

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF TRANSPORTATION



d.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

Right of Way Policies and Procedures Manual

Certified: June 9, 2011

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION**



d. Policy, Planning & Sustainability Administration

Preface

The mission of the District Department of Transportation (DDOT) is to develop and maintain a cohesive, sustainable transportation system that delivers safe, affordable, and convenient ways to move people and goods—while protecting and enhancing the natural, environmental and cultural resources of the District. Carrying out this mission often requires the acquisition of private property, or property controlled by another Federal or District agency, for use as part of the public right of way.

The right of way (ROW) consists of the travel lanes, on-street parking, sidewalk area, and other public space situated between the property lines on either side of a street. The following ROW policies and procedures are intended to establish a fair and efficient process for completing ROW acquisitions and transfers, consistent with federal and local regulations.

This manual, certified by the Federal Highway Administration (FHWA) on June 9, 2011, replaces all previous ROW manuals; incorporating revisions to Chapters 6, 7, 11, and Appendix A, since the August 2009 edition. It is intended to fully comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, and other Federal rules and regulations. Revisions will be made and distributed as rules or requirements change.

Table of Contents - Right of Way Manual

Preface

Table of Contents

| | |
|---|----------------|
| Chapter 1 – Organization & Operations | Section |
| Introduction..... | 1.1 |
| District Department of Transportation..... | 1.2 |
| District’s Office of Property Management | 1.3 |
| Right of Way Program Responsibilities | 1.4 |
| Right of Way Unit – Staff Assistance..... | 1.5 |
| Right of Way Staff and Training | 1.6 |
| ROW Unit’s Operational Guidelines..... | 1.7 |
| Utility Relocation Responsibilities | 1.8 |
| ROW Complaint Process..... | 1.9 |
| | |
| Chapter 2 – Preliminary Right of Way Activities | |
| Introduction..... | 2.1 |
| Creating a Project..... | 2.2 |
| Project Scope and Schedule..... | 2.3 |
| Environmental Evaluations..... | 2.4 |
| Right of Way Cost Estimates and Schedules..... | 2.5 |
| Preliminary Design Plans (30%)..... | 2.6 |
| Parcel and Improvement Identification Numbers (PIN)..... | 2.7 |
| Environmental Site Assessments (ESA)..... | 2.8 |
| Public Information Meetings | 2.9 |
| Preliminary Design Plans (65%)..... | 2.10 |
| Right of Way Plans..... | 2.11 |
| Notice to Proceed with ROW Acquisition..... | 2.12 |
| | |
| Chapter 3 – Advance Acquisition and Hardship Acquisition | |
| Introduction..... | 3.1 |
| Early Acquisition and Protective Buying | 3.2 |
| Hardship Acquisitions..... | 3.3 |
| Warrants for Protective Buying or Early Acquisition..... | 3.4 |
| Programming Documentation..... | 3.5 |
| Program Approval – EPA..... | 3.6 |
| Program Approval –Mayor of District of Columbia..... | 3.7 |
| Program Approval – FHWA..... | 3.8 |
| Alternative Funding | 3.9 |
| Notice to Proceed..... | 3.10 |

Table of Contents - Right of Way Manual

Chapter 4 – Right of Way Funding and Approval

| | |
|--------------------------------------|-----|
| Introduction..... | 4.1 |
| Programming Projects..... | 4.2 |
| Approved Right of Way Plans..... | 4.3 |
| FHWA Approval and Authorization..... | 4.4 |
| Right of Way Records..... | 4.5 |
| FHWA Monitoring and Billing..... | 4.6 |

Chapter 5 – Preliminary Title Reports

| | |
|--|-----|
| Introduction..... | 5.1 |
| Project Survey..... | 5.2 |
| Title Requirement..... | 5.3 |
| Title Reports..... | 5.4 |
| Title Updates..... | 5.5 |
| Outside Title Reports and Title Binders..... | 5.6 |
| Coordination with Acquisitions..... | 5.7 |

Chapter 6 – Appraisal

| | |
|--|------|
| Introduction..... | 6.1 |
| Qualification of Appraisers..... | 6.2 |
| Determining Appraisal Requirements..... | 6.3 |
| Information Provided to the Appraiser..... | 6.4 |
| Conflict of Interest..... | 6.5 |
| Appraisal Report Format..... | 6.6 |
| Appraisal Waiver Valuations..... | 6.7 |
| Appraisal Reports – Minimum Standards..... | 6.8 |
| Narrative Appraisal – Additional Requirements..... | 6.9 |
| Comparable Sales..... | 6.10 |
| Appraisal Valuation Issues..... | 6.11 |
| Appraisal – Development Issues..... | 6.12 |
| Data Ownership..... | 6.13 |
| Appraisal Certifications..... | 6.14 |
| Appraisal Processing..... | 6.15 |
| Appraisal – Eminent Domain..... | 6.16 |
| Specialty Reports..... | 6.17 |

Chapter 7 – Appraisal Review

| | |
|---|-----|
| Introduction..... | 7.1 |
| Appraisal Review Assignment..... | 7.2 |
| Qualifications of a Review Appraiser..... | 7.3 |
| Responsibilities of a Review Appraiser..... | 7.4 |
| Appraisal Review..... | 7.5 |
| Appraisal Corrections and Revisions..... | 7.6 |
| Review Appraisal Conclusions and Actions..... | 7.7 |
| Additional Appraisals..... | 7.8 |
| Uneconomic Remnants..... | 7.9 |

Table of Contents - Right of Way Manual

| | |
|--|-------|
| Required Signatures and Certifications | 7.10 |
| Conflict of Interest | 7.11 |
| Approvals and Determination of Just Compensation | 7.12 |
| Chapter 8 – Acquisitions | |
| Introduction..... | 8.1 |
| Right of Way Unit Manager’s Duties | 8.2 |
| Duties of Acquisition Agent | 8.3 |
| Early Notice | 8.4 |
| Preparation for Negotiations..... | 8.5 |
| Contacts with Landowners..... | 8.6 |
| Negotiation by Mail | 8.7 |
| Tenant-Owned Improvements | 8.8 |
| Continuing Negotiations and Acceptance..... | 8.9 |
| Right of Entry | 8.10 |
| Concluding Negotiations | 8.11 |
| Terminating Negotiations | 8.12 |
| Administrative Settlements..... | 8.13 |
| ROW Acquisition Report..... | 8.14 |
| Process for Settlement or Eminent Domain..... | 8.15 |
| Notice to Vacate..... | 8.16 |
| Donations | 8.17 |
| Chapter 9 – Acquisition of Public Land | |
| Introduction..... | 9.1 |
| Federal Lands..... | 9.2 |
| State of Maryland or Commonwealth of Virginia | 9.3 |
| Washington Metropolitan Area Transit Authority..... | 9.4 |
| Other District of Columbia Owned Lands | 9.5 |
| Chapter 10 – Relocation Assistance | |
| Introduction..... | 10.1 |
| Federal Regulations | 10.2 |
| Relocation Planning at Project Conceptual Stage..... | 10.3 |
| Public Participation and Involvement..... | 10.4 |
| Relocation Planning at Pre-Acquisition Stage..... | 10.5 |
| Providing Relocation Assistance Services (Initiation of Services)..... | 10.6 |
| Providing Relocation Assistance Services (Duties of Relocation Specialist) | 10.7 |
| Determination of Eligibility for Assistance and Payments..... | 10.8 |
| Written Notices | 10.9 |
| General Provisions | 10.10 |
| Replacement Housing Payments (RHPs)..... | 10.11 |
| Moving Costs – Residential Moves | 10.12 |
| Moving Cost – Non-Residential (Business and Non-Profit Organization) | 10.13 |
| Replacement Housing of Last Resort | 10.14 |
| Mobile Homes..... | 10.15 |

Table of Contents - Right of Way Manual

| | |
|---|-------|
| Functional Replacement..... | 10.16 |
| Relocation Records | 10.17 |
| Relocation Appeals | 10.18 |
| Chapter 11 – Settlement and Eminent Domain | |
| Introduction..... | 11.1 |
| Closings – Voluntary Conveyances | 11.2 |
| Initiation of Eminent Domain Proceedings..... | 11.3 |
| Trial or Settlement after Filing Declaration of Taking | 11.4 |
| Chapter 12 – Property Management (Pre-Construction) | |
| Introduction..... | 12.1 |
| Preliminary Project Studies..... | 12.2 |
| Initial Building and Improvement Inventory | 12.3 |
| Right of Way Acquisition Stage | 12.4 |
| Building and Improvement Data..... | 12.5 |
| Relocation Coordination | 12.6 |
| Continuation Rent by Owner or Tenant..... | 12.7 |
| Rental Beyond 180 Days or by Others | 12.8 |
| Possession of Acquired Property | 12.9 |
| Disposal of Improvements and Buildings..... | 12.10 |
| Chapter 13 – Railroad Companies | |
| Introduction..... | 13.1 |
| Railroad Rights | 13.2 |
| Railroad Operation Status..... | 13.3 |
| Railroad Construction and Maintenance Agreement (Agreement) | 13.4 |
| Railroad Force Account Work..... | 13.5 |
| Chapter 14 – Project Certification and Closeout | |
| Introduction..... | 14.1 |
| Right of Way Acquisition Status | 14.2 |
| Right of Way Certification for Project Advertisement..... | 14.3 |
| Project Closeout..... | 14.4 |
| Chapter 15 – Design-Build Projects | |
| Introduction..... | 15.1 |
| Preliminary Right of Way Engineering | 15.2 |
| Right of Way Scope for Design-Build Projects | 15.3 |
| Evaluation of Design-Build Proposals..... | 15.4 |
| Right of Way Plan..... | 15.5 |
| ROW and Relocation Payments..... | 15.6 |
| Eminent Domain Requirements..... | 15.7 |
| Right of Way Certifications | 15.8 |
| Final Submissions | 15.9 |

Table of Contents - Right of Way Manual

Chapter 16 – Right of Way Consultant Services

| | |
|--|------|
| Introduction..... | 16.1 |
| Need for Assistance | 16.2 |
| Right of Way Consultant Procurement Alternatives | 16.3 |
| Scope of Services..... | 16.4 |
| Pre-Qualification of Appraiser and Review Appraiser..... | 16.5 |
| Appraisal and Review Appraisal Contracting..... | 16.6 |
| Administration of Contracts..... | 16.7 |

Chapter 17 – Property (Asset) Management (Post-Construction)

| | |
|--|-------|
| Introduction..... | 17.1 |
| Property Status | 17.2 |
| Property Inventory | 17.3 |
| Management of Operating Right of Way..... | 17.4 |
| Management of Residue Parcels and Airspace..... | 17.5 |
| Determination of Surplus Property Status | 17.6 |
| Review of Disposal Request and Preparation of Surplus Disposal Package | 17.7 |
| Conveyance of Surplus Property | 17.8 |
| Approvals and Closing..... | 17.9 |
| Financial Accounting of Funds Received..... | 17.10 |

Appendix A-1 – Right of Way Acronyms

Appendix A-2 – Right of Way Definitions

Appendix B – Right of Way Forms

Appendix C – Right of Way Acquisition Process – Flow Chart

Appendix D – Right of Way Process Matrixes

Chapter 1 – Organization & Operations

Summary

This chapter covers the organizational structure of the District Department of Transportation (DDOT) and how related right of way (ROW) activities are performed by DDOT's various administrations. Information regarding approval authority granted by the Mayor of the District of Columbia (Mayor) and Director of DDOT is also discussed.

| Section Number | Section Name |
|----------------|--|
| 1.1 | Introduction |
| 1.2 | District Department of Transportation |
| 1.3 | District Office of Property Management |
| 1.4 | Right of Way Program Responsibilities |
| 1.5 | Right of Way Unit – Staffing Assistance |
| 1.6 | Right of Way Staff and Training |
| 1.7 | Right of Way Unit's Operational Guidelines |
| 1.8 | Utility Relocation Responsibilities |
| 1.9 | ROW Compliant Process |

1.1 Introduction

Acquisition of ROW for construction improvements and/or maintenance of the District of Columbia's (District) transportation system is a complex, sensitive process that incorporates the talents of highly specialized professionals. They must have experience in their functional areas; have a demonstrated ability to analyze and evaluate situations to arrive at a win-win resolution; and be able to interact with various stakeholders and individuals at all levels effectively.

The ROW process is controlled by various laws and regulations and compliance is required with most of the body of law that governs private real estate transactions. In addition, there are Federal laws that apply specifically to publicly-funded programs that are subject to use of eminent domain and others where the displacement of residents and businesses is caused by the transportation improvement project, where reference is to a specific project (project). These statutes assure that citizens of the District affected by the ROW process are treated fairly and equitably.

Chapter 1 – Organization & Operations

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|------|---|
| DDOT | District Department of Transportation |
| FHWA | District of Columbia Division of the Federal Highway Administration |
| IPMA | DDOT's Infrastructure Project Management Administration |
| OAG | District of Columbia Office of the Attorney General |
| OCFO | District of Columbia Office of the Chief Financial Officer |
| OGC | DDOT's Office of General Counsel |
| OPM | District of Columbia Office of Property Management |
| PSMA | DDOT's Public Space Management Administration |
| ROW | Right of Way |
| TPPA | DDOT's Transportation Policy and Planning Administration |
| TSA | DDOT's Traffic Services Administration |

The intent of this manual is to detail policy and procedures relating to the acquisition of ROW; the provision of relocation assistance and entitlements; and the management and disposition of real property for DDOT. The District of Columbia Division of the Federal Highway Administration's (FHWA) provides oversight in the development and implementation of all policies and procedures defined in this ROW Policies and Procedures Manual to ensure that DDOT is in compliance with Federal laws, rules and regulations. Staff and consultants contracted to perform ROW work will use this manual as a reference in their daily work activities. This is further outlined in Appendix C, Right of Way Acquisition Process.

Functions involved in the acquisition, management and disposition processes are divided into chapters and sub-sections in this manual. Any questions regarding information contained in the manual or interpretation of information in the manual should be directed to the ROW Unit Manager. Information in the manual will be updated as necessary to ensure compliance with District and Federal laws and regulations. The Director of DDOT has the sole authority to approve modifications to this manual.

Chapter 1 – Organization & Operations

1.2 District Department of Transportation

DDOT’s mission is to enhance the quality of life for District residents and visitors by ensuring that people, goods, and information move efficiently and safely with minimal adverse impacts on residents and the environment.

DDOT manages and maintains transportation infrastructure, and is organized into five administrations which report to the Director. An organizational chart is included at the end of this chapter. These administrations are as follows:

| | |
|--|---|
| Infrastructure Project Management Administration (IPMA) | Primarily responsible for the development of all engineering design plans and specifications for the construction of improvement projects |
| Transportation Policy and Planning Administration (TPPA) | Provides planning and neighborhood coordination activities related to establishing a integrated transportation system and includes the ROW Unit of DDOT |
| Public Space Management Administration (PSMA) | Primarily responsible for public space management |
| Traffic Services Administration (TSA) | Primarily responsible for traffic operations, safety and the installation and improvements to traffic signals |
| Urban Forestry Administration (UFA) | Responsible for establishing and maintaining street trees located in the ROW and on other District property |

Three of these administrations perform activities related to the ROW process: the IPMA, TPPA, and TSA. These three administrations prepare data and plans used in the development of projects and in securing funding from the FHWA or other sources.

The TPPA has the primary responsibilities for acquiring and clearing the ROW for the construction of a project and managing all DDOT real property assets. The ROW Unit is located in the TPPA and is lead by the ROW Unit Manager.

1.3 District Office of Property Management

The OPM, a separate unit of the District’s government, also acquires, manages and disposes of real property. OPM has been delegated the authority from the Mayor to perform these functions and they serve all other units of the District’s government. With this primary function, OPM has a staff of ROW professionals which may be available to assist the DDOT ROW Unit.

Chapter 1 – Organization & Operations

1.4 Right of Way Program Responsibilities

Various offices of the government of the District have responsibilities for supporting and/or administering portions of the ROW program related to DDOT.

Discussed below is an overview of the inter-relations of the various offices. The flow charts at the end of this chapter describe the major ROW processes and the various offices that may be involved.

1.4.1 Mayor, District of Columbia

Statutory authority granted to the District includes the right and power to acquire private property for public purposes, including transportation improvement projects. This includes the requirement for the payment of just compensation and permits the legal taking of the property through eminent domain if a voluntary agreement cannot be obtained.

In carrying out the programs of the District, the Mayor delegates authority to the District's various agencies. The Mayor has delegated to the Director of DDOT the authority to acquire, manage, lease and dispose of real property required to construct, operate and maintain the transportation system within the District. This authority is subject to the rules and regulations promulgated by the Mayor and/or DC Council.

1.4.2 Council of the District of Columbia (DC Council)

Statutory authority granted to the government of the District provides certain limits on transactions involving the acquisition of private property for public purposes, including the amount of just compensation. In accordance with the established limits, certain ROW acquisitions will be presented to the DC Council for approval.

1.4.3 National Capitol Planning Commission (NCPC)

The NCPC provides overall planning and guidance for Federal lands and buildings in the National Capitol Region. As required, the ROW Unit will coordinate jurisdictional transfers of real property with the NCPC to obtain approval.¹

¹ DC Code §10-111 and 40 U.S.C. 8124

Chapter 1 – Organization & Operations

1.4.4 Deputy Mayor for Planning and Economic Development (DMPED)

The DMPED is responsible for developing and implementing the District's economic development policy. The ROW Unit should coordinate with the DMPED when a project involves displaced individuals and families or businesses in searching for possible replacements sites.

DMPED sets development priorities and policies, coordinates how the District markets itself to businesses and developers, and recommends and ensures implementation of financial packaging for District development, attraction, and retention efforts. DMPED, in cooperation with the OCFO, is responsible for carrying out the District's tax increment financing (TIF) program and works with the Washington DC Economic Partnership, a public/private partnership, to market the District to the business and retail community. DMPED plays an important role in explaining the policies and actions of the government to the business community, interpreting and communicating the needs of businesses to government officials and forging partnerships between government and business that promote economic development throughout the District. For transportation projects which were Federally funded, DMPED coordinates with DDOT to strategize on appropriate acquisition and disposition processes which comply with the 23 CFR and 49 CFR.

1.4.5 District Department of Housing and Community Development (DHCD)

In addition to the DMPED, the DHCD is responsible for the production and preservation of housing, community and economic development opportunities, including promoting affordable housing and providing financial assistance. The ROW Unit will coordinate the relocation of displaced families and businesses with DMPED and DHCD.

1.4.6 District Department of Health – Environmental Health Administration (EHA)

This unit of the Department of Health is responsible for monitoring compliances with environmental quality and the regulation of hazardous materials and toxic substances. The ROW Unit will coordinate all environmental site assessment results with the EHA.

1.4.7 District Office of the Attorney General (OAG)

The attorney general is by law the attorney and chief legal officer for the District and is in charge of all its legal affairs. The duties of the attorney general corresponds to the

Chapter 1 – Organization & Operations

combined duties of a State attorney general in matters that are State functions, a corporation counsel in conducting business of the municipal corporation, and the district attorney in prosecution of violations of the local law.

The functions of the OAG are divided among separate divisions. Assistant attorney generals are assigned to the OAG real estate division to handle the processing of real estate transactions. When necessary, that will include condemnation action instituted to secure private property for transportation and other public purposes. In condemnation and voluntary agreements, the ROW Unit will coordinate directly with the assistant attorney general assigned to the case and provide all needed assistance. The assistant attorney general will review all draft legal documents and provide any necessary guidance to the title company closing a transaction.

1.4.8 DDOT's Office of General Counsel (OGC)

The OGC provides legal interpretation and ruling for DDOT and coordination of all aspects of ROW management with the OAG. The ROW Unit will coordinate with the OGC's office to obtain opinions and guidance in interpreting the various rules and regulations involved in ROW management.

1.4.9 DDOT's Infrastructure Project Management Administration (IPMA)

The IPMA is one of the principal organizational units in DDOT. The activities of this administration include the development of all engineering design data and other information for the plans, designs and specifications required for the construction of projects in accordance with the long range plans of the TPPA. Studies will include the necessary environmental evaluation to comply with the National Environmental Policy Act of 1969 (NEPA). IPMA will ensure that the appropriate environmental approval is obtained for a project which may be a categorical exclusion (Cat Ex), finding of no significant impact (FONSI), or a record of decision (ROD). These plans, designs and related information may be developed within IPMA or may be obtained from consultants employed by IPMA for the development of such data and related information.

IPMA also prepares and manages construction contracts, cost estimates and recommends contract awards for highway improvements. In addition, it implements Federal-aid

Chapter 1 – Organization & Operations

projects, determines the necessity for and schedules the acquisitions of real property needed for ROWs.

IPMA directs field surveys and secures data and relative information essential to the establishment of taking lines as well as computation of the geometrics of the real property involved in the final ROW taking. It also develops and directs the preparation of preliminary and final ROW plans in accordance with guidelines established by DDOT, the FHWA, and the requirements of the Office of the Surveyor.

IPMA develops, or obtains from consultants, the maintenance, repair and inspection program for projects. IPMA reviews and makes recommendations to the Office of the Surveyor for approval or disapproval of proposed street and alley dedications and closings. It drafts and prepares agreements between DDOT and the various consulting firms for engineering services. IPMA's Project Managers maintain liaisons concerning all ROW activities with the ROW Unit.

1.4.10 Transportation Policy and Planning Administration (TPPA)

The TPPA is another principal office of DDOT. The ROW Unit is part of TPPA and has the primary responsibility for the ROW program within DDOT. The ROW Unit is responsible for coordinating ROW preliminary engineering activities: estimated cost of ROW acquisition needed as part of a project; providing information necessary for ROW funding phase; executing the ROW acquisition activities; providing relocation assistance and property management activities for the ROW during both the pre-construction and post- construction time frames.

The ROW unit shall coordinate the ROW activities closely with the units/agencies described in this section with the intention of meeting the overall schedule developed for the project. DDOT's real property assets shall be managed to provide the greatest benefits to the District and provide the appropriate service to the citizens.

Other responsibilities of this office include, but are not limited to, planning and coordinating activities related to the accomplishment of an integrated transportation system for the District. Among these responsibilities are the following:

Chapter 1 – Organization & Operations

1. Review the District’s comprehensive ward and small area plans for issues related to transportation needs and the inclusion of proposed projects in Transportation Improvement Program (TIP).
2. Coordinate DDOT plans with the NCPC, the Metropolitan Washington Council of Governments (COG), and other Federal and District agencies. These plans include special studies with other jurisdictions on items that affect planning and programming.
3. Include within the TIP and the Constrained Long Range Plan (CLRP), if applicable, the projects on which ROW acquisition is required or programmatic approval is required.
4. Include within the project budget the necessary funding for ROW acquisitions and relocation assistance services. This should include payments to landowners for real property acquisitions. In addition, this should also include payments to displaced persons, families and businesses as well as administrative costs, including consultant fees for relocation services.
5. Communicate and coordinate with neighborhood associations and civic groups concerning transportation facilities and needs.
6. For any project utilizing Federal funds, arrange for the development of appropriate environmental documents and obtain approval as a Cat Ex, FONSI, or ROD for an environmental impact statement.

1.4.11 Traffic Services Administration (TSA)

The TSA creates improvement projects for traffic safety or traffic signalization needs. Most TSA projects will be constructed within the existing ROW, but occasionally ROW acquisitions will be needed. The ROW Unit will coordinate with TSA to obtain the required ROW acquisitions.

1.4.12 Office of the DC Surveyor (Surveyor)

The Office of the Surveyor establishes street and property lines within the District, whether it is for private citizens, the District or the United States Government. This office provides the official plats of computation and plats of survey as required for defining ROW takings and to be used as aids for appraisals. Except for deeds, assessments and taxation data, the Surveyor’s Office is the repository of all permanent land records of the District.

Chapter 1 – Organization & Operations

1.4.13 Office of the Chief Financial Officer (OCFO)

The OCFO has three operational areas, and the Associate Chief Financial Officer for government services is responsible for DDOT and the ROW functions. The OCFO responsibilities relating to ROW operations of DDOT include budget document processing, contract advertisement, payment processing, cash collections, and project monitoring. The OCFO verifies that any income generated from leasing, renting or disposition of real property purchased with Federal funding is utilized on Title 23 Code of Federal Regulations (CFR) projects by DDOT.

The Capital Accounting Division (CAD) is responsible for establishing capital budget authority in the District's financial system for the ROW acquisition phase of a project, and for coordinating the financial tracking and reporting responsibilities of DDOT. This division processes all financial transactions in the acquisition of land, including those for payments to landowners, payment of relocation benefits, court awards, interest on court awards, expert witnesses, property management, demolition and payment for consultant services.

TPPA, IPMA, or TSA must submit documents establishing or modifying capital budget authority to the DC Budget Office for approval. The OCFO enters into a Federal-aid agreement for the ROW phase of a project development and obtains Federal approval to proceed with ROW acquisition. Copies of the executed Federal letter of authorization (PR-1240) and/or project agreement (PR-2) which documents that FHWA funds have been authorized for Federal-aid ROW acquisition are to be provided to the ROW Unit and managing project administration.

The Capital Grants Billing and Monitoring Division is responsible for managing the Federal Aid Billing System. This operation generates current bills to FHWA for reimbursement of participating expenditures including land acquisition as well as generates credits. This division makes a detailed review of all spending transactions and then submits a final voucher to FHWA isolating participating and non-participating expenditures by line item.

Chapter 1 – Organization & Operations

1.4.14 Public Space Management Administration (PSMA)

The PSMA is responsible for the use and occupancy of public space, including all city streets, alleys, sidewalks. PSMA also approves and processes public space use requests; maintains public space records and coordinates the work done in public space by private utility companies and developers.

The PSMA maintains the maps and records of all surface and underground facilities, proposed and approved grades, street widths, and paving maps showing permanent street improvements for public and interdepartmental use. It approves and processes public space use requests. It also maintains records of proposed changes in public space such as dedications or closings of streets and alleys.

1.5 **Right of Way Unit - Staffing Assistance**

As the workload of the ROW Unit will vary depending on the number of projects under development and assets which are being managed by the ROW Unit, there may be a need for staff augmentation from time to time, in order to accomplish their work within the scheduled timeframes. Assistance may be available from the OPM or can be obtained from ROW consultants available through an Indefinite Delivery, Indefinite Quantity (IDIQ) contracts or project specific procurement. Chapter 16 provides details about ROW consultant services that can be available to the ROW Unit Manager.

The ROW Unit Manager shall maintain constant liaison and alerts with the OPM representative regarding the ROW Unit's schedule and need for assistance in various disciplines or a total acquisition assignment. Work performed by the OPM specialist or a ROW consultant shall be performed in full compliance with this manual.

1.6 **Right of Way Staff and Training**

Both the staff assigned to the ROW Unit and the consultants who perform services for DDOT are held to a very high standard. They must display ethical behavior and professionalism, and have knowledge of not only ROW but also a general understanding of all project development activities in order to meet and interact with landowners, attorneys, engineers, planners and other real estate professionals. As they interact with these individuals, they must reflect a positive image of DDOT, as they are often the only contacts during the project. Normally, staff will work independently in the performance

Chapter 1 – Organization & Operations

of daily activities but will consult with the ROW Unit Manager to obtain guidance when needed.

The staff's main focus during the acquisition process is to meet the advertisement date while maintaining their stewardship of public funds used for the project and protecting the rights and interests of the District as of the landowners and displacees. In order to maintain a staff of the most qualified people, the ROW Unit will conduct on the job training as required and provide opportunities to attend seminars and meetings. Personnel may be authorized to attend and participate in meetings and seminars, and training sessions covering specific ROW disciplines. These may be offered by the National Highway Institute or the International Right of Way Association.

The ROW Unit Manager and staff will also participate in the American Association of State Highway and Transportation Officials (AASHTO), ROW conferences and in the Joint FHWA/State regional ROW conferences in order to maintain its knowledge on the latest rules and regulations regarding the ROW program. The ROW Unit and staff will subscribe to the Code of Ethics of the International Right of Way Associations (see Example 1-1 at the end of this chapter).

1.7 ROW Unit's Operational Guidelines

1.7.1 Freedom of Information Act² (FOIA)

All records of the ROW Unit are confidential until the ROW negotiation has been completed and the property transfer has been closed. In the case of eminent domain, all records are considered to be confidential until there has been an award in the case and the final order is signed. Disclosure of some information may be required and shall be as directed by the OGC or the OAG. Except those documents specifically exempted, as described in the first paragraph, all other information will be made available to citizens of the District upon written request. This request for records must be reasonably specific and in accordance with FOIA.

1.7.2 Title VI

DDOT and the ROW Unit are the recipient of Federal financial assistance in the construction and maintenance of District's transportation facilities. As such, DDOT is

² DC Code §§ 2-531 et seq

Chapter 1 – Organization & Operations

required to comply with Title VI of the Civil Rights Act of 1964, as amended, and all non-discrimination laws and authorities in the interactions with landowners. Title VI prohibits agencies receiving Federal-funds from discriminating against anyone on the grounds of race, color, national origin, sex, age or disability.

1.7.3 Executive Order 12898

Executive Order 12898 titled “Federal Action to Address Environmental Justice in Minority Population and Low-Income Populations” requires agencies receiving Federal funding to achieve environmental justice as part of its mission in identifying disproportionately high and adverse environmental or human health effects of its programs, policies, and activities on minority or low-income populations.

1.7.4 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)³

This Act prohibits unfair and inequitable treatment of persons displaced on Federal and Federally assisted programs and projects. Ensuring equitable practices in the allocation of benefits and services to landowners and tenants affected by District and Federal programs and projects is DDOT’s priority.

1.8 Utility Relocation Responsibilities

Utility relocation is an essential part of the clearance and preparation of a project for actual construction. The Project Manager is responsible for coordinating the project development with the utility companies and the water and sewer authority.

Information and details on the utility relocation process can be found in Chapters 10 and 14 of DDOT’s Design and Engineering Manual. Sections 13.2 and 9.5 of the Design and Engineering Manual describe the agreement and clearance process.

1.9 Right of Way Compliant Process

1.9.1 Property Owner’s Treatment

As indicated throughout this Manual, it is DDOT’s policy to ensure that all persons and businesses affected by a right of way acquisition or relocation be treated fairly and

³ 49 CFR 24

Chapter 1 – Organization & Operations

equitably. This includes compliance with all Federal and District laws relating to non-discrimination.

1.9.2 Notices

All notices referenced in the ROW Manual shall be in writing. All notices shall be delivered to the landowner/tenant's last known mailing address by:

- A. Certified Mail with signed receipt
- B. Overnight Courier service with signed receipt
- C. Personally hand delivered with signed receipt

1.9.3 Appeals

Should a landowner, person or business feel that they have been treated unfairly or discriminated against, they should address their concerns to the ROW Unit Manager. Should the complaint be related to the ROW Unit Manager, the complaint should be made to the Deputy Associate Director of DDOT's TPPA. The ROW Unit Manager or Director of TPPA shall respond to any complaint within ten business days.

As the determination of relocation assistance entitlements can be subjective, there is a separate process to review information and consider appeals. See Chapter 10, Section 10.18 for the relocation appeal process.

Chapter 1 – Organization & Operations

Chapter Resources

Examples

- Code of Ethics of the International Right of Way Association (Example 1-1)
- DDOT Organizational Chart (Example 1-2)

Forms

- FHWA forms PR-1240 and PR-2 (not included)
(FHWA forms prepared by the Office of Chief Financial Officer)

Flow Chart

NEPA and Pre-Acquisition Activities

References

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- District of Columbia Code
<http://dcode.westgroup.com>

Chapter 1 – Organization & Operations

[Example 1-1]

Memorandum

Date:

To: Right of Way Manager

From:

RE: Code of Ethics for Right of Way Activities

“Recognizing the responsibility of our profession to the people and business of our country, I do hereby adopt the following CODE OF ETHICS for our constant guidance and inspiration predicated upon the basic principles of truth, justice and fair play.

- To show the faith in worthiness of our profession by industry, honesty and courtesy, in order to merit a reputation for high quality of service and fair dealing
- To add to the knowledge of our profession by constant study and to share the lessons of our experience with our fellow members
- To build an ever increasing confidence and good will with the public and our employers by poise, self-restraint and constructive cooperation
- To ascertain and weigh all of the facts relative to real properties in making an appraisal thereof, using the best and most approved methods of determining the just and fair market value
- To conduct myself in the most ethical and competent manner when testifying as an expert witness in court as to the market value of the real properties, thus meriting confidence in my knowledge and integrity
- To accept my full share of responsibility in constructive public service to the community, District and Nation
- To strive to attain and to express a sincerity of character that shall enrich our human contacts, ever aiming toward that ideal – „The practice of the Golden Rule’.”

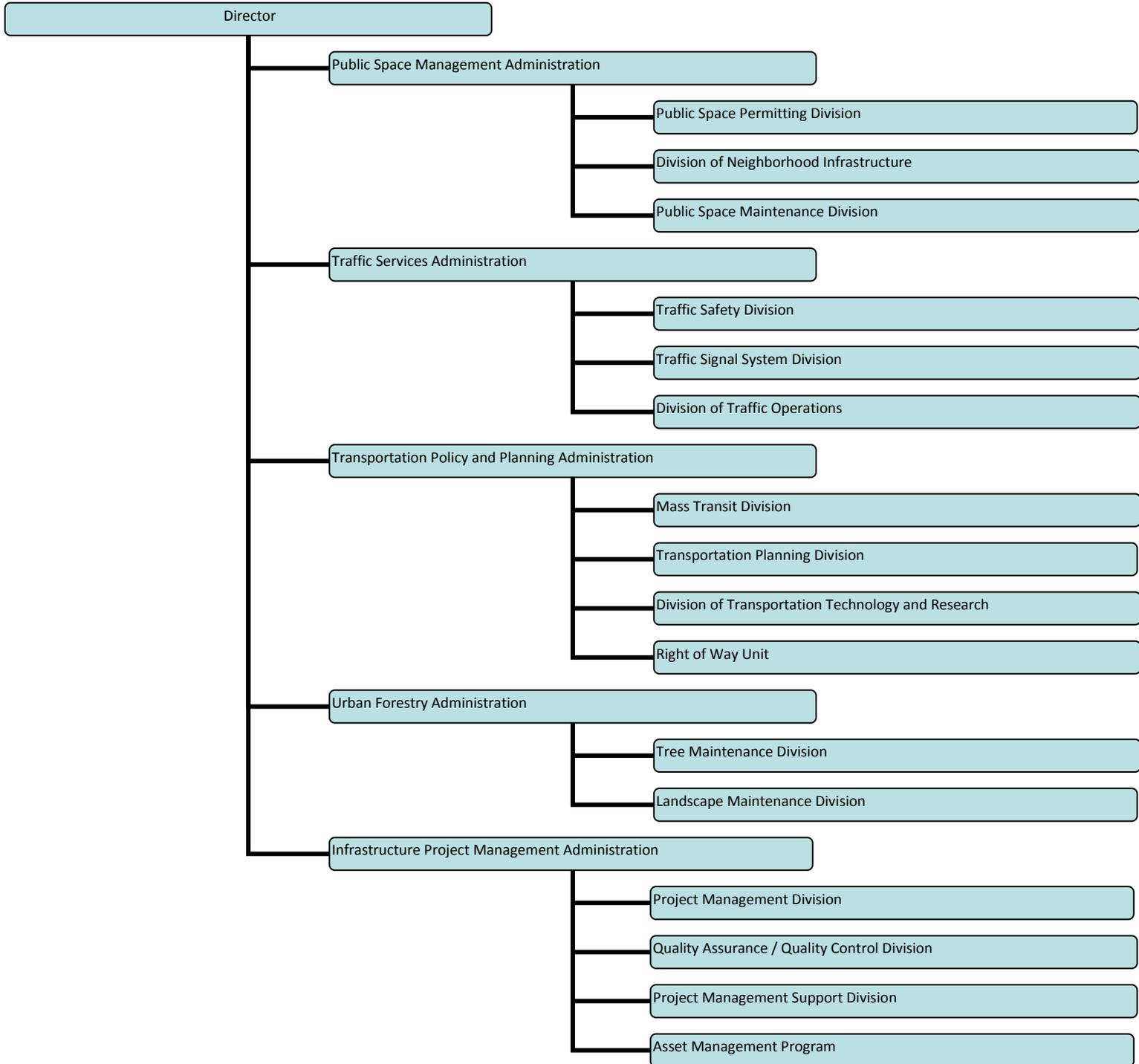
Signed _____

Right of Way Specialist

Chapter 1 – Organization & Operations

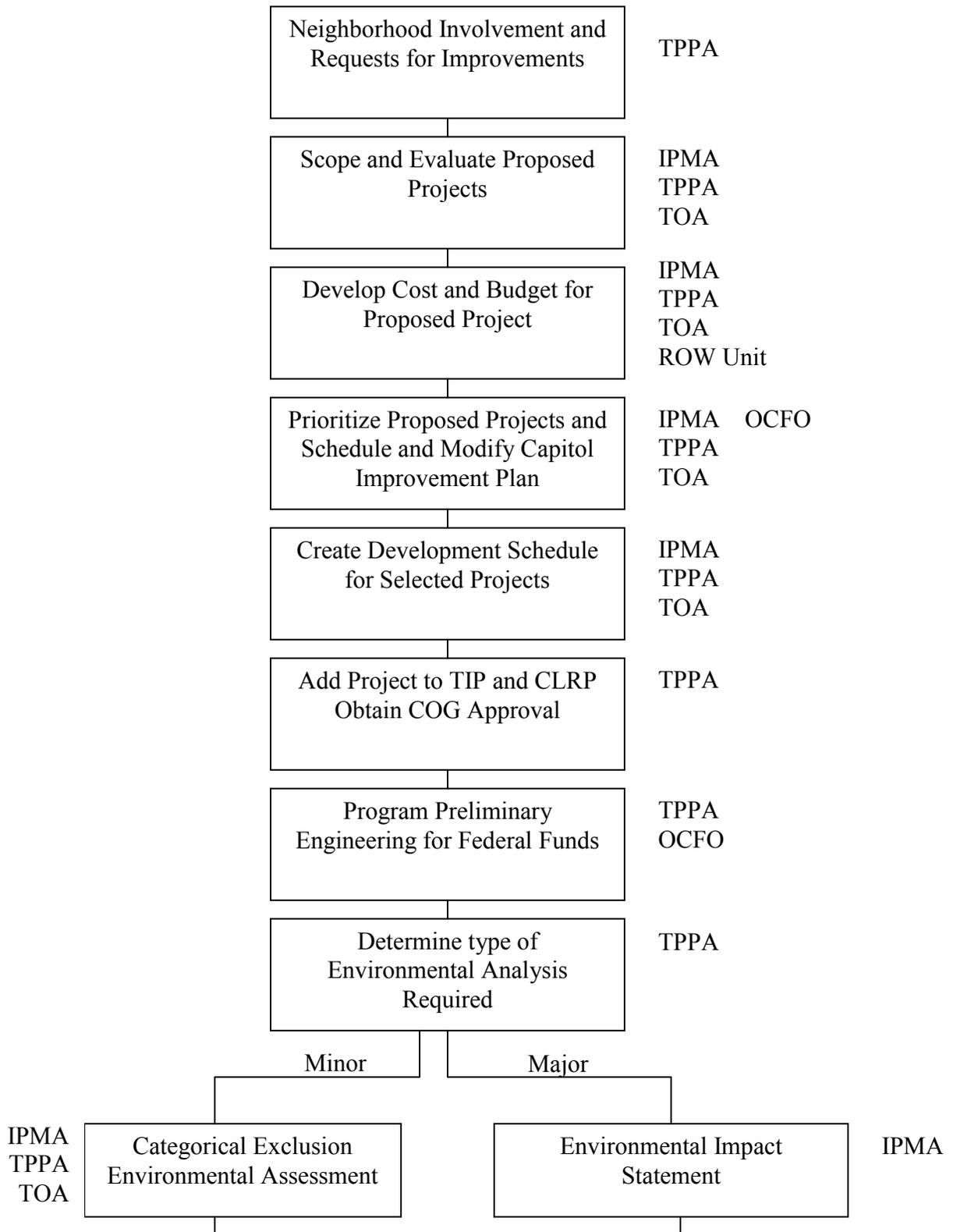
[Example 1-2]

District Department of Transportation Organization Chart

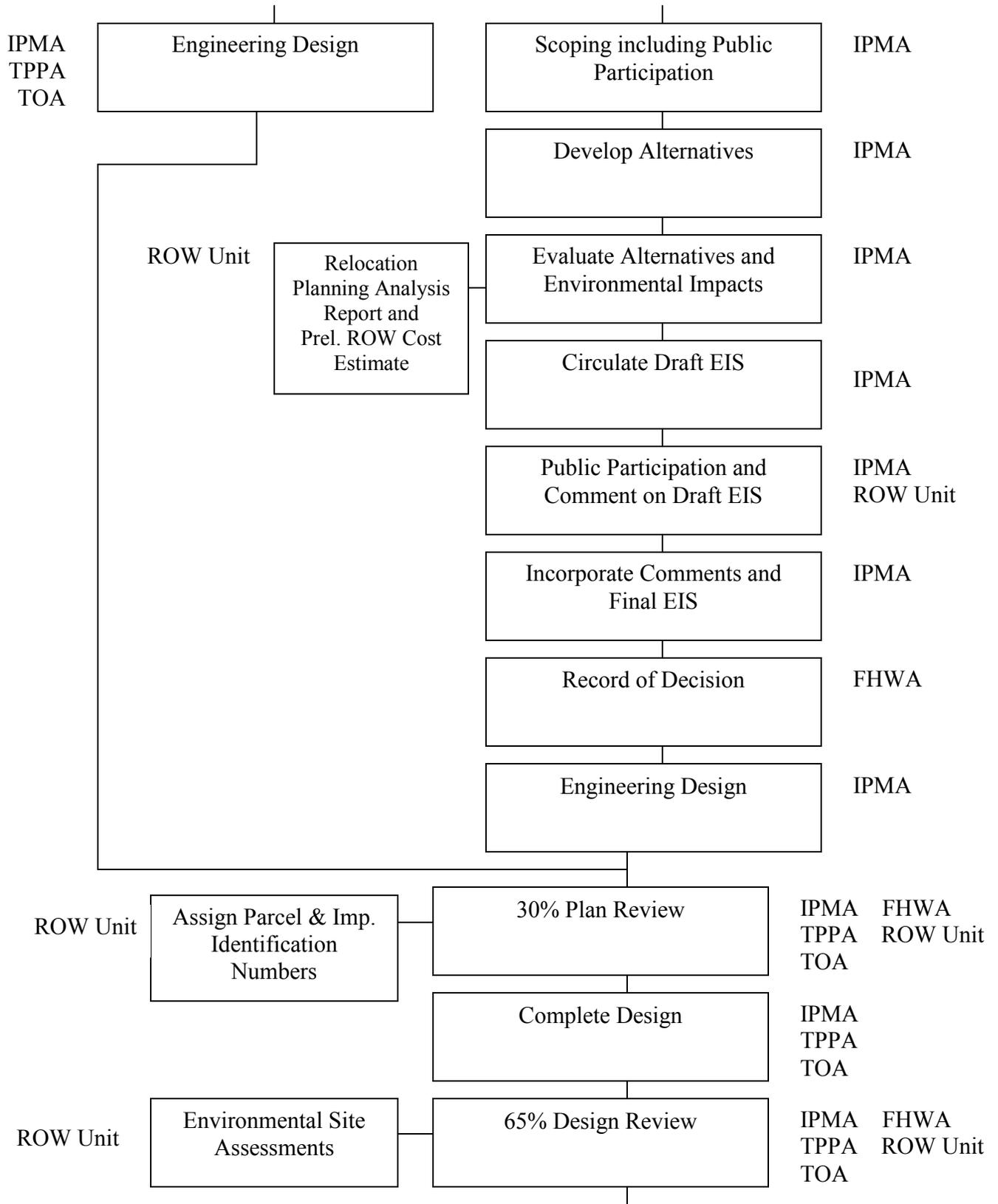


Chapter 1 – Organization & Operations

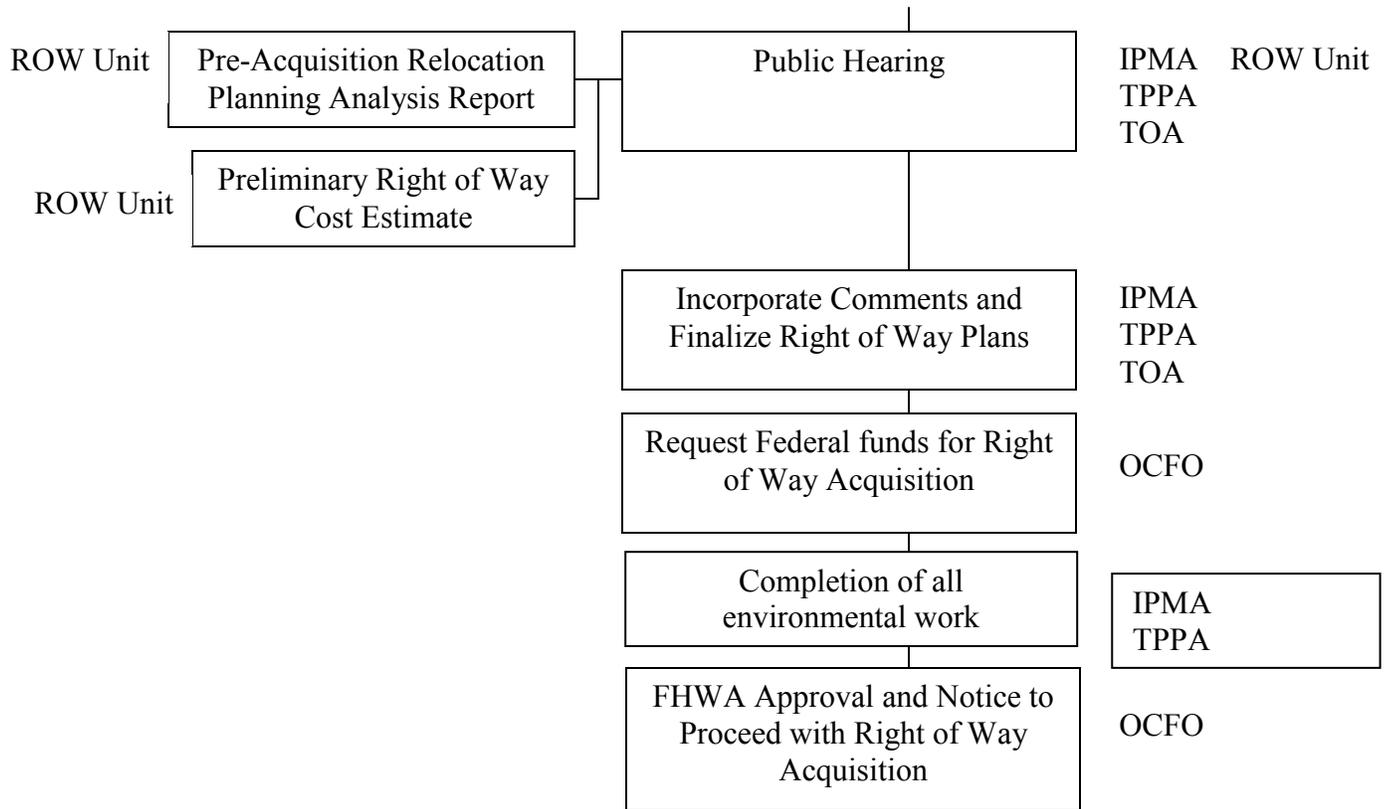
NEPA and Pre-Acquisition Activities



Chapter 1 – Organization & Operations



Chapter 1 – Organization & Operations



Chapter 2 – Preliminary Right of Way Activities

Summary

This chapter covers all preliminary ROW functions that occur between a transportation project's inception and the notice to proceed (NTP) with the actual acquisition. It involves extensive coordination with other units of DDOT and establishes the foundation for the ROW acquisition stage.

| Section Number | Section Name |
|----------------|---|
| 2.1 | Introduction |
| 2.2 | Creating a Project |
| 2.3 | Project Scope and Schedule |
| 2.4 | Environmental Evaluations |
| 2.5 | Right of Way Cost Estimates & Schedules |
| 2.6 | Preliminary Design Plans (30%) |
| 2.7 | Parcel and Improvement Identification Numbers |
| 2.8 | Environmental Site Assessments |
| 2.9 | Public Information Meetings |
| 2.10 | Preliminary Design Plans (65%) |
| 2.11 | Right of Way Plans |
| 2.12 | Notice to Proceed with ROW Acquisition |

2.1 Introduction

Because it is necessary that most details of proposed transportation project's construction be finalized before land acquisition takes place, significant decisions have to be made prior to the ROW acquisition stage. It is the ROW Unit's responsibility to provide information and recommendations with regards to the project's ROW impact so that design decisions made are based on complete information.

