants under contract to the Department when those documents are necessary for the consultant to conduct the activity contracted for by the Department.

9.3.4.9 Social security numbers may be disclosed to a commercial entity engaged in the performance of a commercial activity provided the social security numbers will be used only in the normal course of business for legitimate business purposes. In order to obtain social security numbers held by the Department, a commercial entity must provide the Department a verified written request signed by an authorized officer, employee or agent of the commercial entity. The verified written request must contain the name of the commercial entity, business mailing and location addresses, business telephone numbers, a statement of the specific purposes for which the business entity needs the social security numbers, and how the social security numbers will be used in the normal course of business for legitimate business purposes. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the business entity.

9.3.4.10 All requests for social security numbers received by the Department pursuant to this section must be forwarded to the DDPW for approval prior to the Department providing the requested social security numbers.

9.3.5 Appraisals, Offers, and Counteroffers

All appraisals, agent price estimates and other reports relating to value, offers, and counteroffers must be maintained as confidential and exempt from public records requests, until such time as a purchase agreement is conditionally accepted by the Department or condemnation proceedings are concluded, at which time the exemption will expire. This does not affect the rights of fee owners and business owners or their representatives who request a copy of the appraisal report upon which the offer to the fee owner is based, or through discovery in an eminent domain action. Appraisals, agent price estimates, and other reports relating to value, offers and counteroffers may be provided to consultants under contract to the Department when necessary for the consultant to conduct the activity contracted for by the Department.

9.3.6 Title Information

The Department may exempt title information including names and addresses of property owners whose property is subject to acquisition by purchase or through the power of eminent domain. Title information must be maintained as confidential, until such time as when a purchase agreement is conditionally accepted by the Department or condemnation proceedings are concluded. This does not affect the rights of landowners or their representatives who request this information through discovery in an eminent domain action. Title information may be provided to consultants under contract to the Department when necessary for the consultant to conduct the activity contracted for by the Department.

9.3.7 Construction Plans

Any inspection, examination or duplication of construction plans maintained in right of way records except those provided pursuant to a request by a landowner or landowner's representative, business owner or business owner's representative, or through discovery in an eminent domain action, must comply with the Department's standard procedure.

9.3.8 Business Records Provided to the Department

9.3.8.1 Business records as described in **Section 5.9 Business Damages**, provided to the Department as part of an offer of business damages, shall be maintained as confidential and exempt from public records requests, when the person providing such records requests in writing that the records be held confidential and exempt.

9.3.8.2 The Department may allow an agency, to inspect and copy business records/information made confidential and exempt from disclosure provided the information will be used exclusively for the transaction of official business of the receiving agency.

9.3.8.3 The Department may offer business records/information made confidential and exempt from disclosure as evidence in any legal proceeding.

HISTORY

Original Issue Date: January 2011.

Revision 1 – October 2017 – No changes to this section



DPW Form 9.3-1

Request for Vendor Identification Number

ITEM/SEGMENT NO.: _____
 GU PROJECT NO.: _____
 ROUTE NO.: _____
 PARCEL NO.: _____

Dear

The Department of Public Works will be processing a payment to you related to the above referenced right of way parcel. In order to process your payment, the Department requires your federal taxpayer identification number (TIN). If you do not provide your TIN we cannot process your payment. Your TIN will be your social security number for individuals, or your employer identification number for entities.

Please provide the following information:

Full Name: _____
 Address: _____

Social Security Number: _____ **or**

Employer Identification Number _____

Signature

Date

CONFIDENTIAL

Section 9.4

RIGHT OF WAY PROJECT CLOSING

TABLE OF CONTENTS

PURPOSE9-4-1

AUTHORITY9-4-1

SCOPE.....9-4-1

EFFECT OF CHAPTER ON OTHER AGENCIES.....9-4-1

REFERENCES9-4-1

FORMS9-4-1

9.4.1 Closing Completed Right of Way Projects.....9-4-1

9.4.2 Closing Incomplete Right of Way Projects9-4-2

9.4.3 Funds Management Handbook9-4-3

HISTORY9-4-3

Section 9.4

RIGHT OF WAY PROJECT CLOSING

PURPOSE

The purpose of this section is to establish the process the Department of Public Works, Office of Right of Way (Department) must follow to close right of way projects

AUTHORITY

5 GCA, Chapter 20, Article 6, Records Management

SCOPE

The principal users of this document are Department of Public Works, Office of Right of Way employees and those persons contracted by the Department to perform records management functions, and the Office of the Attorney General (OAG).