While the ROW Unit may provide comments regarding any aspect of the project design, the Unit's primary focus should be analyzing the project's impact on private property including the impact that a design element may have on damaging the remainder property and increasing the overall project cost. All reports, data and recommendations provided to the DDOT Project Manager should be in writing and should also be made a part of the ROW project file.

Chapter 2 – Preliminary Right of Way Activities

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows.

| | |
|-------------------------------------|--|
| CE | Categorical Exclusion as defined in 23 Code of Federal Regulations (CFR) 771.117 |
| EA | Environmental Assessment as defined in 23 CFR 771.117 |
| EIS | Environmental Impact Statement as defined in 23 CFR 771.123 through 127 |
| ESA | Environmental Site Assessment. A multiple stage investigation of potentially hazardous material contamination |
| FHWA | District of Columbia Division of the Federal Highway Administration |
| IPMA | DDOT's Infrastructure Project Management Administration |
| NEPA | National Environmental Policy Act of 1968 ¹ |
| OCFO | District of Columbia Office of the Chief Financial Officer |
| Project | Overall encompassing name for a proposed transportation improvement or maintenance action. Its scope can range from a traffic signal to abridge replacement or freeway project |
| PDP | Project Development Process as defined in DDOT's Design and Engineering Manual |
| Project Manager | Referred to herein is the manager responsible for the overall project development, usually located in the IPMA, TPPA or TOA |
| Relocation Planning Analysis Report | An evaluation of a project's displacement of families and businesses, the availability of replacement sites and the plan to provide relocation assistance services. |
| TPPA | DDOT's Transportation Policy and Planning Administration |
| TOA | DDOT's Transportation Operations Administration |

2.2 Creating a Project

The TPPA is responsible for long-range planning activities that include identifying transportation needs and improvements to be constructed in order to provide an adequate transportation system.

Based upon input from various stakeholders, including the public and elected representatives, DDOT will evaluate the proposed improvements to determine the project need and available resources. Additional information regarding the planning process can be found in Chapter 2, Section 2.1.1, of DDOT's Design and Engineering Manual.

As noted in Chapter 4, Section 4.2 of this manual, the ROW Unit will be provided a copy of the project evaluation criteria report² and may be requested to provide a preliminary ROW cost

¹ 23 CFR 771

² Engineering Design Manual Section 21.1

Chapter 2 – Preliminary Right of Way Activities

estimate for use in DDOT's determination of a project's justification. The Preliminary ROW Cost Estimate (Example 2-1) should include all anticipated ROW costs and indicate the project stage, source of scoping, and project information.

2.3 Project Scope and Schedule

The Project Manager shall gather information from the various DDOT agencies and refine the scope of the proposed project and resources as required. The complexity of the project will establish the schedule of project development activities, including the necessary studies, documents and environmental compliance issues that will need to be resolved.

For additional information on the prioritization and budgeting process see Chapter 2, Section 2.1.2, of DDOT's Design and Engineering Manual.

2.4 Environmental Evaluations

The necessary engineering studies and environmental analysis will follow the Council on Environmental Quality (CEQ) regulations³ for carrying out NEPA. Environmental approvals under NEPA and other applicable environmental laws and regulations including Section 106 of the National Historic Preservation Act and the Section 4f of the U.S DOT Act of 1966. All environmental approvals have to be coordinated through the Project Development & Environment Branch of DDOT/TPPA. FHWA is the lead federal agency responsible providing for these approvals. For information regarding DDOT Environmental process please refer to DDOT Environmental Policy & Process manual. It is important that the ROW Unit provide any information it has which would contribute to the evaluation and mitigation of environmental impacts caused by the proposed project. ROW information on how the acquisitions and displacement of persons or businesses will impact the project area, such as employment, neighborhood cohesion, housing availability, environmental justice issues, etc. should be sent to the Project Manager.

A determination shall be made by TPPA Project Development & Environment Branch (or designee) as to the type of environmental analysis and review that will be needed.. All determinations and decisions regarding the environmental documentation required for a project will be subject to the review and approval of TPPA's Project Development & Environment Branch (or designee). For information regarding DDOT Environmental process please refer to DDOT Environmental Policy & Process manual.

³ 40CFR1500

Chapter 2 – Preliminary Right of Way Activities

In following the NEPA process, a Relocation Planning Analysis (RPA) Report at the project conceptual stage is to be prepared. For details of the information to be included in the report, see Chapter 10, Section 10.3, of this manual. For the format of the preliminary ROW cost estimate see Section 2.6 of this chapter.

The conceptual RPA report and preliminary ROW cost estimates can be prepared by the ROW Unit staff, a ROW consultant on-call to the ROW Unit, or included as part of the scope of work for the consultant team preparing the necessary environmental documents needed for the NEPA process. Should a consultant prepare the report and estimate, they shall meet the requirements of this manual and will be subject to the review and approval by the ROW Unit Manager.

2.5 Right of Way Cost Estimates & Schedules

Preliminary cost estimates and schedules for the overall project are prepared by the Project Manager at various stages during the PDP. The ROW Unit's staff or a ROW consultant, if necessary, shall prepare the ROW cost estimate and schedule at various stages of project development, as requested. As the PDP moves forward and more detailed information and plans are available, the ROW cost estimates and schedules should more accurately reflect the anticipated acquisition costs.

Generally, preliminary ROW cost estimates and schedules are required at the scoping stage; alternative development stage; preliminary design stage (30%); preliminary design stage (65%); and the approved ROW plans stage. RPA reports are generally required at the alternative development stage and pre-acquisition ROW stage. The cost estimate portion of the RPA report can be updated without the entire report being updated.

All preliminary ROW cost estimates are to reflect current market value and shall be projected for 3 years in order to anticipate ROW costs as of the date ROW acquisition may actually occur plus a 30% contingency to address fluctuations in the market and overhead costs. The estimate should only include those values and items that are a part of just compensation or eligible incidental expenses. The time adjustment is to be based on market derived appreciation rates, or in the event these rates cannot be determined, the average annual increase in the Consumer Price Index (CPI) for urban areas over the preceding 5 years may be used.

Chapter 2 – Preliminary Right of Way Activities

In the early stage of the PDP, the ROW cost estimates can be based on the assessed value per the Office of Tax and Revenue (OTR) as multiple alignment alternatives are being considered. Tax assessment data has the necessary advantage of being readily available, thereby reducing the accuracy necessary to derive the cost and incurring a savings in labor cost. However, once the preferred alternative is selected, ROW cost estimates should be based on market sales data. Cost estimates are prepared using the preliminary ROW cost estimate (Example 2-1) format.

At each stage that the ROW Unit prepares or updates an estimate and schedule, general comment and design observations should be provided to the Project Manager. These should include identifying costly property impacts that may warrant alternative studies or other potential changes that may reduce cost and not jeopardize the project's design.

2.5.1 Scope Stage ROW Estimates

There are usually no plans available at this stage, but the general location of the project is known. In order to estimate ROW costs, the ROW Unit must have the project area and the scope of the proposed improvements marked on a map to notify whoever prepares the cost estimate of the general boundaries.

The cost estimate should reflect the average land value in the immediate area of the project. Land value and structures/buildings within the project corridor should be based on the assessed value per the OTR. Appropriate adjustments shall be made when it is apparent that there is a special assessment in place on a property and/or some recent sales are indicating that assessments are below market value. For estimating purposes at this stage, it is suggested that the rule of thumb be that assessments are generally 90 percent (90%) of market value.

The person preparing the preliminary ROW cost estimate should be provided an anticipated acquisition start date to forecast the future estimate and to anticipate the impact of inflation. As shown on Example 2-1, an estimate should only be projected for 3 years.

2.5.2 NEPA :

At this stage, a preliminary design shall be developed for each alternative using an available mapping base. At a minimum, the property lines are overlaid using the tax

Chapter 2 – Preliminary Right of Way Activities

maps and the tax ownership information. The preliminary ROW cost estimate prepared can incorporate acreages calculated, improvements being acquired, and potential damages to properties; and the cost estimate should be based on a cursory review of market values. Any properties that are obvious potential soil contamination sites should be included in the estimate and considered the worst case.

Also at this stage the first RPA report shall be prepared. See Chapter 10, Section 10.3 of this manual, for information to be analyzed and included in the report. An estimate of the relocation costs and entitlements payable are to be included in both the RPA report, and carried over to the preliminary ROW cost estimate.

Unless the RPA report identifies that Housing of Last Resort (HLR) is required, the general costs outlined in a separate policy directive should be used for estimating purposes. For preliminary estimating purposes, relocation units include owner-occupants of single-family residences; tenant-occupants of single-family residences; tenant-occupants of multi-family units; and businesses.

2.5.3 Preliminary Design Plans (30% and 65%)

When the preliminary design reaches a milestone, such as a (30%) or (65%) design circulation stage, an overall project estimate and schedule is needed to confirm the adequacy of funding for the project. An update of the preliminary ROW cost estimate should be requested by the Project Manager, who will provide plans with the current level of design details. The updated preliminary ROW cost estimate should be based on current market data, an estimate of damages occurring to any residue portions of the property, the latest ESA, and relocation assistance for any displacees. The estimated cost should be projected to the time frame that the actual acquisition will occur.

2.5.4 Pre-Right of Way Acquisition Estimate

When the project design has progressed to the stage that final ROW plans can be approved, a detailed pre-acquisition RPA report and a pre-ROW acquisition cost estimate schedule is to be prepared. Both the RPA report and the preliminary ROW cost estimate and schedule should be used to program the ROW phase for Federal participation.

Chapter 2 – Preliminary Right of Way Activities

For details about the pre-acquisition RPA report, see Chapter 10, Section 10.5 of this manual. The preliminary ROW cost estimate should continue to be developed using current market data and the latest plans showing property impacts.

2.5.5 Acquisition Incentive Program

There may be some projects that the ROW schedule can be shortened significantly if a ROW acquisition and/or relocation incentive payment program is utilized. If DDOT determines that an incentive program is warranted, prior approval must be requested and obtained from the FHWA so that the costs will be eligible for FHWA reimbursement.

The proposed incentive program must be uniformly administered so that all landowners could receive an incentive, should they elect to voluntarily participate in the incentive payment program. The amount of the payment should be established as a part of the proposed program. It should be made clear to the landowner that the program is voluntary and they will be allowed a reasonable amount of time to conclude negotiations on a traditional basis. For additional information regarding relocation incentives, see Chapter 10.5.3.

An example of a possible incentive program would be:

- If the offer to acquire is accepted within 30 days of the first offer date, the incentive payment would be an additional 25 percent of the offer, or \$5,000, whichever is less.
- If the offer to acquire is accepted within 45 days of the first offer date, the incentive payment would be an additional 12.5 percent of the offer, or \$2,500, whichever is less.

2.6 Preliminary Design Plan (30%)

Preliminary design generally includes the following: field survey; collection of necessary traffic and geotechnical data; study of design alternatives; development of preliminary plans for selected alternatives; utility information and discussions; design alternatives to meet the standards without any need for design exceptions; environmental approval process, project specific community involvement, initial cost estimates; and a 30% preliminary design review.

The field survey information is to include existing street ROW lines, adjacent property or lot lines, landowner's name and contact information, if available, and the Square, Suffix, Lot (SSL)

Chapter 2 – Preliminary Right of Way Activities

reference numbers. Adequate topographic features must show the relationship between the property, buildings and improvements, and the existing and proposed ROW lines established.

Upon receipt of the 30% preliminary design review plans, the ROW Unit will perform the following:

1. View the project location, and make a thorough desk review of the plans;
2. Compile a list of questions and items to be resolved or recommended during the review;
and
3. Review the survey information. If new development is required, it is critical that the survey be updated and plans be revised before the project advances to the next stage.

Thorough and complete advanced preparation is essential to a quality ROW representation at the review meeting. The ROW specialist will also compile a list of items to be further investigated during the PDP.

2.7 Parcel and Improvement Identification Numbers (PIN)

Based on the 30% preliminary design review plans, the ROW specialist will assign a PIN to each separate ownership from which additional ROW is required. An ownership is defined as the area of all contiguous lands that have a common ownership. “Common Owner” is further qualified, in that, in the case of multiple deed references, landowner names must be identical (i.e. Different partnerships under the control of a single general partner would not qualify as a Common Owner).

A unique parcel number shall be assigned to each landowner on a project. This number is to be three letter characters followed by three number characters; the number characters shall begin with 001 and increase sequentially. The letter characters should be unique to the project (i.e., “SCS” for South Capitol Street to create a parcel/case number “SCS-001”). Each new number combination shall indicate another landowner ownership to be acquired. Parcel/case numbers are generally numbered following the same direction as the stationing of the project.

A parcel number, once assigned, shall remain with that landowner throughout the plan development and acquisition process. It becomes the basic identification for file maintenance, plans and billing. If the landowners merge, the higher parcel number should be canceled, and subsequent transactions shall be posted to the lowest parcel number involved in the merger.

Chapter 2 – Preliminary Right of Way Activities

If during the plan development process a partial sale from a landowner occurs, producing a new landowner from which ROW is required by the project a new parcel/case number is to be assigned to the split-out landowner.

Existing buildings, structures and certain other improvements that are located within the proposed ROW or easement limits shall be identified with an improvement number. See Chapter 12, Section 12.3 of this manual, for information on assigning numbers and creating the initial building and improvement inventory report.

Thirty percent preliminary design review plans marked with the assigned parcel/case and improvement numbers shall be returned to the Project Manager requesting that they be added to the plans and included on all sequent distributions. The parcel identification number (xxx-123) should be shown in an oval within the property boundary, and the improvement number (D-1) should be shown within a square either within or beside the referenced item. For properties or improvements that extend to multiple plan sheets, the numbers are to be shown at least once on each plan sheet occurrence. In addition, the ROW Unit specialist will set up the initial Right of Way Status Report (form ROW STATUS) indicating the assigned parcel/case numbers for the project.

2.8 Environmental Site Assessments (ESA)

If the 30% preliminary design review plans indicate that the acquisition of ROW or easements is required from landowners, the ROW specialist should determine if a Phase I ESA has already been performed on all of the parcels. An ESA is sometimes performed on potentially affected parcels as part of the NEPA process. If the ESA has not been performed, the ROW Unit is to consult with the OAG and arrange to have the ESA performed. The ROW Unit with approval of the scope of work and procurement by the OAG shall have a qualified consultant perform the ESA.

Upon receipt of the Phase I ESA, the ROW specialist shall provide copies to the Project Manager and review any significant findings with the ROW Unit Manager. Consideration should be given to possible alternative designs to the project to avoid contaminated sites. If the results of the Phase I ESA reveal a highly contaminated parcel and there are no design alternatives, the ROW Specialist, with the concurrence of the OAG and Project Manager, should request a Phase II ESA

Chapter 2 – Preliminary Right of Way Activities

in order to clearly identify the limits and types of containments. This would also include the preparation of a preliminary cost for mitigating the parcel. If buildings or improvements located on the parcel are occupied, the Phase II study should not include invasive testing for lead paint or Asbestos Containing Material (ACM) as disturbance of the ACM might make them friable. TPPA's Project Development & Environment Branch (or designee) should be involved in this process. For information regarding hazardous waste assessment and environmental analysis please refer to DDOT Environmental Policy & Process manual.

The results of the Phase II ESA should be provided to the OAG and Project Manager, and retained for use by the appraiser (in the valuation of the property) and the acquisition agent (in explaining the offer to purchase). It is also acceptable to provide the landowner with a copy of the report for informational purposes.

2.9 Public Information Meetings

During the PDP, numerous informational meetings will be held to keep the public informed about the project and to solicit input into the project's plans. These meetings follow the intent of the Uniform Act as amended and other application regulations in ensuring landowners and the public are notified of project activities. They are included in the NEPA process on major projects and other opportunities are provided after the preliminary design plans are available.

Beginning with early scope meetings during the NEPA process, citizens, landowners and tenants will likely be concerned with the impact of the proposed project on their property. The ROW Unit Manager should assign a ROW representative to attend the scope and community meetings to answer general questions about the ROW acquisition process.

The brochure "DDOT Right of Way Acquisition for Transportation Projects" describes general ROW and relocation assistance procedures in layman terms, and should be available for distribution at the meetings. All discussions with the public at these early stages must be generic, as many changes can occur before a final design is selected. Verbal assurances should be given that ample time will be provided when the project reaches the ROW acquisition stage for negotiation of the property purchase and the relocation of their personal property or business.

Chapter 2 – Preliminary Right of Way Activities

2.10 Preliminary Design Plans (65%)

As the PDP continues, the plans are further developed to incorporate changes from the (30%) preliminary design stage to refine design details. After the design features are resolved, prints of the (65%) preliminary design plans are distributed and a review is scheduled.

The ROW Unit should review these plans from the ROW perspective as they will become the ROW plans at the next stage. The following is a list of items that the ROW specialist should consider in consultation with the project engineer as a part of the review:

- A. Horizontal Alignment
 1. Can any alignment changes be made to reduce costly takings, property damage, relocations, etc.?
 2. Can the proposed ROW lines be adjusted to conform to existing property lines or existing fences? If so, prepare a sketch of an alternative or mark the review prints. Be prepared to support your recommendation. Consider how the change would affect ROW and construction costs.
 3. Are any parks, conservation easements, wetlands, or sites of historic or archeological significance affected by the project which may require a special agreement?

- B. Vertical Alignment
 1. Are grades satisfactory in terms of their impact on adjacent property? If not, explain how they might be changed.
 2. Will super elevation adversely affect adjacent property? Are there any alternatives?
 3. Are cuts and fills excessive in consideration of the use of adjoining property?

- C. Topography and Survey Information
 1. Are all important topographical features indicated correctly on the plans? Pay special attention to entrances, cemeteries, wells, signs, landscaping, fencing, etc.
 2. Are complete property lines accurately shown on plans?

Chapter 2 – Preliminary Right of Way Activities

3. Are names of landowners shown correctly on the plans? If owned by the US government or the District of Columbia, is the agency with jurisdiction also shown?
4. Is parcel data for each property indicated on the ROW data sheet? This includes areas of the whole, acquisitions, easements, and residues.
5. Are all improvements outside the ROW that will have value or their use affected by the project shown on the plans? This includes underground facilities.

D. Railroads

1. Are railroads properly identified?
2. Are railroad ROW lines shown?
3. Is encroachment on railroad property necessary?

E. Construction Limits

1. Do construction limits extend beyond ROW line, requiring temporary or permanent easements?
2. Should areas now shown as easements be converted to fee acquisition?

F. Right of Way Features and Considerations

1. Is existing ROW clearly and correctly shown on plans?
2. Is proposed ROW completely shown on plans?
3. Is proposed ROW adequate and not excessive in width?
4. Are minor ROW adjustments needed to avoid excessive or unnecessary damage or takings?
5. Should a proposed acquisition line be added to preclude uneconomic remnants or to bring the acquisition to logical natural barrier?
6. Are there strip remainders between old and newly located highways that should be acquired?
7. Make recommendations as to acquisitions beyond ROW limits that may be acquired under District law. Explain and support any recommendations.

G. Controlled Access Right of Way

1. Are controlled access lines completely shown all plan sheets?

Chapter 2 – Preliminary Right of Way Activities

2. Are controlled access beginning and ending points clearly labeled at a satisfactory point?
3. Can minor adjustments be made to access control to prevent landlocking property?

H. Buildings

1. Are the assigned “D” numbers for all buildings and improvements located fully or partially within proposed ROW shown?
2. Is development imminent in the project area or construction underway?
3. Will advanced, protective buying or hardship/priority acquisition be considered?

I. Entrances

1. Are existing entrances and driveways shown?
2. Will additional entrances be provided as a result of grade changes at the property line?
3. Are proposed entrance grades acceptable for their intended use?
4. Does grade location or width of a proposed entrance cause excessive damage to the property?

J. Easements

1. Are temporary or permanent easements needed for construction features, such as slopes, channels, outfall drainage, staging area, etc.?
2. Are all easements indicated and properly identified?
3. Will any easements cause excessive damage?

K. Miscellaneous Items

1. Is the disposition of existing street and alley ROW closed by the project construction needed?
2. Check bridge sites for adequacy of ROW needed for fill slopes, construction work areas, or maintenance needs.
3. Are easements needed to protect scenic or environmentally sensitive areas?

Chapter 2 – Preliminary Right of Way Activities

A report with all comments and recommendations should be prepared and submitted to the Project Manager. If additional parcels, buildings or improvements have been added to the plans, new identification numbers should also be provided.

2.11 Right of Way Plans

After the comments and changes from the 65% plan review have been incorporated into the plans, final ROW plans are developed for approval and initiation of ROW acquisition. Detailed plans showing property lines, proposed ROW lines, acquisition and residue areas, and all improvements are needed for the appraisal and acquisition functions.

It is critical that ROW information be reflected on plans as early as possible and that topographical and improvement data is accurate and complete. Omissions and errors on plans that are not identified until negotiations have begun with landowners may cause significant delay and added cost.

While ROW plans are a definite, integral part of the transportation project construction plans, they are developed as a separate entity and thus require a significant amount of specialized knowledge in both the ROW field and field of boundary surveying. A ROW plan serves to provide information to define the extent of the ROW required in order to construct and maintain a highway. ROW plans provide a “picture” showing the information needed to facilitate an accurate appraisal of the proposed taking and serve to expedite the required negotiations leading to the acquisition thereof. The plats included with the plans provide metes and bounds dimensions for the development of the conveyance document. In addition, ROW plats will be recorded as official records documenting that which has been acquired and the plans will be the official record in eminent domain cases documenting the proposed construction impact on the remainder property.

The Project Manager is responsible for ensuring that the plans include the determination of precise ROW taking lines and limits for the preparation of all ROW plats. This determination also includes the location of the control of access lines, as required. The plans should indicate the center or base line stationing; the location of the proposed ROW lines; and square, lot and parcel number of affected properties. Also shown are existing streets and alleys with dimensions plus other prominent features such as schools, churches, railroads, streams, and similar items.

Chapter 2 – Preliminary Right of Way Activities

ROW plans are prepared on reproducible material and consist of several sheets, including (a) title sheets, (b) alignment sheets, (c) property ownership tabulation sheets, and (d) topographic or other special detail sheets, where deemed appropriate.

2.12 Notice to Proceed with ROW Acquisition

Upon receipt of authorization of Federal funds for the acquisition of ROW, the OCFO will provide a notice to proceed with ROW acquisition advising that funding is available and that all appropriate reimbursement agreements are in place. The ROW Unit, in accordance with this manual and its relocation planning analysis report, will proceed with the acquisition of ROW.

Chapter 2 – Preliminary Right of Way Activities

Chapter Resource

Major Tasks

- Preliminary Right of Way Activities:
(Project Conception to Approved Right of Way Plans)

Examples

- Preliminary Right of Way Cost Estimate (Example 2-1)
- Relocation Planning Analysis Report (see Chapter 10)

Forms

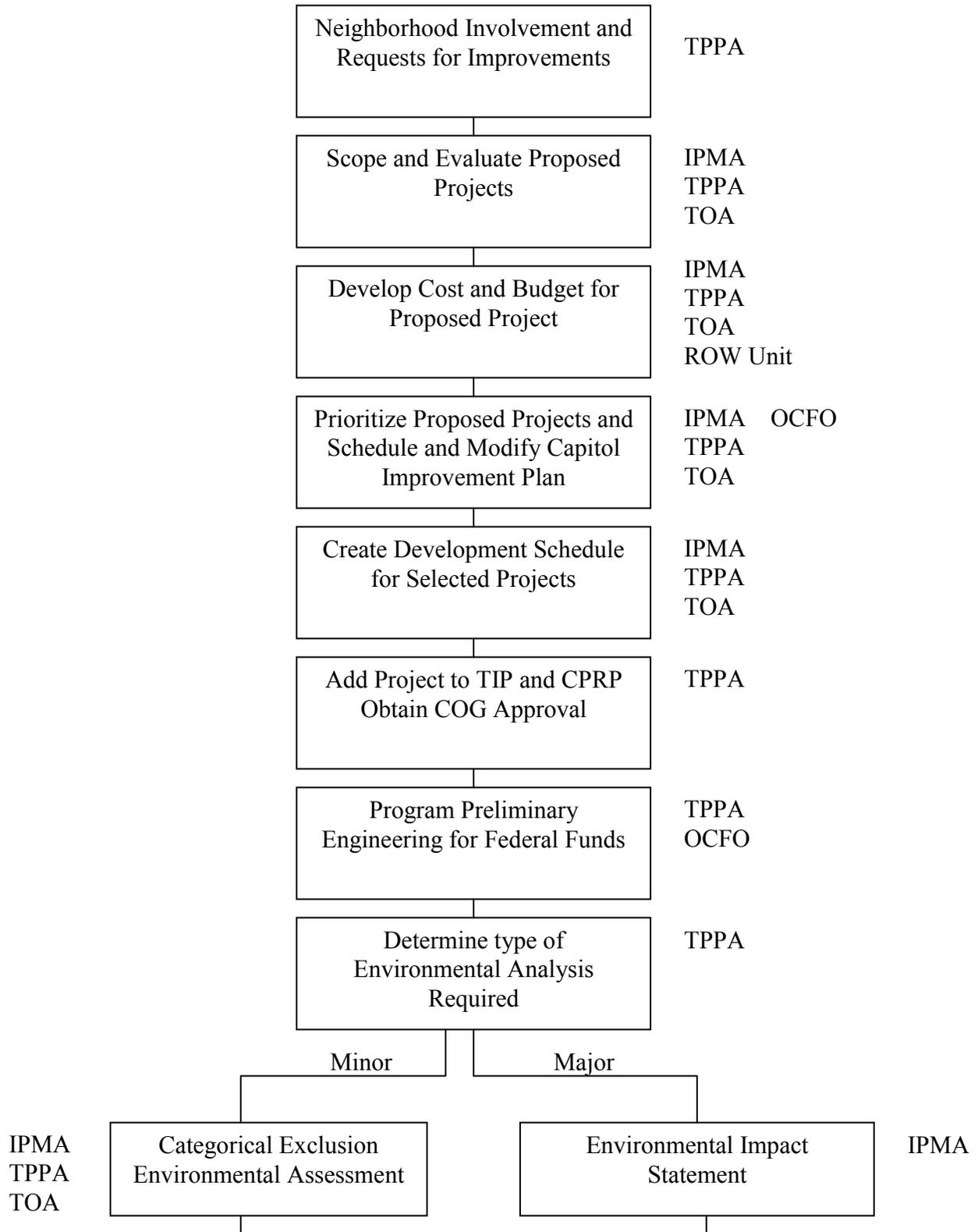
- Right of Way Status Report (form ROW STATUS)

References

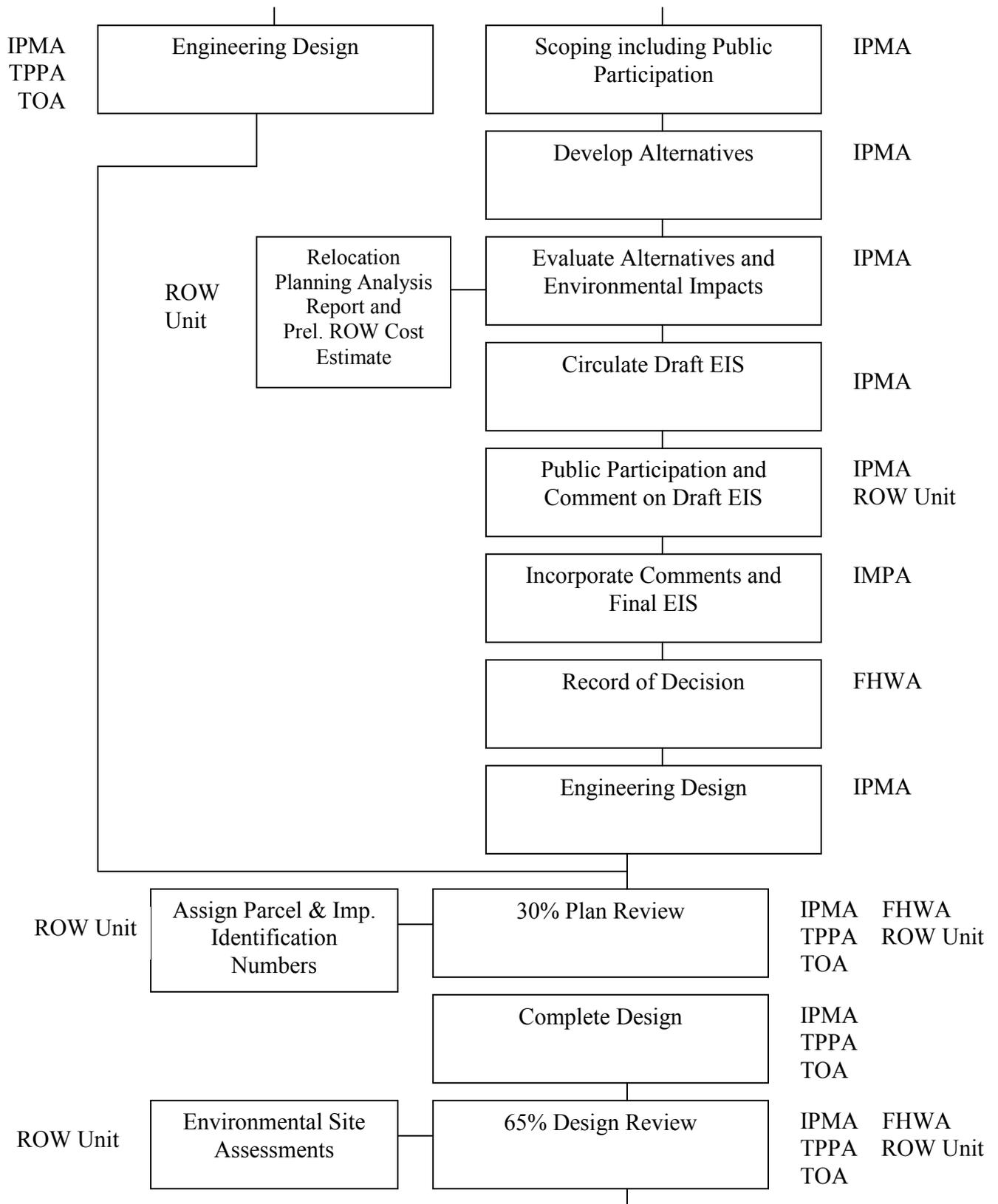
- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- District of Columbia Code
<http://dccode.westgroup.com>

Chapter 2 – Preliminary Right of Way Activities

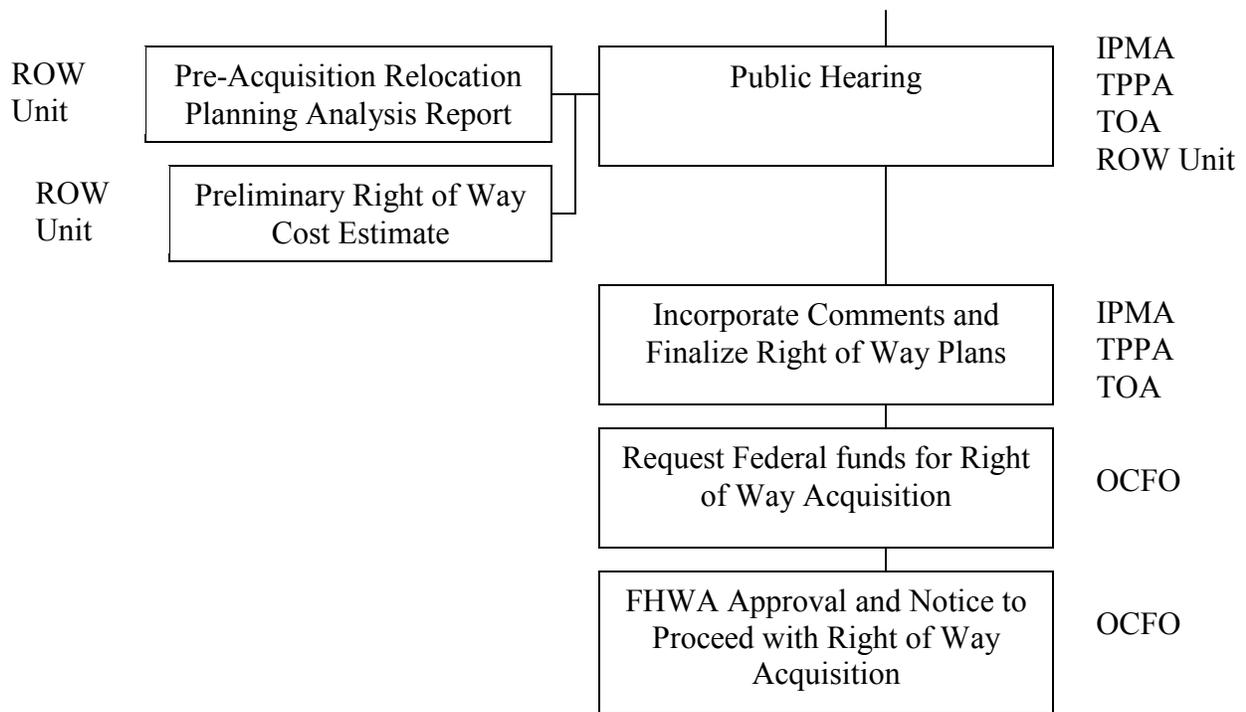
Major Tasks - Preliminary Right of Way Activities: Project Conception to Approved Right of Way Plans



Chapter 2 – Preliminary Right of Way Activities



Chapter 2 – Preliminary Right of Way Activities



Chapter 2 – Preliminary Right of Way Activities

Form RW-201

PRELIMINARY RIGHT OF WAY COST ESTIMATE

[Example 2-1]

Project:

Date:

Estimate Stage:

This estimate is for: Entire Project:

- Participating Cost:
 Non-Participating Cost:

1. **Acquisitions (Total Number of Parcels _____)**
 - a. Land \$
 - b. Buildings \$
 - c. Other Improvements \$
 - d. Damages \$
 - e. Total \$

 - f. Condemnation Increment (%) \$
 - g. Incidental Costs \$
(Includes Title Examinations, Appraising,
Negotiations, Closing Deeds, Title
Transfer fees, etc.)
 - h. Hazardous Waste Removal \$
 - i. Total (Acquisitions) \$

2. **Relocation Assistance**
 - a. Relocation Costs \$
 - b. Moving Costs \$
 - c. Total (Relocation) \$

 - d. Number of Displacements:
Families: _____ Businesses: _____
Non-Profit: _____
Personal Property Only: _____

3. **Total (Right of Way and Relocation)** \$

4. **Railroads**
 - a. Project Review Cost \$
 - b. Railroad Professional Engineer Cost \$
 - c. Railroad Force Account Construction \$
 - d. Total (Railroads) \$

5. **Grand Total (Sum of Acquisitions, Relocation and Railroads)** \$
(Excludes utility owner cost and utility construction costs)

6. **Plans**
This estimate is based on _____ plans.

Chapter 2 – Preliminary Right of Way Activities

[Example 2-1]

PRELIMINARY RIGHT OF WAY COST ESTIMATE (*continued*)

Prepare a separate report for each segment or alternative included in the preliminary engineering study. Also prepare a separate report for each participating and non-participating cost at design hearing stage, programming stage or for approval of funds.

NOTE: INCREASE PROJECTED FOR THE NEXT THREE YEARS AT % PER YEAR

| | |
|-------------------------------------|-------|
| Projected estimated cost as of 20__ | is \$ |
| Projected estimated cost as of 20__ | is \$ |
| Projected estimated cost as of 20__ | is \$ |

Chapter 3 – Advance Acquisition and Hardship Acquisition

Summary

This chapter covers situations where it may be necessary to acquire ROW prior to the normal ROW acquisition phase in the PDP. Under the normal PDP, the ROW acquisition phase is initiated after the environment review process is complete; the public participation process has been facilitated; and the engineering design features of the project have been substantially established. Advance ROW acquisition can occur anytime prior to that normal phase of the PDP.

This chapter also covers the policies and procedures under which a landowner whose property may be affected by a proposed future project, can request an advance acquisition based on a hardship created by the project being developed.

| Section Number | Section Name |
|----------------|--|
| 3.1 | Introduction |
| 3.2 | Protective Buying and Early Acquisition |
| 3.3 | Hardship Acquisition |
| 3.4 | Warrants for Protective Buying or Early Acquisition |
| 3.5 | Programming Documentation |
| 3.6 | Program Approval – EPA |
| 3.7 | Program Approval – Mayor of the District of Columbia |
| 3.8 | Program Approval – FHWA |
| 3.9 | Alternative Funding |
| 3.10 | Notice to Proceed |

3.1 Introduction

As a part of its long-range planning process, DDOT identifies improvements needed to the District's transportation system as well as rehabilitation or replacement requirements for existing infrastructure. The scopes of these new, rehabilitation or replacement requirements are defined during the planning process, and projects are established to develop and accomplish the identified need. The identification, funding, programming and development process for such projects are covered in Chapters 1 and 2 of this manual and in DDOT's Design and Engineering Manual.

Once the proposed project has been identified and added to the TIP, the PDP and engineering studies are initiated. Because of the complexities involved in developing transportation

Chapter 3 – Advance Acquisition and Hardship Acquisition

improvement projects and complying with regulations, the PDP can require several years to complete. During that time frame there may be activities occurring in the project area which may substantially affect the engineering alternatives, project costs, or individual landowner. These circumstances may warrant protective buying, early acquisitions or hardship acquisitions. The criteria that DDOT will evaluate to determine such a need, as well as the procedures, are included in this chapter.

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|-----------------|--|
| FHWA | District of Columbia division of the Federal Highway Administration |
| IPMA | DDOT's Infrastructure Project Management Administration |
| NEPA | National Environmental Policy Act of 1969 ¹ |
| PDP | Project Development Process as defined in DDOT's Design and Engineering Manual |
| Project Manager | Person managing the project from IPMA, TPPA, or TOA |
| ROW | Right of Way |
| TPPA | DDOT's Transportation Policy and Planning Administration |
| TOA | DDOT's Transportation Operation Administration |

3.2 Protective Buying and Early Acquisition

The need to consider early acquisition or protective buying is initiated by DDOT. Early acquisition and protective buying are similar processes that differ by the method of funding and programmatic approvals. Once a parcel of required ROW has been funded and approved for acquisition, the acquisition process shall be as described for the normal ROW acquisition's phase and shall be in compliance with the URA regulations.

In accordance with 23 CFR 710, Subpart E, Sec. 710.501 Early Acquisition

- a) Real property acquisition. State (DDOT) may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. DDOT may undertake early acquisition for corridor preservation, access management, or other purposes.
- b) Eligible costs. Acquisition costs incurred by DDOT prior to executing a project agreement with the FHWA are not eligible for Federal-aid credit. However, such costs may become

¹ 23 CFR 771

Chapter 3 – Advance Acquisition and Hardship Acquisition

eligible for use as a credit towards DDOT's share of a Federal-aid project if the following conditions are met:

1. The property was lawfully obtained by DDOT;
 2. The property was not land described in 23 U.S.C. 138;
 3. The property was acquired in accordance with the provisions of 49 CFR part 24;
 4. DDOT complied with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4);
 5. DDOT determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project, including:
 - a. The decision on need to construct the project;
 - b. The consideration of alternatives; and
 - c. The selection of the design or location; and
 6. The property will be incorporated into a Federal-aid project.
 7. The original project agreement covering the project was executed on or after June 9, 1998.
- c) Reimbursement. In addition to meeting all provisions in paragraph (b) of this section, the FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires DDOT to demonstrate that:
1. Prior to acquisition, DDOT made the certifications and determinations required by 23 U.S.C. 108(c)(2)(C) and (D); and
 2. DDOT obtained concurrence from the Environmental Protection Agency in the findings made under paragraph (b) (5) of this section regarding the NEPA process.

Section 710.503 Protective buying and hardship acquisition is defined as:

a) **General conditions.** Prior to DDOT obtaining final environmental approval, DDOT may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a landowner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

1. The project is included in the currently approved District's TIP;

Chapter 3 – Advance Acquisition and Hardship Acquisition

2. DDOT has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;
3. A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and
4. Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

b) **Protective buying.** DDOT must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

c) **Hardship acquisitions.** DDOT must accept and concur in a request for a hardship acquisition based on a landowner's written submission that:

1. Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and
2. Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

d) **Environmental decisions.** Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

3.3 Hardship Acquisitions

To expand on the requirements for hardship acquisitions above, all requests must be initiated by a current existing landowner and provided in writing to the ROW Unit Manager, clearly demonstrating the landowner's effort to market and sell the property. The written request should provide information and documentation, as may be available, to show that a hardship exists and the following warrants have been met:

- Nature of the hardship
- Documentation of inability to sell property at a reasonable price as a result of the project development

Chapter 3 – Advance Acquisition and Hardship Acquisition

A hardship can result from the following categories:

3.3.1 Health

- A. Advanced age, debilitating illness, injury, disability or handicap of a chronic nature, causing available housing to be classified as inadequate to meet the needs and appropriate maintenance level for the landowner.
- B. Other extraordinary conditions which pose a threat to health, safety or welfare of members of the household. An example would be a serious structural fault that is very expensive to repair and poses a safety threat.

3.3.2 Financial

- A. Impact of loss of employment or job transfer.
- B. Probate litigation requiring sale of property.
- C. Retirement, causing reduced income and inability to afford present home, including maintenance expenses.
- D. Pending mortgage foreclosure.
- E. Any other documented situation similar in impact to the above.

It is critical that claimed hardships be fully documented and supported. The list below is an illustration of the type and detail of information that is expected to support applications for hardship advance acquisition. Examples of acceptable support documents would include the following:

- A. Medical doctor's statement clearly describing the condition and recommending a change in housing.
- B. Real estate broker's statement indicating that the property is not marketable and that it would not be practical to re-list it on the market. The reason(s) should be clearly stated, including the length of time the property has been under a real estate listing agreement.
- C. Financial statements. Where financial hardship is claimed, the landowner should be asked to provide copies of relevant support such as income tax returns, certified financial statement, pay vouchers, etc.
- D. Letter from employer stating a transfer, layoff, etc., which has affected the landowner.

Chapter 3 – Advance Acquisition and Hardship Acquisition

- E. Court records relating to any legal action affecting the landowner's housing that indicates a hardship.

DDOT's ROW Unit, coordinating with the IPMA, should become involved in a project's PDP shortly after the scope of the project is approved and the engineering or after the NEPA process is started. In addition to providing information regarding property ownership and property characteristics that may be available to the ROW Unit, the Unit's personnel shall coordinate with the Project Manager to understand the alternatives being evaluated.

When information about the potential alternatives is available, the ROW Unit shall review the potentially affected properties and identify any special situation that exists and may potentially affect the project design or the PDP schedule (i.e., contaminated site, restricted property ownership, etc.). The ROW Unit shall also review the potential ROW requirements with the OP to ascertain if there are any site development plans being processed for the potential ROW acquisition parcels. The review should include any initiatives being proposed by other DC agencies or advanced-planning contacts from developers. A description of the planned developments, any available mapping and any available schedule obtained from this review should be provided to the Project Manager.

Should the ROW Unit identify land-planning activities occurring in the project corridor that may affect the engineering or the project cost, the ROW Unit should meet with the Project Manager to review the information and discuss the effect on the project. A determination should be made if further studies are needed to evaluate the impact of the proposed property development on the future project and project design. The ROW Unit should continue to liaison with the OP regarding the potential development activities in the project corridor and with the Project Manager about the project.

While reviewing the impact of the proposed property developments on the project, consideration should be given to geometric design costs and the potential of creating displaced families or businesses. Should the ROW Unit or Project Manager determine that it would be in the project's best interest to immediately proceed to acquire the proposed ROW, additional documentation of the warrants (described in Section 3.4) for justifying protective buying or early acquisition should be developed and the appropriate plans prepared.

Chapter 3 – Advance Acquisition and Hardship Acquisition

The ROW Unit shall review the request and documentation to determine if a hardship acquisition is justified. If it is justified, the ROW Unit and the Project Manager shall meet to determine if the plan's development has progressed adequately to identify the ROW requirements and facilitate the preparation of a plat. After the hardship acquisition is justified and the advance acquisition is approved, the Project Manager shall request that the acquisition of the approved parcel be programmed for ROW funding, including Federal participation, if appropriate.

Once a hardship parcel has been programmed and funded, the acquisition process follows that as described for the normal acquisition phase in Chapter 8 and shall be in compliance with the URA as amended and other applicable regulations. If the parties are unable to negotiate a voluntary agreement, the decision to use eminent domain rests solely with the Director of DDOT with a recommendation from the ROW Unit Manager.

3.4 Warrants for Protective Buying or Early Acquisition

Should the ROW Unit Manager and the Project Manager agree that protective buying or early acquisition may be appropriate, they shall jointly prepare a report evaluating the situation with regards to the following warranties and representations:

1. The proposed development or improvements to a property required for the project is imminent.
2. The proposed development of the required property limits or eliminates feasible alternatives for the transportation project.
3. There will be a significant increase in the project's cost if the landowner is permitted to improve or develop the property.

3.5 Programming Documentation

After it is determined that either protective buying or early acquisition is warranted and it would be in the public's best interest to acquire the ROW from selected parcels, the various DDOT units shall prepare the necessary documentation to obtain approval to acquire the ROW. The following documents will be necessary for protective buying, early acquisition or hardship acquisition.

- 3.5.1 An engineering plan showing existing property lines; topography; the proposed roadway, bridge or trail; and the proposed ROW and/or easement lines will be prepared by the managing unit (IPMA, TPPA or TOA). (A plat delineating the

Chapter 3 – Advance Acquisition and Hardship Acquisition

proposed ROW and/or areas to be acquired shall be provided if the acquisition does not require the whole property.)

- 3.5.2 Documentation that the warrants for protective buying or early acquisition or hardship acquisition have been met will be prepared by the ROW Unit.
- 3.5.3 A preliminary estimate³ of the cost to acquire the parcels being proposed for advance ROW acquisition, including all administrative costs and contingencies, will be prepared by the ROW Unit. Should the advance ROW acquisition involve the displacement of families or businesses a pre-acquisition RPA shall also be prepared.⁴
- 3.5.4 Unless the NEPA process has been completed and a ROD or a FONSI has been issued, a separate environmental assessment shall be prepared covering only the advance ROW acquisition.

The CE should evaluate all aspects related to the ROW acquisition and document that none of the parcels to be acquired are parkland as described in 23 U.S.C. 138, or historic properties as described in 16 U.S.C. 470(f). Both the assessment and CE should be performed by the managing unit (IPMA, TPPA or TOA). The CE shall be submitted to the FHWA for review and approval.

- 3.5.5 A review of the project's scope as related to possible design alternatives should be completed. The review must include a commitment that the advance acquisition of any parcels will not influence the overall environmental assessment (per NEPA requirements at 23 CFR 771) for the project or the selection of a recommended alternative. This statement should be prepared by the managing unit for the Director of DDOT's signature.
- 3.5.6 A statement outlining the public involvement meetings held regarding the project and all major concerns raised about the project. One of the public meetings should include notice of DDOT's intent to acquire certain properties as advance ROW acquisitions and shall include, as a minimum, a notice to the affected landowners.

³ See Section 2.6.4

⁴ See Section 10.5

Chapter 3 – Advance Acquisition and Hardship Acquisition

The proposed plan showing the proposed alternatives should also be available for the landowner's review. Documentation regarding public involvement in the project should be prepared by TPPA.

3.5.7 A statement that the proposed project is included in DDOT's TIP and is eligible for Federal participation should be prepared by TPPA.

3.6 Program Approval – EPA

If advance acquisition is being programmed as an early acquisition under 23 CFR 710.501, approval is required from the US Environmental Protection Agency (EPA). As soon as the early acquisition programming documentation is available, DDOT's Project Manager from the managing unit (IPMA, TPPA or TOA) shall submit a request to the appropriate representative of the EPA seeking concurrence with DDOT's finding that the early acquisition of the requested parcels will not affect the outcome of the environmental studies. The letter indicating their concurrence in that finding shall be included in the documents sent to the FHWA.

3.7 Program Approval – Mayor of the District of Columbia

If the advance acquisition is being programmed as an early acquisition under 23 CFR 710.501, the Mayor shall certify that the early acquisition of the selected properties is consistent with the District's comprehensive and coordinated land use, environment and transportation planning process⁵ and the District's transportation planning processes pursuant to 23 U.S.C. 135.

3.8 Program Approval – FHWA

With the completion of the protective buying or early acquisition programming documents, concurrence from the EPA regarding the NEPA process, and receipt of the Mayor's Certification, DDOT shall seek written approval from the FHWA for the advance ROW acquisition from the parcels identified in the documentation. DDOT may simultaneously, with the request for approval of protective buying/early acquisition or hardship acquisition, submit a request for ROW funding for the advance acquisition parcels. Upon obtaining approval of the advance acquisitions and funding, the DDOT/FHWA project agreement, or an amendment thereto shall be executed and a notice to proceed with ROW acquisition issued.

⁵ 23 U.S.C. Ch. 1, §108(c)(2)(c)

Chapter 3 – Advance Acquisition and Hardship Acquisition

3.9 Alternative Funding

In the event that DDOT determines that early acquisition program is most appropriate, funding will be provided by DDOT. Provided that the other requirements of 23 CFR 710.501 are met, DDOT will be eligible for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants. However, early acquisition costs incurred by the District prior to executing a project agreement with FHWA are not eligible. Such costs may become eligible for use towards the District's share of a Federal aid project. When parcels are acquired under the early acquisition regulations using DDOT funds, funds will be credited in accordance with 23 CFR 710.501, and records shall be maintained showing the actual historical acquisition costs of payments made to the landowner, any eligible tenant, administrative costs, and any settlement amount or court awards. In such circumstances where more than 18 months lapse prior to the project advancing to the normal ROW acquisition phase or should there be a significant change in market value (not influenced by the proposed project), an appraisal of the current fair market value shall be made and the credit for DDOT providing the early acquisition ROW shall be based on that current fair market value appraisal.

3.10 Notice to Proceed

Upon receiving approval from the FHWA for early acquisition protective buying or hardship acquisition parcels along with project funding authorization from the OCFO, the ROW Unit is authorized to proceed with the acquisition of the approved parcels following its normal ROW acquisition procedures, the URA and all applicable regulations.

Based upon the time frame of the overall PDP, the ROW Unit shall implement the appropriate property management procedures. This may include leasing any improvements or land, or entering into a lease-back arrangement with the current landowner.

Even though some parcels become approved for advance ROW acquisitions, the ROW Unit shall continue to liaison with the Project Manager and the OP to ensure that the development of other properties is not imminent. If other development activities occur, DDOT should consider additional advance acquisition in accordance with this policy.

Chapter 3 – Advance Acquisition and Hardship Acquisition

THIS PAGE INTENTIONALLY LEFT BLANK

Chapter 3 – Advance Acquisition and Hardship Acquisition

Chapter Resources

Major Tasks

- Advance Acquisition Process
- Hardship Acquisition Process

Examples

- Preliminary Right of Way Cost Estimate (see Chapter 2, Example 2-1)
- Pre-acquisition Relocation Planning Analysis Report (see Chapter 10, Example 10-1)

References

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- United States Code (U.S.C.)
www.gpoaccess.gov/uscode/index.html

Chapter 3 – Advance Acquisition and Hardship Acquisition

Major Tasks – Advance Acquisition

| | |
|--|-------------------------------|
| Monitor new project development process and land planning activities | ROW Unit IPMA and TPPA |
| Advise IPMA or TPPA of plans for redevelopment that may affect planned project | ROW Unit |
| Determine affect of development on project and review alternatives | ROW Unit IPMA and TPPA |
| Determine if advance acquisition may be advisable | ROW Unit IPMA or TPPA |
| Develop data and documentation required to justify advance acquisition | ROW Unit IPMA or TPPA OCFO |
| Prepare a preliminary plan | IPMA or TPPA |
| Prepare a preliminary ROW cost estimate | ROW Unit |
| Prepare an environmental document | IPMA or TPPA |
| Obtain public comment through a public involvement meeting | IPMA or TPPA |
| Submit documentation for Mayor and EPA approval if necessary | IPMA or TPPA |
| Submit documentation and finding plan for FHWA approval | IPMA or TPPA |
| Receive FHWA approval of advance ROW acquisition and funding plan | IPMA or TPPA |
| ROW Unit receives notice to proceed work advance acquisition | TPPA |
| Advise landowners | ROW Unit |
| Begin normal acquisition process | ROW Unit |

Chapter 3 – Advance Acquisition and Hardship Acquisition

Major Tasks – Hardship Acquisition

| | |
|---|---------------------------------|
| Contact by landowner of property affected by a project under development | IPMA or TPPA or TOA |
| Provide information to ROW Unit | IPMA or TPPA or TOA |
| ROW Unit advises landowners of information needed | ROW Unit |
| Receive request and documentation from landowner | ROW Unit |
| Review request, consult with IPMA, TPPA or TOA on project status | ROW Unit IPMA or TPPA or TOA |
| If request is justified determine if funding is available | ROW Unit TPPA OCFO |
| If request is not justified advise Landowner | ROW Unit |
| If funding is available request FHWA approval of hardship acquisition | TPPA |
| FHWA approved hardship acquisition and funding. DDOT modifies project agreement | FHWA TPPA |
| ROW Unit received notice to proceed with advance acquisition | TPPA |
| Advise landowner | ROW Unit |
| Begin normal acquisition process | ROW Unit |

Chapter 4 – Right of Way Funding and Approval

Summary

This chapter describes the various approvals that are required for a proposed project to reach the ROW acquisition stage of development. It also addresses the process for obtaining project funding for ROW acquisition including Federal funding under 23 CFR.

| Section Number | Section Name |
|----------------|---------------------------------|
| 4.1 | Introduction |
| 4.2 | Programming Projects |
| 4.3 | Approved Right of Way Plans |
| 4.4 | FHWA Approval and Authorization |
| 4.5 | Right of Way Records |
| 4.6 | FHWA Monitoring and Billing |

4.1 Introduction

As indicated in Chapter 2, transportation improvement projects are first identified as either city-wide or ward transportation needs and then must be added to the 5-year Capital Improvement Program (CIP). A project development team has been established for each pair of wards (Team 1: wards 1 & 2; Team 2: wards 3 & 4; Team 3: wards 5 & 6; and Team 4: wards 7 & 8). The Project Manager develops an estimated cost data for the project, a budget and a schedule. If DDOT determines that the proposed project needs Federal funds, the project should be added to DDOT's CLRP and the TIP. The Project must be submitted to the Metropolitan Washington Council of Governments (WASHCOG) Transportation Planning Board (TPB) for approval. Any maintenance, rehabilitation or signalization projects that require the acquisition of additional ROW will also need to be programmed for the authorization of ROW acquisition and the appropriate source of funding.

The IPMA, TPPA and the TOA are responsible for the programmatic functions of projects which they administer. Each administration works with the OCFO to request funding authorizations and agreements with the FHWA. Close coordination is required among TPPA, IPMA, TOA, and the ROW Unit to ensure that all ROW cost estimates and data is available to secure funding according to schedule. (See Chapter 14, Section 14.4.1) Where property has been acquired prior to FHWA approval of a capital project and that land is necessary for a federal aid project, the

Chapter 4 – Right of Way Funding and Approval

current appraised value of the land shall serve as a soft match towards the District's share of a Title 23 funded project.

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|-----------------|--|
| OCFO | District of Columbia Office of the Chief Financial Officer |
| FHWA | District of Columbia Division of the Federal Highway Administration |
| PE | Preliminary engineering activities required to develop engineering studies and plans for the construction of transportation improvement projects |
| Project Manager | Person managing the project from IPMA, TPPA, or TOA |
| IPMA | DDOT's Infrastructure Project Management Administration |
| TPPA | DDOT's Transportation Policy and Planning Administration |
| TOA | DDOT's Transportation Operation Administration |
| Ward | One of eight political subdivisions (areas) in the District of Columbia |

4.2 Programming Projects

When the development teams, lead by the ward transportation planner and Project Manager, complete the scoping of a new project, the ROW Unit should be provided a copy of the project evaluation criteria report and may be requested to provide an estimate of ROW costs for the project. The preliminary cost estimate (form DC 106) should be completed using the market cost data available at established land and improvement costs. The preliminary ROW cost estimate (form RW-EST) breakdown should be attached to the DC 106 form. The completed ROW cost estimate is to be provided to the Project Manager along with a cover letter noting any significant potential ROW issues. Significant ROW issues could include identification of properties with known contamination issues, development plans pending, restrictive easements or covenants, etc.

Preliminary ROW engineering, which include the NEPA process and other activities that can occur prior to the NEPA process can consist of title reports, preparation of preliminary property maps, and appraisals, can be programmed as either a preliminary engineering (PE) or ROW activity with the FHWA. The ROW Unit's estimated preliminary ROW engineering costs are minimal compared to other PE costs for a project; hence, it is typically best to include the ROW Unit's budget within the overall PE authorization request, except when otherwise requested, a budget and charge code shall be opened for preliminary ROW engineering charges.

Chapter 4 – Right of Way Funding and Approval

4.3 Approved Right of Way Plans

ROW plans are drawn to give a visual perspective of the project, showing the ROW alignment and centerline, construction limits, terrain features, property lines, access lines, areas of additional proposed easements and current and proposed ROWs. For each parcel to be acquired, the plans must include (1) District and Federal project identification number, (2) parcel identification number, (3) landowner names, (3) the area of property to be acquired in square feet or acres, and any remainders of partial taking, and (4) data affecting the cost of ROW (i.e., structures, access roads, improvements, etc.). The plans should also include the location of the control access lines, as required on federally aided projects, and should provide a pictorial view of properties affected by the acquisition.

The Project Manager for IPMA, TPPA, or TOA shall provide ROW plans to the ROW Unit for updating the pre-acquisition cost estimate and relocation assistance report. The final ROW plans are a complete representation for all pertinent data involving property and are a permanent record. They include full details on the partial takings as well as total takings. Final ROW plans are circulated within DDOT for approval before the ROW phase is authorized for Federal participation.

4.4 FHWA Approval and Authorization

The OCFO is responsible for programming DDOT projects for Federal funds participation and executing project agreements with the FHWA, in accordance with the criteria. The approval process is outlined in greater detail in Appendix C, Sheet 2, ROW Acquisition Approvals.

The Associate CFO for government services staff will submit project data and preliminary cost estimates during three major stages of project development (PE, ROW, and Construction) and request FHWA approval and authorization of funds using the Fiscal Management Information System (FMIS). Projects must be from a CLRP and TIP program prior to submission to FHWA.

4.4.1 FHWA Project Agreement

Upon approval of the project for PE, ROW or Construction, the Associate DC CFO or authorized representative will enter into a project agreement between DDOT and the

Chapter 4 – Right of Way Funding and Approval

FHWA.¹ The contractual obligation between the District and the FHWA is created in the project agreement, which also allows FHWA to reimburse all eligible project costs. Eligible costs are not eligible until FHWA authorizes the applicable phase of the project. The requirements for the project agreement include the following:

- Description of project location including termini
- The Federal aid project number
- Phases of work covered by the project agreement and the date of authorization for each phase
- Total project cost and total Federal funds under the agreement
- Statement that DDOT accepts and will comply with the provisions of 23 CFR 630.112
- Statement that the DDOT representative's signature certifies compliance with 23 CFR 630.112
- Signatures of DDOT and FHWA representatives and date of execution

If time has lapsed in the project this could trigger a revaluation hence the need to resubmit this information for review. If there is a change in the location, costs or other significant aspects of the project after the project agreement has been executed, DDOT can modify the project agreement with FHWA's approval to reflect the appropriate changes. The modified project agreement must include the original agreement's information and the reason(s) for the change.

4.5 Right of Way Records

While acquiring land as street ROW and/or for other transportation purposes, complete records and files must be maintained to document the various processes, conclusions, and actions that DDOT makes relative to evaluation, acquisition and disposition. Various operations of DDOT (in acquiring properties, selling improvements, and in the ultimate disposal of properties no longer needed for transportation purposes) are subject to close scrutiny, both now and at any time in the future. While certain features of a transaction might be clearly understood at the time of action, the understanding might not be clear at a later date unless detailed documentation is provided with pertinent information. Examples of documents that should be kept as part of the ROW project records include the following:

¹ 23 CFR 630.108

Chapter 4 – Right of Way Funding and Approval

- Project Schedules (for engineering, appraisals, negotiations, advertising, construction, etc.)
- Financial ledgers (including expenditures, payments, etc.)
- Parcel/case files (for each acquisition of separate parcel [discussed in detail below])
- Maps (including rights of way, acquired property, surrounding property, etc.)
- Photographs (showing property, surrounding property, etc.)
- Plans (including architectural, engineering, etc.)
- Other documentary materials (including but not limited to video tapes, disks, papers and models or illustrations,)
- Relocation Agent phone log
- Appraisals
- Certifications
- Related Correspondence

Except for the period of time that certain records are exempt under the FOIA, any DDOT unit, DC government, or FHWA can request and inspect the ROW Unit's project records at any time.

The ROW Unit shall retain all original project records for at least 3 years from the date of acceptance of the final reimbursement voucher.² Note that the acceptance date could be longer than the 3 years from the project completion date. If for any reason, including where a surplus residue parcel is created from the project, DDOT requires a longer time period for retention for project records, DDOT should adhere to this longer time period. If litigation arises within this 3-year period, all records must be retained until the litigation has been resolved, even if beyond the 3 year time limit. For third party individuals, used as subcontractors on the project, the 3-year period begins when they receive the final payment from the principal contractor.

FHWA may acquire DDOT's project records for retention at a Federal facility due to the potential long-term value of the records. In that case, DDOT would be relieved from the Federal obligation of retaining the records for at least 3 years.

4.6 FHWA Monitoring and Billing

² 23 CFR 17

Chapter 4 – Right of Way Funding and Approval

The FHWA conducts process reviews of DDOT's actions at specific points during the various phases of the project to assure that DDOT is in full compliance with Federal laws and regulations and to evaluate how DDOT manages its transportation program under both District and Federal regulations. The URA³ and 23 CFR set forth regulations that must be followed to ensure that DDOT can receive reimbursement for expenses incurred during project development activities, including ROW based on historical acquisition costs. In circumstances where more than 18 months lapse prior to the project advancing to the normal ROW acquisition phase or should there be a significant change in market value (not influenced by the proposed project), an appraisal of the current fair market value (FMV) shall be made and the reimbursement for DDOT providing the early acquisition ROW shall be based on that current FMV appraisal.

FHWA: These expenses will be reimbursed up to the limits set forth by the FHWA. FHWA will usually provide funds for any part of the normal ROW project, except for portions of the acquired land not included in the actual ROW unless the portion of land is an Uneconomic Remnant or under some other allowable category provided by FHWA.

In order to be reimbursed for project costs, DDOT must submit a request for payment in the form of a voucher. The voucher must be certified by the appropriate District representative(s) and supported by project data. Vouchers must be submitted in a prompt manner and can be submitted in one of two forms: (1) a progress voucher through what is termed "current billing," which occurs periodically throughout the life of the project, or (2) a final voucher which is submitted at the completion of the entire project.

A progress voucher is submitted during various phases of the project. In order to properly receive reimbursements on this payment schedule, a record of liability must exist and DDOT must have already disbursed funds.

A final voucher is submitted at the close of a single project. It includes a request and summary of all expenses from the initial authorized date of the project to the completion date. The voucher must also summarize the cost according to work type.

³ 49 CFR 24

Chapter 4 – Right of Way Funding and Approval

Chapter Resources

Forms

- DC 106, used by IMPA, TPPA or TOA to documents scope and project cost (not included)
- Preliminary Right of Way Cost Estimate (see Example 2-1 in Chapter 2)

References

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html

Chapter 5 – Preliminary Title Research

Summary

The ownership of real property by both private/public persons and private/public entities is based on constitutional and local laws that establish the manner in which real property can be possessed, how these rights can be conveyed, and how and where records are to be kept. This chapter addresses this portion of the legal requirements that should be investigated prior to entering into an option/purchase agreement for real property rights for ROW or accepting the donation of ROW. The investigation involves verifying ownership information, and how title is vested to the landowner, encumbrances and other exceptions that may affect DDOT receiving a free and unencumbered ROW.

Legal documents required for the acquisition of ROW and easements are discussed in Chapter 8. The legal requirements related to closings of voluntary conveyances and eminent domain procedures are discussed in Chapter 11.

| Section Number | Section Name |
|----------------|---|
| 5.1 | Introduction |
| 5.2 | Project Survey |
| 5.3 | Title Requirement |
| 5.4 | Title Reports |
| 5.5 | Title Updates |
| 5.6 | Outside Title Reports and Title Binders |
| 5.7 | Coordination with Acquisitions |

5.1 Introduction

The PDP process as well as ROW acquisitions are based on knowing the legal owner and how title is vested to the landowner of each real property interest affected by the project. Title research assures DDOT that it has all necessary information of the extent and nature of the vesting of title in and to the property to be acquired, and that all parties--and only those parties--who have a legitimate interest in the acquired real property interests are compensated. It is equally important that all encumbrances on acquired property, including air rights or easements (if applicable), deeds of trust and other types of liens, be released before DDOT takes possession of property. Air rights are outlined in greater detail in Chapter 17, Section 17.7 and 17.8. Title research consists of examining public records to identify all the holders of property rights and

Chapter 5 – Preliminary Title Research

liens so that their interest can be evaluated and acquired in the process of acquisition. These formal title examinations are summarized in the form of title reports.

Title reports are to be prepared on every property assigned a parcel identification number to be conveyed to DDOT. The detail and extent of the title research required shall be prescribed by the OAG. Early performance of the title research will facilitate all subsequent phases of the ROW acquisition process. The title research must be conducted prior to making an offer to acquire property interests by purchase or by filing a declaration of taking under eminent domain declaration. The ROW Unit Manager will therefore assign or order preliminary title reports as soon as the schedule warrants.

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|-----------------|--|
| OAG | District of Columbia’s Office of Attorney General |
| Project Manager | Person managing project from IPMA, TPPA or TOA |
| Title Binders | A preliminary report issued by a title company listing issues with a property title and exception which must be resolved or excepted in order for a title insurance policy to be issued. |
| Title Chain | A document showing the condensed history of the title to a property for the specified period of time. Such research is used to prepare the title report and/or title binder. |
| Title Company | A business employing an attorney whose practice is real property conveyances and title research. |
| Title Report | An investigation of public record and documents to ascertain the history and present status of title to real property, including ownership, liens, encumbrances, and other interests. |

5.2 Project Survey

The initial determination of landowners is usually made during the survey phase of a transportation improvement project development. The survey personnel will research the land records to determine the location of property boundaries and the current landowner. This information will be reflected on the plans. The ROW Unit may be called upon to assist the survey personnel and perform additional research should there be a difficult ownership situation.

At any time that the ROW Unit becomes aware of a change in ownership the Unit will advise the project manager so that the plans can be updated.

Chapter 5 – Preliminary Title Research

5.3 Title Requirement

In preparation for the transportation improvement project advancing to the ROW acquisition phase, the ROW Unit Manager will prepare a list of properties that will have to be acquired showing the type property interest involved (i.e. fee, easement). The ROW Unit Manager will request that the OAG determine the type of title report required and if an outside title company is needed.

Should an outside title company be required, the OAG will determine if the work can be done under an existing contract or if a new procurement will be necessary. In either case, the ROW Unit will enter into a Memorandum of Understanding (MOU) with the OAG to provide the necessary preliminary title research and title reports and for DDOT to transfer project funds to pay for the cost of these services.

5.4 Title Reports

A title report should identify the current landowner; the interest owned; the legal description of the property; when the interest was purchased; how it was acquired; from whom it was acquired; the recorded location of the instrument; others that may have a right, title, and/or interest in the property or use of the property; and whether or not the property or any portion of it is encumbered by liens, restrictions, the impact of subdivided lots, renamed, potential cloud on title, easements, reservations, etc.

Any title report prepared by the ROW Unit is not to contain an opinion of title and is not to certify title in any specific landowner, as this would constitute the practice of the law. The assigned ROW Unit Specialist should have the ability to understand metes and bounds legal descriptions, be familiar with the record system, and have a working knowledge of recorded documents and the legal requirements of their execution.

5.4.1 Limited Title Report

When lower valued properties are acquired by donation or voluntary conveyance, or temporary or permanent easements are acquired, (estimated acquisition cost of \$2,500 or less) the ROW Unit Manager may approve an exception and determine that a current landowner rundown is adequate to verify the interest being conveyed. If a current landowner rundown is determined to be adequate, the title research is confined to a

Chapter 5 – Preliminary Title Research

complete rundown of the current landowner's information. The current landowner rundown will include the following information:

- Landowners
- Source deed
- Assessments
- Deeds of Trust
- Liens
- Leases
- Proffers
- Easements
- Unreleased judgments
- Financial statements
- Other information (divorce settlements, estates, etc.)

Should there appear to be some irregularity in title information the OAG should be consulted to determine if a full title report is needed.

5.4.2 Detailed Title Report

5.4.2.1 The detailed title report prepared for each parcel shall extend back for at least 60 years and may extend beyond 60 years until root title is identified. A root title is either a general warranty deed or judicial decree. To establish root title, the title researcher may have to research several title chains within the same parcel. The title report shall be completed on (Form TITLE-REPORT) and shall be supported by (Form TITLE-CHAIN).

5.4.2.2 The title report should be submitted with the information outlined in Section 5.4.2.3 and in the following order:

1. The title report
2. The title chain
3. A copy of the deeds showing how the current landowner obtained title to the subject property
4. Copies of mortgages, liens, encumbrances, leases, deeds and anything else that is pertinent and appropriate for the title report (included as attachments to the report)

Chapter 5 – Preliminary Title Research

The title report and title chain forms submitted to the ROW Unit shall be typed and not handwritten.

5.4.2.3 Information to be Included in the Title Report

A. Fee and/or Other Primary Landowners

List the names, addresses, marital status (to include the spouse's name, if married), and the interest owned by each landowner. (For items that do not apply, record as Not Applicable [N/A].)

B. Brief Description of Subject Premises

From the deed(s) instrument by which the present landowner(s) acquired title to the property, briefly state the legal location and surface area of the subject parcel(s). List all instruments of record that account for the fee simple ownership of the entire parcel. If the deed includes multiple tracts, specify which tracts are involved in the referenced parcel. The size of each parcel impacted by the taking needs shall be listed in this section. In situations where there are multiple landowner land hooks (contiguous ownership parcels), the title report shall identify all contiguous parcels under common ownership; the area of each parcel; the tax identification number for each parcel; the deed book; and page number of each parcel. A complete title chain (Form TITLE-CHAIN) going back 60 years shall be completed on those parcels which have areas taken by DDOT. For those parcels not having any area taken, no other research is needed, and the ROW Specialist shall mark N/S (Not Searched) on the report to state what was and was not researched.

C. Mortgages, Liens and Encumbrances

A list of all mortgages that are active or open against the property, including the amount of the mortgage, date filed, and the address of the mortgagee, shall be obtained. Liens should be listed by type, such as Federal or District tax liens, and the amount. All releases and satisfactions are to be listed. The title report shall include any active or pending judgments, copies of all liens and encumbrances. In all cases,

Chapter 5 – Preliminary Title Research

the name and address of mortgagee, the lien holder, and the entity possessing the judgment or encumbrance should be obtained.

D. Leases

When recorded leases are discovered against the property, the names and addresses of both the lessor and lessee shall be obtained. Additionally, copies of all leases currently active on the parcel should be provided, including the commencement date, length of the lease, and any condemnation clause contained in the lease.

E. Easements

Title search should include a review of any air space conveyances. Recorded easements shall include to whom the easement is granted, for what purpose or what type the easement is, and the address of the person(s) or company or entity that it is granted to. Copies of all easement instruments should be provided.

F. Defects in Title-Irregularities-Comments

While completing the examination of the various conveyances, deeds, and related materials, the ROW Specialist should identify and list any irregularities or defects found in the documents reviewed. This includes any type of pending litigation or other matters of a legal consequence or challenge against the property or the landowners of record.

G. Taxes and Special Assessments

The ROW Specialist shall complete all sections under this heading as well as identify any special assessments against the property. The ROW Specialist shall also verify whether there are any current and/or delinquent taxes owed on the property and identify for each tax parcel the taxes owed. The ROW Specialist shall also attach a copy of tax record to the title report for any delinquent parcel. All tax parcels impacted by the proposed ROW acquisition need to be listed. A separate addendum to the title report is permitted for this purpose.

Chapter 5 – Preliminary Title Research

H. Acknowledgment

The ROW Specialist shall complete the acknowledgment section of the title report and include the date and time that the research was completed at the records room; the ROW Specialist shall also verify that the research includes all conveyances, liens, encumbrances, etc., and all applicable indexes of records at the time were researched.

- 5.4.2.4 The title chain report (Form TITLE-CHAIN) shall reflect the various transfers of the property and trace the ownership back to the root title for a minimum of 60 years. The completion of the title chain is performed by the ROW Specialist who shall enter the data in the proper spaces on the form for every transfer of any ownership in the subject property.

5.5 Title Updates

Title reports should be updated prior to the initiation of negotiations if 6 or more months have elapsed since the date covered in the previous report. The ROW Unit should also have the report updated if there has been a possible change in ownership. The update is to be completed by a ROW Specialist who uses the records room to search and review any and all available indexes and records of rights, titles or interests in the subject property that has been recorded, transferred, or challenged since the date of the original title report or the latest title report update.

Title report updates (Form TITLE-UPDATE) are to be completed in a typed or word processing format. The ROW Specialist shall attach copies of any and all documents that have been recorded against the subject property since the original title report/update. Should the ROW Specialist discover information that evidences any changes in the right, title or interest in the property since the original title report, that information should be copied and attached to the title report update. The ROW Unit Manager shall also be advised of the change of ownership as well as the project manager

While preparing the title report update, the ROW Specialist shall consider all information from the original title report, previous title updates and the negotiator's notes if available, and shall compare the original findings to any discrepancies or additional information which may have a bearing on the update process. In completing the title report update, the following items are to be considered:

Chapter 5 – Preliminary Title Research

A. Fee or Other Primary Landowners

The ROW Specialist shall determine whether or not there are any new or additional landowners since the date and time of the acknowledgment on the original title report. If the title researcher finds any changes under the fee landowner or other primary landowners of the subject property, the ROW Specialist shall obtain copies of the instrument transferring any of the rights including the name, address, marital status, spouse's name, and interest that the person, company, or entity has received in the subject property since the original title report.

B. Brief Description of Subject Premises

The ROW Specialist shall list any changes in the deeds of record since the date and time of the completion of the original title report or latest update. Should the ROW Specialist find any changes or out sales of the original tract of which the acquisition parcel is a part, the ROW Specialist shall obtain complete copies of any instrument of transfer, including the legal description(s), and determine whether or not the out sale in any way affects the acquisition parcel.

C. Mortgages, Liens, and Encumbrances

If the ROW Specialist finds any new or additional mortgages, liens and/or encumbrances recorded against the subject property since the completion date of the original title report or latest update, the ROW Specialist shall obtain the following information:

- Name and address of the mortgagee, lien holder, or person(s)/company/entity having recorded an interest in the subject property
- Date filed
- Amount of the mortgage, lien, or encumbrance
- Type of lien
- Complete copy of the instrument

Chapter 5 – Preliminary Title Research

D. Leases

When a lease is discovered during the title update, the ROW Specialist shall list the names and addresses of the lessors (the landlord) and lessees (the tenant), the type of lease (commercial or residential), the term of the lease and what exactly is being leased. The ROW Specialist shall obtain complete copies of the lease, if available.

E. Easements

Easements discovered during a title report update shall be listed with the name and address of the person(s)/company/entity giving and receiving the easement, the type of easement, and the date the easement was signed. The ROW Specialist shall also supply a complete copy of the easement.

F. Defects in Title-Irregularities-Comments

Items in this section would also be included in the same section of form Title-Report. Information uncovered during the negotiation process shall be included in the title update report as being off the record.

G. Taxes and Special Assessments

The ROW Specialist shall identify any changes that have taken place with regard to taxes owed and taxes paid since the date of the original title report. Additionally, the ROW Specialist shall further identify the filing or proposed filing of any special assessment(s) against the property.

H. Acknowledgment

The ROW Specialist shall complete the acknowledgment section at the end of the title report update and enter the date and time of completion.

I. No Change

If the ROW Specialist determines that no changes have taken place after a review of the various indexes, offices, and records, the researcher shall check the “NO CHANGE” box.

Chapter 5 – Preliminary Title Research

5.6 Outside Title Reports and Title Binders

In most cases these requirements for closing will include the purchase of title insurance. This requirement is for properties from which the ROW to be acquired is fee simple (partial or total taking) or permanent easements are being conveyed to DDOT with just compensation greater than \$2,500. In these cases, the ROW Unit Manager shall coordinate with the outside title company, selected in accordance with Section 5.3, for title research and the issuance of a title report and title binder. The procurement of a title company and the delivery of the title reports and binders shall be scheduled to make title information available prior to the commencement of negotiations.

In addition to the title report and title binder, the title company should provide copies of recorded documents (see Section 5.4.2.3) so that any conditions or exceptions can be reviewed by the ROW Unit Manager and the OAG.

5.7 Coordination with Acquisitions

Upon receipt of the title report and/or title binder, the ROW Unit Manager shall review the reports to determine if any deficiencies exist that may affect the acquisition of the property or the appraisal and determination of just compensation. If the title information is not provided to the appraiser prior to the submission of the appraisal, the ROW Unit Manager shall review both to assure that any leases or other title issues were properly considered in the appraisal.

The ROW Unit Manager shall consult with the OAG to resolve issues as to how any questionable conditions or restrictions should be handled during negotiations. All pertinent information and directions should be provided to the ROW Specialist negotiating the parcel.

The ROW Unit Manager shall also review the information provided with the title report and/or title binder with project plans. Should any ownership information shown on the plans be incorrect, a plan revision should be requested. Should any property or lot lines shown on the plan be different, the ROW Unit Manager shall request that the project manager have the project survey updated.

Chapter 5 – Preliminary Title Research

Chapter Resources

Major Tasks

- Preliminary Title Research

Example

- Title Research Scope of Work (See Chapter 16, Example 16-1)

Forms

- Title Report Form (Form TITLE-REPORT)
- Title Update Form (Form TITLE-UPDATE)
- Title Chain Form (Form TITLE-CHAIN)

Reference

- District of Columbia Code
<http://dcode.westgroup.com>

Chapter 5 – Preliminary Title Research

Major Tasks – Preliminary Title Research

| | |
|---|--|
| Property boundaries and current owner for plans | IPMA, TPPA or TOA Project Manager |
| Prepare list of properties to be acquired | ROW Unit |
| Determine type of title research required | ROW Unit & OAG |
| Determine need for outside title company | OAG & ROW Unit |
| Prepare and sign Memorandum or Understanding with OAG | OAG & ROW Unit & TPPA Associate Director |
| Procurement of outside Title Company | OAG & OCP |
| Conduct title research and complete reports | ROW Unit or Outside Title Company |
| Review title reports and exceptions | ROW Unit & OAG |

Chapter 5 – Preliminary Title Research

Form TITLE-REPORT]

District Department of Transportation Title Report

| Street | Project | Landowner | | |
|--------|---------|-----------|-----------|--------|
| Ward | Block | SSL# | Area (SF) | Parcel |

NOTE:

- (1) Landowner is defined as any individual, partnership, association, or corporation having any estate, title, or interest in any real property. This includes, but not limited to, all fee Landowners, life tenants, remaindermen, mortgages, tenants, and subtenants (whether or not the lease is recorded), occupants, possessors, lien holders, easement Landowners, judgment creditors, etc.
- (2) A copy of the pertinent portions of the deed or instrument creating any interest must be attached.

(1) **FEE OR OTHER PRIMARY LANDOWNERS**

Name & Address: Martial Status (Spouse's Name) Interest:

(2) **BRIEF DESCRIPTION OF SUBJECT PREMISES**

(From deed to present or other instruments containing a valid description. Give deeds of record.)