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

Right of Way Manual Section 9.3, Right of Way Records Management

FORMS

None specific to this section.

9.4.1 Closing Completed Right of Way Projects

9.4.1.1 In accordance with *Right of Way Manual, Section 9.3, Right of Way Records Management*, the Department shall insure all real property has been acquired and all subordinate interests cleared. The Department must verify that copies of all legal documents and subordinate releases, properly executed, are in the Department's official right of way files. However, if an executed subordinate document cannot be located, the Department must determine whether the subordinate interest has expired or otherwise been extinguished. Alternatively, the Office of the Attorney General (OAG) Counsel may determine whether the outstanding interest is of sufficient importance to require further action. Projects may also be closed if **three years** have passed since the documented completion of construction. Reasonable efforts must be made to locate the missing documentation.

9.4.1.2 A right of way project should be closed within **eighteen months** of the date of closing on the last parcel on the project or the date of entry of the last final judgment on the project, whichever is later. When the Department determines that a project is ready to be closed, the DPWRS shall:

- (A) Determine that all required documents, including all legal documents, are in the Department's official project and parcel files; obtain any outstanding legal documents; verify that unneeded legal documents have been officially voided; verify that all fees and costs and relocation claims have been paid; document the file accordingly;

-
- (B) Determine the financial and contractual status of the project. This review includes:
 - (1) Review of the Department's financial management systems, to determine the status of the work program phases, funds, and whether the project is open for charges;
 - (2) Review the Department's financial management systems to obtain encumbrance balance(s).
 - (3) Review of the Department's files to determine whether the project is open for charges, and to obtain contract numbers;
 - (4) Review of the Department's Fiscal Section (DPWFS) with Department of Administration (DOA) records to obtain the contract status and encumbered balances;
 - (5) If the project is open for charges, contact the agency responsible for managing the contract to determine whether final billing has been processed.
 - (C) When final billing has been processed, request in writing that:
 - (1) The DOA Accounting Section, close the project and unencumber any balances, and
 - (2) The DPWFS update the contract status.
 - (D) Request in writing that the DPWFS, place the project in a status of closed for expenditures, but open for receipt of revenue.
 - (E) When all research has been completed, the Department of Public Works Right of Way Supervisor (DPWRS) or designee shall execute the following:
 - (1) For Federal aid projects, the DPWRS or designee shall submit a memo to the DPWFS, certifying that all parcels have been acquired and all legal documents are on file.
 - (2) For non-federal aid projects, the DPWRS or designee shall submit a memo to the DPWFS certifying that all parcels have been acquired and all legal documents are on file.
 - (F) The Department must document the date the project is closed or certified for final vouchering, in order to determine when the retention schedule has been met. This allows files to be destroyed timely upon completion of the retention period.

9.4.2 Closing Incomplete Right of Way Projects

9.4.2.1 Right of way projects may be closed when documents are outstanding because of lengthy pending litigation. Federal Highway Administration (FHWA) can authorize the Department to consider final vouchering for these projects with the understanding that the project may be reopened to allow Federal aid billing of subsequent right of way settlements or final judgments.

9.4.2.2 By closing the projects, the unexpended balance will be available for obligation on new projects.

9.4.2.3 If a project is closed, and its remaining balance is committed to other projects, current year funds must be used to process payments if the closed project is reopened.

9.4.3 Funds Management Handbook

A ***Funds Management Handbook*** shall be developed by the Department to assist Department personnel in performing their responsibilities. The handbook should detail the criteria to be followed in order to comply with this procedure.