(3) **MORTGAGES, LIENS, AND ENCUMBRANCES**

Name & Address: Date Filed: Amount & Type of Lien:

(4) **LEASES**

Name & Address: Commercial/Residential: Term:

(5) **EASEMENTS**

Name & Address: Type:

Chapter 5 – Preliminary Title Research

District Department of Transportation Title Report (continued)

(4) DEFECTS IN TITLE-IRREGULARITIES-COMMENTS

(5) TAXES AND SPECIAL ASSESSMENTS (Listed by tax parcel number, description, amount, etc.)

| TAX PAR. NO(S) | <u>Land</u> | <u>Buildings</u> | <u>Total</u> | <u>Taxes</u> |
|----------------|-------------|------------------|--------------|--------------|
| | \$ _____ | \$ _____ | \$ _____ | \$ _____ |

This title report covers the time period from _____ to _____. The undersigned hereby verifies that this Title Report is an abstract of the real estate records for that time period, which reflects all currently relevant instruments and proceedings of record pertaining to Parcel(s) _____ and personally standing in the name of _____ as the same are entered upon the several public records of the District of Columbia.

Date: _____
Time: (am/pm)

Signed: _____

(Printed Name of Preparer)

Chapter 5 – Preliminary Title Research

District Department of Transportation Title Report Update (continued)

(4) DEFECTS IN TITLE-IRREGULARITIES-COMMENTS

(5) TAXES AND SPECIAL ASSESSMENTS (Listed by tax parcel number, description, amount, etc.)

| TAX PAR. NO(S) | Land | Buildings | Total | Taxes |
|----------------|------|-----------|-------|-------|
| - | \$ | \$ | \$ | \$ |

This title report update covers the time period from ____ to _____. The undersigned hereby verifies that this is a Title Report Update to a Title Report prepared by _____; and it is a complete and accurate continuation of that abstract of the real estate records, which reflects all currently relevant instruments and proceedings of record pertaining to Parcel _____ and presently standing in the name of _____ as the same are entered upon the several public records of the District of Columbia.

Date:
Time: (am/pm)

Signed: _____

(Print Name Of Preparer)

Chapter 5 – Preliminary Title Research

[Form TITLE-CHAIN]

District Department of Transportation Title Chain

| Street | Ward | Block | SSL# | Project | Landowner | Parcel |
|--|---------|-------------|----------------------|-------------|----------------|-----------------|
| Grantor | Grantee | Date Signed | Date & Time Recorded | Liber/Folio | Conveyance Fee | Type Instrument |
| Brief Land Description & Remarks (Include interest conveyed) | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Chapter 6 – Appraisal

Summary

This chapter covers one of the most important parts of the ROW acquisition program for public purposes by obtaining a current appraisal report prepared by a licensed appraiser (hereinafter “appraisal”) for the real property (hereinafter “property”) to be acquired. The appraisal will establish the FMV of the entire parcel of property; the FMV of the remainder of the property and any damages that may occur to the remaining property of the landowner being acquired in the event of a partial take. The appraisal process is also used to determine the FMV of surplus parcels or air rights that may be leased or sold by DDOT or another District agency. The preparation of the appraisal is limited to a DDOT approved consultant licensed appraisers (“appraiser”), who must follow Federal and District laws and regulations and meet industry standards. Those requirements are described in this chapter.

| Section Number | Section Name |
|-----------------------|--|
| 6.1 | Introduction |
| 6.2 | Qualification of Appraisers |
| 6.3 | Determining Appraisal Requirements – Scope of Work |
| 6.4 | Information Provided to the Appraiser |
| 6.5 | Conflict of Interest |
| 6.6 | Appraisal Report Format |
| 6.7 | Appraisal Waiver Valuations |
| 6.8 | Appraisal Reports – Minimum Standards |
| 6.9 | Narrative Appraisal Report – Additional Requirements |
| 6.10 | Comparable Sales |
| 6.11 | Appraisal Valuation Issues |
| 6.12 | Appraisal Report – Development Issues |
| 6.13 | Data Ownership |
| 6.14 | Appraisal Certifications |
| 6.15 | Appraisal Report Processing |
| 6.16 | Appraisals – Eminent Domain |
| 6.17 | Specialty Reports |

Chapter 6 – Appraisal

6.1 Introduction

An appraisal is an estimate of the FMV of property supported by all available market data and pertinent facts related to the before acquisition value, the value of the acquisition, and the remaining property value, if applicable. Often the terms “Market Value” and “Fair Market Value” are interchangeably used. For appraisals completed for DDOT, the definitions are synonymous.

Fair Market Value is defined by the Uniform Standards of Professional Appraisal Practice (USPAP) as: “The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1) Buyer and seller are typically motivated;
- 2) Both parties are well informed or well advised, and acting in what they consider their best interests;
- 3) A reasonable time is allowed for exposure in the open market;
- 4) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- 5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”

All appraisals required by DDOT shall be prepared by an appraiser who, if necessary, shall be contracted in accordance with the procedures outlined in Chapter 16. The appraiser shall prepare the appraisal in accordance with the scope of work as developed in Chapter 16 of this manual and shall meet the minimum requirements set forth in this Chapter, 49 CFR 24(b) and the Uniform Standards of Professional Appraisal Practice (USPAP), and the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).

The Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), sometimes referred to as the “yellow book,” establishes standards for the preparation and review of appraisals. The appraiser shall comply with these standards. The appraiser must also consider the use of extraordinary assumptions, hypothetical conditions, and jurisdictional exceptions in order to also be in compliance with USPAP.

Chapter 6 – Appraisal

When the appraisal or valuations are being prepared for property disposition, either lease or sale, the appraisal should also consider restrictions and other considerations on the use of the property or air rights being valued. See Chapter 17 of this manual for procedures regarding the disposal process and other information that will be available.

Upon completion of the appraisal, it is to be submitted along with the sales utilized, or a sales brochure, to the ROW Unit Manager or review appraiser for review and comments. Should any changes be appropriate as a result of the review appraiser's comments, the report should be changed and the final report submitted along with the appraiser's certification. The final appraisal or the review appraiser's report shall be the basis for the ROW Unit Manager establishing and approving an amount believed to be just compensation. A just compensation letter (Example 8-3) will be completed and signed by the ROW Unit Manager and will be provided to the landowner with the initial offer.

A complete glossary of definitions and acronyms is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|--------------------------|---|
| Appraisal | A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. |
| Arm's Length Transaction | A sale of real property from a willing seller to a willing buyer, with neither acting under any compulsion to buy or sell |
| Highest and Best Use | The most productive use, reasonable but not speculative or conjectural, to which property can and may be put in the near future, and for which there is a demand. |
| Parcel | A unit of land not separated by any other ownership, |

Chapter 6 – Appraisal

either private or public. If the land on both sides of a highway is in the same ownership, then that landowner has two parcels of land and each must be assigned a different parcel number

| | |
|---------|--|
| Subject | Parcel of real property being valued for acquisition by DDOT |
| UASFLA | Uniform Appraisal Standard for Federal Land Acquisitions |
| USPAP | Uniform Standards of Professional Appraisal Practice |

6.2 Qualification of Appraisers

6.2.1 Real Property Appraiser

To qualify and perform real property appraisals for DDOT, the appraiser must be licensed as a “Certified General Real Estate Appraiser” in the District with at least 3 years of appraisal experience in the last 10 years. Appraisers licensed in the States of Maryland or Virginia are eligible for a reciprocity license if they qualify and meet all of the requirements of the District. The appraiser must also have experience and continuing education courses specific to complex appraisals and eminent domain.

In addition to having the licensing and experience requirements outlined above, appraisers are required to be able to verify specific appraisal experience in the type of property that they are to appraise (i.e., commercial, residential, etc.). Membership in good standing with the American Institute of Real Estate Appraisers (MAI designation), the American Society of Appraisers (ASA designation), or senior membership in the Society of Real Estate Appraisers (SRA designation) will qualify a licensed District appraiser to perform appraisals for DDOT.

All appraisal services will be performed according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 49 CFR; current US Department of Transportation and FHWA guidelines and policies; DDOT policies and procedures; applicable Federal and District laws and USPAP and UASFLA. The

Chapter 6 – Appraisal

appraiser shall have demonstrated the ability to perform appraisal services meeting these requirements.

All individuals, in addition to being appropriately licensed as an appraiser, must meet the requirements of 49 CFR 24.103(d) and the competency provision required by USPAP. If the appraiser begins an assigned appraisal and, due to discovered conditions, no longer meets the competency provision set forth by USPAP, the appraiser must disclose this lack of competency to the ROW Unit Manager as required by USPAP to complete the assignment. The ROW Unit Manager may elect to reassign the appraisal to a different appraiser or direct steps to be taken in order to meet the competency provisions.

6.2.2 Specialty Appraiser or Engineering

All specialty reports must be prepared by a qualified specialty expert in the specific field. Engineering studies, estimates, and reports evaluating the impact of an acquisition to a property shall be prepared by a registered professional engineer or an American Institute of Certified Planners (AICP) planner. The ROW Unit Manager should be consulted if there is any question about the specialty appraiser's or engineer's qualification for performing services for DDOT.

Any specialty appraisal or engineering report provided by the landowner, created by a specialty appraiser or engineer on behalf of the landowner, shall not be utilized without independent review and verification. In the unusual circumstance that there is no other available expertise regarding the specialty item, the appraiser shall obtain the approval of the ROW Unit Manager prior to utilizing the report provided by the landowner. In the event that a landowner submits an appraisal prepared by a specialty appraiser, DDOT will retain a review appraiser to have the appraisal reviewed. If the review is done by a fee review appraiser, then DDOT will need to approve the review appraisal and internally create a certification accepting the approved value, the appraisal and just compensation for the acquisition. The ROW Unit Manager must obtain FHWA written approval prior to making such a decision.

6.3 Determining Appraisal Requirements

The preparation of the appraisal for the property to be acquired as the project ROW is eligible for reimbursement as a preliminary engineering cost. Therefore, the appraisal process can be started

Chapter 6 – Appraisal

and/or completed prior to the notice to proceed with ROW acquisition. In the ideal situation, the ROW Unit Manager should initiate the appraisal process not less than 90 days prior to the date that the notice to proceed is anticipated. This would provide time to procure the appraiser and allow the appraiser to begin sales and other data collection.

The ROW Unit Manager or staff shall review the final ROW plans showing the acquisitions and field review the project area in order to determine the appraisal scope of work and requirements; this review shall be based on a timeframe deemed appropriate by the ROW Unit Manager. For each parcel, the ROW Unit Manager or staff will determine the type of appraisal required (see Section 6.5 for the types defined); the complexities of the property being appraised; items that are personal property instead of real property; if a waiver valuation is appropriate; and any obvious need for a specialty or engineering report. This information will be tabulated on the Appraisal Cost Estimate Report (Form APP. EST.).

In addition to the specific appraisal scope of work, the ROW Unit Manager should establish priorities for the completion and delivery of appraisals and estimate the cost of obtaining appraisals from a consultant. In establishing the appraisal completion priorities, the priorities for negotiation as outlined in Chapter 8, Section 8.5, as well as the complexity of the appraisal should be considered. The completed appraisal cost estimate report will allow the ROW Unit Manager in consultation with the OAG, to determine the need for a consultant licensed appraiser, the scope of work and the estimated contract cost.

Waiver valuations are not appraisals and are not prepared by a licensed appraiser; however qualified staff can be used to complete the waiver valuations. In exceptional cases, if qualified staff is not available, the ROW Unit Manager may prepare the justification for hiring a qualified contractor to complete the waiver valuations on a specific project. The ROW Unit Manager will submit the justification to the Associate Director for review. If the justification is acceptable, the Associate Director may waive the use of staff, and authorize the hiring of a qualified contractor.

6.4 Information Provided to the Appraiser

The ROW Unit Manager or staff must provide the following information to the appraiser:

- Project and parcel numbers
- Appraisal issues and recommended format.
- Special appraisal instructions (proposed easement information, legal instructions, etc)

Chapter 6 – Appraisal

- Due date
- Priorities
- Current and complete ROW plans, parcel plats, title report, design plans, profiles and cross sections, etc.
- Specialist reports, estimates, and legal opinions
- Necessary printed forms
- Any other pertinent information

6.5 Conflict of Interest

In accordance with the requirements of 49 CFR 24.102 (n), the appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued. Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

On any real property acquisition for a federally funded appraisal, appraisal review or waiver evaluation project, no person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation.

An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by DDOT to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less.

6.6 Appraisal Report Format

Based on the ROW Unit Manager's review of the appraisal requirements and real estate values in the project area, the ROW Unit Manager should determine if any acquisition involves an estimated FMV of less than \$10,000. For these parcels, the ROW Unit Manager shall confirm that the appraisal problem is uncomplicated and that a waiver of a formal appraisal is appropriate.

For all other parcels a written appraisal, Acquisition Appraisal or Narrative Appraisal, will be required. The minimum appraisal reporting requirement accepted by DDOT is a written "Summary Report" as defined by USPAP, which shall address all items in the scope of work, including sections that meet the following requirements:

Chapter 6 – Appraisal

- A. An adequate description of the property’s physical characteristics being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and a minimum 5-year sales history of the property.
- B. All relevant and reliable approaches to value consistent with established Federal and federally assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser’s opinion of value.
- C. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- D. A statement of the value of the property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining property, where appropriate.
- E. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

USPAP Standard 2, Real Property Appraisal, Reporting, outlines the requirements applicable to the reporting of an appraisal. UASFLA, Part A contains further standards for appraisal report and data documentation. All appraisals shall comply with the “Recommended Format for Federal Appraisal Reports, UASFLA Appendix B (form APP. FORMAT). Restricted Use reports or Oral appraisals are not acceptable to DDOT. The appraiser may elect to provide a self-contained report in lieu of a summary report if the appraiser deems that the complexity of the appraisal issues warrants this type of reporting. A self-contained written appraisal may be utilized subject to obtaining written approval from the ROW Unit Manager.

6.6.1 Appraisal Waiver Valuation

As noted in the first paragraph of Section 6.5, a waiver valuation is appropriate if it is determined that the valuation problem is uncomplicated and the FMV is estimated at \$10,000 or less based on a review of available data. The ROW Unit Manager or a staff

Chapter 6 – Appraisal

person with a good understanding of the real estate market will prepare the waiver valuation. They should utilize other appraisals on the project and other available information to have a Basic Administrative Report (form Admin Report) completed. Photographs and marked plan sheets showing the acquisition area and the basis for determining land values should be included in the documentation. The basic administrative report form and the approved offer of just compensation letter (see Example 8-3 in Chapter 8) should be provided to the ROW Specialist for inclusion in the offer package during preparation.

6.6.2 Acquisition Appraisal

An Acquisition Appraisal (form Acq. App.) is appropriate for partial acquisitions comprised of land or land and minor improvements. Cost-to-cure items, such as property pins, fencing, etc., may be included. The acquisition appraisal cannot be used if there are incurable damages to the remaining property, changes in zoning, or changes in highest and best use. The acquisition appraisal format meets the minimum reporting requirements for DDOT and is a complete appraisal summary report as defined by USPAP.

6.6.3 Narrative Appraisal

The narrative appraisal format is used if the appraisal issue does not meet the criteria for using a waiver valuation or the acquisition appraisal format. A narrative appraisal is required for properties that are improved properties and comprised of total acquisitions; partial acquisitions where damages or benefits to the remaining property exist; or where the complexity and scope of the appraisal issue requires more detailed analysis. Similar to the acquisition appraisal, a narrative appraisal is a complete appraisal summary report as defined by USPAP.

6.6.4 Appraisal Update

If a significant delay of 6 or more months has occurred since the date of the appraisal was made or the OAG requests an update prior to filing a Declaration of Taking, the ROW Unit will request an Appraisal Update from the original appraiser. Other circumstances that might require an appraisal update would be new information presented by the landowner; material change in the character or condition of the property; or a design revision to the ROW plans.

Chapter 6 – Appraisal

Only the original appraiser may complete an update of an appraisal. The appraisal update form (form ACQ APP UPDATE), or equivalent, should be used. This form specifically addresses the value allocation that DDOT requires, and it is designed to meet USPAP and the URA¹ requirements. The appraiser should attach a copy of the original appraisal to the appraisal update.

6.7 Appraisal Waiver Valuations

A waiver valuation must include, as appropriate:

- A description of the land to be acquired
- Nominal improvement values, the contributory values of which can be readily supported by estimates of depreciated replacement cost; each improvement to be acquired must be listed.
- Minimal costs-to-cures, supported by reference to research or documented discussions with professional estimators

If appropriate and practical, inspect and photograph the area to be acquired. Owner contact is not required.

To determine value, obtain information from appraisals of similar properties or comparable sales used to establish a unit value that adequately reflects the current market. Assessed value is the value of a property according to the tax rolls in ad valorem taxation and is not necessarily equivalent to the property's market value. Assessed value is a value indicator for the purpose of illustrating trends but is not to be used as the only basis for value.

Briefly explain the necessity of any cost-to-cure damage evaluation and name their source and the depreciated value (and the source) of any improvements to be acquired.

Show all calculations, add any cost-to-cure items, and state the estimated value of the acquisition and the date of the estimate. The date of the estimate must be current.

6.8 Appraisal Reports – Minimum Standards

The appraisal scope of work for each parcel should be agreed upon by the appraiser and the ROW Unit Manager or staff. While the initial scope of work is provided to the appraiser with

¹Uniform Act and 49 CFR Part 24

Chapter 6 – Appraisal

their assignment, it is incumbent upon the appraiser to verify the scope of work defined and to cooperatively work with the ROW Unit to clarify any issues. The appraiser should be confident that the scope of work properly identifies the appraisal issues and is sufficient to produce creditable results.

Acquisition appraisal or narrative appraisals prepared for DDOT must meet the minimum requirements outlined in 49 CFR 24.103 and the USPAP standards for a complete appraisal summary report. The minimum DDOT requirements include the following:

1. The purpose, scope, client, and the intended use of the appraisal. The following wording is suggested:

The purpose of the appraisal is to estimate the market value of the landowner's rights acquired as defined by District law, as follows:

Fair market value is the highest cash price that the property would have brought at the time of the taking, considering the property's highest and most profitable use, assuming:

- (1) the property was offered for sale on the open market;
- (2) the property was left on the market for a reasonable time to find a buyer;
- (3) the buyer wanted to buy the property but was not forced to buy it;
- (4) the seller wanted to sell the property but was not forced to sell;
- (5) both the buyer and the seller knew of all the favorable and unfavorable circumstances and facts about the property; and
- (6) both the buyer and the seller knew the property's current use and all other potentially suitable uses.

The fair market value of the property should be determined in view of the most valuable use or uses for which the property reasonably can or may be put, and for which there is a demand. The most valuable use or uses to which the property can or may be put includes either some existing use, or a use which is so reasonably likely to arise in the near future, that the availability of the property for that use would affect its market value.

The estimate of the market value is also defined by the USPAP as follows: “The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

Chapter 6 – Appraisal

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and acting in what they consider their best interests; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”

The function of the report is to provide a FMV estimate for compensating the property owner for the acquisition of property rights acquired according to the United States Constitution, Amendment V, that reads, in part, “... nor shall private property be taken for public use, without just compensation.”

2. The jurisdictional exceptions that were invoked in the appraisal.
3. Any hypothetical conditions and/or extraordinary assumptions that were used in determining FMV.
4. The landowner’s name, telephone number, and address.¹ The most recent contact date with the landowner and the initial contact date must be stated. The appraiser must report if the landowner or their representative accompanied the appraiser on the property inspection and state the person’s name. See Section 6.11.14 for requirement of the landowner contacts.
5. A list and discussion of any proffers, dedications, reservations, or other development restrictions that are present on the property²
6. Tenant names, addresses, telephone numbers, and the terms of any agreements in place between the landowner and the tenants, if available.
7. A sales and listing history, if available, for the past 5 years and an analysis of any sales that transpired, including any subdivision of the property that has taken place. If the property did not convey or was not subdivided in the past 5 years, the appraiser must make a statement to that effect. If a difference exists between a property’s historical sales price(s) versus its appraised value, other than that explained by time, an explanation is required. The minimum required information includes the following:

² 49 CFR 24.103(a)(2)(i)

Chapter 6 – Appraisal

- Grantee
 - Grantor
 - Date of Sale
 - Deed book/page number
 - Verified consideration and information required by Section 6.9.1
 - Size
8. The property's zoning, tax assessment and the amount of the real estate taxes
 9. The FEMA flood map information (i.e., flood map identification, date, and zone for the subject)A verification of the personal property vs. real property determination that was made prior to the appraisal assignment. The appraiser's initial property inspection should be made with the assigned relocation specialist, either DDOT staff or a consultant retained by DDOT (Relocation Specialist) being in attendance in order to eliminate any questions as to classifying any questionable items of personal property or real property. Should there be any questions as to the classification of type of property, the questioned items should be reviewed with the ROW Unit Manager. All items of personal property should be listed in the appraisal.
 10. A full description of any hazardous material observed during the property inspection as well as considering the effect on the property caused by the hazardous material.
 11. A description of the subject property in sufficient detail to understand its physical characteristics. At a minimum, this will include the legal description, an identification or listing of the buildings, structures, and all site improvements, as well as any fixtures considered real property, that are located on the property with additional details being provided for those in the acquisition area.
 12. A market area analysis sufficient in depth to understand the real estate economics that impact the subject property given the type of property and complexity of the appraisal issue.³ The market area boundaries must be clearly stated. Any analysis used in the preparation of the report should be listed with the extent of their contributions indicated.
 13. A description of comparable sales in the body of the report with a summary page and a photo page included in the addenda.⁴ See Section 6.7 for information to be included in the Sale Data Sheet (Form SALES DATA). A location map should be included showing the location of all comparable sales and the subject property.

³ 49 CFR 24.103(a)(2)(ii)

⁴ 49 CFR 24.103(a)(2)(iii)

Chapter 6 – Appraisal

14. An analysis and discussion of the subject property's highest and best use that is sufficient in depth given the property type and the complexity of the appraisal
15. An explanation for adjustments made to the sales. Also, a reconciliation of the value indicators by the sales comparison approach must be provided.
16. An explanation for any approaches excluded when valuing improved property
17. A reconciliation. If more than one approach to derive value is used by the appraiser, the appraisal must include a final reconciliation of value that weighs the applicability and strength of each approach used.
18. The exposure time (the estimated time on the market prior to the effective appraisal date required for the property to have sold at the appraised value) for the subject must be included as required by USPAP.
19. A description of the proposed acquisition area(s) providing the size, basic shape, approximate frontage and depth of the fee acquisition, all easements, and any site improvements and the remaining property. Overlapping easement areas will be noted.
20. The appraiser must estimate the value of any cost-to-cure items.
21. A breakdown of the estimated just compensation due to the landowner as a result of the acquisition using a completed executive summary that summarizes key information pertinent to the appraiser's conclusions.⁵ If there is more than one parcel and/or more than one project presented in an appraisal, the appraiser will indicate recommended just compensation for each parcel and/or project within the report and/or on the executive summary sheet and will allocate the final reconciliation of value into the components acquired.
22. Uneconomic Remnants An uneconomic remnant is a remainder parcel of real property that DDOT determines has little or no value or utility to the owner. Designation of a remainder as an Uneconomic Remnant is an administrative function unrelated to market value, and such determination is the responsibility of the ROW Unit Manager. While the primary factor is the analysis of the remainder property, input received as a result of meetings between the owner and DDOT during the pre-acquisition stage, meetings between the owner and the ROW Specialist and the OAG recommendation shall be considered. If DDOT designates a remainder as an Uneconomic Remnant, DDOT is to make an offer to purchase the uneconomic

⁵ 49 CFR 24.103(a)(2)(iv)

Chapter 6 – Appraisal

remainder based upon the value of the Uneconomic Remnant as shown in the appraisal report.

23. The effective appraisal date, the date of the property inspection, and the report date⁶.
24. The project identification information that includes Project name; District and Federal project numbers, plan sheets, profiles, entrance profiles, stations, and parcel number(s).
25. Numbering of each page that indicates the DDOT parcel and landowner reference number in the footer of the report.
26. Photographs of the property showing the area of acquisition, all above ground improvements visible from the area of acquisition and/or property features that affect property value. The appraisal shall contain sufficient photographs to assure a comprehensive view of the appraised property and proposed acquisition. If buildings of greater than nominal value are to be acquired, a picture of the interior is required. Each shall be identified by a number, parcel reference number, improvement number, if applicable, and project number on the photograph page.
27. A copy of the plan sheet(s) or parcel plats indicating the proposed acquisition(s), with lines on the sheets marked in the appropriate colors are referenced below. The photograph number and the direction that the photograph was taken must be shown on the plan sheet or the plat as well as a north arrow. The color codes are as follows:

| | |
|-------------------------|-----------|
| Proposed Right of Way | Red |
| Existing Right of Way | Red |
| All Permanent Easements | Green |
| Temporary Easements | Orange |
| Controlled Access Only | Dark Blue |
28. Signature of appraiser who completed the report; all signatures and/or initials must be dated. Signers who provided significant professional assistance in the preparation of the report should be listed along with the extent of their contributions included.
29. A certificate of appraiser and a statement of contingent and limiting conditions in a format approved by DDOT.

6.9 Narrative Appraisal – Additional Requirements

- 6.9.1 When buildings of greater than nominal value are to be appraised, a complete floor plan shall be included in the appraisal. The floor plan or building layout should be a scale

⁶ 49 CFR 24.103(a)(2)(v)

Chapter 6 – Appraisal

drawing. If the drawing is not to scale, the proper perspective of the number and size of rooms to the overall building area shall be maintained. All exterior dimensions shall be shown to help maintain the proper perspective.

6.9.2 Each appraisal shall contain an accurate and legible sketch of the entire property (i.e., tax map, recorded plat, etc.). In addition, an accurate sketch of the proposed area of acquisition (marked plan sheets as described in Section 6.5.27) or a composite plan is to be included. In order to assure uniformity, the following are minimum requirements:

1. The photograph number and direction on the property sketch.
2. Proposed and existing ROW lines and easements clearly designated.
3. Identify all roads, streets, or other mean of access that serve the property.
4. The location and dimensions of buildings and/or structures showing distances from the ROW lines in the approximate location. If the acquisition is very small and the improvements will be unaffected, it will not be necessary to locate buildings accurately or give measurements from the ROW lines.
5. Improvement numbers designating buildings, significant signs, underground tanks and wells within the acquisition.
6. The appraisal sketch should be drawn to scale, if possible. The proper perspective of land and improvements shall be maintained in all drawings. A north arrow must be shown.
7. Demarcation lines shall show any land divisions indicated by the appraiser.
8. Station numbers indicated along the proposed acquisition for a proper perspective of the property and the established points of acquisition.
9. Where practicable, a sketch of the proposed cut and fill grades at key points long the proposed street frontage (fifty (50) foot maximum). As an alternative, the data may be included in the narrative body of the appraisal as a table. Cut or fill changes in evaluations should be established from the back of sidewalk elevation.

6.9.3 The description of the remainder must be detailed enough to support adjustments in the Sales Comparison Approach (i.e., age and condition); within the Cost Approach (i.e., depreciation); and within the Income Approach (i.e., operating expense ratio).

6.9.4 The appraiser must provide adequate market support for all income multipliers, capitalization rates, discount rates, and/or yield rates that are used in the appraisal. If the

Chapter 6 – Appraisal

appraiser elects to use a yield capitalization method (i.e., a discounted cash flow) that was not identified in the original scope of work, the appraiser should contact the ROW Unit Manager to discuss its necessity; yield capitalization is seldom relied upon and/or recognized by the courts. Care should be given to ensure that the rates extracted from the market are consistent with the development of the income and expense projections for the subject property (i.e., if the income and expense statement includes a line item for replacement reserves, capitalization rates extracted from market sales should have similarly considered this expense as a line item).

6.9.5 If applicable, the appraiser should provide expense estimates based upon market support when constructing a property expense forecast. The expense forecast may include replacement reserves as a line item expense.

6.9.6 In a partial acquisition situation, an after-acquisition valuation of the remainder property is required. It should include an analysis of the impact on the fair market of the proposed project's influences as anticipated to be completed in the future on the effective date of the appraisal (a hypothetical condition as defined by USPAP).

Subsequent to the establishment of an after value, a recapitulation that compares the before and after valuation must be provided. The before and after itemization is based on the land and any improvements that are appraised in order to estimate the compensation due. At a minimum the itemization must include the following:

1. The appraised value of the total property prior to the acquisition (referred to as "A" in the following for this example).
2. The appraised value of the remainder (land and improvements) including the impact, positive or negative, of the proposed government project ("B").
3. The value of the acquisition is the difference between the value of the total property before the taking and the value of the remainder after the taking.
4. When two or more approaches are used to establish value in either the before or after situations, a final conclusion of value must be shown. The final conclusion of value will include a breakdown to show the allocation of value to land, buildings, site improvements, special benefits and damages, as applicable.

6.10 Comparable Sales

Chapter 6 – Appraisal

The use of comparable sales of real properties similar to the property being appraised⁷ is critical in determining FMV. The ROW Unit Manager will determine when it is more appropriate to have a market data book prepared for the entire project instead of the appraiser researching individual real estate sales for each appraisal. Regardless of whether the comparable sales are part of a market data book or appraisal, the data must be verified and appropriate documentation included on the Sales Data sheet. (form SALES DATA).

6.10.1 Verification of Comparable Sales

The appraiser, who is utilizing a comparable sale or completing the market data book or sales brochure, must confirm the sale with one or more parties who were directly involved with the transaction (i.e., buyer, seller, broker, closing agent, etc.). If a market data book is prepared for the project and an appraiser uses a comparable sale that is not contained in the sales brochure, they must confirm the sale with one or more parties who were directly involved with the transaction. If the appraiser is unable to confirm a sale with a direct party, the appraiser may attempt to confirm the sale with an indirect party (i.e., a relative, neighbor, assessor, etc.) who is aware of the transaction and who has familiarity with the local real estate market. If a direct or an indirect party is not available, the appraiser may use secondary sources (i.e. published data, public records, electronic databases, etc.) In all cases, the appraiser must provide detailed information with respect and reference information for the confirmation. (If through a secondary published source, the publication name, date and page must be provided.)

For any sale used, the appraiser must determine that an “arm’s length” transaction occurred between buyer and seller. The appraiser may provide a “conditions of sale” adjustment, if applicable, that is well supported by market data. The appraiser must provide detailed information with respect to contact and reference information for the confirmation made (if through a secondary published source provide the publication name, date, and page).

Information requirements for documenting a comparable sale follow in Section 6.9.2. In addition, if the appraiser is unable to confirm the sale by contacting a direct party to the transaction, supplemental market evidence (state typical contract terms and provide examples) must be provided for transactions that have occurred in the marketplace so that

⁷ 49 CFR 24.103(a)(2)(iii)

Chapter 6 – Appraisal

the sale may be appropriately analyzed. Once the review appraiser approves a comparable sale for use in the appraisal process, other appraisers may elect to use the sale's comparable data in their appraisals. However, they must be satisfied with the sale's confirmation and analysis of sale. The appraiser must inspect all comparable sales used, as each appraiser is responsible for the integrity of the comparable sales data used in the appraisal.

6.10.2 Market Data Book

6.10.2.1 General

A market data book is prepared for larger scale projects at the discretion of the ROW Unit Manager. Its primary purpose is to ensure uniformity and create efficiencies by only having one contact to be made to verify a sale. The book shall be assembled in an orderly manner (Sale #1 should be at the beginning of the book, and the following sales should proceed in sequence along a planned and systematic route on the location map). The scale of the sales location map shall be large enough to be clearly and easily read. When necessary, the appraiser should update the market data book on a periodic basis as market conditions dictate.

6.10.2.2 Market Data Book Content

The market data book will include the following items:

- A. Sales, listings, and rental information with a location map(s)
- B. Zoning and land use plan information and requirements for the area and properties impacted by the project
- C. Cost estimate data for repetitive cost-to-cure items such as fencing, property pins, etc.

The information required for each comparable sale is outlined on the comparable sales data sheets (Form SALES DATA). Comparable data sheets are to be developed for land (residential, industrial and commercial) and improved properties (residential, industrial, and commercial). The data sheets must be completed in their entirety. In addition to completing the data sheet, the appraiser must provide the following:

Chapter 6 – Appraisal

1. Photographs of all comparable sales showing the principal above ground improvements or unusual features that affect the value of the comparable. Photographs of improved comparable sales shall be taken from several different locations in order to show any unusual features affecting the value and will be identified by sale number and project. The minimum photograph size is 3.5 inches by 5 inches.
2. Any conditions of the sale in the comments.
3. A copy of the recorded plat or a copy of the tax map with the subject property boundaries highlighted.
 - a. If available, provide the boundary dimensions or at a minimum provide the amount of road frontage.
 - b. Identify road, street, or other means of ingress and egress.
 - c. Identify by number the location and direction of the photographs.

These data requirements are the same for individual sales included in the appraisal. It is permissible to use market data books prepared on other projects to make appraisals on a cross-reference basis. These market data books shall be updated when used on additional projects. Any market data book used from other projects shall be referenced in the appraisal.

6.11 Appraisal Valuation Issues

6.11.1 Hazardous Materials

As a part of the project's NEPA study or during preliminary design, the ROW Unit will have a Phase I ESA conducted to determine if any properties from which proposed ROW or easements are required, have any soil contamination or other hazardous materials located on the site. Improvements will be inspected for asbestos containing material (ACM) or lead-based paint after the occupants have been relocated. Copies of the ESA report will be provided to the appraiser for inclusion in the appraisal.

Should the Phase I ESA identify a potential contamination, the ROW Unit Manager or staff will have a Phase II ESA performed to determine the actual level and extent of the contamination and to identify action which must be taken, if any. An approximate cost to remediate the contamination will be provided. The appraiser should use the data

Chapter 6 – Appraisal

provided and appropriately consider the necessary clean-up cost in the FMV of the acquisition.

If upon inspection of the property, the appraiser notes any possible hazardous materials that have not been identified by DDOT, the appraiser must contact the ROW Unit Manager. In some cases, the appraiser is instructed to appraise the property under hypothetical condition⁸ that the hazardous material contamination does not exist. Otherwise, the appraiser should follow the guidelines set forth in USPAP.

6.11.2 Specialty Item Appraisals and Studies

If a separate valuation of machinery, equipment, timber, or other specialty item is required, it may be necessary to employ the services of a specialist in that particular discipline. The employment of the specialist may be made by an individual contract with the specialist or included within a contract for a consultant appraiser (see Chapter 16). The magnitude of the appraisal issue may necessitate the employment of more than one specialist.

A specialty item appraisal obtained for DDOT must be written, and it must comply with the requirements outlined by USPAP, if applicable, as of the effective date of the appraisal. The appraised value of the specialty items shall not be arbitrarily added to the valuation of the other components of the real property but shall be considered to the extent of its contributory value to the value of the whole property.

If questions exist as to personal property versus real property, each appraisal shall contain a list of items outlining whether they are being handled as personal property or real property. If it is determined that a fixture or item is being handled as real estate or part of realty, its value will be considered as a part of the real property realty. The appraisal will contain sufficient information to properly identify the item, (if possible) including but not limited to the following:

- a. A brief description of the item
- b. The manufacturer's name
- c. The model name
- d. The item's serial number

⁸ USPAP Standard Rule 1-1(h)

Chapter 6 – Appraisal

If a specialist makes a separate valuation for what are considered non-realty items, the salvage value of each item must be measured and included within the report. If the relocation of a sign is an option, the cost to relocate must be included. These estimates are used for assisting the ROW Specialist or Relocation Specialist in negotiating with the landowner.

It may be necessary to request a special engineering study to determine the impact of an acquisition on the utility of a property. For instance, the acquisition area may impact parking. An engineer may need to study the “condition before” versus the “after acquisition” impact on a parking lot. A general contractor may need to estimate the cost to construct the redesigned parking lot in order for the appraiser to include curable damages (cost to cure) in the value.

6.11.3 Parking

When appraising an acquisition that includes off-street parking, a description of the existing parking area must include at a minimum, the following attributes:

- a. The lot condition
- b. The total number of parking spaces and the number of handicapped spaces
- c. A description of the traffic patterns, ingress and egress to the lot
- d. A statement of whether or not the parking conforms to DC ordinances and zoning
- e. An analysis of whether or not the existing parking is suitable for the highest and best use as improved, if applicable
- f. An assessment of whether or not the number of parking spaces can be expanded at a future date
- g. A description of the location of the parking spaces relative to the location of the improvements
- h. A sketch of the parking area relative to the improvements

If a partial acquisition of the property is made, the appraiser must determine if the resulting parking is impacted by the acquisition. If so, the same attributes outlined above are to be considered. When evaluating comparable sales data, the appraiser must analyze the attributes outlined and compare them to the subject when determining the before and after value. After doing so, a conclusion is reached as to whether or not incurable

Chapter 6 – Appraisal

damages or cost-to-cure items should be included in the FMV of the acquisition (i.e., re-striping costs to make better use of the remaining parking area).

6.11.4 Fencing

If the proposed acquisition includes a portion of an existing security enclosing fence, the appraiser will place a value to re-enclose the remainder with a similar type fence. No consideration is given to any fencing being acquired, only the fencing needed to re-enclose. The cost to re-enclose the property shall be in the executive summary of the appraisal as a cost-to-cure damage, under incidental items. The narrative explanation the curable situations will be contained within the body of the appraisal. The appraiser will document the replacement cost using estimates obtained within the local area. All other fencing shall be handled as an improvement and valued based upon its contributing value to the whole property. A complete description of the fencing must be included in the property description and its value included in the overall property value. If the ROW will be fenced as part of the construction project, the appraiser will not estimate a cost-to-cure damage to re-enclose the property.

If a temporary construction easement is proposed outside of the proposed ROW, the enclosure and/or security fencing must be moved twice, and the appropriate Property owner compensated. If the fence is to be included in the construction contract, no compensation should be included in the appraisal.

6.11.5 Permanent Property Pins

Engineering information regarding the location of property pins shall be properly verified, located by the survey party and correctly indicated on the plans. The appraiser should check the plans to determine if property pins are present. In addition, the appraiser should check with the landowner and/or review available plats at the time of the property inspection to determine if any existing property pins are not shown on the plans.

If the appraiser determines that property pins fall within the acquisition area, the appraiser must secure an estimate of the cost of resetting or replacing the property pins and must provide an explanation for this cost in the appraisal. The cost estimate is based

Chapter 6 – Appraisal

on the number of pins required to re-stake the landowner's survey, not the number of existing pins within the acquisition area.

6.11.6 Water and Septic Facilities

Water (i.e., well, landscape irrigation) or privately owned septic facilities disturbed or affected by the proposed acquisition are handled as a cost-to-cure damage (assuming the building remains) if they can be relocated onto the remainder of the property. The appraiser shall contact a representative of the DC Department of Health and obtain a written commitment or a permit to relocate the system on the remainder. A written estimate of the cost involved should be obtained from a competent local contractor performing this type of service. The estimate should be included in the appraisal.

6.11.7 Manufactured Housing

Chapter 10, Relocation Assistance, briefly addresses the process of valuing a manufactured home. A determination must be made whether or not it is personal or real property. The ROW Unit Manager, prior to making the appraisal assignment, will determine the property type. However, the appraiser is responsible for independently confirming whether or not the property is personal or real property. In doing so, the appraiser should consider the condition, manner of attachment, and the owner's intent. If the condition of the home does not allow for it to be moved, then it is considered real property. If it is determined that the home has been permanently secured to the land in accordance with local requirements, it is considered real property. If the appraiser determines that the property is personal, the appraiser should contact the ROW Unit Manager to verify that determination.

6.11.8 Tenant-Owned Improvements (Buildings, Structures and Other Items)

Occasionally, it is necessary to appraise property when the fee owner of the land does not own the improvements (buildings, structures, and/or improvements) located on the property. In instances where the improvements are acquired or adversely affected by the acquisition or construction of the project, it becomes necessary to estimate the individual interests of the affected parties.

In appraising a property of this nature, the appraiser shall make an inquiry as to the ownership of the improvements during the inspection of the property. A complete

Chapter 6 – Appraisal

itemized list of these improvements (buildings, structures, fixtures, equipment, outdoor advertising signs, etc.) is to be prepared and included in the appraisal. Generally, such improvements are located on a property as a result of a written lease agreement.

The appraiser shall attempt to obtain all available information, including a copy of the lease, and provide it with the appraisal. If the lease has a condemnation clause, the appraiser should submit the lease to the ROW Unit Manager for transmittal to the OAG for a legal review of the compensability of the tenant's real property interest. The property, however, will be appraised at the FMV with contract rent being considered as part of the income approach. For the purpose of determining the offer of just compensation for these improvements, they are to be appraised at their contributing value or salvage value, whichever is greater.⁹ Salvage value is defined as "the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense."

After the total estimate of just compensation offer has been determined for the property, the appraiser shall allocate the value of the individual components of the property. The total allocation shall not exceed the total estimate of just compensation offer due to the landowner. This breakdown will be included in the appraisal. In order to accurately separate the compensation due the individual owners or lessee of the property, separate executive summary sheets are required. The first sheet shall list the total value of the acquisition and damages, if any. The second sheet shall give the value of the acquisition due the landowner of the land or lessor's interest. The third shall give the value of acquisition due the owner of the improvements not owned by the landowner but are lessee's interest. The value of the first sheet shall equal the value of the second and third sheet. Only one certificate of appraiser and review appraiser for the total acquisition value is required.

6.11.9 Deleted.

6.11.10 On Premise Signs

Signs that are located on the property and advertise the business or activities occurring on the property are considered on-premise signs. On-premise signs are divided into two

⁹ 49 CFR 24.105

Chapter 6 – Appraisal

categories: signs worth more than \$1,000 (those with considerable value) and those that are worth less than \$1,000. Signs with a considerable value typically feature one or more of the following attributes, and requires a specialty appraisal to value these signs:

- has electrical service
- requires the services of a sign company for a repair
- requires the services of a sign company for relocation
- requires the services of a masonry contractor to construct

Signs with a value of less than \$1,000 are valued based upon their cost new less accrued depreciation. Using a cost index, such as Marshall & Swift, the appraiser may develop a cost and depreciation estimate. The appraiser may also use prior knowledge and experience as a basis for estimating the cost new and the amount of depreciation for these signs. However, examples and data to support the appraiser's opinion must be provided.

The value attributable to the signs in both categories, and included as payment in the appraisal, is to be based upon their cost new less accrued depreciation or based upon their contributory value to the property.

The appraiser must also include the relocation cost and the retention/salvage value for the sign. This is necessary should the landowner decide to retain the sign during negotiations. However, if the cost to relocate an on-premise sign exceeds its depreciated market value, the sign will not be relocated as part of the project.

6.11.11 Outdoor Advertising (Billboard) Signs

Outdoor advertising signs involve complexities which effects the valuation of the property on which they are located. In most cases the outdoor advertising signs are located on property under a lease agreement which may be short or long term. Some agreements may also include a termination clause other than a clause related to eminent domain action.