HISTORY

Original Issue Date January 2011

Revision 1 – October 2017 – No changes to this section

Section 10.1

RIGHT OF WAY CERTIFICATION

TABLE OF CONTENTS

PURPOSE10-1-1

AUTHORITY10-1-1

SCOPE10-1-1

REFERENCES10-1-1

FORMS10-1-1

DEFINITIONS10-1-1

10.1.1 Certification for Construction10-1-1

10.1.2 Certification Exceptions10-1-2

10.1.3 Certifications10-1-3

10.1.4 Certification Delivery10-1-3

HISTORY10-1-3

Section 10.1

RIGHT OF WAY CERTIFICATION

PURPOSE

The purpose of this section is to establish the process the Guam Department of Public Works, Office of Right of Way (Department) must follow for right of way project certifications.

AUTHORITY

23 CFR, 635.309(b)(c)(g)(h)&(p)

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition and management functions.

REFERENCES

Right of Way Manual Chapter 8.2, Right of Way Clearing
Right of Way Manual Chapter 8.7, Asbestos Management

FORMS

10.1-1 Right of Way Certification
10.1-2 Right of Way Certification with exception(s)

DEFINITIONS

Buildable Segment: A segment of a project on which right of way activities are sufficiently complete to allow construction to commence on that segment. Construction cannot interfere with the rights of property owners or tenants whose properties have not been acquired or who have not been relocated.

10.1.1 Certification for Construction

10.1.1.1 The Department must own and/or control all rights of way needed for construction of its projects. The Director Department of Public Works (DDPW) or designee must certify right of way is available for construction for all construction projects prior to advertisement for bids. **Form No. 10.1-1, Right of Way Certification**, shall be used to certify projects for construction when:

- (A) Title to all property and easements needed to construct the project, as designed, have vested in the Department as follows:
 - (1) The Department has obtained all private property and property rights needed for the project by conveyance, court order, or construction and maintenance easement;
 - (2) Property or property rights owned by the Government of Guam agencies have been transferred to the Department or alternatively the Department has obtained a permit, lease, license, or other form

of consent to construct its project;

- (3) Property or property rights owned by Federal agencies have vested in the Government of Guam pursuant to a conveyance or transfer.
- (B) All persons and businesses who were required to move or move personal property, if any, have been relocated from the project right of way in accordance with ***Right of Way Manual, Section 7.1, Relocation Assistance Program and Section 7.2 General Relocation Requirements***;
- (C) All structures and/or improvements, if any, have been removed from the project right of way in accordance with ***Right of Way Manual, Section 8.2, Right of Way Clearing***, or alternatively will be removed as part of the construction contract. This includes structures and/or improvements encroaching on existing right of way incorporated into the project; and
- (D) Asbestos abatement of buildings and/or structures to be removed by the construction contractor, if any, has been completed in accordance with ***Right of Way Manual, Section 8.7, Asbestos Management***, or alternatively, will be included in the construction contract.

10.1.1.2 Prior to certification, the Department must conduct a diligent review to fulfill the requirements of ***Section 10.1.1.1*** have been met for right of way acquired for, and existing right of way incorporated into, the project being certified. Review shall include but is not limited to:

- (A) Review of right of way maps and construction plans to confirm necessary right of way is available for construction;
- (B) Field review of the project to confirm there are no remaining structures, encroachments or relocation issues;
- (C) Review of parcel and project files to confirm all necessary right, title and interests in the right of way have been obtained, relocation is complete, and asbestos abatement and demolition are complete or detailed in the construction contract; and
- (D) Review of any additional information available.

10.1.2 Certification Exceptions

10.1.2.1 The DDPW and DPWHA may approve exceptions to the requirements of ***Section 10.1.1.1*** on a case-by-case basis. When requesting an exception, the Department of Public Works Right of Way Supervisor (DPWRS) shall provide the DDPW and DPWHA a detailed explanation of the circumstances requiring the exception on ***Form Number 10.1-2, Right of Way Certification with exception(s)***. The DDPW and the DPWHA shall coordinate with FHWA, as necessary, to provide the DPWRS a response within **ten business days** after receiving the request.