Unless the property is owned by the sign company, the sign is considered to be a tenant-owned improvement and appraised in the same manner as other tenant-owned improvements described in this chapter. That is, the contributory value of outdoor advertising sign belongs to the total value of the property and the acquisition.

Chapter 6 – Appraisal

If the highest and best use of the land “as if vacant” is a change to a higher development intensity, the existing outdoor advertising sign may be considered a detriment to that development because the sign must be removed. Under such a situation, the outdoor sign may not contribute to the highest and best use value. In no case should the sign’s income or expenses, or the sale of signs between sign companies, be used to determine the contributory value.

If the appraiser determines that the lease is short term or that the landowner can terminate the lease on short notice, the appraiser should contact the ROW Unit Manager for additional direction.

6.11.12 Trees, Shrubs or Other Site Improvements

The appraiser must only estimate the value of the site improvements in terms of their contribution to the overall property value. Using replacement cost or insurable value alone may not represent the true contributing value of a site improvement.

6.11.13 Easements

The design engineer is responsible for providing the ROW Unit Manager with plans that show the details of any proposed temporary or permanent easements. A copy of the plans is then provided to the appraiser. In the property description, the appraiser must describe any known existing and recorded permanent easements. The value of easements may vary since each easement may have a different impact on the property, and they are typically based upon a percentage of fee value.

If a new or an additional easement(s) is/are required, the appraiser must value the easement(s) and estimate the damages, if any, to the remainder property as a result of the construction of the facility for which the easement(s) is/are being provided. Once the value of the easement(s) is/are determined, the value attributed to the proposed easement(s) must be allocated. Improvements (e.g., sidewalks, drives, walls, fencing, landscaping, trees, etc.) within the proposed easement(s) that will be affected by the easement(s) should be paid for at either their depreciated or contributing value. The percentage utilized for the easement(s) should be based upon the impact that the easement has on the remainder property. Consideration should be given as to whether the

Chapter 6 – Appraisal

easement(s) is/are new or a replacement; if the landowner is to be paid for the easement(s) (market value for the area acquired for easement(s) and/or damages), it must be shown in the executive summary. Appraisers must provide rationale for their conclusions.

6.11.14 Overlapping Easements

Some ROW acquisitions require the valuation of several easements (i.e., utility, temporary, permanent) that overlap each other. The appraiser must consider both the impact of each individual easement and the combined easements. If the easements overlap, the net area of the overlapping easement area is valued; the value of each individual easement should not be combined to derive a value for the overlapping easement area, as this can overstate the value of the combined easements. A value that exceeds 100% of the fee simple value of the area is not permitted.

6.11.15 Right of Way Line Passes Through a Building

If the ROW line passes through a building, the building is to be acquired and assigned an improvement number.

6.12 Appraisal – Development Issues

As noted in Section 6.1, an appraisal is an estimate of the FMV of a property supported by all available market data and all pertinent facts. In developing an opinion of value, the appraiser needs to consider and incorporate the following information in the report:

6.12.1 Important Dates

All property evaluation reports must contain the report date. The appraisal must have an effective appraisal date and the date that the property was inspected. Every report that is approved must have an approval date.

If the appraisal is retrospective (that is, the effective date is in the past), the appraiser should confer with the ROW Unit Manager to determine the appraisal development and reporting requirements needed. Laws, regulations, and this manual may have been revised between the retrospective appraisal date and the Appraisal date. The ROW Unit Manager may confer with the OAG for guidance with respect to specific valuation concerns that result from completing the retrospective value opinion.

Chapter 6 – Appraisal

6.12.2 USPAP Departure Rule: A “Complete” versus “Limited” Appraisal

The departure rule permits exceptions from sections of the USPAP Standards when they are classified as specific requirements rather than binding requirements. A departure from USPAP results in a limited appraisal, and is not permitted unless prior written permission is obtained from the ROW Unit Manager. Without this written permission, a complete appraisal is required.

6.12.3 Stipulated Value

The appraiser will not include a stipulated value of property in an appraisal prepared for DDOT. These values are based upon third party data (i.e., rough estimates or assessed values of the improvements) for the purpose of showing a before and after accounting. If some of the remaining improvements are affected after a partial acquisition is made, the affected improvements must be valued in both the before and after acquisition values. Since stipulated values are not specifically developed by the appraiser during the appraisal process, they may be misleading. However, upon completing an appraisal for partial acquisition purposes, the appraiser must make a definitive statement as to whether or not damages result to the remainder property. If there are no damages to the remainder, it is to be clearly stated within the report.

6.12.4 Deleted.

6.12.5 Use of Primary and Secondary Data

Primary data is information gathered and evaluated first hand (i.e., confirmed sales comparables). When using primary data, the source and date confirmed should be stated. Secondary data is derived from sources that are not directly compiled. Sources for secondary data may include real estate publications or research compiled by local brokers and other data sources. Secondary data is often used to supplement data in the market analysis section of a report.

It may be necessary to rely upon specialty appraisals. These reports will address a specific issue within the overall valuation (i.e., value of a sign). The same criteria used to determine the appropriateness of secondary data is used when determining if the data contained in a “specialty report” are appropriate. The appraiser must ensure that the report complies with USPAP requirements, if applicable, that are in effect as of the

Chapter 6 – Appraisal

effective date of the report. If the appraiser concludes that the data contained in the report is appropriate, complies with USPAP, and the conclusions seem credible, the appraiser may extend the conclusions made into their appraisal by the use of an extraordinary assumption.

6.12.6 Clarity, Accuracy, Consistency, and Supportable Conclusions

The appraiser is required to report and present data and information in logical format within the type of appraised report that is required. The appraiser's conclusions must reflect market behavior. Also, the appraiser must take care to provide consistency within the report and analysis (i.e., if the appraiser estimates reserves for replacements in a stabilized operating statement for a property, capitalization rates extracted from market sales are to be derived based upon the consideration of reserves for replacements). All conclusions must rely upon factual data and be documented and supported.

6.12.7 Hypothetical Conditions

USPAP defines a hypothetical condition as “that which is contrary to what exists but is supposed for the purpose of the analysis.” When appraising for DDOT, the after value is based on a supposition that the project is anticipated to be completed on an estimated date in the future as of the effective date of the appraisal. This is a hypothetical condition resulting from the custom of the courts and the instructions in this manual. Otherwise, the appraiser is not allowed to use additional hypothetical conditions in the appraisal unless instructed to do so by the ROW Unit Manager or has requested to do so in writing prior to completing the assignment. When making the request, the appraiser must state the hypothetical condition and the reason for its inclusion (i.e., legal, purpose of reasonable analysis, purpose of comparison, etc.). The ROW Unit Manager will furnish written approval if the hypothetical condition is allowed for the specific appraisal problem, if requested.

If a hypothetical condition is used, the appraiser is required to disclose the known facts concerning the physical, legal, or economic characteristics of the property being appraised. A hypothetical condition can result in a misleading appraisal if that hypothetical condition is not fully disclosed. In the appraisal, the appraiser must clearly disclose the use of all hypothetical conditions used and address the impact of value resulting from the hypothetical condition. If the appraiser receives written approval to

Chapter 6 – Appraisal

base the analysis on hypothetical conditions other than those specifically referenced, a copy of the written approval must be provided in an addendum to the report.

6.12.8 Extraordinary Assumptions

USPAP defines an extraordinary assumption as “an assumption, directly related to a specific assignment, which if found to be false, could alter the appraiser’s conclusions or opinions.” An extraordinary assumption presumes as fact otherwise uncertain information about the physical, legal, or economic characteristics of the subject property. For example, if soil contamination is suspected on a property, the appraisal can be prepared as if it was not contaminated based on the extraordinary assumption stated in the report. On the other hand, if the contamination was known as fact, the appraisal could NOT be prepared as if it was not contaminated based on the hypothetical condition stated in the report. The assumption may also encompass conditions external to the property, such as market conditions or trends or integrity of data used in the analysis. Extraordinary assumptions used in the appraisal and the basis for relying upon them must be clearly disclosed and discussed. Also, the report must disclose the impact on value of any extraordinary assumption used. Upon review of a specialty appraisal, the appraiser may elect to extend the conclusions made in the specialty report to their appraisal by use of an extraordinary assumption.

6.12.9 Jurisdictional Exception

USPAP defines jurisdictional exception as “an assignment condition that voids the force of a part or parts of USPAP, when compliance with the part or parts of USPAP is contrary to law or public policy applicable to the assignment.” Other than the examples cited in this section, jurisdictional exceptions in the appraisal process are not permitted without the prior written approval from the ROW Unit Manager.

DDOT requires specific jurisdictional exceptions be included in their appraisals. DDOT is subject to Federal and District laws specifying how certain valuation issues are addressed. In 49 CFR 24.103(b) of the Federal regulation, it states that “the appraiser shall disregard any decrease or increase in the FMV of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project.” As the appraisal must be prepared in this manner, and

Chapter 6 – Appraisal

the regulation is contrary to USPAP Standard Rule 1-4(f) if a jurisdictional exception is to be included in the appraisal.

6.12.10 Qualitative and Quantitative Adjustments

If market data is lacking, it is not always possible to quantify all of the applicable adjustments for the sales comparison approach. Qualitative adjustments allow the appraiser to explain differences between a comparable sale and the subject property by using narrative comments. Such differences may be illustrated in a comparison grid. If the appraiser elects to use both quantitative and qualitative adjustments for comparison, all quantitative adjustments must be made first followed by the qualitative adjustments. For quantitative or qualitative adjustments, the appraiser must provide market evidence (i.e., discussion with market participants) to support the adjustments. Adjustments should be visually displayed within an adjustment grid for each characteristic where an adjustment is required.

6.12.11 Market Data Book

The specific requirements for the market data book are outlined in Section 6.10 of this chapter. Prior to an appraisal being reviewed and approved, the review appraiser is required to review the market data book (if one has been completed) and approve the sales comparables used. In most instances, this activity takes place in advance of the appraiser's appraisal submission.

In addition to preparing a market data book, the appraiser must have detailed market knowledge to understand the market trends, supply and demand factors, and economic considerations that impact the value of real estate. The level of market analysis required depends upon the individual appraisal assignment. Market analysis requirements are discussed in greater detail within Section 6.11.16.

6.12.12 Dedications, Proffers, and Donations

A dedication is a voluntary gift by a landowner of private property for public use, usually in the context of facilitating commercial development. A proffer is a promise or proposal to provide private land for public use in the future. A proffer often occurs when a developer requests a zoning change or requests site plan approval for a proposed project. Often the real estate developer is required to proffer any land that may be needed for

Chapter 6 – Appraisal

proposed street improvements. The approved site plan should show in detail the area to be proffered along with a statement to include, plat or metes and bounds description indicating the area to be proffered. The appraiser must consider the impact that proffers have on the value of the proposed acquisition and the remainder of the property, if applicable.

In order to determine if dedications or proffers are present, the appraiser must thoroughly research land development files (i.e., zoning requests, site plan approval requests, planning department files, etc.) if they are available within the District Office of Planning (OP). If a proffer statement does exist, it may be difficult to interpret, or there may be questions about enforcement, as the statement may be broad and general in its description. The OP should be contacted for its interpretation of the proffer and its expectation that the proffer will be consummated. If the appraiser requires assistance with interpreting a statement, they should contact the ROW Unit Manager. It may be necessary for the OAG to help interpret the impact of a proffer.

All landowners are eligible to receive just compensation for their property and advised of such eligibility may elect to donate the property for public use. Under this circumstance, an appraisal of the real property is not required, provided the landowner signs a waiver agreeing to waive the receipt of just compensation. If the landowner requests a statement of just compensation, for tax purposes, DDOT staff shall provide the requested statement.

6.12.13 Project Influence Date

When addressing project influence,⁶ the appraiser should cite the milestone that marks the onset. One starting point may be known as the date of a roadway's final alignment. Others may include the date that funds were approved to complete the design phase, the design approval date, or the date that the project funding is approved to proceed with construction, etc. "A project is coming" understanding of the staff is too general and should not be used as a basis for setting a beginning date. The appraiser may request that the ROW Unit Manager provide these dates.

6.12.14 Property Inspection and Landowner Contact

⁶ 49 CFR 24.103(b)

Chapter 6 – Appraisal

For an acquisition or narrative appraisal, the appraiser must contact the landowner (or the landowner's representative) to offer an opportunity of accompaniment during the property inspection. The initial attempt to contact the landowner must be made by letter (certified mail) (Example 6-1). A copy of the contact letter and return mail receipt should be placed in the appendix of the appraisal. Additional attempts to contact a landowner may be made verbally by the appraiser. The appraiser is required to adequately document his contacts and/or efforts to the contact the landowner.

The appraiser may contact some landowners that will refuse to allow access to the property or to provide critical lease information. After making a best effort to gain access to a property or improvement, the appraiser is to proceed with the appraisal based upon information available at public sources (i.e., tax records for improvements, Building Permits office, etc.). Photographs taken from the existing street should be included even if they would not provide the best view. The appraiser shall fully document the landowner's refusal to allow an inspection and any extraordinary assumptions made that may affect the value. These same procedures are also to be used in the event a landowner cannot be located within a reasonable period of time.

After contacting the landowner or when inspecting the property with the landowner, the location of the property lines and any site improvements should be confirmed. The appraiser must inspect the proposed acquisition area, the exterior, and, if applicable, the interior of all improvements located within the acquisition area. If the acquisition is a partial taking, the appraiser is required to inspect all improvements located within the remainder. The results of a property inspection must be documented. The form of documentation may include a memorandum to the file, use of a property inspection checklist, or if preparing a narrative appraisal, the property description information contained in the appraisal.

During a property inspection, the appraiser may not express any opinion as to the condition of the improvements or speculate on the value of property. If a person requests that the appraiser, acquisition agent or Relocation Specialist provide any conclusions with respect to property value or condition, the appraiser, acquisition agent or Relocation Specialist) is required to politely advise the person that all factors relevant to value must be studied before arriving at any conclusions.

Chapter 6 – Appraisal

At a minimum, the licensed appraiser signing the appraiser certification is required to perform an exterior inspection of any sales or rental comparables used in the appraisal. An expert witness testifying on behalf of DDOT is required, at a minimum, to inspect the exterior of any sales or rental comparables that may be relied upon as the basis of the testimony.

6.12.15 Property Description

The appraiser must describe the property as it exists before the acquisition without considering the impact of any proposed roadway improvements. If the acquisition is a partial taking, the appraiser must also provide a detailed description of the land and the improvements located within the acquisition area as well as in the remainder. The level of detail required for a description of the improvements located within the remainder is the same as when preparing a description of land and improvements located within the acquisition area. Improvements assigned identification numbers are referenced as such throughout the appraisal.

Land descriptions must address topographical features, road frontage, elevation of the roadway (existing and proposed), drainage, land features (i.e., wooded, etc.), existing easements, floodplain, zoning, zoning requirements, and deed restrictions that affect the property. Building and site improvement descriptions must address improvements above and below ground. Buildings, landscaping, fencing, sidewalks, walls, driveways, and all other miscellaneous site improvements must also be addressed.

The description of the building improvements being appraised must include the type of building (i.e., block building), the estimated and/or actual age, and the quality of materials/construction and foundation type. Also a general description of the walls, siding, flooring, roofing, interior trim, plumbing, heating/cooling systems, electrical, and built-in appliances/equipment must be given. The appraiser must state a conclusion about the condition of the improvements.

6.12.16 Market Area Delineation and Analysis

The complexity and the nature of an appraisal dictate the level of market analysis required. As defined by the Appraisal Institute's *The Appraisal of Real Estate*, 13th

Chapter 6 – Appraisal

edition, the level of market analysis used to develop the highest and best use for a property may be based upon inferred analysis or may be expanded to include a fundamental market analysis. The Appraisal Institute source states, “inferred analysis is sometimes referred to as trend analysis, is descriptive and emphasizes historical data rather than future projections.” It also states that a fundamental analysis is a “more detailed study of market conditions, focusing on the specific sub-market of the subject property and providing strong reasoning and quantifiable evidence for projections of future development.” This level of analysis is based on the premise that real estate value is tied to the services the property provides, and that a study of the market for those services will reveal influences on the value.

The degree of market analysis required by DDOT may involve the use of an inferred analysis if the proposed acquisition does not result in a change in the highest and best use of a property. If the appraiser concludes that the property (or properties) have an intensive highest and best use and/or the highest and best use is different from its current use (e.g., the current use is parking but the appraiser concludes that the land’s highest and best use is for retail development at some future point in time), the appraiser is required to prepare a fundamental market analysis: Level C, as defined and outlined by *The Appraisal of Real Estate*, 13th edition. If a fundamental market analysis is required, the appraiser is required to use the narrative appraisal.

6.12.17 Highest and Best Use

Highest and Best Use is “the reasonably probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value” (*The Appraisal of Real Estate*, 13th Edition). The appraiser must provide statements that describes the analysis and conclusions pertaining to the highest and best use of the property as though vacant and, if applicable, of the property as improved. The four tests of highest and best use, (1) physically possible, (2) legally permissible, (3) financially feasible, and (4) maximally productive, must be considered for each analysis.

The existing use and zoning must be considered as well as the possibility of obtaining a zoning change to a more intensive use. However, even if a zoning change to a more intensive use is likely, any potential use under the zoning change must be financially

Chapter 6 – Appraisal

feasible. If no effective demand exists for such a potential use, even though it is allowed by zoning, the appraiser may not conclude that it is the highest and best use for the property.

When compared to existing improvements, if an improved property for a different use has the highest and best use as vacant, the appraiser must consider that impact on the level of depreciation for the existing improvements.

If a property has different land usages and/or demarcation/division lines established under its highest and best use, these same requirements apply to each usage or demarcation/division. If questions arise about the level of analysis required, the appraiser should contact the ROW Unit Manager. If the appraiser concludes that damages or enhancements exist after the acquisition, the appraiser must include the highest and best use analysis of the remainder property as if vacant and as improved, if applicable.

6.12.18 Interim Use

Interim use is the current highest and best use that is likely to change in a short period of time. The appraiser must identify the interim use of the property as well as comparable properties. The differences in interim uses that may have the same future highest and best use must be considered in the appraiser's analysis. The appraiser should exercise caution when valuing a property that has a different highest and best use "as vacant" when comparing it to the highest and best use "as improved." If this is the case, the appraiser is required to estimate when the land use will change. The interim value of improvements located on the land must be discounted in accordance with the estimated timing of land use change.

6.12.19 Speculative Use

Speculative use is defined as the purchase or sale of property motivated by the expectation of realizing a profit at some future point in time from a future highest and best use. As a general rule, remote or speculative damages are not to be considered. If damages are considered, the appraiser should exercise caution that any premium concluded for land and/or improvement for a potential future highest and best use is clearly derived from market-based transactions. Uses considered must be reasonably probable or likely to have an effect on the present market value of the land. Qualitative

Chapter 6 – Appraisal

adjustments are not acceptable support for deriving a premium paid for a speculative future use; the support for this case must be quantifiable.

6.12.20 Partial Acquisitions and Valuation of the Remainder

For partial, the appraiser is required to complete an after value. Any appraisal prepared for court testimony must include the after value. When completing an “after value,” the appraiser is required to use the narrative appraisal format. The value of the property before the acquisition and the value of the remainder after the acquisition are two distinct appraisals. The appraiser must assume a hypothetical condition that the proposed roadway improvements are to be completed in the future at an estimated/projected date as of the effective date of the appraisal when completing the after value. The valuation of the remainder must be supported and documented to the same extent and thoroughness as the valuation of the property before the proposed acquisition. One or more of the following must support the valuation of the remainder:

- Comparable sales similar to the remainder property, including its highest and best use
- Data that demonstrates the economic loss and, if applicable, any gain brought about by a change in land use, units of production, development costs, rental activity, cost-to-cure, etc.
- Data and conclusions from severance damages studies that are related to similar acquisitions
- Public sales of comparable properties by the District of Columbia or other public agencies
- In the event the data described in the above are not available, the appraiser must state this in the appraisal and must use any other reasonable appraisal premise or technique pertinent to deriving the after value

6.12.21 Damages and Special Benefits to Remainder Property

Damages and/or Special Benefits to the remainder property must be supported by market data included in the after-taking remainder property appraisal. The reasoning and analysis used to determine the amount of damages must incorporate market data and appropriate appraisal techniques.

Chapter 6 – Appraisal

Damages may be offset by either special and/or general benefits that accrue to the property as a result of the proposed roadway improvements. The appraiser must consider any benefits that may accrue from the permanent use of drainage structures, bridges or improved ingress and egress for vehicular traffic, water and sanitary sewer lines, etc., which may be granted under a reservation clause (that is, will have been made part of the deed), a dedication, or a proffer. The appraiser should contact the ROW Unit Manager to determine how to treat the reservation clause, dedication, or the proffer. A determination must be made as to whether the right granted is compensable.

If any damage is financially feasible to cure, it must be supported with an appropriate explanation and justification (i.e., cost estimates from contractors). The cost to cure method of estimating diminution in value is only valid when the cost to cure is less than the diminution in value if the cure is not undertaken.

6.12.22 Non-Compensable Items

Appraisals must exclude⁷ compensation for damage items not compensable under District law such as:

- Increase in land value, due in whole or in part, of the land and/or property acquired that resulted from the proposed project itself. However, if a change to highest and best use resulted from reasons unrelated to the proposed project, the landowner is entitled to the benefit of the property's increase in value.
- Loss due to the necessity of moving a business and loss of profits due to interruption of business by reason of and during construction of the public improvement. If the type of business is an integral part of, and closely related to, the land itself, the nature and amount of business and the income from the business may be admissible if the landowner or appraiser can show it has a direct bearing on the value of the land.
- Loss of business or profits
- When an abutting owner has a right to ingress and egress, the loss of which will be compensated where there is either a physical injury to the property or impairment of access, the owner will NOT be compensated when DDOT, by proper exercise of the District's police power, installs traffic control devices.
- Loss of goodwill
- Loss of sentimental value to the landowner of the property

Chapter 6 – Appraisal

- Change in use of a public way
- Loss arising from a landowner's inability to find an adequate substitute location
- The presence of noise, dirt, and fumes caused by increased traffic and disturbances from construction
- Loss due to an annoyance and/or inconvenience suffered by the public in general
- Loss as a result of a contractor completing construction work for the proposed roadway improvements
- Loss resulting from circuitry of travel or (reduced ingress and egress) caused by dividing a street.
- Loss resulting from re-routing or the diversion of traffic
- Loss resulting from an increase or a decrease in the amount of traffic volume
- Danger from possible illegal acts that may result from a transportation improvement
- Attorney's fees incurred on behalf of the landowner, as a general rule, are not recoverable unless there is a statute that specifically provides for recovery
- Loss resulting from the reasonable exercise of police powers
- Loss resulting from a change in access if the landowner still retains reasonable access to the public road system
- Loss that is speculative and remote or is difficult to discern

6.12.23 General and Special Benefits

In eminent domain valuation, benefits to a remainder property after a partial acquisition are sometimes categorized into general or special benefits. General benefits are those that accrue to an entire neighborhood or community. Special benefits are those that accrue to a specific property as a result of the roadway improvements.

In a partial taking, the portion of the owner's property that was not taken may benefit from an increase in value because of the Government project involved. Two types of benefits can result to the remainder property: general benefits and special benefits.

General benefits are those that flow to properties in the neighborhood generally, including the owner's property. On the other hand, special benefits are those which flow

Chapter 6 – Appraisal

directly and particularly to the owner's property. In other words, special benefits are connected with the ownership, use, and enjoyment of a particular property, as opposed to other property in the neighborhood generally. An example of a special benefit would be where the remainder property has a new road providing access suitable for development of lots, that it did not have before the taking.

Compensation to the owner may not be reduced based on any general benefits resulting from the Government project.

Compensation to the owner should, however, be adjusted based on any increased value in the remaining property due to special benefits. Any adjustment must be based on benefits that could be reasonably accurately calculated, and may not be based on speculation or conjecture. Special benefits, if any, must be measured as of the date of the taking and must be shown to have affected the fair market value of the property as of that date.

While owners are entitled to just compensation for property for right of way purposes, unless benefits are taken into consideration the right of the taxpaying public will not be protected. Appraisers must be familiar with the various benefits that affect a remainder property and recognize special benefits. In the District of Columbia, special benefits can be offset against both the damages to the remainder and the value of the land taken.

6.12.24 Approaches to Value

The application of the three approaches to value (sales comparison, replacement cost and income) is used as the appraisal issue with market data dictating the relevance. The omission of an approach to value under appropriate circumstances does not result in a limited appraisal. However, an explanation for the omission of any approach to value is required. The appraiser must use appropriate appraisal methodology and techniques for each approach to value.

Before applying any approach, the appraiser must collect specific, pertinent data from the market for analysis. The requirements for data verification of sales comparables are described in Section 7.2. The process of extracting relevant market data is essential in the application of adjustments and/or units of comparison throughout the valuation process and when completing the final reconciliation of value.

Chapter 6 – Appraisal

6.12.25 Sales Comparison Approach

The sales comparison approach estimates value by analyzing comparable properties that have recently sold and are arm's length transactions, and then adjusting the comparables to the subject Property. This approach is applicable to most property types, and may be the most reliable indicator of market value if a sufficient number of recent comparable property sales are available.

Adjustments are made for differences within the properties and are referred to as the elements of comparison. Every adjustment made shall have an explanation supporting the differences. In some instances, an explanation will set forth the reasoning and analysis upon which the adjustment is based. The analysis—not opinion—of market data shall be the basis for all adjustments. Adjustments to the comparable property should always be adjusted to the subject property.

An adjustment grid is desirable in the sales comparison approach. An adjustment grid may be appropriate to illustrate the adjustments made to the comparables. If it is appropriate to include an adjustment grid, the appraiser is required to do so. The review appraiser is responsible for determining if an adjustment grid in the sales comparison approach is necessary. In addition, the review appraiser must determine if the use of qualitative (the comparable sales based on numerous factors are adjusted to the subject property) versus quantitative (based on a sufficient number of comparable sales) adjustments is warranted. If ample market data exists, a market grid and quantitative adjustments are required. If listings are required for use in the analysis, the appraiser must consider their reliability when reconciling the sales comparison approach. In addition, the appraiser must consider the reliability of the sales comparison approach when completing the final reconciliation of value.

6.12.26 Cost Approach

In part, the cost approach is based on the principle of substitution. This principle effectively means that the cost of acquiring an equally desirable substitute property tends to set property values. The cost estimate of the improvements is based on the replacement cost of the improvement as of the effective appraisal date plus entrepreneurial incentive

Chapter 6 – Appraisal

less accrued depreciation. The value is then derived by adding the value of the land to the depreciated cost of the improvements. The following subsections discuss the elements of the cost approach:

A. Land Value

Land value is determined by its highest and best use as though vacant. It may be estimated by using the sales comparison approach, allocation, extraction, capitalization of ground leases, and land residual technique (i.e., subdivision or development method). The appraiser may use one or more of these procedures to derive a land value. The subdivision method should seldom be used alone as the courts are often reluctant to accept this method. Regardless of which valuation procedure is used, the analysis requires adequate support for the conclusions made. Market value of the land sought may not be proved by evidence of gross receipts or gross sales of a business conducted on the property subject to condemnation.

B. Cost Estimate Data and Entrepreneurial Incentive

The replacement cost new of the improvements (unless the reproduction cost is specifically indicated) can be measured by using several techniques. The most prevalent techniques include using a cost estimating service, obtaining contractor estimates, or a combination of the two. If reference is made to a cost-index service, the book, page number, and section shall be furnished. References to contractor estimates require the name of the supplier, point of contact, address, telephone number, the date of the estimate, and its valid for how long the estimate is for (i.e., 60, 90 days) date. Entrepreneurial incentive is based upon what a developer reasonably anticipates receiving as a result of developing a project. While entrepreneurial profit can be extracted from the marketplace to assist in determining future developer expectations, this information is historical data and does not address anticipated benefits.

C. Depreciation

Accrued depreciation is the loss in value between the replacement cost and the present value as of the date of appraisal. It can result from physical deterioration, function obsolescence, and/or economic obsolescence. Physical depreciation may be determined by a number of methods, including the age-life method, the modified

Chapter 6 – Appraisal

economic age-life method, the breakdown or engineering method, the sales comparison technique, the income capitalization or annuity method, observed depreciation method, and the physical age-life or straight-line method. Local market practices should determine the method used. Any depreciation used must be explained and supported using market data.

6.12.27 Income Approach

The income approach is used to estimate the present worth of future benefits and the value of property rights that produce an income stream. The appraiser should ensure that capitalization rates are market based.

Estimated rents, collection loss, vacancy loss, and operating expenses must be market based and supported by market data. These estimates may or may not be similar to the actual operating results for the subject property. If a substantial difference exists between market-based income and an expense for the actual operating history of the subject property, the appraiser is required to provide an explanation in sufficient detail to present a clear and logical understanding of the differences.

6.12.28 Personal Property and Trade Fixtures

In some instances, it may be difficult to determine if certain items or fixtures should be treated as personal property or as real estate. In these cases, the appraiser may contact the ROW Unit Manager for guidance as the ROW Unit Manager is responsible for making such determinations.

6.12.29 Reconciliation

The appraiser is expected to reconcile each approach to value used in the appraisal by evaluating and weighing the quantity, quality, and relevance of the data provided in the approach to value (i.e., question whether a potential buyer would consider the same comparables used in sales comparison approach as a reasonable alternative to the subject property). Any limitations with obtaining data should be considered (i.e., whether expense comparables used in income approach are representative of the subject property). If more than one approach to value is used in the appraisal, a final reconciliation of value is required.

Chapter 6 – Appraisal

The final reconciliation provides the appraiser with an opportunity to review the appraisal for consistency (i.e., whether the effective age of the property in the cost approach is consistent with the physical condition reported). Data in one approach to value can be more accurate and meaningful than data in another. Also, market participants may consider the relevance of one approach to value superior to another, even if the quality of data is inferior (e.g., market participants may rely upon the income approach for an existing income-producing property even if the data contained in the cost approach is deemed more reliable than data in the income approach). Evidence that supports the quality and relevance of the indicated value of each approach used is considered (i.e., determine whether capitalization rates were derived from market sales using actual expense data or the expenses estimated by the appraiser).

The final value reconciliation of the subject property should reflect the use of appropriate appraisal methodology. It should also reflect consistent analysis and logic presented throughout the report. Once a final value is derived, the value must be allocated to show the value to land, buildings, and other improvements.

6.13 Data Ownership

DDOT owns the data provided in an appraisal or as a result of the appraisal process. At times, market participants may agree to provide data to an appraiser, and they may request that the information provided by them be kept confidential. DDOT cannot guarantee the confidentiality of the data and sources that are provided in an appraisal. DDOT may be required to distribute appraisals to landowners and other sources as a result of litigation. While not preferred, anonymous sources of data will be accepted when no other market data is available (i.e., comparable property operating statements), and the market participant providing the data request anonymity. However, anonymous sources of data should be supported by secondary data sources that publish similar data (e.g., “Dollars and Cents for Shopping Centers” for a retail property).

6.14 Appraisal Certifications

The appraiser will furnish the ROW Unit Manager with four copies of the appraisal. All copies require the appraiser’s original signature. The ROW Unit Manager’s signature is also required on the approved reports. A record copy of the appraisal is required for the file.

Chapter 6 – Appraisal

Appraisals may not be co-signed unless there is a supervisory appraiser and an appraiser trainee who sign the report. Otherwise, only one licensed appraiser who is responsible for the contents of an appraisal may sign the report. Contributions made by other appraisers who may have assisted in the development of an appraisal must be disclosed within the appraisal.

All reports are required to meet the requirements of this manual. Any appraisals received from an appraiser must meet the conditions of the appraisal contract. If the review appraiser is unable to obtain a report that complies with this manual or an appraisal contract, when applicable, the review appraiser shall notify the ROW Unit Manager.

Both the acquisition appraisal and the narrative appraisal require a certificate of the appraiser (Example 6-3). The same certificate shall be used in the narrative appraisal. Any modification to the standard certificate should be reviewed with the ROW Unit Manager before being submitted.

6.15 Appraisal Processing

Appraisals are submitted to the ROW Unit Manager unless otherwise specified. Appraisal revisions are made as needed during the draft review process. Draft appraisals can be submitted to the review appraiser with comments and suggestions incorporated prior to the final submission. However, once an appraisal is submitted and it has been approved for negotiations, it may not be revised, and an updated or new appraisal is required. An updated appraisal may only be accepted from the appraiser who completed the original appraisal.

Upon receipt, an appraisal checklist (Example 6-2) shall be completed for each report. The review appraiser, or other personnel at the direction of the ROW Unit Manager, may complete the checklist. Ultimately, the review appraiser is responsible for ensuring that the checklist has been accurately completed. In addition to the checklist, a review appraiser must complete a technical review appraisal in accordance with Standard 3 of USPAP. Once the review process is completed, a copy of the appraisal, appraisal checklist, and review appraisal is retained in the ROW Unit's project file.

Chapter 6 – Appraisal

6.16 Appraisals – Eminent Domain

The appraiser should be aware that the acquisition of ROW for projects may result in a court trial under eminent domain procedures to determine just compensation. The appraiser will be required to testify as an expert witness if the OAG attorney is satisfied with the appraisal.

At such time as the ROW Unit Manager and the OAG determine it necessary, the ROW Unit will direct the appraiser to submit an updated condemnation appraisal to the review appraiser. This document is protected by the attorney-client privilege. The appraiser must personally reconfirm ALL market data once the property is in litigation. The OAG may request further updates or revisions. Unless otherwise instructed by the OAG, the appraiser should mark any comments and recommendations concerning the appraisal **CONFIDENTIAL ATTORNEY-CLIENT INFORMATION** and direct them to the OAG. The OAG requests that all confidential condemnation correspondence be maintained next to the parcel file in a separate condemnation file folder. After completing the appraisal review, the review appraiser must transmit the revised appraisal to the OAG.

After discussion with the ROW Unit Manager, the attorney handling the condemnation case may request that an additional appraisal be prepared for court testimony. If outside counsel hires a fee appraiser or an expert witness, an agreement exists between the attorney and the person hired. Although an expert witness hired works for an attorney, it is the attorney who should ensure that any expert witness who is an appraiser meets the DDOT appraiser minimum qualifications. If an attorney desires to retain an expert witness who is not pre-qualified by DDOT, the attorney may contact the ROW Unit Manager to make a request that the expert witness be allowed to proceed in the trial.

At the ROW Unit Manager's request, the conclusions and testimony of the expert witness and/or fee appraiser will be made available for review in sufficient time to allow DDOT to comment and make recommendations regarding possible testimony. The attorney may request DDOT complete a technical or administrative review of an appraisal completed by an expert witness and/or fee appraiser hired by the attorney.

Lastly, the appraiser, review appraiser or ROW Unit Manager may be requested to review an opposing appraisal. If requested they should advise the OAG of the strongest aspects of a valuation witness's report and which aspects DDOT may successfully challenge.

6.17 Specialty Reports

Specialty reports are studies made of certain attributes or features of real property necessary to the valuation of subject property but are generally beyond the capability of a real estate appraiser. Such studies are concerned with estimates of machinery and equipment, mineral valuation, engineering studies, rehabilitation costs or economic studies. Because it is not possible to determine precisely the format and data required in such a report, each one must be specifically designed to fit the scope of the issue. Specialty reports, at a minimum, must contain the following information:

1. Statement of purpose of report
2. Definition of value(s) reported (i.e. FMV, salvage value, etc.)
3. Identification of the property and its ownership
4. Statement of appropriate contingent and limiting conditions, if any
5. Identification of the value problem
6. Estimate of value(s)
7. The data and analysis to explain substantiate and thereby document the estimate of value(s). For machinery and equipment appraisals, but not necessarily by limited to the following:
 - a. Description of item
 - b. Name of manufacturer or name of the specific item of equipment
 - c. Serial number if available
 - d. Age and remaining life
 - e. Condition
 - f. Adequacy of service equipment – for instance, electrical lines, gas lines, etc.
 - g. Values sources (referenced to quoted manufacturer's price new, invoices checked, etc.)
 - h. Method of depreciation (the degree to which physical, functional and economic depreciation was considered and method such as age-life, sum of the digits, etc.)
8. Date(s) on which and/or as of which the estimate of value(s) is made
9. Certification, signature and date of signature of the specialist
10. Other descriptive material (maps, charts, plans, photographs)
11. The Federal aid project number and DDOT parcel identification

Chapter 6 – Appraisal

The additional content of the specialty report is dependent upon the value problem, and documentation must be included in addition to the items above. All specialty reports must be prepared by qualified specialty experts; the reports are to be typewritten, dated, and signed by the individual creating them. Each report must contain a certification, incorporating requirements as shown above.

Chapter 6 – Appraisal

Chapter Resources

Major Tasks

- Appraisal Process

Examples

- Appraisal Inspection Contact Letter (see Example 6-1)
- Appraisal Technical Checklist (see Example 6-2)
- Appraiser Certification (see Example 6-3)
- Appraisal Scope of Services (See Chapter 16, Example 16-2)

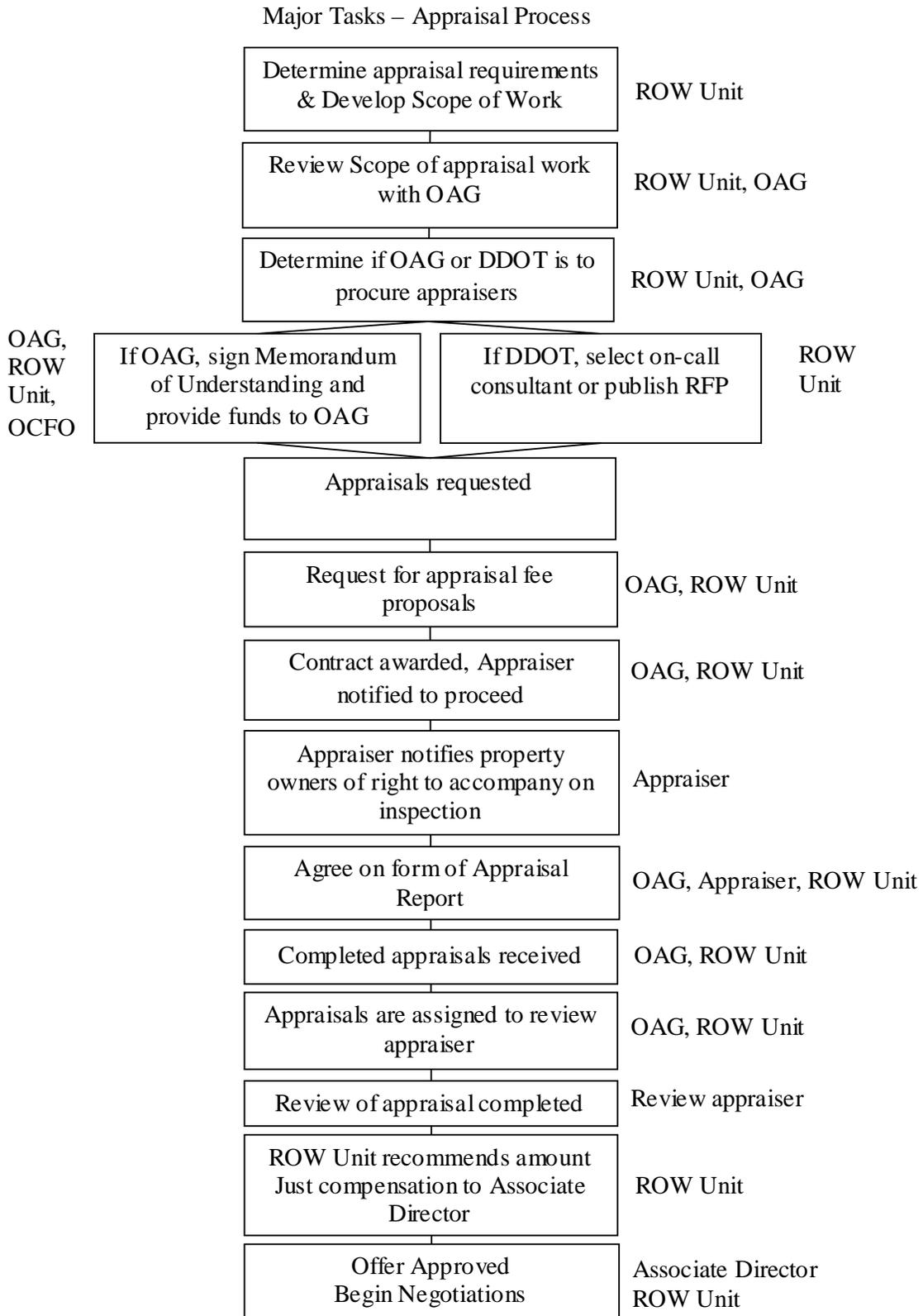
Forms

- Appraisal Cost Estimate Report (Form APP. EST.)
- Basic Administration Report (Form ADMIN. REPORT)
- UASFLA Appendix B. Recommended Format for Federal Appraisal Reports (Form APP. FORMAT)
- UASFLA Appendix A. Appraisal Report Documentation Checklist (Form APP. CHECKLIST)
- Update of Real Property Appraisal (Form ACQ APP UPDATE)
- Sales Data Sheet (Form SALES DATA)

References

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- Uniform Standards of Professional Appraisal Practice (USPAP)
The Appraisal Foundation
www.appraisalfoundation.org
- Uniform Appraisal Standard for Federal Land Acquisition
United States Department of Justice
www.justice.gov/enrd/ENRD_Assets/Uniform-Appraisal-Standards.pdf
- Standardized Civil Jury Instructions for the District of Columbia, Chapter 22, Eminent Domain.

Chapter 6 – Appraisal



Chapter 6 – Appraisal

[Example 6-1: Appraisal Inspection Contact Letter]

Date

Street: _____

Project: _____

Right of Way - (Property Title Name)

Parcel #

Landowner

Landowner Address

BY CERTIFIED MAIL

Dear _____ :

The District Department of Transportation (DDOT) has approved the plans to acquire right of way for proposed improvements to (Street Name). The property, or a portion of the property, referenced above is needed to complete the street improvement. I have been requested to provide an appraisal of the property.

In order to evaluate the property, I will need to make an inspection of the property. Though it is not necessary for you to be present during the inspection, I would like to offer either you or your designated representative the opportunity to accompany me during inspection of the property.

I intend to inspect the property within the next two (2) weeks. In making the appraisal, it would be helpful for me to obtain any information that you may have regarding the property. After I have completed the appraisal and it is approved, a specialist representing the Right of Way Unit of DDOT will contact you with the details of an offer to acquire the property. The representative will answer any of your questions regarding the proposed acquisition.

Please contact me at (Sender's Phone #) so that we may discuss and confirm an inspection date and time. My office hours are _____ AM through _____ PM, Mondays through Fridays. If I am unavailable, please leave a message. Thank you for your time, and I look forward to meeting with you.

Sincerely,

Appraiser

Chapter 6 – Appraisal

[Example 6-2: form Appraisal Checklist]

APPRAISAL TECHNICAL CHECKLIST

The following items are included in the attached appraisal:

| | YES | NO | N/A | INITIALS |
|--|--------------------------|--------------------------|--------------------------|----------|
| 1. Federal and/or District projects numbers correct | <input type="checkbox"/> | <input type="checkbox"/> | | _____ |
| 2. Parcel numbers correct | <input type="checkbox"/> | <input type="checkbox"/> | | _____ |
| 3. Correct stations used | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| 4. Interstate and/or controlled access identified where appropriate | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| 5. Dates of assignment and inspection notification letter included | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| 6. Purpose of appraisal included (Mod and Narrative) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| 7. Last 5 years sales data included | <input type="checkbox"/> | <input type="checkbox"/> | | _____ |
| 8. Building properly identified with “D” numbers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| 9. Pictures properly indicated | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| 10. Sketches show sufficient information (dimensions, demarcation lines, picture locations, improvement locations, etc.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| 11. Certificate of appraiser executed | <input type="checkbox"/> | <input type="checkbox"/> | | _____ |
| 12. Mathematical computations correct | <input type="checkbox"/> | <input type="checkbox"/> | | _____ |
| 13. Appraiser has DDOT’s Right of Way Manual | <input type="checkbox"/> | <input type="checkbox"/> | | _____ |
| 14. Title provided before appraisal | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____ |

LANDOWNER’S NAME: _____

PARCEL NO.: _____

STREET.: _____

PROJECT NO: _____

CHECKED BY: _____

DATE: _____

Chapter 6 – Appraisal

[Example 6-3: Appraiser Certification]

Certificate of Appraiser

I hereby certify that:

- the statements of fact contained in the report are true and correct;
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions, limiting conditions, and legal instructions, and are my personal, unbiased professional analysis, opinions, and conclusions;
- I have no present or prospective interest in the property appraised and no personal interest or bias with respect to the parties involved;
- the compensation received by me for the appraisal is not contingent on the analyses, opinions, or conclusions reached or reported;
- the appraisal was made and the appraisal report prepared in conformity with the *Uniform Appraisal Standards for Federal Land Acquisitions*;
- the appraisal was made and the appraisal report prepared in conformity with the Appraisal Foundation's *Uniform Standards for Professional Appraisal Practice*, except to the extent that the *Uniform Appraisal Standards for Federal Land Acquisitions* required invocation of USPAP's Jurisdictional Exception Rule, as described in Section D-1 of the *Uniform Appraisal Standards for Federal Land Acquisitions*;
- I have made a personal inspection of the property appraised and the property owner, or his/her designated representative, was given the opportunity to accompany the appraiser on the property inspection;
- no one provided significant professional assistance to the appraiser (including both professional appraisal assistance and providers of subsidiary assistance, e.g., planning and permitting consultants, engineers, cost estimators, marketing consultants.). If professional assistance was provided, the name of the individual(s) providing such assistance is stated within this report and their professional qualifications are included in the addenda of this report.

I understand that the appraisal is to be used in connection with the acquisition of right of way for a highway to be constructed in the District of Columbia with the assistance of the Federal aid highway funds or other Federal funds or with District funds exclusively. This appraisal has been made in conformity with the appropriate District laws, regulations, and policies and procedures applicable to appraisal of property for such purposes; that to the best of my knowledge, no portion of the value assigned to the property consists of items which are noncompensable under the established laws of the District.

I have not revealed the findings and results of this appraisal to anyone other than the proper officials for the District Department of Transportation (DDOT) or officials of the Federal Highway Administration, and I will not do so until so authorized by DDOT or until I am required to do so by due process of law, or until I am released from the obligation by having publicly testified to these findings.

Chapter 6 – Appraisal

My opinion of the fair market value of the acquisition as of the _____ day of _____
20____, is \$_____ based upon my independent appraisal and the exercise of my
professional judgment.

Date

Signature of Appraiser

Printed Name of Appraiser

Chapter 6 – Appraisal

[Form APP. EST.]

APPRAISAL COST ESTIMATE REPORT

[Form APP. EST.]

Street: _____
 Project: _____

| PARCEL NO. | PLAN SHEET NO. | LANDOWNER | TYPE OF PROPERTY | IMPROVED (I) or UNIMPROVED (U) | APPRAISE BUILDINGS (Y) or (N) | DAMAGES (V) or (N) | ACQUISITION COST < \$10k (Y) or (N) | TYPE OF APPRAISAL | ESTIMATED APPRAISAL FEE | REMARKS |
|------------|----------------|-----------|------------------|--------------------------------|-------------------------------|--------------------|-------------------------------------|-------------------|-------------------------|---------|
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |

Prepared by: _____ (Signature) _____ (Date)
 Approved by: _____ (Signature) _____ (Date)
 _____ (Print Name) _____ (Print Name)

DC Department of Transportation (DDOT)
 Right of Way Policies and Procedures Manual

Chapter 6 – Appraisal

[Form ADMIN. REPORT]

d.

DISTRICT DEPARTMENT OF TRANSPORTATION

BASIC ADMINISTRATIVE REPORT (BAR)

| Project, Parcel and Ownership Information | | | | | |
|--|--------------------|-------------------------------|-----------------|-----------------------------|---|
| Parcel No. | | | | | |
| Project No. | | | | | |
| Federal Project No. | | | | | |
| Street | | | | | |
| Parcel Address | | | | | |
| Parcel City, State and Zip | | | | | |
| Owner Name | | | | | |
| Owner Address | | | | | |
| Owner City, State and Zip | | | | | |
| ROW Specialist Name | | | | | |
| Zoning, Use and Assessment Information | | | | | |
| SSL# | | Assessed Land | \$ | | |
| Zoning | | Assessed Improvement | \$ | | |
| Current Use | | Total Assessed Value | \$ 0.00 | | |
| Parcel Size Before Acquisition | | Parcel Size After Acquisition | | | |
| Estimate of Just Compensation | | | | | |
| Item | Unit of Comparison | Size | Unit Value (\$) | Percentage of Value Applied | Estimated Value (Size x Unit Value x Percent Applied) |
| Fee Simple Area | SF | | | | \$ |
| Permanent Easement Area | SF | | | | \$ |
| _____ Easement Area | SF | | | | \$ |
| _____ Easement Area | SF | | | | \$ |
| Value of the Land and Easements | | | | | \$ 0.00 |
| Value of the Improvements (List and Comment Below) | | | | | \$ |
| Cost to Cure Items (Explain and Calculate Below) | | | | | \$ |
| TOTAL ESTIMATED PAYMENT | | | | | \$ 0.00 |
| Comments, Explanations and Calculations (e.g., area of residue acquired, if any) | | | | | |
| | | | | | |
| Signatures and Date Approved for Acquisition | | | | | |
| ROW Specialist Signature | | | | | |
| Date | | | | | |
| ROW Manager Signature | | | | | |
| Date Approved for Acquisition | | | | | |

Land prices are based on a range of values derived from property transfers in the project area.

Chapter 6 – Appraisal

[Form APP. CHECKLIST] (1 of 4)



Appraisal Report Documentation Checklist

Title Page

- Agency Name
- Agency Tract No.
- Appraiser's Address
- Property Address
- Appraiser's Name(s)
- Effective Date of Value

Letter of Transmittal

- Date of Letter
- Prop. Rights Appraised
- Special Assumptions
- Estimate of Before Value
- Appraiser Signature
- Identification of Property
- Effective Date of Value
- Special Instructions
- Estimate of After Value

Table of Contents

- Omitted
- Adequate
- Inadequate

Appraiser's Certification

- Facts True & Correct
- No Interest in Property
- Conforms to USPAP
- Property Inspection
- Professional Assistance
- After Value
- Limited Only by Assump.
- No Contingent Fee
- Conforms to Fed. Standards
- Offered Owner Accomp.
- Before Value
- Effective Date of Value

Summary of Salient Facts and Conclusions

- Ident. of Property
- H & B Use—Before
- Description Before
- Value Before:
 - Cost
 - Market
 - Income
 - Final Est.
- Effective Date of Value
- H & B Use—After
- Description After
- Value After:
 - Cost
 - Market
 - Income
 - Final Est.

Photographs of Subject

- Omitted
- Adequate
- Inadequate

Assumptions & Limiting Conditions

- Appropriate
- Extraneous Assumptions
- Suitable for Trial
- Limited Appraisal

Scope of Appraisal

- Omitted
- Adequate
- Inadequate

Purpose of Appraisal

- Defin. of Market Value
- Defin. of Property Rights

Sum. of Appraisal Prob.

- Omitted
- Adequate
- Inadequate

Legal Desc.—Before

- Omitted
- Adequate
- Inadequate

Area Data—Before

- Omitted
- Adequate
- Inadequate

Site Data—Before

(Overall)

- Adequate
- Present use
- Topog.
- Vegetation
- Land Shape
- Minerals
- Hazards
- Inadequate
- Access
- Soils
- Land Area
- Utilities
- Easements

Improvement Data—Before

(Overall)

- Adequate
- Type
- Actual Age
- Condition
- Occupancy
- Inadequate
- Size
- Effective Age
- Quality
- On-site Imp.

Fixtures—Before

- Omitted
- Adequate
- Inadequate

History—Before

Use

- Omitted
- Adequate
- Inadequate

Sales

- Omitted
- Adequate
- Inadequate

Rental

- Omitted
- Adequate
- Inadequate

Chapter 6 – Appraisal

[Form APP. CHECKLIST] (2 of 4)

Assessed Value & Tax Load—Before

Assessed Value
 Omitted Adequate Inadequate
 Tax Load
 Omitted Adequate Inadequate

Zoning & Land Use Regulations—Before

Description
 Omitted Adequate Inadequate
 Rezone Probability
 Omitted Adequate Inadequate
 Land Use Regs.
 Omitted Adequate Inadequate

Highest and Best Use—Before

Vacant
 Omitted Adequate Inadequate
 Improved
 Omitted Adequate Inadequate
 L.P. Considered
 Omitted Adequate Inadequate
 Reasonable Conclusion
 Yes No

Land Valuation—Before

Comparables:
 Description
 Adequate Inadequate
 Photos
 Omitted Adequate Inadequate
 Analysis
 Omitted Adequate Inadequate
 Suitable for Trial
 Yes No
 Final Value Analysis
 Adequate Inadequate

Cost Approach—Before

Justified Omission
 Yes No N/A
 Reproduction Cost
 Adequate Inadequate
 Depreciation:
 Market Supported
 Yes No
 Analysis
 Omitted Adequate Inadequate
 Final Estimate
 Adequate Inadequate

Sales Comparison Approach—Before

Comparables:
 Description
 Adequate Inadequate
 Photos
 Omitted Adequate Inadequate
 Analysis
 Omitted Adequate Inadequate
 Suitable for Trial
 Yes No
 Final Value Analysis
 Adequate Inadequate

Income Capitalization Approach—Before

Justified Omission
 Yes No N/A
 Gross Income Estimate
 Adequate Inadequate
 Vacancy
 Omitted Adequate Inadequate
 Expenses:
 Fixed
 Omitted Adequate Inadequate
 Operating
 Omitted Adequate Inadequate
 Reserves
 Omitted Adequate Inadequate
 Capitalization Rate:
 Market Supported
 Yes No
 Selection Method
 Adequate Inadequate
 Suitable for Trial
 Yes No

Final Value Estimate—Before

Reasoned Analysis
 Omitted Adequate Inadequate
 Avoided Summation Appraisal
 Yes No
 Suitable for Trial
 Yes No

Legal Description—After (or Description of Acquisition)

Omitted Adequate Inadequate

Neighborhood Factors—After

Project Desc.
 Omitted Adequate Inadequate
 Project Impact
 Omitted Adequate Inadequate

Site Data

Shape Utilities
 Size Access
 Easements
 Relationship to Project
 Adequate Inadequate

Improvements—After

Description
 Omitted Adequate Inadequate

Fixtures—After

Omitted Adequate Inadequate

History—After

Use/Rental Since Take
 Omitted Adequate Inadequate

Assessed Value—Tax Load—After

Estimated A.V.
 Omitted Adequate Inadequate
 Estimated Tax Load
 Omitted Adequate Inadequate

Zoning & Land Use Regulations—After

Rezone Considered
 Omitted Adequate Inadequate

Chapter 6 – Appraisal

[Form APP. CHECKLIST] (3 of 4)

Highest & Best Use—After

- Change Considered
 - Omitted Adequate Inadequate
- Intensity Considered
 - Omitted Adequate Inadequate
- Restoration Considered
 - Yes No N/A
- Effects of TCEs
 - Yes No N/A
- Reasonable Conclusion
 - Yes No
- Non-conformity
 - Omitted Adequate Inadequate

Land Valuation—After

- Comparables:
 - Same Comparables as Before
 - Yes No
 - Description
 - Adequate Inadequate
 - Photos
 - Omitted Adequate Inadequate
 - Analysis
 - Omitted Adequate Inadequate
 - Suitable for Trial
 - Yes No
 - Final Value Analysis
 - Adequate Inadequate

Cost Approach—After

- Justified Omission
 - Yes No N/A
- Reproduction Cost
 - Adequate Inadequate
- Depreciation:
 - Market Supported
 - Yes No
 - Analysis
 - Omitted Adequate Inadequate
 - Final Value Analysis
 - Adequate Inadequate

Sales Comparison Approach—After

- Comparables:
 - Same Comparables as Before
 - Yes No
 - Description
 - Adequate Inadequate
 - Photos
 - Omitted Adequate Inadequate
 - Analysis
 - Omitted Adequate Inadequate
 - Suitable for Trial
 - Yes No
 - Final Value Analysis
 - Adequate Inadequate

Income Capitalization Approach—After

- Justified Omission
 - Yes No N/A
- Gross Income Estimate
 - Adequate Inadequate
- Vacancy
 - Omitted Adequate Inadequate
- Expenses:
 - Fixed
 - Omitted Adequate Inadequate
 - Operating
 - Omitted Adequate Inadequate
 - Reserves
 - Omitted Adequate Inadequate
 - Capitalization Rate:
 - Market Supported
 - Omitted Adequate Inadequate
 - Selection Method
 - Adequate Inadequate
 - Suitable for Trial
 - Yes No

Final Value Estimate—After

- Reasoned Analysis
 - Omitted Adequate Inadequate
- Avoided Summation Appraisal
 - Yes No
- Suitable for Trial
 - Yes No

Acquisition Analysis

- Avoided Valuing Take
 - Yes No
- Shown in Proper Form
 - Yes No

Allocation & Explanation of Damages

- Value of Take/Damages Properly Allocated
 - Yes No
- Damage Explanation
 - Omitted Adequate Inadequate
- Noted Accounting Tabulation
 - Yes No
- Cost to Cure Damage Estimated
 - Yes No
- Cost Justified
 - Omitted Adequate Inadequate
- Profit
 - Omitted Adequate Inadequate
- Cost v. Diminution in Market Value Considered
 - Omitted Adequate Inadequate

Special Benefits

- Adequately Explained
 - Yes No N/A

Location Map

- Omitted Adequate Inadequate

Comparable Data Maps

- All Comps on Map
 - Yes No
- Subject Shown on Map
 - Yes No

Chapter 6 – Appraisal

[Form APP. CHECKLIST] (4 of 4)

Comparable Data Sheets

- Confirmed
 Yes No
- Terms Reported
 Yes No
- Buyer/Seller
 Yes No
- Date of Sale
 Yes No
- Recording Info
 Yes No
- Location
 Yes No
- Present Use
 Yes No
- H&B Use
 Yes No
- Zoning
 Yes No
- Legal
 Yes No
- Physical Description
 Adequate Inadequate

Plot Plan

- Property Boundaries Shown
 Yes No
- Dimensions Before
 Yes No
- Dimensions After
 Yes No
- Street Frontage Before
 Yes No
- Street Frontage After
 Yes No
- Photo Locations
 Yes No
- Improvement Locations
 Yes No

Floor Plan

- Adequate Inadequate N/A

Title Report

- Omitted Adequate Inadequate

Other Exhibits

- Adequate Inadequate N/A

Qualifications

- Omitted Adequate Inadequate



Recommended Format for Federal Appraisal Reports

Part I—Introduction

- A-1. Title page
- A-2. Letter of transmittal
- A-3. Table of contents
- A-4. Appraiser's certification
- A-5. Summary of salient facts and conclusions
- A-6. Photographs of subject property
- A-7. Statement of assumptions and limiting conditions
- A-8. Scope of the appraisal
- A-9. Purpose of the appraisal
- A-10. Summary of appraisal problems

Part II—Factual Data—Before Acquisition

- A-11. Legal description
- A-12. Area, city and neighborhood data
- A-13. Property data:
 - a. Site
 - b. Improvements
 - c. Fixtures
 - d. Use history
 - e. Sales history
 - f. Rental history
 - g. Assessed value and annual tax load
 - h. Zoning and other land use regulations

Part III—Data Analysis and Conclusions—Before Acquisition

- A-14. Analysis of highest and best use
- A-15. Land valuation
- A-16. Value estimate by cost approach
- A-17. Value estimate by sales comparison approach
- A-18. Value estimate by income capitalization approach
- A-19. Correlation and final value estimate

Part IV—Factual Data—After Acquisition

- A-20. Legal description
- A-21. Neighborhood factors
- A-22. Property data
 - a. Site
 - b. Improvements
 - c. Fixtures
 - d. History
 - e. Assessed value and annual tax load
 - f. Zoning and other land use regulations

Part V—Data Analysis and Conclusions—After Acquisition

- A-23. Analysis of highest and best use
- A-24. Land valuation
- A-25. Value estimate by cost approach
- A-26. Value estimate by sales comparison approach
- A-27. Value estimate by income capitalization approach
- A-28. Correlation and final value estimate

Part VI—Acquisition Analysis

- A-29. Recapitulation
- A-30. Allocation and explanation of damages
- A-31. Explanation of special benefits

Part VII—Exhibits and Addenda

- A-32. Location map
- A-33. Comparable data maps
- A-34. Detail of comparative data
- A-35. Plot plan
- A-36. Floor plan
- A-37. Title evidence report
- A-38. Other pertinent exhibits
- A-39. Qualifications of appraiser

Chapter 6 – Appraisal

[Form APP. UPDATE] (1 of 2)

| SUBJECT INFORMATION | | BEFORE | UPDATED |
|---|------|----------------------------------|---------|
| Parcel Size Before Acquisition | | | |
| Fee Simple Acquisition Size | | | |
| Parcel Size After Acquisition | | | |
| TOTAL ESTIMATED COMPENSATION | | | |
| Value of Land in Fee Simple Acquired | | = \$ | \$ |
| Value of Easements Acquired: | | | |
| Permanent Easement | = \$ | \$ | |
| Temporary Easement | = \$ | \$ | |
| Utility Easement | = \$ | \$ | |
| Other | = \$ | \$ | |
| Total Updated Estimate of Value for Land Acquired | | | \$ |
| Value of Buildings Acquired: | | | |
| Building 1 | = \$ | \$ | |
| Building 2 | = \$ | \$ | |
| Building 3 | = \$ | \$ | |
| Total Updated Estimate of Value for Buildings | | | |
| Value of Other Improvements Acquired: | | | |
| Fencing | = \$ | \$ | |
| Landscaping | = \$ | \$ | |
| Sidewalks | = \$ | \$ | |
| Drive | = \$ | \$ | |
| Walls | = \$ | \$ | |
| Other | = \$ | \$ | |
| Total Updated Estimate of Value for Other Improvements | | | \$ |
| Value of Cost to Cure Items | | \$ | \$ |
| Damages (less Enhancements) | | \$ | \$ |
| I ESTIMATE THE MARKET VALUE, AS DEFINED, of ACQUIRED LAND, IMPROVMENTS, EASEMENTS and COST TO CURE ITEMS as of the EFFECTIVE UPDATED APPRAISAL DATE TO BE: | | | \$ |
| THE ORIGINAL APPRAISAL REPORT ESTIMATED THE MARKET VALUE, AS DEFINED, of ACQUIRED LAND, IMPROVMENTS, EASEMENTS and COST TO CURE ITEMS as of its EFFECTIVE DATE TO BE: | | | \$ |
| Difference in Before and Updated Estimates | | | \$ |
| DATES OF RELEVANCE | | | |
| Effective Date of the Original Appraisal Report | | Current Property Inspection Date | |
| Effective Date of the Appraisal Update Report | | Date Received by Office | |
| Attachments to the Report? | | | |

LICENSED APPRAISER or
LICENSED APPRAISER TRAINEE

SUPERVISORY APPRAISER

Signature _____
 Print Name _____
 Date _____
 License/Certification Number _____
 License Type _____

Signature _____
 Print Name _____
 Date _____
 License/Certification Number _____
 License Type _____

Chapter 6 – Appraisal

[Form APP. UPDATE] (2 of 2)

The original scope, intended use, client and intended user, purpose, hypothetical conditions, extraordinary assumptions, and exposure time remain the same as those contained in the original appraisal report, if applicable, unless otherwise specified. Also, the definition of market value remains the same as the original appraisal report (or most recent update) unless otherwise specified:

The reason for the appraisal update is:

Statement of any changes in market conditions since the original appraisal date:

Statement of any changes in property conditions since the original appraisal date:

Statement of any changes in the approaches to value used (attach additional data and support if necessary):

Chapter 6 – Appraisal

[Form SALES DATA] (1 of 4)

DDOT INFORMATION:

Comparable ID #: _____ Project Number: _____
Federal Project Number: _____
Street: _____
Data Assembled By: _____

PROPERTY IDENTIFICATION:

Address Number: _____ Street Name: _____
Ward: _____
Tax ID Number: _____
Property Location Description: _____

TRANSACTION INFORMATION:

Consideration: \$ _____ Adjusted Sales Price: \$ _____ Effective Sale Date: _____

Site Size: _____ Acre Sq. Ft. Other: _____
Building Size: _____ Price Per Unit: \$ _____ / _____

Deed Book: _____ Page: _____ Deed/Instrument Type: _____ Deed Date: _____
Recordation Date: _____
Grantor Name: _____
Grantee Name: _____

INCOME INFORMATION

Income producing property? Yes No Owner Occupied? Yes No
Total # of Tenants at Sale: ____

At the time of sale, the market was: Appreciating Stable Declining

Contract Rental Rates Range From: \$ _____ to \$ _____

Describe Contract Rents: _____
Describe Concessions: _____
Describe Expense: _____

Chapter 6 – Appraisal

[Form SALES DATA] (2 of 4)

PROPERTY DESCRIPTION and USE:

Total Land Area: _____ = _____ Acre Sq. Ft. Other _____
 Zoning Classification: _____ Improvements Conform to Zoning Regulations: Yes
 No N/A
 Present Use: Apartment Retail Office Hotel Industrial Other: _____

Comments: _____

| | <i>Good</i> | <i>Avg.</i> | <i>Fair</i> | | <i>Good</i> | <i>Avg.</i> | <i>Fair</i> | | <i>Good</i> | <i>Avg.</i> | <i>Fair</i> |
|-----------------|--------------------------|--------------------------|--------------------------|-------------|--------------------------|--------------------------|--------------------------|------------------------|--------------------------|--------------------------|--------------------------|
| Access | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Visibility | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Drainage | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Street Frontage | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Landscaping | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Adequacy of Utilities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Shape | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Parking | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Traffic Pattern/Volume | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Trans Linkages | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | | | | | | | |

Comments: _____

Excess Land? Yes No If "Yes", is it developable? Yes No

Comments: _____

Construction Type: _____ #Buildings: _____ #Stories: _____ Year Built: _____ Actual Age: _____
 Bldg. Efficiency Ratio: _____ Floor Area Ratio%: _____ Ground Coverage Ratio: _____ %
 Sprinkler: Yes No # Overhead Doors: _____ Door Height: _____ # Delivery Bays _____

General Description of the Improvements, Rating and Comments: _____

Describe Property's Marketability: _____

TRANSACTION CONFIRMATION:

The sale was confirmed with a party to the transaction (seller, buyer, etc.)? Yes No
 If No, state why and provide data source(s): _____
 Confirmed Name (1): _____ Relationship: _____ Date: _____
 Confirmed Name (2): _____ Relationship: _____ Date: _____
 Sales Price: \$ _____ Adjusted Sales Price: \$ _____ Effective Sale Date: _____
 Comparable Inspected? Yes No Date: _____ Financing at Market Terms?
 Yes No
 Financing Comments (type, term, rate, etc.): _____
 Other Comments: _____

REVIEW INFORMATION:

Appraiser Name: _____ Comparable Approved? Yes No
 Appraiser Signature: _____ Date: ____/____/____

Chapter 6 – Appraisal

[Form SALES DATA] (3 of 4)

Sale #: _____ Project #: _____
Date Photo Taken: _____ Photo Taken By: _____



Photo #: _____ Photo Shows a View of: _____

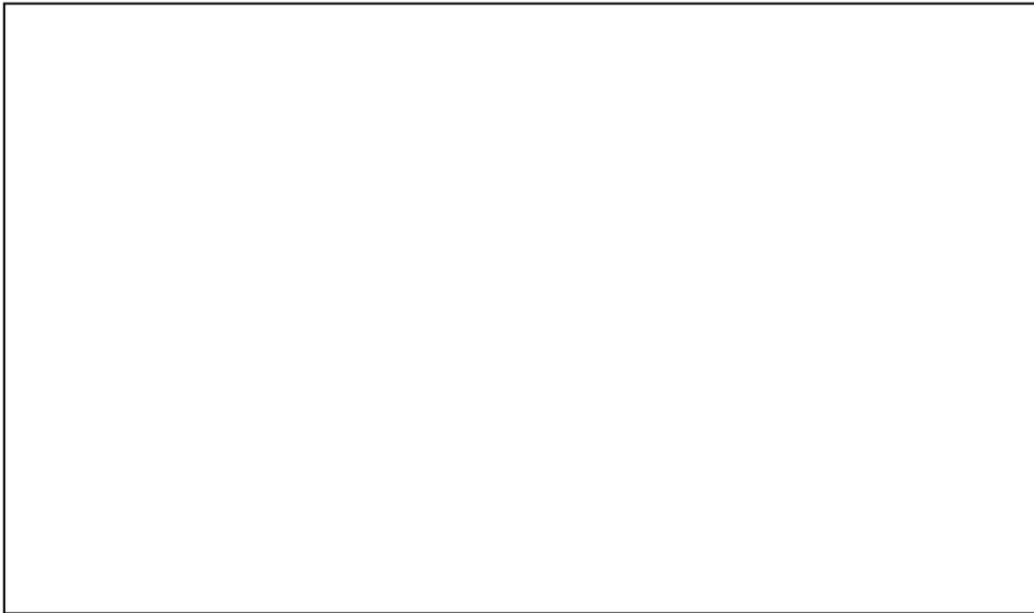
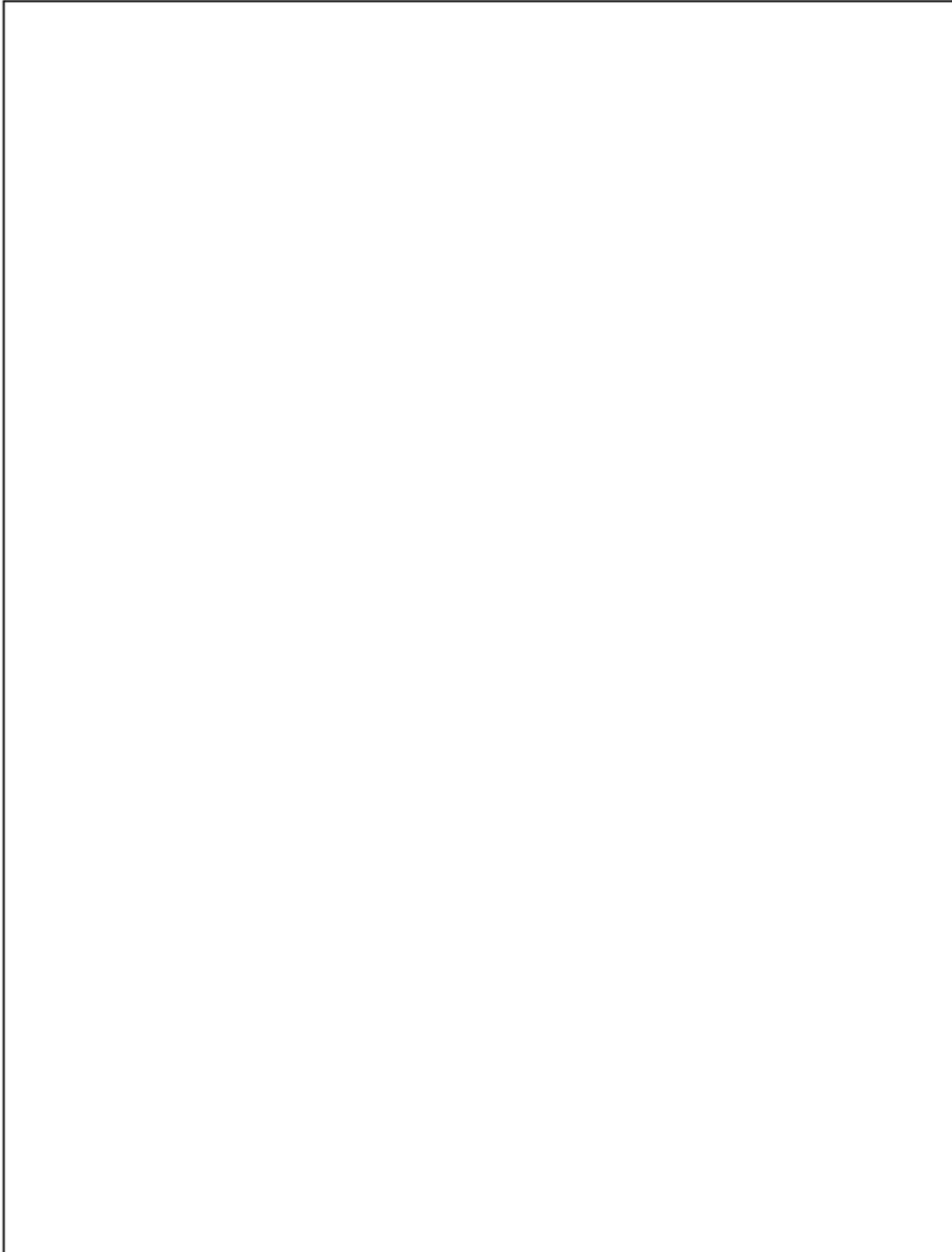


Photo #: _____ Photo Shows a View of: _____

Chapter 6 – Appraisal

[Form SALES DATA] (4 of 4)

SKETCH / PLAT—SALE #

A large, empty rectangular box with a thin black border, intended for a sketch or drawing related to a sale. The box is currently blank.

Chapter 7 – Appraisal Review

Summary

This chapter covers the ROW process whereby all real property appraisals are reviewed by a qualified person working for the District or an independent contract appraiser. The appraisal and reviewer appraiser's recommendations are the basis by which the estimate of just compensation is made. This chapter provides criteria for the qualification of the review appraiser, the review appraiser's duties and responsibilities, the technical aspects of the review appraisal and the approval process.

| Section Number | Section Name |
|----------------|--|
| 7.1 | Introduction |
| 7.2 | Appraisal Review Assignment |
| 7.3 | Qualification of a Review Appraiser |
| 7.4 | Responsibilities of a Review Appraiser |
| 7.5 | Appraisal Review |
| 7.6 | Appraisal Corrections and Revisions |
| 7.7 | Review Appraisal Conclusions and Actions |
| 7.8 | Additional Appraisals |
| 7.9 | Uneconomic Remnants |
| 7.10 | Required Signatures and Certifications |
| 7.11 | Conflict of Interest |
| 7.12 | Approvals and Determination of Just Compensation |

7.1 Introduction

An appraisal review is required on all real property acquisitions by Federal regulations and is a technical review of an appraisal by an experienced, competent, qualified review appraiser ("review appraiser"). Appraisal review is a critical quality control element in the valuation and acquisition process. An appraisal review is not only an arithmetic or grammatical review of an appraisal but also a comprehensive technical examination of the appraisal's approach to FMV.

The purpose of the review is to ensure that a review appraiser evaluates the estimate of FMV (just compensation) and that the value estimate is supported by an acceptable appraisal. This function

Chapter 7 – Appraisal Review

is critical; the review appraiser must not only assure that each appraisal is independently acceptable but also ensures consistency throughout the project.

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|-----------|---|
| Appraisal | A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. |
| DRES | District of Columbia Department of Real Estate Services |
| USPAP | Uniform Standard of Professional Appraisal Practice |
| UASFLA | Uniform Appraisal Standards for Federal Land Acquisitions |

7.2 Appraisal Review Assignment

At the same time the ROW Unit determines that an appraisal will be required, the need for an appraisal review should also be determined. The complexities of the appraisal assignment should be used to determine if the review can be done by a District staff person or a review appraiser should perform the review.

Should it be determined that a review appraiser will be needed to accomplish the appraisal review, the ROW Unit will coordinate the procurement with the OAG and OCP. At that time, the parties will determine if the contract will be administered by DDOT or the OAG. If OAG is to arrange for the review appraiser, then a Memorandum of Understanding (MOU) will need to be entered into to provide for the necessary services and set up the reimbursement. The qualification of the review appraiser has been outlined in this Chapter.

7.3 Qualification of a Review Appraiser

An appraiser must qualify to be a review appraiser as an individual; appraisal firms are not eligible to be qualified as review appraisers.

Chapter 7 – Appraisal Review

All appraisal review services shall be performed according to current United States Department of Transportation and FHWA guidelines and policies¹; the DDOT policies and procedures outlined in this manual; applicable Federal and District laws; and USPAP, which requires that the review appraiser be licensed or certified, and UASFLA. The review appraisers shall have demonstrated ability to perform these services in compliance with these rules and regulations.

An individual seeking qualification as a review appraiser shall be licensed as a “Certified General Real Estate Appraiser” in the District of Columbia with at least 3 years of appraisal experience in the past 10 years. The individual must also have experience and/or continuing education specific to eminent domain valuation within the past 5 years. In addition, the review appraiser must have demonstrated commercial real estate appraisal experience and have testified as an expert witness.

Since the review appraiser is not only responsible for approving appraisals prepared by other appraisers, but also for obtaining corrections and/or revisions to those reports, when necessary, it is important that the review appraisers be tactful and effective in their contacts with the appraiser(s).

All review appraisers must meet the competency provision required by USPAP. Any disclosures required prior to accepting the assignment shall be made to the ROW Unit Manager. The ROW Unit Manager may elect to reassign the review appraisal to a different review appraiser based on the ROW Unit Manager’s sole discretion.

7.4 Responsibilities of the Review Appraiser

For a discussion of Scope of Services, and samples of the same, see Chapter 16 – Right of Way Consultant Services, in this manual.

The review appraiser shall examine all appraisals to ensure they meet applicable appraisal requirements and shall, prior to completion of the review report, seek necessary corrections or revisions.² The review appraiser shall prepare a review report consistent with the requirements of Standard 3 of USPAP, consistent with the scope of work, therein reporting an opinion of the following:

- the completeness of the material under review (Standards Rule 3-1(d))

¹ 49 CFR 24.104

² 49 CFR 24.104(a)

Chapter 7 – Appraisal Review

- the apparent adequacy and relevance of the data and the propriety of any adjustments to the data (Standards Rule 3-1(e))
- the appropriateness of the appraisal methods and techniques used (Standards Rule 3-1(f))
- whether the analyses, opinions, and conclusions are appropriate and reasonable (Standards Rule 3-1(g))

If the review appraiser is unable to provide an opinion that the analyses, opinions, and conclusions in the appraisal are appropriate and reasonable and that the appraisal is an adequate basis for the establishment of an estimate of just compensation, a determination shall be made by the ROW Unit Manager as to whether it is practical to obtain another appraisal. In the event that it is determined to be impractical to obtain an additional appraisal, the review appraiser may be requested to develop a value of opinion consistent with 49 CFR Part 24, USPAP and UASFLA. The level of explanation for the reviewer's recommended or approved value depends on the complexity of the appraisal issue and shall comply with the USPAP standard rule.

7.5 Appraisal Review

When an appraisal is ready for review, the ROW Unit Manager shall provide the report to the review appraiser assigned to perform the review function. The appraisal shall be date-stamped and logged into the Project Status Spreadsheet. The review appraiser is given a reasonable time period to complete the review function. If the review appraisal is being performed by an employee of another DC agency, then the ROW Unit Manager should notify the Manager of that agency, in writing (e-mail is acceptable), of the review appraiser's assignment and estimated completion date, and must place a copy of the assignment notice in the parcel file.

The review appraiser should perform the review as instructed in 49 CFR 24.104(a) to ensure technical compliance with UASFLA, to include working with the appraiser to obtain an acceptable appraisal. The review appraiser should remain at all times in an advisory role in order to maintain objectivity in the review process.

The first responsibility of a review appraiser in the evaluation of an appraisal is objectivity. An appraisal is an estimate of FMV of specified real property based on a specified scope of work. It is the review appraiser's responsibility to determine if an appraisal contains factual information, proper documentation and appropriately supported conclusions. The review appraiser must also

Chapter 7 – Appraisal Review

assure that the appraisal conforms to current United States Department of Transportation and FHWA guidelines and policies³; the DDOT policies and procedures outlined in this manual; applicable Federal and District laws; and USPAP and UASFLA.

As part of the review function, the review appraiser shall perform the following:

Compliance Check

- Ensure that the appraisal meets the minimum standards and the requirements set forth in this manual and complies with USPAP and UASFLA, Federal and District laws and regulations.
- Check the report against the contract to ensure that all requirements regarding conduct of the appraisal (scope of work, special instructions, type of report, etc.) have been fulfilled.
- Check all mathematical computations in the appraisal for accuracy; proofread the appraisal, for clarity and logic as well as spelling and grammar; and complete the Conformance to Plans and the Appraisal Report Checklist.

Conformance to Plans

- Review all plans related to DDOT's project (including preliminary plans, ROW plans, and construction features) and make a determination as to whether the appraiser has accurately considered the plans in the valuation. At a minimum review the following:
 - Accurate project number and parcel numbers
 - Correct ownership
 - Current ROW plans, design plans/profiles, and cross-sections
 - Accurate areas
 - A discussion of all encroachments
 - Existing easements, including identification of size, purpose, use, and interests
 - Verify that improvements within local setback requirements from the proposed ROW lines are accurately shown on the ROW plans.

Field Inspection

The review appraiser should inspect the subject property and the comparable sales and/or rental data included in the report. If an inspection cannot be made, the review appraiser shall explain such in the review report. The review appraiser need not physically inspect the interior of any

³ 49 CFR 24.104

Chapter 7 – Appraisal Review

structure on the subject property if the appraisal of the acquisition area does not materially affect the improvement. The field inspection should include:

- Confirm the accuracy of sales data and check the descriptions of both the subject and comparable sales.
- Identify the scope of available data on the project, including relevant appraisals and comparable sales.
- Become familiar with zoning, local ordinances or codes, regional requirements, etc. to evaluate the appropriateness of the appraiser's analysis.
- Conduct an overview of area and neighborhood economic trends.
- For a partial acquisition, examine cross sections and plans to thoroughly consider the effects of access, drainage, topography, design features, etc. on fair market value of the remainder property.
- Conduct spot check interviews of landowners, neighbors, assessors, real estate professionals, recording officers, media, previous owners, local appraisers, or other interested parties as necessary.

Analyze Report

- Examine the appraisal for basic real estate theory, techniques, valuation methods, mathematical accuracy and compliance to established policies and procedure.
- Does the appraisal conform to DDOT requirements?
- Determine whether the appraisal correctly identifies the property being acquired or affected by the acquisition. The review appraiser should ensure that there is an appropriate discussion of the determination of the total parcel and the remainder (if any). Further, the review shall include a determination that the appraisal contains appropriate identification, including ownership, or listing of the buildings, structures, and improvements on the land as well as the fixtures that were considered as part of the real property.
- Are the sales or market data used comparable to the property under appraisal?
- Does the report contain sufficient pertinent data to value the property adequately? Are all pertinent data incorporated in the analysis? Are adjustments to the data supported, proper, and consistent?
- Does the appraisal include all applicable approaches to value? If not, is there an adequate explanation why an approach was not used? Is each approach adequately supported?

Chapter 7 – Appraisal Review

- Determine whether the appraisal correctly identifies the impact of the acquisition on the remainder.
- Ensure that the appraisal includes the valuation of compensable items only, and does not include compensation for items that are non-compensable under Federal and District law or policy. The review shall ensure that both damages and special benefits to compensable real property interests have been adequately considered.
- Ensure that the final estimate of value is allocated by land, easements, improvements, cost-to-cure and damages.
- Ensure that the value conclusion is representative of market values as defined in the appraisal and the appraisal recommends the just compensation due to the landowner.
- Ensure that the appraisal contains or makes reference to the information necessary to explain, substantiate, and thereby document the conclusions and estimate of FMV.
- Is a specialty appraisal report included? The reviewer must disclose any training and experience limitations he may have and consult with appropriate technical specialists, as necessary.
- Is the value conclusion consistent with other appraisals of similar properties submitted to the Appraisal Review Unit? If not, why?
- Make recommendations for minor corrections, such as mathematical, and note such action in the review report. Likewise, the review appraiser may make comments and provide additional supporting data as necessary, and report the same in the review report. The review appraiser's opinion shall not substitute that of the appraiser's; the review appraiser shall develop an opinion as to whether the analyses, opinions, and conclusions are appropriate and reasonable.
- All technical review appraisals shall be in compliance with USPAP and UASFLA and meet the minimum standards and requirements set forth in this manual, including current USDOT and FHWA guidelines and policies⁴; and applicable Federal and District laws.
- The review appraiser shall include all supporting documentation with the review report.⁵
- Upon completion of the review appraiser's review, if the appraisal is found to be in compliance the review appraiser should so state that the appraisal is acceptable, conforming to all of the necessary requirements. Should the appraisal be determined to be unacceptable, the review appraiser should provide supporting documentation relating to all areas of the appraisal found to be unacceptable. The rejection of the appraisal

⁴ 49 CFR 24.104

⁵ 49 CFR 24.103(c)

Chapter 7 – Appraisal Review

should only be recommended when every reasonable effort has been made to obtain an acceptable report.

- Should the review appraiser be duly authorized, at such time as the appraisal is determined to be acceptable, the appraisal can be recommended for approval and the amount estimated to be just compensation can be established.

7.6 Appraisal Corrections and Revisions

The review appraiser's judgment shall not substitute that of the appraiser's, but if the review appraiser finds analytical and/or factual deficiencies in the appraisal, remedial action must be taken in consultation with the ROW Unit Manager. The review appraiser shall first ask the appraiser to consider making the required corrections in the appraisal. The appraisal itself shall not be changed by the review appraiser.

The review appraiser will identify and itemize any deficiencies found in the appraisal, including itemized deficiencies resulting from non-compliance with this manual, USPAP, or 49 CFR 24.103. The review appraiser is required to cite the section of this manual, USPAP or 49 CFR 24.103 where non-compliance exists.

The review appraiser should comment on deficiencies or request further clarification, explanation, justification, and documentation from the appraiser, when needed, to support the appraiser's reasoning and conclusions. The review appraiser, however, shall not attempt to influence the independent opinion of the appraiser.