Note: Exceptions needed solely to meet certification or production schedules, where project letting is not in jeopardy, are not allowed.

10.1.2.2 In unusual circumstances and in order to preserve the project letting date, the DDPW may authorize exceptions that extend beyond the letting date. Exceptions involving Federally funded construction projects also require approval by FHWA. Exceptions extending beyond the project letting must be cleared or removed prior to commencement of construction on the affected portion of the project

10.1.2.3 The DDPW shall notify the FHWA Manager, Federal Aid Management Office, when a certification exception is requested.

10.1.3 Certifications

10.1.3.1 Projects require an initial certification stating the status of the project right of way as of the advertisement date. For projects to be constructed entirely within existing right of way and/or right of way acquired for the project prior to letting, the certification shall be a certification for construction that complies with the requirements of **Section 10.1.1.1**. For projects requiring acquisition of right of way after letting, the certification shall contain a statement that all additional rights of way to be acquired for the project shall be acquired in compliance with **Section 10.1.2** and applicable Guam and Federal law.

10.1.3.2 Construction projects may commence before the project is fully certified for construction. However, construction must be restricted to buildable segments of the project as determined by the Department, FHWA on Federally funded projects and in some cases the contractor. Prior to construction, buildable segments must meet the conditions for right of way certification in **Section 10.1.1.1**. For each identified buildable segment, construction may commence when the DDPW has provided the contractor's project manager a "Right of Way Clear Letter" stating that right of way activities are complete and right of way is available for construction.

10.1.4 Certification Delivery

The Department shall include the Right of Way Certification for Construction in the project plans, specifications and estimates (PS&E) package. The Department shall also provide the DDPW a copy of the certification at or before the project letting.

HISTORY

Original Issue Date: January 2011.

Revision 1 – October 2017 – changes to section 10.1.2.1.



DPW Form 10.1-1

Department of Public Works
ROW CERTIFICATION FOR CONSTRUCTION

Project Name:
GU Project No.:
Location:
Letting Date:

The undersigned hereby certifies as Follows:

Title to all property and easements needed for the above construction project is vested in the Government of Guam. The Government of Guam has obtained sufficient authority to occupy, use, construct, and maintain the proposed improvements on property and easements owned by the Government of Guam. Further:

Acquisition

- Right of way was not required for this project.
Right of way was acquired for this project in compliance with the applicable Guam and Federal law.

Relocation

- No persons or businesses were required to move or move personal property from the project right of way.
All persons and businesses that were required to move or move personal property from the project right of way have been provided relocation assistance in conformance with applicable Guam and Federal law.

Demolition

- No structures or improvements, including encroachments, required removal from the project right of way.
All structures and/or improvements, including encroachments, have been removed from the project right of way in compliance with applicable Guam and Federal law or will be included in the construction contract.

Asbestos Abatement

- No structures or improvements requiring asbestos abatement were located on the project right of way.
Asbestos abatement of buildings and/or structures, including those to be removed by the construction contractor has been completed in compliance with Guam and Federal law, or will be included in the construction contract.

Certified by:
Title: Director, Department of Public Works
Date:



DPW Form 10.1-2



Department of Public Works
ROW CERTIFICATION FOR CONSTRUCTION
(With Exceptions)

Project Name: _____
Project No.: _____
Location: _____
Letting Date: _____

The undersigned hereby certifies as Follows:

Title to all property and easements needed for the above construction project is vested in the Government of Guam. The Government of Guam has obtained sufficient authority to occupy, use, construct, and maintain the proposed improvements on property and easements owned by the Government of Guam. Further:

Acquisition

- Right of way was not required for this project.
Right of way was acquired for this project in compliance with the applicable Guam and Federal law.

Relocation

- No persons or businesses were required to move or move personal property from the project right of way.
All persons and businesses that were required to move or move personal property from the project right of way have been provided relocation assistance in conformance with applicable Guam and Federal law.