The review appraiser may suggest minor corrections to an appraisal that will have no effect upon the estimate of value(s) or just compensation. The review appraiser should return the appraisal or draft to the appraiser and request that the appraiser make corrections and resubmit the report. Requests for revisions, additional data and/or information should be made in writing, or by e-mail, with a copy to the ROW Unit Manager so proper file documentation of the request is made. Resubmitted reports are due within 15 business days upon request for a revision.

Any needed factual data or analytical changes that cannot be coordinated with the appraiser will require that the review appraiser, in the review report, assume the burden of substantiating and documenting the valuation in accordance with recognized standards. If the review appraiser determines that sufficient errors or omission exist within an appraisal, the review appraiser's own

Chapter 7 – Appraisal Review

value may be concluded in the review appraisal report, or the review appraiser may choose not to accept the report and suggest that an additional appraisal be prepared. The review appraiser shall prepare a memo to the ROW Unit Manager if the appraiser does not consent to the requested corrections, stating the reason(s) why the revisions to the appraisal are not acceptable. If an appraisal is not accepted because of material deficiencies, payment may be withheld from the appraiser until the matter is resolved. The written notification should explain the material deficiencies in the report and the attempts made to correct them with the appraiser

7.7 Review Appraisal Conclusions and Actions

Upon completion of the review, the review appraiser shall complete a technical appraisal review report in accordance with Standard 3 of USPAP for each appraisal that is to be approved for acquisition.

The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition.⁶

When completing a technical review report, the review appraiser is to report conclusions according to one of the following three options.⁷

- A. Recommended: as the basis for establishment of the amount believed to be just compensation.
- B. Accepted: as meeting requirements, but not selected as recommended or approved.
- C. Not Accepted: While the review appraiser does not provide an opinion of value, he/she must explain why the report is not being accepted in the review appraisal report. In the event the review appraiser finds that the appraisal submitted and/or as revised does not accurately represent the value of the acquisition and/or its effects on the remainder, the

⁶ 49 CFR 24.104(c)

⁷ 49 CFR 24.104(a)

Chapter 7 – Appraisal Review

ROW Unit Manager should be consulted to determine if a second appraisal is necessary or an appropriate alternate course of action.

If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, DDOT may direct the review appraiser, as part of the review, to present and analyze market information in conformance with §24.103 to support a recommended (or approved) value.⁸

7.8 Additional Appraisals

A review appraiser may recommend that an additional appraisal report be obtained. Examples of when this might be appropriate include, but are not limited to:

- At the review appraiser's recommendation due to the complexity nature of the appraisal.
- A question exists with respect to a property's highest and best use.
- Market data is inconclusive or scarce.
- Significant improvements are not compatible with the highest and best use of the land, and the appraiser was inconsistent in the treatment of highest and best use and method for valuing the property.
- A large portion of the compensation is attributed to damages or enhancement
- Major corrections and/or differences in philosophy between the appraiser and review appraiser concerning value

If two appraisals are obtained and the review appraiser cannot approve either, the ROW Unit Manager should be consulted for guidance. A technical review appraisal must be completed on each appraisal received. Also, the review appraiser may elect to complete a review on an appraisal obtained and incorporate the original appraisal by hypothetical condition into the review appraisal. In that case, the review appraiser is to provide an opinion of value and recommend that the review and original appraisal be approved for negotiation versus ordering an additional appraisal.⁹

⁸ 49 CFR 24.104(b)

⁹ 49 CFR 24.104(b)

Chapter 7 – Appraisal Review

If more than one appraisal is obtained on a property and the review appraiser approves one of the appraisals, the unapproved report must be submitted to the ROW Unit Manager along with the approved report. The review appraiser will attach a cover letter explaining the differences in the appraisals and the reasoning and analysis for recommending approval of the selected appraisal.

7.9 Uneconomic Remnants

An Uneconomic Remnant is a remainder parcel of real property that DDOT determines has little or no value or utility to the owner. Designation of a remainder as Uneconomic Remnant is an administrative function unrelated to market value, and such determination is the responsibility of DDOT. The primary factor is the analysis of the remainder property, input received as a result of meetings between the owner and the ROW Specialist during the pre-acquisition stage, as well as subsequent meetings between the owner and the ROW Specialist and OAG recommendation shall be considered. If, after completing the review, the review appraiser recommends a remainder be deemed an Uneconomic Remnant, the value of the Uneconomic Remnant is to be shown in the review appraisal report. DDOT is to make an offer to purchase the uneconomic remainder.

7.10 Required Signatures and Certifications

After the review appraiser determines that an appraisal is accepted or accepted with revisions and can be approved for acquisition, the appraiser shall so note such conclusion and sign the report. The review appraiser certification is shown as Example 7-1 and must be included as a part of the technical review appraisal.

7.11 Conflict of Interest

Regardless of whether an appraiser is an employee of DDOT or a consultant under contract, the appraiser is not expected to act as an advocate for any party, including DDOT or the landowner. The review appraiser should not attempt to steer the appraisal process in an effort to influence the possibility of litigation. The review appraiser is expected to employ sound appraisal practices and methodology necessary to produce a credible, reliable, and unbiased opinion of market value as defined within the review appraisal report and to produce a review appraisal report that meets the requirements stated in this manual.

The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued. Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

Chapter 7 – Appraisal Review

On any real property acquisition for a federally funded project, no person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation.

An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by DDOT or the ROW Unit Manager to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less.

The review appraiser is expected to provide services in a timely manner to avoid project delays that may impact DDOT's ability to meet project deadlines. When called upon to do so, the review appraiser is expected to respond in a timely manner providing additional information or clarification. The review appraiser must comply with the ethics and confidentiality requirements set forth by USPAP.

To prevent a conflict of interest, the review appraiser cannot participate in the development of an appraisal that the same review appraiser will review at a later time. Furthermore, a review appraiser cannot prepare and review appraisals for the same project. The review appraiser should review the project with the assigned appraiser(s) and discuss general information regarding the project. If the review appraiser determines a need to consult someone in connection with the appraisal process, the ROW Unit Manager shall be consulted.

7.12 **Approvals and Determination of Just Compensation**

The review appraiser shall submit the technical review appraisal and recommendation to the ROW Unit Manager within the time frame requested at the time the assignment was made. The ROW Unit Manager shall determine if the review was adequately documented; based upon the recommendation, the ROW Unit Manager shall approve on behalf of DDOT the appraised FMV of the proposed acquisition as just compensation. The approval date shall be noted on the appraisal, and a determination of just compensation letter (see Chapter 8, example 8-3) shall be prepared and signed.

Chapter 7 – Appraisal Review

Should the amount of approved just compensation for a parcel exceed \$500,000, approval by the ROW Unit Associate Director is required. The negotiator assigned to the parcel shall assemble a review package for submittal to the Associate Director shall include the following:

- A brief written narrative outlining the proposed acquisition and its impact of the total property.
- A summary of the appraisal and the review appraisal report.
- Identification of an amount that will be ineligible for federal reimbursement.

Once approved by the ROW Unit Manager or Associate Director, the parcel is ready for negotiations.

Chapter 7 – Appraisal Review

THIS PAGE INTENTIONALLY LEFT BLANK

Chapter 7 – Appraisal Review

Chapter Resources

Major Tasks

- Appraisal Review Process

Example

- Review Appraiser’s Certification (see Example 7-1)
- Review Appraisal Scope of Work (See Chapter 16, Example 2A)

Form

- Technical Review Appraisal Report (Form REVIEW REPORT)

References

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- Uniform Standards of Professional Appraisal Practice (USPAP)
The Appraisal Foundation
www.appraisalfoundation.org
- Uniform Appraisal Standard for Federal Land Acquisition
United States Department of Justice
www.justice.gov/enrd/ENRD_Assets/Uniform-Appraisal-Standards.pdf
- Standardized Civil Jury Instructions for the District of Columbia, Chapter 22, Eminent Domain.

Chapter 7 – Appraisal Review

Major Tasks – Appraisal Review Process

| | |
|--|------------------|
| Determine Appraisal Scope and need for review | ROW Unit & OAG |
| Determine if ROW Unit or OPM reviewer is available | ROW Unit & OPM |
| Develop a Memorandum of Understanding with OAG if review appraiser is to be procured | ROW Unit & OAG |
| Procurement of Review Appraiser | ROW Unit & OAG |
| Contract with Review Appraiser | OCPC |
| Provide Review Appraiser with plans project data and schedule | ROW Unit |
| Receive appraisal report and submit to reviewer | ROW Unit & OAG |
| Perform technical review (see checklist) | ROW Unit |
| Perform review of subject property, comparable sale and appraisal report | |
| Coordination between appraiser and review appraiser | Appraisers |
| Finalize Appraisal Report | Appraisers |
| Finalize Review Appraisal Report | Review Appraiser |
| Distribute Appraisal Report | ROW Unit & OAG |
| Request approval of Just Compensation | ROW Unit |
| Approve offer of just compensation amount | Assoc. Director |

Chapter 7 – Appraisal Review

[Form REVIEW REPORT] (1 of 2)

Technical Field Review Appraisal

| | | | |
|---|-----------------|-------------------------------------|---------------------------------------|
| Property Location: | Address: | | |
| | City: | | |
| | Zip Code: | | |
| Project No. | Street | | |
| Federal Project No. | Parcel No(s). | | |
| Current Landowner(s) | | | |
| Tenant(s) | | | |
| Effective Appraisal Date | Property Rights | <input type="checkbox"/> Fee Simple | Personal <input type="checkbox"/> Yes |
| | | <input type="checkbox"/> Other | Property <input type="checkbox"/> No |
| The appraisal under review (check all that apply) is a <input type="checkbox"/> Total or a <input type="checkbox"/> Partial Acquisition with | | | |
| <input type="checkbox"/> Damage and/or <input type="checkbox"/> Enhancement; of | | | |
| <input type="checkbox"/> Vacant Land <input type="checkbox"/> Vacant Land with Minor Improvements or an Improved <input type="checkbox"/> Commercial and/or <input type="checkbox"/> Residential Property | | | |

Section I - Review Appraisal Questions (complete for all assignments)

If the answer checked to any of the questions below is NO, a comment is required.

1. Did the appraisal report contain the appropriate prior sale(s) and/or prior listing(s) of the subject property and comparable sales and were they appropriately analyzed? YES NO
2. Is the data in the appraisal report factual and accurate? YES NO
3. Is the estimated site/land value before the acquisition reasonable for the subject? YES NO
4. Is the estimated site/land value after the acquisition reasonable for the remainder? YES NO N/A
5. Is the estimated value of the improvements reasonable as of the effective date of the appraisal under review? YES NO N/A
6. If a partial acquisition, and if applicable, is the estimated value of the remainder reasonable as of the effective date of the appraisal under review? N/A YES NO
7. If a partial acquisition, and if applicable, are all damages and/or enhancements listed and are they reasonable as of the effective date of the appraisal under review? N/A YES NO
8. Is the estimate of total compensation reasonable as of the effective date of the appraisal under review? YES NO

Comments:

Section II - Disposition of the Appraisal (complete for all review appraisal assignments)

- A) **APPROVAL RECOMMENDED** - The review appraiser recommends that this appraisal be used as an adequate basis for the establishment of the offer of just compensation as submitted or as revised and the original appraisal is incorporated by hypothetical condition in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) subject to the revisions made in this review appraisal.
- B) **ACCEPTED (NOT RECOMMENDED)** - The appraisal meets all requirements but is not recommended as an adequate basis for the establishment of the offer of just compensation (see comment below as to why this appraisal is not recommended).
- C) **NOT ACCEPTED** - The appraisal is not accepted because a different appraisal is relied upon as a more reliable indicator of value. The review appraiser provides no opinion of value. An additional appraisal is ordered (complete section III).

Comments:

Section III - Complete if the Disposition of the Appraisal is "B" or "C"

Comment on why the appraisal is not accepted or on any revision(s) and their impact on original value estimate: _____

ADDITIONAL INFORMATION IS ATTACHED IN THE FORM OF AN ADDENDA

Comments:

Section IV - Reconciliation, Breakout of Final Estimate of Just Compensation

| | Appraiser | Review Appraiser |
|------------------------------|-----------|------------------|
| FEE SIMPLE LAND = | \$ | \$ |
| EASEMENTS = | \$ | \$ |
| IMPROVEMENTS = | \$ | \$ |
| COST TO CURE ITEMS= | \$ | \$ |
| DAMAGES (LESS ENHANCMENTS) = | \$ | \$ |
| JUST COMPENSATION DUE: | (\$) | (\$) |

Reconciliation:

Purpose of the Appraisal

The purpose of this appraisal review is to verify the accuracy of the factual data and conclusions and to determine the reasonableness of the value opinion contained in the appraisal report under review. The intended use is to verify the accuracy of the estimated just compensation as of the effective date of the original appraisal. When the value is determined to be unreasonable, the review appraiser may develop and report an opinion of value. The intended user and client for this report is the District Department of Transportation on behalf of the District of Columbia.

Scope of the Appraisal

In order to make a determination as to the reasonableness of the value, the review appraiser has, at a minimum, read the entire appraisal report under review, made an exterior inspection from the street of the subject property and the comparable sales described in the report, inspected the neighborhood in which the subject is located, researched all appropriate data, verified the data in the appraisal report using all reliable resources, and assumed the property condition stated in the report is accurate unless there is evidence to the contrary. The review appraiser is not required to replicate the steps completed by the original appraiser.

In Addition

Chapter 7 – Appraisal Review

[Example 7-1]

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

1. The facts and data reported by the reviewer and used in the review process are true and correct.
2. The analysis, opinion, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. My compensation is not contingent on an action or event resulting from the analyses, opinions, and conclusions in this review or from its use.
7. I made a personal inspection of the subject property of the work under review. The inspection consisted of viewing the property from the street, unless I otherwise indicated within this report that an interior inspection of the subject property was completed.
8. I personally inspected the comparables from the street, unless I otherwise indicated within this report that an interior inspection of the comparables was completed.
9. No one provided significant appraisal, appraisal review, or appraisal consulting assistance to this appraiser signing this certification unless otherwise stated in this certification.
10. I developed my analysis, opinions, and conclusions and prepared this review report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP); the Code of the District of Columbia; Title III of the Uniform Relocation and Real Property Assistance Act; the Code of Federal Regulations, 49 CFR 24 §§102, 103, 104, 105 and 108; and the Uniform Standards of Federal Land Acquisitions, as applicable.

(Signature)

(Print Name)

Chapter 8 - Acquisitions

Summary

This chapter covers the actual acquisition process that is followed to acquire private property for transportation improvement or maintenance projects. The acquisition phase is initiated after the preliminary PDP has been completed and approval and funding have been provided for ROW acquisition. The acquisition phase is considered complete when agreements have been obtained or eminent domain has been initiated for all necessary parcels of ROW required to construct the project.

| Section Number | Section Name |
|----------------|--|
| 8.1 | Introduction |
| 8.2 | Right of Way Unit Manager's Duties |
| 8.3 | Duties of Acquisition Agent |
| 8.4 | Early Notice |
| 8.5 | Preparation for Negotiations |
| 8.6 | Contacts with Landowners |
| 8.7 | Negotiation by Mail |
| 8.8 | Tenant-Owned Improvements |
| 8.9 | Continuing Negotiations and Acceptance |
| 8.10 | Right of Entry |
| 8.11 | Concluding Negotiations |
| 8.12 | Terminating Negotiations |
| 8.13 | Administrative Settlements |
| 8.14 | ROW Acquisition Report |
| 8.15 | Process for Settlement or Eminent Domain |
| 8.16 | Notice to Vacate |
| 8.17 | Donations |

8.1 Introduction

Acquisition is an extremely important part of the ROW process. It can also be the most sensitive process because of the personal contact with the public who will be affected by the project. Whether it is a portion or the entire property, every aspect of the acquisition process must be handled professionally.

Chapter 8 - Acquisitions

The DDOT enabling legislation, codified at D.C. Code § 50-921.04(4) (F) grants to DDOT, provided that it obtains the consent of the OPM, authority to acquire and dispose of real property in the name of the District and authority to request that the OAG file condemnation actions to acquire real property in the name of the District. The initiation of eminent domain proceedings and the processes and documentation required are referenced in Chapter 11, Section 11.2. DDOT is responsible for acquiring ROW adequate for the construction, operation, and maintenance of transportation projects.

It is the policy of DDOT to acquire real property by negotiations. While District holds the power of eminent domain, it desires to respect each landowner's authority and control over property and to reach a fair settlement based on a mutual agreement. This policy requires that landowners be approached with consideration for their interests and concerns; landowners must be provided information, as well as just compensation offer, that will motivate a timely and voluntary decision to sell. This chapter addresses the various forms of ownership and property rights that are typically encountered on the project level. It will serve as a reference and a basic guide to negotiators and administrative personnel.

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|--------------------|---|
| Acquisition Agent | The primary contact person that represents DDOT in negotiating with the landowners |
| Disclaimer | A written declaration that the landowner has no interest or rights with regard to a specified item affixed to their property |
| Easement | A right to control property for a designated and limited purpose. |
| Purchase Agreement | A written agreement granting a privilege to acquire property or interest therein at a fixed price within a specified period |
| Project Manager | Person managing the project from Infrastructure Project Management Administration (IPMA), Transportation Policy and Planning Administration (TPPA), or Transportation Operations Administration (TOA) |
| Title Report | An investigation of public record and documents to ascertain the history and present title status to real property, including ownership, liens, encumbrances and other interests |

Chapter 8 - Acquisitions

8.2 Right of Way Unit Manager's Duties

The ROW Unit Manager must prepare a formal assignment for each parcel that includes the following:

- Project and parcel numbers
- The name of each acquisition agent
- The date of assignment
- The date acquisition must be completed to meet project scheduling

The ROW Unit Manager may not supervise or formally evaluate the performance of any appraiser or review appraiser unless FHWA waives the requirement after determining that it creates a hardship for DDOT. Nor may the ROW Unit Manager assign any parcels to the acquisition agent who prepared the appraisal for the parcel, but may assign a parcel to the acquisition agent who prepared a waiver valuation if the estimated value is for \$10,000 or less.

In setting out the timeline for acquisition, the ROW Unit Manager should keep the following guidelines in mind:

1. Acquire improved properties first. This facilitates clearance of the ROW and allows greater lead time for the relocation and PM functions before construction.
2. Acquire properties where an existing business is located requires identification of comparable replacement sites through relocation advisory services to ensure the successful relocation and reestablishment of businesses. (See Chapter 10 for more details)
3. Acquire graveyards, which present a unique set of circumstances requiring disposition, removal and reinterments of remains
4. relocation of gravesites.
5. Acquire churches, which may have differing sets of hierarchies and laws regarding the conveyance of real property interests.
6. Acquire property from an ownership entity which has filed bankruptcy, or where bankruptcy is imminent, where acquisition of real property rights will require approval of the bankruptcy court.
7. Acquiring parcels from railroads presents a unique set of issues, including coordination to ensure that there is no disruption to railroad service, and negotiating railroad construction agreements. (See Chapter 13 for more details)

Chapter 8 - Acquisitions

8. Acquire publicly owned properties, or land owned by a quasi-governmental authority through inter-agency coordination which may involve significant environmental issues, and acquisition processes which may vary by agency. (See Chapter 9 for more details)
9. Acquiring parcels through eminent domain involves negotiation with a landowner, which are ultimately unsuccessful. After the negotiations have terminated, DDOT shall prepare a “condemnation package” for OAG, which will be incorporated into the Complaint, the Declaration of Taking, and just compensation is filed with the court. (See Chapter 11 for more details)
10. Acquire parcels valued by a waiver valuation as soon as possible. If acquisition is unsuccessful, an appraisal of the parcel may be necessary.

8.3 Duties of Acquisition Agent

The practice of negotiations requires a high level of knowledge, dedication and professionalism by the acquisition agent. The acquisition agent must be familiar with the complex body of law, regulations, and program rules that control property acquisition; familiar with and be able to explain the ROW and appraisal process in a clear understandable way to the landowner; informed about the specific effects of the project on each property being acquired. The acquisition agent must show empathy to each landowner’s or tenant’s concerns; particularly if there will be displacement from home or business. Most importantly, the acquisition agent must project the intangible personal qualities of maturity and trustworthiness that will help overcome initial negative perceptions about the ROW process that are occasionally encountered.

The active acquisition process begins with the acquisition agent assembling the negotiation package for the landowner’s parcel, including a copy of the “DDOT Right of Way Acquisition for Transportation Projects” brochure (ROW brochure). It is the acquisition agent who meets personally with the landowner to try to reach an agreement on the purchase of the property rights, and facilitates their first meeting with DDOT’s proposed plans and the offer of just compensation value. The acquisition agent needs to listen to the landowner and remain open to the landowner’s suggestions for plan changes and counter offers.

The duties of the acquisition agent include the following:

1. Coordination with the Relocation Specialist if the acquisition involves relocation eligibility for the landowner. The acquisition agent and Relocation Specialist shall meet with the landowner at the same time if the landowner is being displaced. If

Chapter 8 - Acquisitions

qualified staff is available, a single agent can handle both acquisition and relocation negotiations.

2. Acquire ROW and easements through negotiations to minimize litigation, if possible, and promote public confidence in land acquisition programs.
3. Explain the project and the effects of the project on the landowner's property including, but not limited to, changes in elevation, access, and drainage. The acquisition agent shall explain the property rights being acquired by DDOT.
4. Assist the landowner in the acquisition process regardless of the landowner's opinion of either DDOT's offer or project plans. This includes advising of the landowner's rights in the acquisition and eminent domain processes.
5. In accordance with the provisions of 23 CFR 710.201(f)(1) and 49 CFR 24, DDOT shall maintain working files and master files of the acquisition and relocation activities in sufficient depth and detail to document compliance with Federal and State laws, rules, codes and the requirements of this manual. The working files and related documentation should be updated as the project progresses in a timely fashion. Master files should be completed once the acquisition and relocation (if applicable) is completed. These files are subject to FHWA review for all Federal-aid projects.
6. Advise the ROW Unit Manager of information obtained about the project that may affect the progress or cost of the project.

8.4 Early Notice

As noted in Chapter 2, Section 2.9, representatives of the ROW Unit shall attend public involvement meetings to answer questions and provide information about the ROW acquisition process and the need to acquire additional land. Copies of the ROW brochure are to be made available.

When the NTP with ROW acquisition has been issued, the acquisition agent shall notify all affected landowners, in writing (Example 8-1), that a portion or the entire property may be

Chapter 8 - Acquisitions

needed for the project. The ROW brochure is to be sent explaining in more detail the landowner's rights and what to expect during negotiations. Contact information for the acquisition agent, including telephone number and email addresses, should also be provided.

8.5 Preparation for Negotiations

Success in negotiations requires the acquisition agent prepare and plan every detail of the acquisition process before the initial offer is made. Before actual negotiations can commence, the ROW Unit must prepare administratively for the process ahead, which will aid in an expeditious process. A negotiation extends beyond delivering the offer amount and processing conveyance documents. Landowner questions must be answered correctly and objections must be handled respectfully and resolved promptly. Any legalities and sufficient transfer of needed property rights require that data appearing on documents is accurate and complete.

8.5.1 Preparation Steps

The following steps, as a minimum, should be completed upon receiving a negotiation assignment but before initial offers are made to landowners:

A. **Review Project Plans and Property Plat**

The acquisition agent should be familiar with the project as a whole and its effect on properties adjacent to the new ROW line. From prior inspection of the project area and consultation with the Project Manager, the acquisition agent should confirm that the plans include all significant land improvements that are affected by the project. The acquisition agent should be prepared to explain any temporary detours, changes in elevation, drainage and/or access. Any discrepancies or additional information needed should be resolved with the Project Manager before meeting with the landowner.

B. **Examine the Appraisal and the Review Appraisal or Waiver Appraisal**

The acquisition agent must understand the content of the appraisal on which the offer is based. A key factor in securing a signed agreement or option is the acquisition agent's ability to explain to the landowner the consideration of all factors that contributed to the value and the thoroughness of the appraisal process. It is the familiarity and understanding of the basis for the value that aids an acquisition agent's ability to successfully conclude negotiations. If an error or

Chapter 8 - Acquisitions

discrepancy is noted during the examination, it must be resolved with the ROW Unit Manager before the offer is delivered. If the appraisal review and the approved offer of just compensation differ from the appraisal, the acquisition agent must understand the reason for the variance. The review appraiser should be consulted as necessary to clarify issues raised in the appraisal review document.

C. Examine Title Report and Ownership Information

The acquisition agent will verify ownership from the date of the title report to the current date and, if necessary, complete a current owner information form (see Chapter 5, Preliminary Title Reports). The title report should be reviewed and checked against other documents in the negotiation package for consistency of factual information. For properties that are not owned by an individual or group of individuals, determine the correct person or persons to contact regarding the acquisition. The acquisition agent may need to negotiate with a fiduciary, attorney or a representative of a corporation. The acquisition agent should be guided by the following:

1. For fiduciary see Section E.1 below
2. Corporate Ownership

The acquisition agent needs to determine which officers are authorized to convey property and act in the corporation's behalf. If not available before initial contact, request a copy of the corporation's articles of incorporation and/or bylaws for the files. If necessary, secure a corporate resolution authorizing conveyance of the property to DDOT.

3. Landowner Represented by an Attorney

If the landowner or their representative advise DDOT to conduct all negotiations with an attorney, make all future contacts with that attorney. The owner or the owner's attorney should furnish written confirmation of the representation, and place it in the parcel file. If the landowner subsequently advises the acquisition agent that an attorney no longer represents him/her, the landowner should be requested to furnish a letter of notification for the file.

4. Power of Attorney

Chapter 8 - Acquisitions

When dealing with an attorney-in-fact, accept conveyance from one of the following persons:

- a. The individual (the principal)
- b. The attorney-in-fact if the following has been verified:
 - The power of attorney is recorded in the appropriate recording district; place a copy in the parcel file.
 - The power of attorney is current.
 - The power of attorney includes the authority to act for the principal in all matters relating to the property being conveyed.

5. For Non-Profit Organization See Section E.3 below

6. For publicly owned lands, the acquisition agent shall coordinate with all appropriate District and Federal agencies to determine all necessary requirements to convey property.

D. Secure Legal Documents

The acquisition agent shall coordinate with the OAG to prepare, or have prepared, the legal documents required to negotiate and document an agreement to purchase the proposed ROW. At a minimum, an offer acceptance agreement shall be required. Depending on a special ownership situation, as outlined below, an affidavit or other legal document may be needed.

E. Special Ownerships

1. Owner represented by a Fiduciary

The title report or field work may indicate that a fiduciary (administrator, executor, guardian, trustee, personal representative, etc.) exists or is needed. The title report should note the existence of a court-appointed fiduciary if the court action was in (or was recorded in) the recording district where the property is located. If a fiduciary is needed, or if the existing court-appointed fiduciary does not have the power to convey, suggest that the party in interest (their heirs, successors or assigns) obtain the service of any attorney. When confirmed or appointed by a court, and acting under court order, a fiduciary may take the form of one of the following:

Chapter 8 - Acquisitions

- Administrator, executor, or personal representative of the estate of a decedent.
- Court-appointed guardian of a minor, legally incompetent or insane person (See E.3 below for more information)
- Receiver of a corporation in receivership (See Section E.4 for more information)
- A similar fiduciary role recognized under district or state law.

If a landowner is deceased and the landowner's will has been probated, the title report should identify that the property is controlled by an estate and name the heirs and executor. The acquisition agent should contact the executor to determine the status of the estate prior to having legal documents prepared. If a final order of distribution has not been submitted to the court, the offer shall be made to the executor. The resulting agreement should be prepared in the manner for the executor.

If first contact reveals that the landowner is deceased and the title report does not indicate an estate, the acquisition agent should secure a copy of the death certificate and determine if the deceased landowner is intestate or if a will be presented for probate. Should the acquisition agent determine that the property was owned with rights of survivorship to a husband or wife, and the surviving spouse has the right of survivorship, only a copy of the death certificate is required and the surviving landowner can execute the option/purchase agreement.

If it is determined that the estate will not be able to convey property for an extended period of time, DDOT must initiate eminent domain proceedings and place the just compensation with the court to be distributed when the estate issues are settled.

2. Infant and Other Incompetent Owners

If the landowner does not have legal capacity to convey title, the District may utilize eminent domain. Some examples would be if the landowner is a minor, is mentally incompetent, or is a prisoner of a state or Federal prison.

Chapter 8 - Acquisitions

If ownership of the property is shared by more than one property owner--competent or incompetent--the competent parties may execute the option/purchase agreement. The acquisition agent will explain the necessity of eminent domain proceedings to all parties, including legally appointed guardians and competent landowners.

3. Non-Profit Organizations

Negotiations with non-profit organizations often involve volunteers and Board of Directors that meet on a periodic basis. The acquisition agent should allow additional lead time to negotiate with these types of ownership.

In order to obtain a valid agreement from a religious or other incorporated non-profit organization, it is necessary for the organization to have a meeting of the governing body and approve the conveyance. For some religious denominations, an order must be entered by the court authorizing the trustees to execute an agreement. In the event that the court has not been called on to approve the election of the trustees, an order must be entered by the court approving election of the trustees. The acquisition agent should consult with the OAG and/or the organization to verify the actual requirements for the organization to be able to convey title to real property.

If an agreement cannot be reached with the governing body of the organization or if title to the property is defective, the filing under eminent domain proceedings is to be handled in the usual manner.

4. Bankruptcy

If the title report indicates a landowner has filed bankruptcy or a corporation is under protection of the bankruptcy court, the agent shall consult with the OAG to determine the appropriate course of action. In most cases, obtaining permission from the bankruptcy court is necessary for the conveyance of any assets of the bankrupt landowner. Eminent domain proceedings cannot be brought against the bankrupt landowner without the consent of the bankruptcy court. Once the bankruptcy court approves the proposed

Chapter 8 - Acquisitions

acquisition, negotiations can proceed with the offer of just compensation. Regardless of how the acquisition is concluded, any compensation paid shall be as directed by the bankruptcy court.

5. Aliens Not Lawfully Present in the United States

An alien, not lawfully present in the United States, must be advised of their eligibility for relocation payments or relocation advisory assistance in accordance with the certification requirements of 49 CFR 24.208.

6. Cemeteries

The following procedures should be used in effecting the acquisition of a cemetery and removal of graves:

a) If the cemetery is a corporation having authority over the land with the right to reinter remains, the acquisition agent should proceed as follows:

1. Verify of ownership of land
2. Verify corporation's license to operate
3. Verify the corporation has legal authority to make disposition, removal and reinterments of remains
4. Upon receipt of approved ROW plans, attempt to reach agreement for acquisition of land and disposition on graves, i.e., reinterment elsewhere in subject cemetery

b) If the corporation does not have legal authority to make disposition, removal and reinterment of remains, it is necessary to deal with next of kin. The acquisition agent should proceed as follows:

1. Determine landowner and attempt to reach independent agreement for acquisition of land.
2. Determine names of persons buried; check cemetery records, interview landowners and/or longtime residents in the area.
3. Determine next of kin of all persons buried, including names and addresses, as outlined above.
4. Check local ordinances and Health Department requirements, such as permit application for disinterment.

Chapter 8 - Acquisitions

5. Attempt reach agreement with next of kin and incorporate therein the following provisions:
 - A suitable repository or place of reinterment, and determine whether it will be provided by DDOT or by the next of kin. If repository is to be provided by DDOT, attempt to obtain permission to reinter on subject property and include payment therefore and terms thereof in separate transaction; or secure private property nearby obtaining agreement providing for permission, consideration, etc.; or reinter in licensed cemetery obtaining agreement, as required. If repository is provided by next of kin or reinterment is not in a cemetery providing perpetual care, incorporate assurance that DDOT is not responsible beyond completion of reinterment.
 - The manner of removal, transportation and reinterment; i.e., licensed undertakers or funeral director with due dignity, reverence and decorum, etc.
 - The type of vault, casket, box, chest, or other containers, if replacement is necessary
 - The type of marker, the disposition or replacement of existing markers, fences, railings, etc.
 - Provide for direction, consent and authority to be granted by next of kin
 - Provide for conformity with Health Department requirements and all local ordinances.
6. If applicable, prepare bid specifications for removal, transportation and reinterment in accordance with the agreement. Provide for inspection of site. Include unit bids on basis of known and unknown graves. Provide for all necessary services, site preparation, etc., or include alternatives.
7. Request that the Office of Contracting and Procurement (OCP) advertise bids for professional services or licensed undertaker or funeral director.

Chapter 8 - Acquisitions

8. Review bids submitted by funeral directors, make selection and request OCP award a contract. If payment is required at this time for the new repository, submit voucher request for payment to the OCFO. Request OAG secure a court order for disinterment and reinterment, and obtain an order of publication and posting of notice.
 9. Upon issuance of court order and posting of notice, authorize the contractor to perform the services. Secure release from landowner and/or next of kin.
 10. Keep written record of all contacts with landowner, next of kin, attorney, etc., and indicate results. Keep permanent record of location of new graves.
 11. Submit to ROW Unit Manager the agreements reached with next of kin and repository site owners, bids obtained from funeral directors, and copies of all other related papers.
- c) If agreement cannot be reached with the landowner, submit a ROW Acquisition Report (Form ACQ-REPORT) with recommendation to proceed under eminent domain code.

Due to the time required to relocate graves, it is imperative that priority be given to the clearing ROWs having cemeteries located therein. Depending on the age of the cemetery, it may take as long as 9 months to complete a grave relocation.

F. Offer Acceptance Agreement

The property rights to be acquired must be accurately and fully described and entered on the offer acceptance agreements and instruments of conveyance, including easements of permanent or temporary nature for specific purposes. These documents should be checked closely to assure that intended property rights are acquired.

On controlled access projects, it will be necessary to describe the line along which the rights of access to secure are to be extinguished. These lines are to be shown in BLUE color on the plan prints.

Chapter 8 - Acquisitions

When easements are to be acquired, in addition to areas of fee simple ROW, the type of easement and purpose must be specifically stated in the agreement as well as the conveyance document. An easement is a right to control property for a designated and limited purpose. DDOT acquires easements when it is not necessary to have fee simple ownership and control over property. Generally it is necessary to have absolute control over operating street ROW, and fee simple title is acquired for this purpose. Construction easements are acquired for such purposes as drainage, slope maintenance, detours, channel changes and certain construction features that are outside the highway ROW. Permanent easements are required where there is a continuing need for maintenance. The decision as to the need for easements is made during the PDP, and the approved plans will reflect whether permanent or temporary easements are required.

If the plans indicate a permanent easement for slope or other purposes required, the following clause is to be incorporated in the agreement in addition to a fee acquisition:

“Together with the permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of cut and/or fill slopes, containing _____ acre, more or less.”

Should a permanent easement for a purpose other than slope be required in addition to a fee acquisition, the clause must specify the exact nature of the easement. For example, a permanent channel change easement should be worded in the following manner:

“Together with the permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of a channel change, containing _____ acre, more or less.”

Temporary easements are effective for the duration of the construction project. If a temporary easement is required in addition to a fee acquisition, the following clause is to be incorporated into the option:

Chapter 8 - Acquisitions

“Together with the temporary right and easement to use the additional areas shown as being required for the proper construction of cut and/or fill slopes, containing _____ acre, more or less. Said temporary easement will terminate at such time as the construction of the aforesaid project is completed.”

In explaining the termination of temporary construction easement, the agent should not only discuss the project schedule and the expected duration of the construction period but also state that the time period is approximate and that circumstances can cause unexpected delays.

Special clauses should also be added to the agreement as appropriate to the circumstances that pertain to individual acquisitions. Several clauses relate to choices that the landowner will make as to the retention of buildings on the ROW. The applicable clauses reflecting landowner options will be explained to the landowner during negotiations and entered on the document as agreement is reached. The clauses concerning buildings are summarized on Table 8-1. The full texts of the clauses are in the resources following this chapter.

Note: Instructions on applicability of clauses with regard to building retention are in Section 8.9.4 of this chapter.

TABLE 8-1: Special Option Clauses

| Clause No. | Primary Provisions | Applicable |
|------------|--|--|
| 1 | <ul style="list-style-type: none"> ✓ Property owner retains buildings, consideration reduced, and performance bond posted. ✓ Owner to remove building by specified date. | <ul style="list-style-type: none"> ✓ Building totally on ROW. ✓ Owner decides to retain. |
| 2 | <ul style="list-style-type: none"> ✓ Vacation of property and removal of personal property by a specified date. ✓ Added provision for extension if a family or business occupies property. | <ul style="list-style-type: none"> ✓ Owner decides not to retain building |
| 3 | <ul style="list-style-type: none"> ✓ DDOT may remove buildings within ROW at any time after notice of acceptance of option. | <ul style="list-style-type: none"> ✓ Building vacant |
| 4 | <ul style="list-style-type: none"> ✓ Permission granted by owner of remaining property to allow the DDOT to enter to remove entire building. | <ul style="list-style-type: none"> ✓ Building partially on ROW |
| 5 | <ul style="list-style-type: none"> ✓ Owner agrees that when building is vacated no realty is to be removed from property. | <ul style="list-style-type: none"> ✓ Items of realty in building which could not be removed |
| 6 | <ul style="list-style-type: none"> ✓ Owner agrees to compensate tenant(s) for compensable damages suffered as a result of the | <ul style="list-style-type: none"> ✓ Building tenant occupied. |

Chapter 8 - Acquisitions

| | | |
|----|---|--|
| | conveyance and will save DDOT harmless from any related claims. | ✓ Owner will retain building. |
| 7 | ✓ Owner retains building which are partially on ROW. Owner agrees to remove or demolish entire building. | ✓ Building crosses ROW line |
| 8 | ✓ Owner agrees to relinquish all rights, including income, to building by specified dates after acceptance of option. DDOT to serve vacation notice to occupants. | ✓ Building tenant occupied. ✓ Owner will not retain building. |
| 9 | ✓ Owner has the option of retaining building at time DDOT determines vacation date. ✓ Retention value and bond amount is specified. | ✓ Building tenant occupied. ✓ Owner to retain. |
| 10 | ✓ Owner grants right to DDOT to enter remaining lands to remove partially encroaching building. | ✓ Building crosses ROW line. ✓ Owner will not retain. |

G. Letter of Offer to Purchase

Items that require special attention in the letter of offer to purchase, explaining the project's impact on the property as well as the offer acceptance agreement, are as follows:

a) Cost to Cure Items

As discussed in Chapter 6, Appraisals, improvements that are impacted by the proposed construction can be mitigated (or "cured") by the modifications to the property or improvements. The appraiser will evaluate these items and have a cost to cure estimate developed. This cost to cure amount (curable damages) is to be part of the offer of just compensation, unless otherwise provided for by DDOT.

There may be situations where it is in DDOT's best interest to include the construction of the cost to cure an item as a part of the roadway contract. If the landowner is agreeable, this cost to cure amount will be eliminated from the just compensation payment. A separate agreement or modification to the offer acceptance agreement is to be executed by the landowner and DDOT. Some examples of impacted items which may be addressed as a cost to cure payment are the following:

- Install landscape irrigation system
- Replace paved surface area or parking spaces
- Reconfigure lighting

Chapter 8 - Acquisitions

b) Fencing

As part of a partial acquisition, it is DDOT's responsibility to provide for fencing when an existing fence will be removed by construction. This responsibility may be resolved by the landowner providing the fencing, paid as a cost to cure item in the just compensation, or DDOT constructing the fencing.

A portion of a security fence around a commercial and/or industrial property may fall within the proposed fee acquisition or easement acquisition, and the fence is necessary for use of the property by the landowner or tenant. It may be satisfactory to relocate the existing fence rather than paying for a fence on a cost new, less depreciation basis. If fencing must be relocated for a temporary easement and then reinstalled on the ROW line after construction, the costs for both installations are compensable.

If the ROW acquisition offer is refused, a separate agreement may be reached to pay for fence re-enclosure only or for DDOT to construct the fencing. When a fencing agreement calling for either separate payment or for DDOT to provide fencing is reached, the amount determined in the appraisal will be deducted from the total consideration. The fencing agreement, after refusal of the general acquisition offer, will specify that the condemnation proceedings by the attorneys for both sides will stipulate to the court that fencing has been settled, and the court is not to consider the cost of fencing. This decision will be confirmed in writing, advising the landowner of the acceptance of an offer acceptance agreement or notifying the landowner of the filing of a declaration.

c) Landscaping

A landowner may retain landscaping that is within the proposed ROW. The offer of just compensation for the required ROW will be reduced by the amount included in the offer unless the items are of negligible value. The provision will be stated in the offer acceptance agreement that the landowner will remove the items from the proposed ROW within 30 days.

If not removed in the allotted time, the landscaping becomes property of

Chapter 8 - Acquisitions

DDOT, and any amount deducted is forfeited. There will also be a provision that the landowner will backfill all holes to grade so as not to create a safety hazard.

When the landowner desires to retain landscaping but there is a refusal of the acquisition offer, an agreement will be entered subsequent to filing. Conditions regarding the retention of landscaping will be the same as stated above.

d) Conduits and Other Structures

Under certain circumstances, it is in the best interest of DDOT for landowners to retain usage of drainage structures, bridges or conduits for the passage of vehicles, people, and/or utility lines under or over the transportation project. This retention is sometimes done to protect the unity of property that will be bisected by the project.

The acquisition agent must have an appropriate clause included in the agreement and deeds that properly set forth rights and limitations regarding the structure(s). When conduits and/or other structures are to remain in the ROW, the following clause will be used:

“Excepting and reserving, however, unto the Grantor, his heirs and successors, as a covenant running with the remaining lands of the Grantor, the permanent right to pass beneath said _____ with a _____ shown on the plans at approximate _____ centerline station for the _____. Said facilities to be operated and maintained by the Grantor, his heirs or successors in title.”

“Nothing herein contained shall be construed as preventing the Grantee from widening, lengthening, altering or reconstructing the said means of passage or the said street within the limits of its rights of way as in the opinion of Director, Department of Transportation the necessity or convenience of the public may require, without payment of further compensation.”

Chapter 8 - Acquisitions

In appraising the required acquisition area, the appraiser is to consider that the usage of the passage is being reserved to the landowner. Damages, if any, will have to be appraised on this basis. It may not be advantageous for DDOT to allow these reservations if the street construction cost increase exceeds the value of the benefits realized in reduced ROW acquisition damages.

IPMA, TPPA or TOA should be requested to place a special note on the plans as applicable to the specific situation. The note is to advise the contractor of DDOT's arrangement with the landowner to allow an item to remain or to be installed.

H. Marked Plan Sheets

Prints of plans (plan, profile and entrance profile) are to be outlined in color to indicate the type of acquisition in accordance with Table 8-2:

Table 8-2: Plan Marking Code Based on Type of Acquisition

| Type of Acquisition | Color Outline |
|------------------------|---------------|
| Proposed Right of Way | Red |
| Permanent Easement | Green |
| Temporary Easement | Orange |
| Controlled Access Line | Dark Blue |
| Utility Easement | Yellow |

Initially two sets of plans will be color coded, one of which is to be provided to the landowner on initiation of negotiations. The acquisition agent should have plotted cross sections available for review with the landowner as well.