Demolition

- No structures or improvements, including encroachments, required removal from the project right of way.
All structures and/or improvements, including encroachments, have been removed from the project right of way in compliance with applicable Guam and Federal law or will be included in the construction contract.

Asbestos Abatement

- No structures or improvements requiring asbestos abatement were located on the project right of way.
Asbestos abatement of buildings and/or structures, including those to be removed by the construction contractor has been completed in compliance with Guam and Federal law, or will be included in the construction contract.

Exception(s) to the above statements and time frame(s) for the exceptions to be cleared or removed are described as Follows:

Certified by: _____
Title: Director of Public Works

Date: _____

Section 11.1

CARE & PROTECTION OF HIGHWAY

TABLE OF CONTENTS

PURPOSE.....11-1-1

AUTHORITY.....11-1-1

SCOPE.....11-1-1

EFFECT OF CHAPTER ON OTHER AGENCIES11-1-1

REFERENCES.....11-1-1

FORMS11-1-1

DEFINITIONS.....11-1-1

11.1.1 Encroachment Permit Requirement; Petty Misdemeanor and Fine11-1-2

11.1.2 Permit Terms.....11-1-3

11.1.3 Protection of Public Right of Way.....11-1-3

11.1.4 Cost of Work Supervision.....11-1-4

11.1.5 Bond May Be Required11-1-4

11.1.6 Notice Demanding Removal.....11-1-4

11.1.7 Summary Removal by Department.11-1-4

11.1.8 Removal by Department.....11-1-5

11.1.9 Renewal of Highway Encroachment Permit11-1-5

HISTORY11-1-5

Section 11.1

CARE & PROTECTION OF HIGHWAY

PURPOSE

The purpose of this section is to establish the process the Department of Public Works, Office of Right of Way (Department) must follow to administer the Care and Protection of Highways.

AUTHORITY

Pursuant to **Guam Public Law 27-118:2 [21 G.C.A. § 62112(c)]**, the Department has oversight responsibility for the development of Public Rights of Way through the highway encroachment permitting process.

Executive Order 83-011 issued by the Governor of Guam and dated May 5, 1983 authorizes the Director of the Department of Public Works (DDPW) to direct and coordinate the operations and activities of the Department; and to establish and enforce policies for the management and supervision of the Department.

SCOPE

The principal users of this document are Department of Public Works, Office of Right of Way employees.

EFFECT OF CHAPTER ON OTHER AGENCIES

This Chapter outlines general principles and guidelines that can be considered for use and guidance in the absence of relevant law or agency rules, regulations, policies or procedures. Nothing herein is intended to supersede or conflict with jurisdiction, or applicable law, or any agency rule, regulation, policy or procedure. In the event of a conflict with this Chapter or ROW Manual, then the applicable law or the rules, regulations, policies or procedures of the affected governing agency shall prevail.

REFERENCES

5 GCA Chapter 53; Care & Protection of Highways
16 GCA Chapter 5; Size, Weight and Load Limitations and Restriction of Certain Vehicles
21 GCA Chapter 62; Subdivision Law
Executive Order No. 83-011
Each Sub-Section of this Chapter will identify the specific applicable sources.

FORMS

None specific to this Section.

DEFINITIONS

Billboard: A sign that identifies or communicates a commercial or noncommercial message related to an activity conducted, an election campaign, a service rendered, or a commodity sold at a location other than where the sign is located. A billboard is a Highway Commercial Use.

Easement: A grant by an owner of land for a specified use or uses of said land to a person or persons, to the general public, or to the Government of Guam. Source: **21 G.C.A. § 62105(c)**.

Encroachment: Any tower, pole, pole line, pipe, pipeline, fence, billboard, stand or building, or any structure, device or item not particularly mentioned, that is placed in, under or over any portion of a highway. **Encroachment** also means a Highway Commercial Use involving the commercial operation of any trucks meeting the HS20 designation as defined by the American Association of State Highway & Transportation Officials (AASHTO), with a maximum allowable weight of 76,800 pounds and/or maximum single axle weights of 20,000 pounds, or as otherwise authorized by **16 G.C.A. Chapter 5**. Source: **5 G.C.A. § 53101**.

Highway: The entire width between the boundary lines of every publicly maintained surface, when any part thereof is open to the use of the public for purposes of vehicular travel; synonymous and interchangeable in usage with "street". Highway also means all or any part of the entire width of right of way, whether or not such entire area is actually used for highway purposes. Source: **16 G.C.A. § 5101 and 5 G.C.A. § 53101(c).**

Highway Commercial Use: A use of the highway, or of public lands, or of Public Right of Way for the purpose of providing or delivering goods or services either for commercial use or within the course and scope of commerce; including but not limited to any static non-moving commercial encroachment use such as erection of a billboard, or of any non-static commercial use or action which necessitates travel and access by motor vehicle of the highway or of public lands or of Public Right of Way. Non-profit or not-for-profit entities are not exempt from any statutes or regulations governing Highway Commercial Use.

Permittee: The holder of a Highway Encroachment Permit and/or the owner of an encroachment.

Public Right of Way: A Right of Way where the public has the right to pass unhindered. It includes: (1) easements for roadways created by law or operation of law; (2) those subdivision easements, access, or rights of way created by delineation on approved maps, way of formal grants or dedication of easement, access, or right of way, regardless of formal acceptance by the government; and (3) those rights of way mandated by the Guam Subdivision Law within a subdivision or lot parceling which appear on an approved final subdivision or lot parceling map as dedicated easements, dedicated access, rights of way, or roadways. Source: **21 G.C.A. § 62112(a).**

Right of Way: The privilege of the immediate use of the highway. It includes the entire width between the property lines of a highway, street, or alley. Source: **16 G.C.A. § 1102(ee) and 21 G.C.A. § 62105(n).**

Weigh-in-Motion (WIM) System: The technology for measuring the weight of moving trucks in order to monitor pavement loadings.

11.1.1 Encroachment Permit Requirement; Petty Misdemeanor and Fine

11.1.1.1 A public highway, road, easement, or right of way serves the public, and no person or entity shall commit, do, or otherwise take any action that would, either above or below, encroach upon, use, obstruct, place obstructions upon, hinder passage over, place signs upon, or otherwise hinder the maintenance of a Public Right of Way or Highway unless the person or entity shall first apply for and receive a written Highway Encroachment Permit as provided for in this Section. Source: **21 G.C.A. § 62112(d).**

11.1.1.2 The Department may issue written permits, as provided in this Article, authorizing the Permittee to do any of the following encroaching acts:

- (A) Making an opening or excavation for any purpose in a highway. Source: **5 G.C.A. § 53102;**
- (B) Place, change or renew an encroachment. Source: **5 G.C.A. § 53102;**
- (C) Place or display in, under, or over any highway, any kind of billboard or advertising sign or device. Any such billboard, sign, or device placed or displayed contrary to the provisions of this Section is a public nuisance, and the Department may immediately remove it without notice or liability as authorized by **5 G.C.A. § 53107** and by the **Right of Way Manual, Section 11.1.9, Care and Protection of Highway.** Source: **5 G.C.A. § 53102;**
- (D) Engage in a Highway Commercial Use involving the commercial operation of any trucks or other vehicles meeting the HS20 designation as defined by the American Association of State Highway & Transportation Officials (AASHTO), with a maximum allowable weight of 76,800 pounds and/or maximum single axle weights of 20,000 pounds, or as otherwise authorized by **16 G.C.A. Chapter 5.**

11.1.1.3 Any person who does any of the acts specified in this Section without the authority of a valid permit is guilty of a petty misdemeanor. Source: **5 G.C.A. § 53102.**

11.1.2 Permit Terms

11.1.2.1 Any permit issued under the provisions of this Article may provide that the Permittee will pay the entire expense of replacing the highway in as good condition as before, and may provide such other conditions as to the location and the manner in which the work is to be done as the Department finds necessary for the protection of the highways. Source: **5 G.C.A. § 53103.**

11.1.2.2 All permits shall provide that they are revocable upon five (5) business days notice by the Department. Source: **5 G.C.A. § 53103.**

11.1.2.3 All work related to an encroachment for which a permit is issued must be commenced within six (6) months of the date that the permit is issued, otherwise the permit may be cancelled by the Department. The authorized work shall be carried out in accordance with the approved plans, specifications and agreements submitted with the permit application. The location, design, and specifications of an approved encroachment may not be changed without the prior approval of the Department.

11.1.2.4 The permit may provide for such other conditions pertaining to the location and the manner in which the work is to be done as the Department finds necessary for the protection of the highways, including but not limited to, the requirement that weight scales or a Weigh-in-Motion (WIM) system be installed for the purpose of verifying the weight of any vehicle traversing or otherwise using the highway.

11.1.2.5 If installation of permanent static weight scales or other Weigh-in-Motion (WIM) system is required by the Department as a condition for issuance of an encroachment permit, the Permittee shall be required to deliver and report its weight records on a quarterly basis to the Department and to further provide on an annual basis to the Department a certification of scale calibration. Failure to comply with this subsection shall be grounds for revocation of the encroachment permit and for its non-renewal.

11.1.2.6 The Permittee shall maintain the encroachment in accordance with the requirements and conditions of the Department. All encroachment permits are subject to any site-specific conditions that may apply.

11.1.2.7 The Permittee is responsible for the construction, marking and maintenance of any detours required, and for maintaining safety measures for the protection of the public during the construction of any works in respect of the encroachment. During construction of the encroachment, the Permittee shall ensure that the operation of the highway is not interfered with and that the right of way remains free of debris, earth or other material.

11.1.2.8 The Permittee shall protect all survey markers and monuments in the vicinity of the work and shall replace at its cost all markers and monuments if damaged.

11.1.2.9 The Permittee shall not cut, trim or interfere with any trees or shrubs on the right of way without the prior written approval of the Department.

11.1.2.10 No permit shall be issued for any actual or proposed encroachment that exceeds a height of thirty (30) feet. Source: **21 G.C.A. § 61401.**

11.1.2.11 The Permittee shall hold indemnify and hold the Department harmless for all damages and liabilities caused as a result of the encroachment or of any related works undertaken pursuant to the permit.

11.1.2.12 No rights derived from any Highway Encroachment Permit shall be assigned, sold, leased, subleased, encumbered or hypothecated without the consent and approval of the Department, and any attempted alienation of any interest in a Permit without such prior consent and approval shall be void.

11.1.3 Protection of Public Right of Way.

11.1.3.1 No person or entity shall in any way retain special property rights that would allow him to charge fees for passage or otherwise, that would allow him to prohibit, and therefore, discriminate against, any member of the public from using a Public Right of Way. Source: **21 G.C.A. § 62112(e) ~ (i).**

11.1.3.2 No person or entity shall in any way retain special property rights that would allow him to grade, change water courses upon, or modify the topography and roadway elevation of the Public Right of Way without the prior written authorization from the Department of Public Works. Source: **21 G.C.A. § 62112(e) ~ (i)**.

11.1.3.3 No person or entity shall in any way retain special property rights that would allow him to use any portion of the Public Right of Way to meet setback or other zoning requirements. Source: **21 G.C.A. § 62112(e) ~ (i)**.

11.1.3.4 In subdivisions approved since 1975 where the subdivider has not opened, improved, or established a public access road, any landowner whose property is served by the Public Right of Way may, with the express written authorization of the Department of Public Works, take necessary and reasonable measures to make the Public Right of Way passable for ingress and egress to his property. The subdivider shall in no way retain special property rights that would allow him to obstruct the lawful development of this Public Right of Way. Source: **21 G.C.A. § 62112(e) ~ (i)**.

11.1.3.5 In subdivisions where the subdivider or the government has not maintained a Public Right of Way, any landowner whose property is served by that right of way may make the necessary and reasonable measures to maintain that portion of the easement that immediately abuts his property. Reasonable maintenance is herein defined as cutting brush, mowing vegetation, filling potholes, and removing rocks and other obstructions to passage; it does not include grading or otherwise changing the topography or elevation of the roadway. Source: **21 G.C.A. § 62112(e) ~ (i)**.

11.1.4 Cost of Work Supervision

The Department may, but is not required to, supervise any work done under any permit issued under the provisions of this Article, in which event, the Permittee shall pay the reasonable cost of such supervision to the Department. Source: **5 G.C.A. § 53104**.

11.1.5 Bond May Be Required

Before granting a permit under any provision of this Article, the Department may require the applicant to file with the Department a satisfactory bond, payable to the Government of Guam in such amount and term as the Department deems sufficient, conditioned on the proper compliance by the Permittee with the provisions of **5 G.C.A. Chapter 53**. In the event of forfeiture of the Bond, the proceeds shall go to the affected agency. Source: **5 G.C.A. § 53105**.

11.1.6 Notice Demanding Removal.

11.1.6.1 Except as otherwise provided in **5 G.C.A. § 53108**, notice shall be given to the owner, occupant, or person in possession of the encroachment, or to any other person causing or suffering the encroachment to exist, by serving upon any such person a notice containing a demand for the immediate removal of such encroachment from within such highway. Any such notice shall describe the encroachment complained of with reasonable certainty as to its character and location. Source: **5 G.C.A. § 53106**.

11.1.6.2 The DDPW may approve a longer period of time for removing the encroachment; provided however, that in no case shall the time permitted for removal exceed more than **six (6)** months from the giving of a notice demanding removal.

11.1.6.3 Any notices required by this Section may be given by: (i) personal delivery; or (ii) mailing a copy of the notice via regular mail, postage prepaid with proof of mailing to the responsible person's last known mailing address. When service of a notice is done by mail, service is complete upon mailing and proof thereof, and it is not required that the addressee ultimately picked up or received the notice; or (iii) publicly posting a copy of the notice simultaneously at the place of encroachment and in the office of the Mayor of the village where the encroachment is located.

11.1.7 Summary Removal by Department.

11.1.7.1 The Department may, without notice or liability, immediately remove from any highway any encroachment that:

- (A)** Is not removed prior to the expiration of **five (5)** days from and after the service of notice as provided for in **5 G.C.A. § 53106**. Source: **5 G.C.A. § 53107**;

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- (B) Obstructs or prevents the use of the highway by the public. Source: **5 G.C.A. § 53107**;
 - (C) Consists of refuse. Source: **5 G.C.A. § 53107**;
 - (D) Is an advertising sign of any description. Source: **5 G.C.A. § 53107**;
 - (E) Is one for which no authorized Highway Encroachment Permit has been issued;
 - (F) Is one which threatens public safety or welfare.

11.1.7.2 The owner of the encroachment shall be liable for all expenses of such removal; and if a notice demanding removal was given, then in addition thereto, a fine of **Ten (\$10.00)** Dollars for each day the encroachment remains after the expiration of five days from the service of the notice. Source: **5 G.C.A. § 53108**.

11.1.7.3 All encroachments removed by the Department shall become the property of the Department.

11.1.8 Removal by Department

11.1.8.1 The Department may, without notice or liability, immediately remove from any highway any encroachment on the failure of the owner to comply with the notice provided for in **5 G.C.A. § 53106**. Source: **5 G.C.A. § 53108**.

11.1.8.2 The owner of the encroachment shall be liable for all expenses of such removal and in addition thereto, a fine of **Ten (\$10.00)** Dollars for each day the encroachment remains after the expiration of five days from the service of the notice. Source: **5 G.C.A. § 53108**.

11.1.8.3 All encroachments removed by the Department shall become the property of the Department.

11.1.9 Renewal of Highway Encroachment Permit

The Department may renew a Highway Encroachment permit for additional subsequent terms of no more than one (1) year each. Upon the expiration of a highway encroachment permit, and if a further one-year term is required, an application for renewal of the permit shall be made to the Department before the expiration date of the permit, otherwise a new permit application must be submitted in full, together with payment of the established non-refundable application fee.

HISTORY

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