I. Document Consistency

The document package should be reviewed thoroughly for factual consistency. In particular, there should be no conflicts in factual information among the plans, the appraisal and the option/purchase agreement.

Chapter 8 - Acquisitions

J. Assembly of Offer Documents

The document package shall be assembled in the following order:

1. Letter of Offer to Purchase with summary of offer amount (Example 8-2)
2. DDOT's determination of offer of just compensation (Example 8-3)
3. Offer acceptance agreement (2 copies)
4. Utility agreement (if needed)
5. Colored plan, profile, and entrance profile sheet
6. Plat of partial taking
7. W-9 and Mortgage Information Sheet (Example 8-4)

8.6 Contacts with Landowners

After adequate preparations, the acquisition agent shall call the landowner and arrange a meeting where discussion can be unhurried and all questions can be fully answered. If the acquisition agent is unable to determine the landowner's telephone number or if successive calls have produced no response from the landowner, or the landowner resides outside of the United States, the acquisition agent is to send a letter to the landowner requesting a meeting by certified or registered first class mail with return receipt requested. In unusual circumstances, e-mail communications may be effective in conducting negotiations.

Note: If the landowner is eligible for relocation benefits, the acquisition agent is to coordinate the property offer with the offer of relocation benefits made by the Relocation Specialist, as referenced in Chapter 10.

The meeting should be held at the time and place preferred by the landowner. However, the acquisition agent may propose an alternative if the proposed location is not feasible or not conducive to business. The acquisition agent should know in advance if persons other than the landowner will be at the meeting. If a landowner obtains legal counsel, the acquisition agent will request written notification from the attorney or the landowner and will thereafter limit his contacts to the attorney of record. The attorney of record must be indicated in the appropriate block on the ROW Acquisition Report. If legal counsel represents the landowner, the attorney should be included in all communications and meetings. If the landowner is elderly, or has a condition such as impaired hearing, the presence of a family member or close friend at the meeting should be welcomed. If the landowner does not speak in a language spoken by the

Chapter 8 - Acquisitions

acquisition agent, an interpreter shall be retained to accompany the agent. Other than these circumstances, the presence of a third party should not be encouraged.

In the case of a corporation or limited liability company, determine that the person contacted has the authority to negotiate and/or convey the property to DDOT. If ownership differs from that shown on the title report, notify the appropriate persons for necessary changes to the title report, ROW plans, and documents. The landowner may prefer to be represented by others.

During contact with the landowner, the agent or consultants are expected to be always courteous, to fully explain the DDOT's acquisition policies and procedures, and to take a sincere interest in the landowner's concerns. DDOT representatives shall avoid the use of emotionally charged words such as "take" when referring to the acquisition of private property. The information contained in the ROW brochure shall be discussed to assure that each landowner's rights have been properly apprised. A copy of this brochure shall be given to the landowner when the offer is delivered and acknowledged by the landowner.

The order and pace of the initial meeting is entirely a matter of the agent's professional judgment. The discussion will be influenced by and adapted to the temperament and needs of the landowner as well as other dynamics of the situation. The acquisition agent should remain sufficiently in control of the discussion to assure that all essential information is conveyed accurately and completely. The acquisition agent should be patient and flexible, adjusting the presentation to the needs and reactions of the landowner. Repetition of key points may be necessary and should be done without any indication of impatience or annoyance.

Explain the physical impact of the project, the property interest DDOT is seeking to acquire for its project and any property interest DDOT will extinguish by the acquisition. Explain or reaffirm the public need and necessity of the project itself, and how the property fits into the overall project. Be positive.

Inform the landowner of the following:

- The public necessity of the facility or improvement
- The positive effects the improvement will have on the neighborhood and the remaining property

Chapter 8 - Acquisitions

- The engineering, environmental studies, and public hearings held that led to determining the final extra location
- The impacts on the landowner's property and DDOT's decisions or actions to deal with or mitigate those impacts

The effects on the property should be explained in lay terms including all proposed changes in alignment, profiles and grades of private entrances. Discuss the basic content of the acquisition's legal description with the landowner and explain it on the ROW map. Avoid technical terminology as much as possible. Show the instruments of conveyance and explain them either during or after discussing the ROW plans. Offer to walk with the landowner around the property to be acquired. If necessary, orient the owner to the acquisition and the remainder by relating the property description to physical landmarks.

Show the relationship between the layout of the proposed construction, the types and location of project improvements and the remaining land, including ingress and egress, proximity to the improvements, drainage patterns, relative elevation compared to the existing terrain, general details, the types and location of project improvements, etc. Identify where improvements or damages have been considered in the appraisal report, and what has been done about them (payment or mitigation measures).

Explain the property interest to be acquired, such as fee simple, easement, access control, temporary construction permit, etc. Explain the documents necessary to acquire that interest. In addition, the acquisition agent will furnish the landowner a summary of the offer of just compensation for the property and, where there is a fee taking, a copy of the title report. Any discrepancies in the title report should be discussed so the landowner or DDOT can resolve them.

Explain any other pre-existing interest that must be extinguished (utility easements, tenant-owned improvements, leaseholds, etc.) Adhere to the same procedures in the acquisition of less-than-fee interests and take the following actions:

- Verify that current title information is correct
- Obtain any information needed to clear the title to the property (satisfaction of judgments or liens, reconveyances of deeds of trust, missing or unrecorded documentation, etc.)

Chapter 8 - Acquisitions

Inform the landowner about the following positive aspects of the sale. DDOT provides, at no cost to the owner:

- Title insurance, a title report, or a title opinion
- The instruments of a conveyance
- Prepayment penalty costs for preexisting mortgages, recording fees, and mortgage release fees
- Opportunity for continued occupancy after acquisition
- A full cash sale
- Possible retention of improvements subject to a retention value

If the landowner presents new information or asks questions which cannot be answered with certainty, the acquisition agent may defer an answer until the matter can be researched. It is not expected that the acquisition agent will have an answer to every question. It should also be understood that the landowner's attachment to home and land might be deeper than can be addressed by a rational explanation of public's need for improved transportation. Such feelings should be acknowledged, and a rebuttal is not appropriate.

The URA¹ requires agencies to provide certain information to the owner of real property during the first meeting where just compensation is discussed. This is a written statement and summary of the basis for the amount that has been established as just compensation for the ROW being acquired. This requirement is satisfied by the letter of offer to purchase (Example 8-2), DDOT's determination of just compensation (Example 8-3), along with the agreement (option/purchase, etc.) and a print of the plans outlining the areas to be acquired and the applicable profile sheets.

Some landowners will sign the offer acceptance agreement at the initial meeting; others will be reluctant to sign. They may object to the offer amount, the acquisition, or not clearly state the reason for dissatisfaction. The landowner's initial reaction should not be taken as an unalterable attitude. An initial negative reaction may be a bid for time. The landowner may wish to consider the offer in privacy, to consult with advisors and family, or to try to find what neighbors have been offered. Communications should be kept alive and the possibility raised for a contact at a later date. The reaction at the initial meeting should not be considered a refusal unless the landowner unequivocally states that no further contacts are desired.

¹ 49 CFR 24

Chapter 8 - Acquisitions

If the landowner does not accept the offer, the acquisition agent and the landowner should agree on a time for the landowner to consider the offer, usually of at least one week. Before leaving the initial visit, the acquisition agent should schedule the time period for the next meeting, if possible.

Be alert for any of the following:

- Landowner advises of new comparable sales data that may have become available since the date of appraisal (newly recorded sales, or sales that were completed but not recorded, etc). Provide this information to the appraiser or review appraiser, through appropriate channels.
- Landowner produces new information, such as listings, earnest money agreements or options. Address each item of new information with the owner. In addressing the new information, consider the impact on just compensation.
- Any design changed the owner indicates is proposed.

Before recommending that the property be considered a refusal and submitted for an eminent domain taking, the acquisition agent should attempt to meet at least twice with the landowner over the course of at least 30 days if the landowner is still considering DDOT's offer and willing to meet with an acquisition agent. A request for administrative settlement may be initiated at any time that the acquisition agent believes a counteroffer is reasonable. In the event the landowner does not accept the offer after negotiations, the acquisition agent shall provide a 10 day letter notifying the landowner to respond and accept the offer within the 10 day period or DDOT shall initiate condemnation proceedings.

There may be circumstances where a landowner is given DDOT's offer and the final offer within the same day, same week or same meeting. Such cases may include a hostile environment where the acquisition agent is fearful of bodily harm, or the landowner has indicated a total rejection and desire not to continue any further discussions. These extreme cases must be well documented in the acquisition agent's notes and brought to the attention of the ROW Unit Manager for any further action.

8.7 Negotiation by Mail

8.7.1 Personal "face to face" contact should take place if feasible, but is not required in all cases. Typical situations where negotiations are not personally conducted generally include the following:

Chapter 8 - Acquisitions

- The landowner resides outside of the State.
- The landowner prefers to review information before meeting.
- A corporation or institution owns the property, and the responsible officer is not available to meet.
- The landowner is not legally competent to contract for the sale of real estate
- The landowner is a minor.
- The landowner is unknown, or address is unknown.

Out-of-state landowners may require that discussions be conducted by telephone with notices sent by certified or registered mail with return receipt requested. Negotiations with out-of-state landowners follow the same process as personal negotiations with the telephone substituted for personal meetings.

8.7.2 Unknown Landowners

In the case of absentee or unknown landowners, a notice will be posted on the property 10 days prior to preparation of the acquisition report. The notice will state that DDOT intends to acquire title to all or a portion of the property (Example 8-8).

8.7.3 Procedure for Negotiations by Mail

The procedure is as follows:

1. The acquisition agent shall send the following to the landowner:
 - a. The offer letter with required notices and a summary statement of the offer of just compensation.
 - b. Offer acceptance agreement to be signed by the landowner.
 - c. Form W-9 and Mortgage Information Sheet to be completed by the landowner.
 - d. ROW plans, sketches and/or plats showing the take and the effect of the taking to the residue.
 - e. A copy of the ROW brochure detailing the acquisition process.
 - f. A letter advising the landowner on the process to complete the forms, instruments, and contracts.
 - g. The name, telephone number and address of the acquisition agent who shall be responsible for answering the landowner's questions and concerns.

2. Upon return of certified mail receipt or in approximately 2 weeks, the acquisition agent should make a follow up telephone call. The acquisition agent is to complete the required discussions with the landowner and arrange a personal meeting with the landowner, if requested, for all in-state landowners.

8.8 Tenant-Owned Improvements

Tenants' rights in the leasehold and in property improvements are not automatically extinguished with the acquisition of the fee interest. Negotiations for the necessary ROW, including tenant-owned improvements, are to be conducted with the fee owner or an authorized representative, unless a disclaimer is signed by the fee owner (Example 8-5), allowing for negotiations with the tenant.

- A. If the fee owner disclaims interest in the tenant-owned improvement, either the amount of contributory value that the building, structure or improvement adds to the FMV of the real property to be acquired or the value that such building, structure or improvement generates from the removal from the real property (salvage value), whichever is the greater is to be offered and paid to the tenant if an agreement is reached

Retention of the improvement will be offered to the tenant. If a settlement is reached for the tenant-owned improvement, a separate agreement will be executed; thus, completing negotiations for the improvement. Example 8-7 is used for DDOT purchases of the improvement; retention of the improvement will then be offered to the tenant. Example 8-6 is used if the tenant retains and relocates the improvement. If the tenant does not retain the improvement, DDOT will dispose of it in the same manner as any other purchased improvement.

- B. If negotiations with the tenant fail, the appropriate FMV referenced (Section 8.8 A) will be offered to the fee owner; the fee owner will be advised of the responsibility for settlement with the tenant for the improvement. A statement to this effect will be included within the offer acceptance agreement under consideration. If the fee owner accepts the offer under these conditions, an agreement including the tenant-owned improvement will be taken. Retention of the improvement will then be offered to the fee owner. If the fee owner does not retain the improvement, DDOT will dispose of the

Chapter 8 - Acquisitions

improvement in the same manner as any other purchased improvement. The tenant will be notified in writing that an agreement, including compensation for the tenant's improvement, has been reached with the fee owner.

If the fee owner is not willing to accept responsibility for sale of the tenant-owned improvement, a Declaration of Taking is to be filed in the name of the fee owner. Just compensation stated in the declaration will include the FMV referenced (Section 8.8 A), along with the FMV of the underlying fee. The tenant will not be named in the declaration but will be notified of the proceedings. Relocation assistance entitlements will be provided in the removal of any personal property. DDOT will notify the tenant when the Declaration of Taking is filed and a court date determined.

8.9 Continuing Negotiations and Acceptance

8.9.1 General

It is not possible to establish the number of negotiation contacts that will be needed on each parcel. However, the commitment of DDOT to make every effort to acquire property by negotiations requires that negotiations extend beyond the initial delivery of the offer, if the landowner permits this to occur. A minimum of two contacts within a 30 day period is suggested. After this, the offer may be considered refused unless there is specific reason to believe that extending negotiations would be productive.

An effort should be made in subsequent contacts to determine what is preventing agreement. If the obstacle to settlement is the amount of the offer, the acquisition agent might discuss the appraisal process and factors contributing to value. Other issues may involve retention of buildings, concerns about grade changes, landscaping, utility of remainder of the property, or disruption during construction. These concerns might be relieved by factual information presented by the acquisition agent.

If it becomes apparent that the landowner will not accept the DDOT's offer, an effort should be made to obtain a statement from the landowner as to whether or an appraisal of the property to be taken has been obtained or whether the landowner intends to obtain an appraisal. If the landowner disagrees with the DDOT's proposed FMV, the basis for the highest settlement and the lowest amount the landowner will accept for the required property rights should be clearly stated in the record of contact, if possible. Additionally,

Chapter 8 - Acquisitions

all future contacts with the landowner, whether in person or by telephone, shall be similarly documented for the file.

8.9.2 Counteroffers

Real property being acquired for public purposes is based on the offer of appraised FMV. The appraisal, appraisal review, and offer process assures that landowners are treated equitably and all elements of value are fully considered in the DDOT's offer. At the time of the initial offer, the acquisition agent should not invite a landowner to make a counteroffer or indicate that counteroffers, are readily accepted. Some landowners will counteroffer at the first meeting.

When a counteroffer is made, the acquisition agent should ask the landowner for the basis of the counteroffer. The acquisition agent should proceed to explore the landowner's reasoning of value with open-ended questions without indicating either agreement or rejection. The counteroffer and the basis and reasoning offered by the landowner should be noted and reported to the ROW Unit Manager. If the counteroffer is based on legitimate value factors not previously considered, or if an administrative settlement would otherwise be appropriate, the counteroffer may contribute to a settlement.

8.9.3 Errors and Discrepancies

Discussion with the landowner and on-site observation of the property may occasionally lead to discovery of a discrepancy or omission in the plan or appraisal. This can occur despite a thorough process that included an opportunity for the landowner to accompany the appraiser in an inspection of the property. The landowner should be advised that the matter will be fully reviewed by DDOT, and the offer will be modified if it is an item that affects value.

8.9.4 Retention of Improvements

A landowner will be given the option of retaining a building in the acquisition area for a reduction in the compensation reflected in the pre-determined retention value. An amount will also be withheld as a performance bond to guarantee removal of the building from the ROW. This is a preference that must be exercised by the landowner before DDOT has accepted an option/purchase agreement or filed a Declaration of Taking.

Chapter 8 - Acquisitions

Thereafter, the landowner will be treated as any other party interested in purchase of the building for removal.

The option clauses referred to in Table 8-1 of Section 8.5.1 and which are contained in the chapter resources, address the landowner retention status of buildings entirely or partially on the acquired ROW. Table 8-3 clarifies the applicability of these clauses to the occupancy status of the building.

Chapter 8 - Acquisitions

Table 8-3: Applicability of Clauses to Occupancy Status of a Building

| Code | Relevant Clauses | Applicability |
|------|------------------|---|
| A-1 | 1 | Always applicable |
| | 8, 11 | Applicable only if building is on proposed ROW |
| A-2 | 2, 6 | Always applicable |
| | 4 | Applicable only if building is on proposed ROW |
| B-1 | 10 | Always applicable |
| | 7 | Applicable if building contains tenant-owned property |
| | 8 | Applicable only if building is on proposed ROW |
| B-2 | 6, 7, 9 | Always applicable |
| | 4 | Applicable only if building is on proposed ROW |
| C-1 | Same as A-1 | Same as A-1 |
| C-2 | 3 | Always applicable |
| | 4 | Applicable only if building is on proposed ROW |

Code Key:

A= Building owner occupied, or having only owner's personal property stored therein

B= Building tenant occupied, or having only tenant's personal property stored therein

C= Building vacant

1= Owner to retain building

2= Owner will not retain building

The ROW acquisition report (Form ACQ-REPORT) will be marked to indicate the retention status of buildings and improvements on all property acquired. The landowner may be interested in retaining landscaping or site improvements such as sheds, above ground pools or decks. It should be determined whether such items are considered real property and included in FMV offer. If they are regarded as real property, a reasonable retention value will be assigned. If the appraisal does not indicate a contributing value for the landscaping or site items, no reduction is made in compensation to the landowner. The landowner must agree to remove the items from the proposed ROW within 30 days from the date of acceptance of the option/purchase agreement and also backfill any holes or depressions that may become a hazard.

Chapter 8 - Acquisitions

8.9.5 Acquisition of Residues

Residue parcels may be acquired to better integrate the ROW with a neighborhood or with a natural or geographic feature. The acquisition of the residue may help advance local plans for development or enhancement of areas adjacent to the ROW.

Land areas outside the ROW may be identified for potential acquisition during the project field review stage or during negotiations for the ROW acquisition. The ROW Unit Manager shall be consulted for approval of the acquisition of residues during the PDP and when acquisition is requested by the landowner.

Occasionally it may be in the best interest of the landowner and DDOT to acquire residue on which a building is located. The ROW Unit Manager must confirm that there is economic justification for the acquisition. A relevant consideration is that relocation benefits are to be provided to displaced persons, regardless of the conditions under which the property is acquired.

If acquisition of a residue is economically justified or if the residue is determined to be an Uneconomic Remnant, the ROW Unit Manager will document the determination with a memorandum to the project file. The acquisition of a residue will also be noted by the acquisition agent in the acquisition report.

Buildings on residue parcels to be acquired will be assigned identification numbers under the following conditions:

- The landowner retains the building(s)
- The building does not contribute to the value of the residue parcel and DDOT will dispose of the building or improvement by sealed bid, auction, negotiated retention sale, negotiated sale, or demolition contract

All properties to be acquired (including fee simple, lease or easement), in whole or in part, shall be assessed for the potential presence of hazardous materials and cleared by the Environmental Unit prior to initiating negotiations. Property contamination and associated clean-up costs shall be considered as a factor in determining just compensation for the property or to proceeding with the purchase.

Chapter 8 - Acquisitions

With regards to the purchase of the residue, the area outside of the proposed ROW not originally intended to be acquired was probably not included in the original EA. The additional area should be evaluated prior to the decision being made to acquire the residue.

8.10 Right of Entry

In exceptional circumstances, DDOT may obtain a right of entry for construction purposes before making payment to the landowner. This does not apply to obtaining a right of entry with utility companies, where payment for a right of entry is not typically required. Mail an informational copy of the approval to the FHWA Division Administrator. This provision is intended to prohibit the use of rights of entry solely to meet a predetermined construction schedule, unless the project itself is of an emergency nature. Rights of entry are not acceptable for FAA projects.

8.11 Concluding Negotiations

If the offer is acceptable to the landowner, the Offer Acceptance Agreement is to be signed by all parties named in the document, and each signature notarized. The acquisition agent will inquire as to the existence of a tenancy, either written or oral, unless this has been previously determined. If there is a tenancy, but no tenant-occupied buildings within the ROW, the following note will be entered into the comment section of the ROW acquisition report (Form ACQ-REPORT):

“It has been determined that the land hereby reported is subject to tenancy; however, no tenant-occupied buildings are to be acquired.”

If tenant-occupied buildings are within the ROW being acquired, the sections of the acquisition report for “Improvements” and “Relocation” are to be completed.

The acquisition agent is to forward the offer of acceptance agreement and title report to the OAG requesting that they prepare the Purchase Contract. The OAG will provide the Purchase Contract to the agent for signatures of the appropriate parties. Should there be any issues regarding language in the agreement the landowner’s representative shall resolve them with the OAG. Once the language is resolved all parties shall execute the agreement and it will be ready to submit to the settlement agent.

Chapter 8 - Acquisitions

8.12 Terminating Negotiations

The acquisition agent will afford a reasonable opportunity to each landowner to settle by signing an offer acceptance agreement. The decision to terminate negotiations and recommend filing a Declaration of Taking should be made after a review of all circumstances including the prospect for success of further contact and the urgency of the acquisition to meet a project schedule. In no instance, however, will a project schedule be a reason for terminating negotiations prior to attempting two contacts with a landowner. The following are reasons to terminate negotiations:

- Landowner or attorney unequivocally states that no further contact is wanted
- Landowner displays menacing or threatening conduct
- No progress on settlement after repeated personal contacts
- Landowner becomes unavailable, or whereabouts unknown

Sufficient time should be allowed for a landowner to fully consider an offer and to consult with other parties before considering the offer refused. In the event the landowner does not accept the offer after negotiations, the acquisition agent shall provide a 10 day letter notifying the landowner to respond and accept the offer within the 10 day period or DDOT shall initiate condemnation proceedings. Negotiations may be resumed at any time on initiative of the ROW Unit or the landowner; negotiations may also be resumed after the filing of a Declaration of Taking.

8.13 Administrative Settlements

8.13.1 General

Administrative settlement implies that the amount of consideration agreed is greater than the approved offer of just compensation. A proposed administrative settlement must consider DDOT's responsibility to treat all landowners equitably and fairly in regard to payment for property acquired for ROW.

Administrative authorization for purchase of property for a higher consideration than the appraised FMV and approved just compensation should be granted under certain limited circumstances. Administrative settlements are considered only if reasonable effort has been made to settle based on appraised value. In addition, an administrative settlement must be properly documented and authorized.

Chapter 8 - Acquisitions

An administrative settlement may be reached any time after the initial offer, based on the approved appraisal, has been made to the landowner. If settlement is reached after filing a Declaration of Taking under eminent domain procedures, the process is termed an “Agreement after Declaration.”

8.13.2 Settlement during the Negotiation Process

When an agreement cannot be reached on the offer to the landowner and the landowner has requested additional compensation (counteroffer), which the negotiator believes is reasonable, the negotiator may request an administrative settlement for an increase in compensation to be paid the landowner from ROW Unit Manager.

If the acquisition agent does not believe the landowner’s counteroffer is reasonable, acquisition agent shall negotiate to obtain a monetary value for an administrative settlement, which the acquisition agent believes to be reasonable, and would recommend for approval.

The acquisition agent should make it clearly understood that any administrative settlement above the compensation offered is subject to DDOT and DC Council approval. The acquisition agent shall then prepare the justification for administrative settlement and process the assembly for approval.

Once the ROW Unit Manager has approved and the other required authorizations are obtained, the acquisition agent shall meet with the landowner and advise the landowner of the approved administrative settlement. If the landowner does not accept the approved settlement, the DDOT offer amount reverts back to the original offer. If the landowner accepts the settlement amount, the option/purchase agreement is amended to reflect the agreed on amount.

The ROW Unit Manager has the option of approving or recommending, subject to settlement authority, an increase in compensation higher than the offer amount and lower than the landowner’s request. If the settlement recommendation is not approved or approved for a lesser amount, they shall inform the landowner that acquisition agent the request for additional compensation has not been approved. The landowner has the option of submitting a revised counteroffer or providing more support for the initial

Chapter 8 - Acquisitions

counteroffer. The acquisition agent shall attempt to reach a settlement for the lesser amount suggested by the ROW Unit Manager during the original settlement review process. If the landowner insists upon the previous offer without providing more support for their counteroffer, the acquisition agent is to proceed with initiating eminent domain procedures.

8.13.3 Justification for Administrative Settlements

There are many factors that may be considered for the approval or rejection of an administrative settlement for more money than the offer, such as the cost of the eminent domain procedure or valuation problems. The following factors may be considered in evaluating potential administrative settlements:

- Legal complications
- Subjectiveness of opinions as to damages to the residue
- Trend of condemnation awards on similar recent cases
- Range of probable testimony as to fair market value
- Opinion of legal counsel as to the potential outcome of condemnation case
- Estimate of trial cost
- Other risk factors which would increase cost to DDOT

If a landowner submits a counter offer requesting special construction items not shown on the plans, submit the request to the IPMA for approval. Write the special construction requests in clear enough detail to avoid misinterpretation. The IPMA project manager must approve the request in the space provided on the request letter before DDOT is committed to any special or additional construction. If the items requested might affect the value of the part to be acquired or the remainder, handle the request as an administrative settlement.

In considering potential administrative settlements, consideration should be given to assure consistent treatment of all landowners and to assure public confidence in land acquisition procedures that the decision is in the best interest of the public and fair to the landowner.

The extent of the written explanation is a judgment determination where no limits can be set but should be consistent with the situation, circumstances, and amount of money

Chapter 8 - Acquisitions

involved. Justification should not be limited to administrative savings only, but rather, should include all relevant facts and reasoning.

8.13.4 Authority to Approve Administrative Settlements

In the event the proposed administrative settlement exceeds the approvals granted by DC Council when the project was authorized for acquisition the ROW Unit Manager shall make the necessary arrangements to have the proposed administrative settlement added to the DC Council's agenda and shall be prepared to provide details about the settlement and answer questions.

The acquisition agent has the authority to approve an administrative increase over the approved offer of just compensation up to \$1,000. The acquisition agent will note such approvals and the justification for the increase of the acquisition report.

The ROW Unit Manager has the authority to approve an administrative increase over the offer of up to 5% not to exceed a \$25,000 increase in the approved amount of just compensation. The approval and supporting justification must be in writing. The approval document must be attached to the ROW acquisition report. The authority for approval of administrative increases in excess of \$25,000 or 5% of the approved offer of just compensation rests with the Director of DDOT. The ROW Unit Manager shall forward the recommendation to the Director and provide the supporting data provided by the acquisition agent and/or landowner. Space will be provided for on the recommendation letter assembly for the Director to indicate approval or rejection.

8.14 ROW Acquisition Report

The ROW acquisition report (Form ACQ-REPORT) is the administrative record of the property acquisition; it is the vehicle for processing the acquisition through the settlement/eminent domain process and for payment of compensation. The acquisition agent should initiate the acquisition report form when preparing for first contact with the landowner of each parcel.

It is critical that the acquisition agent prepare a final ROW acquisition report immediately following negotiation. It must be thorough, accurate and complete. All applicable spaces are to be completed, blocks checked, and appropriate remarks by the agent are to be recorded. The contact comment section of the report should be concise yet have sufficient detail to reflect the

Chapter 8 - Acquisitions

main points in the negotiations that have been concluded. Contact comments should be entered as contacts are made, rather than at the end of the process.

The ROW acquisition report shall include the following information that the acquisition agent was provided or obtained:

1. Latest title information from the title report or landowner. Information regarding mortgages or judgments shown on the title report or title binder should be verified with the landowner and listed as being active or released. Information regarding the death of a co-landowner should be listed and a copy of death certificate provided.
2. Latest information on the appraisal and determination of the offer of just compensation. If the acquisition agent made any changes to the appraised value, a copy of the marked revised summary sheet should be attached to the report.
3. A written description of compensation agreed upon or offered prepared for inclusion in the deed.
4. Contacts entries with the landowner should include the following:
 - The contact number
 - The date and time of contact
 - The amount and/or other terms or conditions offered by DDOT and the fact that the offer was made both verbally and in writing; repeat the same information for any revised offer
 - The amount and/or other terms or condition asked by the landowner
 - The acquisition agent's name (for every contact, since more than one agent may make contact due to illness, vacation, etc.)
 - The full name of each person present (Mr. John F. Jones, not Mr. Jones) and the name of any party in interest who is contacted by telephone, in person or by mail.
 - The actual location of any meeting (the dining room of the landowner's residence; attorney John T. Smyth's office in the Block Building, etc.)
 - Comments and remarks summarizing the meeting, including the following:
 - Pertinent materials received from, or left with, the landowner; list all documents given to each landowner, such as the MOA, brochure, warranty, deed, etc.
 - Responses to specific questions or concerns, or promises made to the landowner
 - Problems noted or special requests made (construction features, etc.)

Chapter 8 - Acquisitions

- The specifics of any relocation benefits discussed with the landowner
 - An explanation of the landowner's right to retain improvements, if applicable
 - The offer to purchase Uneconomic Remnants, if any
 - An explanation of the 90-day notice or rental provisions, if applicable
 - An explanation of the prepaid taxes or other reimbursable items
 - The details of any counter-offers and the outcomes
 - An explanation of any delays if a prompt offer was not made, and an explanation of any delays between subsequent contacts
5. Information on any occupant of the property that will be displaced as a result of the acquisition. The relocation assistance benefits should also be included in the Relocation Specialist's notes.
 6. Information of any improvements acquired with the land. Each improvement should have been assigned an identification number and listed separately. Any special disposition of the improvement should be noted (i.e., landowner or tenant to retain and remove by mm-dd-yyyy).
 7. Special instructions for closing/settlement company or attorney.
 8. Signed certification from acquisition agent regarding no conflicts of interest and negotiations.
 9. Cost to cure items such as wells, irrigation systems, etc. within the proposed ROW, are to be identified in the remarks and the time limit for discontinuance of their use specified.

All ROW acquisition reports, as well as legal documents, plans and descriptions are to be reviewed and verified by ROW Unit Manager before approval.

8.15 Process for Settlement or Eminent Domain

Upon assembly of all required information for the closing of a voluntary conveyance or initiation of eminent domain procedures, the agent is to submit the closing assembly to the title company assigned to handle the settlement process or with the approval of the Associate Director of TPPA to the OAG for the filing of a Declaration of Taking. See Chapter 11 for details on settlements and eminent domain, and for the information required to process each case.

Chapter 8 - Acquisitions

8.16 Notice to Vacate

The construction of a project must be scheduled so that no person lawfully occupying real property will be required to move from a dwelling, business, farm or non-profit organization without at least 90 days written notice of the intended vacation date. There may be instances when additional time would be appropriate due to the size of the operation of a business or non-profit organization, or conditions of hardship affecting residential displacees.

A 90-day notice will be sent to landowners and tenants simultaneously in accordance with one of the procedures outlined in Chapter 10 (Relocation Assistance). The vacation date is confirmed at the acceptance of an option or at the filing of a Declaration of Taking. The notice must include a specific date by which the property shall be vacated. If comparable replacement housing is not available to the displaced individual or family, the issuance of the 90-day notice will be delayed until such housing is made available.

A comparable replacement dwelling will be considered to have been made available to a person, if

1. The person is informed of its location; and
2. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property (within 90 days); and
3. The person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled sufficient time to complete the purchase or lease of the property.

If negotiations precede the establishment of the replacement housing supplement, the acquisition report will stipulate that the final notice is not to be issued at that time. Subsequently, when the supplement is established and provided the displacee, the agent will issue the appropriate final notice.

8.17 Donations

Donations may be made and accepted at any time during PDP provided the following:

1. The landowner is advised that they have the right to have their property appraised when necessary and to receive just compensation.³
2. When an appraisal is made, the appraiser offers the landowner the right to accompany the appraiser on the inspection of the property.

Chapter 8 - Acquisitions

For any property that is donated prior to environmental study clearance, the conveyance document must contain the following clauses regardless of whether the donation is used for a credit to DDOT's matching share:

1. All alternatives to a proposed alignment will be studied and considered pursuant to NEPA.
2. The acquisition of such property will not influence the NEPA process for the project, including the need to construct the project or the selection of specific location.
3. The property will be conveyed to the grantor or its successor in interest if such property is not required for the alignment chosen after the completion of the environmental document.

Prior to the acceptance of a deed donating private property to DDOT for transportation purposes, the ROW Unit will perform a due-diligence investigation of the property. This investigation may utilize information provided by the landowner and verified by the ROW Unit or research performed by the ROW Unit.

At a minimum, the following items should be determined to be acceptable to DDOT:

1. Landowner has a clear and unencumbered title to the property being donated. Utility easements and other typical easements need not be cleared for the property to be donated for transportation purposes.
2. The property has no known environmental contamination. Evidence that the property has not been used for a suspect contaminating activity or an EA provided by the landowner can be used to make this determination.
3. That the improvements located on the property would not unreasonably increase DDOT cost of acquisition and demolition.

Upon completion of a satisfactory due diligence, DDOT should execute the donation deed and accept the property from the landowner. Upon recordation of the deed, the ROW Unit PM specialist shall assume control of the property and improvements and provide PM services until the property is needed.

If it is determined that an appraisal is not necessary, the landowner's signature must be obtained on the following written statement:

Chapter 8 - Acquisitions

“(My/our) donation of (the above-referenced parcel) to DDOT is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation. (I/We) also release DDOT from the obligation of preparing an appraisal of this donated parcel.”

If an appraisal is necessary, the landowner’s signature must be obtained on the following written statement:

“(My/our) donation of (the above-referenced parcel) to DDOT is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation.

If the landowner requests an appraisal, valuation shall be handled in accordance with this manual.

THIS PAGE INTENTIONALLY LEFT BLANK

Chapter 8 - Acquisitions

Chapter Resources

Major Tasks

- Negotiation Process

Attachment

- Clauses for Offer Acceptance Agreement

Examples

- Early Notification Letter (Goodwill) (see Example 8-1)
- Offer to Purchase Letter (see Example 8-2)
- Approval of Offer of Just Compensation Letter (see Example 8-3)
- Mortgage Information Sheet (see Example 8-4)
- Disclaimer of Partial Property Interest (see Example 8-5)
- Tenant Retention of Improvements (see Example 8-6)
- Purchase of Tenant-Owned Improvement Agreement (see Example 8-7)
- Posting Unknown Owner (see Example 8-8)
- Negotiations Scope of Work (See Chapter 16, Example 16-3)

Handout

- “DDOT’s Right of Way Acquisition for Transportation Projects” brochure

Forms

- Right of Way Acquisition Report (form ACQ-REPORT)

References

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- District of Columbia Code
<http://dcode.westgroup.com>

Chapter 8 - Acquisitions

Major Tasks – Negotiation Process

| | |
|---|--|
| Receive authority to acquire and approve appraisal | TPPA, OCFO |
| Review plan changes since Appraisal Assignments | ROW Unit Manager |
| Review status of appraisal reports/appraisal review (Check due date) | ROW Unit Manager OAG |
| Review title report status (Check due date) | ROW Unit Manager OAG |
| Assign parcels to acquisition agent based on priorities and due dates | Acquisition Agent |
| Review title report, list questions and resolve with ROW Unit Manager | Acquisition Agent |
| Verify appraisal status and schedule. Update if necessary. | Acquisition Agent |
| Prepare documents for offer based on approved appraisal: <ul style="list-style-type: none"> • Offer letter • Offer acceptance agreement • Marked plans | Acquisition Agent |
| Contact relocation specialist, if applicable | Acquisition Agent |
| Coordinate offer of Replacement Housing Payment with relocation Agent, if applicable | Acquisition Agent Relocation Specialist |
| Contact landowner and arrange meeting or mailing offer package | Acquisition Agent |
| Meet with landowner and explain offer plans, project, etc. | Acquisition Agent Relocation Specialist |

Chapter 8 - Acquisitions

| | |
|--|---------------------------------------|
| Answer landowners questions, consult with IPMA or TPPA, if necessary | Acquisition Agent |
| Contact landowner and encourage a response to offer or acceptance of offer | Acquisition Agent |
| Consider any counteroffer and advise landowner if reasonable it will be considered by DDOT administration | Acquisition Agent |
| If counteroffer is received, prepare justification statement and process for review and approval within DDOT | Acquisition Agent |
| Make a final effort to reach an agreement | Acquisition Agent |
| Advise landowner of impasse and intentions to proceed with eminent domain. Explain eminent domain process | Acquisition Agent |
| Prepare Report of Negotiation and request appropriate action | Acquisition Agent |
| Send documents to OAG if a voluntary conveyance is approved at settlement amount. Request purchase contract | Acquisition Agent ROW Unit Manager |
| Provide purchase contract to landowner and request execution | Acquisition Agent |
| Provide executed purchase contract and closing documents to Title Company's settlement agent and OAG | Acquisition Agent |
| Provide any coordination necessary during settlement | Acquisition Agent |
| If eminent domain is necessary provide eminent domain request and information to OAG | Acquisition Agent ROW Unit Manager |

Chapter 8 - Acquisitions

| | |
|--|-------------------|
| Provide documents and signatures needed by OAG | ROW Unit Manager |
| Provide notice to landowner when Declaration of Taking is recorded | Acquisition Agent |
| Complete parcel file and retain for permanent records | Acquisition Agent |

Chapter 8 - Acquisitions

Attachment

NOTE: The following clauses will be entered on options in accord with the applicability column on Table 8-1 and 8-2.

Clause No. 1

“Consideration: \$_____, in full for land, all improvements thereon, and any and all damages. The landowner is to retain possession of building(s) No(s). D-_____ and hereby agrees that the total consideration shall be reduced by the sum of \$_____, which represents payment for the said building(s). Nothing herein contained is to be construed as guaranteeing the issuance of a permit for moving said building(s) on or across streets or highways.”

“It is understood and agreed by the landowner that the aforesaid building(s) shall be removed by the landowner within _____ days after notice of acceptance of this option by the District. The landowner also agrees that the sum of \$_____ is a guarantee by him that he will remove said building(s) from the right of way within the hereinabove designated time limit.”

“The building(s) is (are) to be completely removed down to the non-combustible portion of the foundation(s) thereto, leaving the premises in a neat and presentable condition satisfactory to the District Department of Transportation. It is further understood and agreed that if said building(s) is(are) not removed from the right of way within the _____ days specified, the landowner does forfeit the amount paid for such building(s) and the amount of guarantee being withheld pending removal of said building(s) which totals \$_____, together with all retained rights in said building(s). The District will then have the right of remove and dispose of said building(s) without any further responsibility or obligation to the landowner.”

Clause No. 2

“It is understood and agreed by the landowner that the property will be vacated and all personal property removed from the building(s) within or encroaching upon the proposed right of way herein described within _____ days after notice of acceptance of this option by the District.”

Chapter 8 - Acquisitions

NOTE: If a family or a business occupies the property, the following is to be made a part of Clause No. 2.

“An extension of the above established vacation date may be permitted by the District on a rental basis, provided conditions are such that an extension of time will not cause a delay in the advertisement of the project for construction.”

Clause No. 3

“It is understood and agreed by the landowner that the building(s) within or encroaching upon the proposed right of way herein described may be removed by the District or her agents at any time after notice of acceptance of this option by the District.”

Clause No. 4

“It is understood by the landowner that building(s) No(s). _____ (**hereby briefly describe same**) is (are) located partially on the remaining property of the landowner. The landowner hereby agrees by the execution of this option to allow the District or her agents or contractors to remove the entire building(s) and hereby grants permission for such temporary encroachments on his remaining property as may be necessary for the removal of said building(s).”

Clause No. 5

“It is specifically understood and agreed that when the building(s) is (are) vacated, none of the realty is to be removed from the property.”

Chapter 8 - Acquisitions

NOTE: Clause No. 6 will be inserted in all options covering items paid for that could be reasonably removed from the premises prior to possession by the District. In order to eliminate any questions as to what items are being acquired, options should enumerate those items of doubtful nature such as fixtures or personal property.

Clause No. 6

“The landowner further agrees that he will compensate the tenant(s) of the said land for his (their) interests and any and all legally compensable damages said tenant(s) may suffer and sustain by reason of the conveyance agreed to hereunder and by reason of the said proposed construction, and agrees to save the District harmless from any and all claims that may be made by such tenant(s) for the taking and/or damaging of the property by reason of such conveyance and/or construction.”

Clause No. 7

“It is understood and agreed that the landowner is retaining possession of the building(s) designated as D-_____, which is (are) located partially on the proposed right of way, at its (their) retention value, and further agrees to remove the entire building(s) or demolish it (them). It is further understood and agreed that the landowner will not cut the building(s) off at the right of way line and leave the remainder(s) of the building(s) in place.”

Clause No. 8

“It is understood and agreed to by the landowner that he relinquishes all real property interests, including income rights, to building(s) No(s). _____ within or encroaching upon the proposed right of way herein described at the end of a period of _____ days (**not to exceed 90 days for non-commercial property**) after notice of acceptance of this option by the District or as part of the date within the aforesaid period of time on which the property is vacated. It is further understood and agreed to by the landowner that the District will serve vacation notice to the occupant(s) to vacate the aforesaid buildings.”

Chapter 8 - Acquisitions

Clause No. 9

“It is understood and agreed to by the landowner that he relinquishes all real property interests, including income rights, to building(s) No(s). _____ within or encroaching on the proposed right of way herein described at the end of a period of _____ days (**not to exceed 90 days for non-commercial property**) after the notice of acceptance of this option by the District or as of the date within the aforesaid period of time on which the property is vacated. It is further understood and agreed to by the landowner that the District will serve vacation notice to the occupant(s) of the aforesaid building(s). It is also further understood and agreed that the landowner has the privilege of retaining the aforesaid building(s) and that at such time as the District has determined the date the building(s) will be vacated, a retention sales agreement will be presented to the landowner for his execution; said agreement will provide for a retention value payment of \$_____ and the posting of a cash bond of \$_____ which bond will be returned with the terms of the said retention agreement.”

Clause No. 10

“It is understood by the landowner that the building(s) No(s). _____ is (are) located partially on the right of way described herein and partially on the remaining property of the landowner. The landowner hereby grants unto the District, its agents or contractors, permission to enter on remaining lands subsequent to his removal of aforesaid building(s) for the purpose of doing such work as deemed necessary by the District to eradicate the physical evidence as to the prior existence of the building(s). The landowner does also hereby grant unto the District, its agents or contractors, permission to enter upon his remaining lands for the purpose of effecting the removal of the aforesaid building(s) in the event that the landowner does not comply with the terms of the option.”

Chapter 8 - Acquisitions

(Example 8-1 – Early Notification Letter)

Street: _____

Project: _____

Landowner
Address

Dear Mr. and Ms. :

As you are probably aware from public information meetings held during the project development process, street improvements are planned for the section of (street) between (street) and (street). The planning for this project has now advanced to the right of way acquisition stage. Your property will be affected by the right of way acquisition.

The District Department of Transportation (DDOT) Right of Way Unit , or a consultant firm hired by DDOT, will negotiate with the affected property owners for the various rights of way and easements needed to construct these improvements. Over the course of the next several months, representatives from my office or a consultant firm will be contacting you and will explain the process and the various steps which will be followed. The assigned real estate appraiser will provide you with an opportunity to accompany him/her when he/she inspects the property as a part of appraising the value of these rights of way and easements.

I would like to ensure you that as this process continues, you will be provided with complete information as to how the street improvement affects your property, the determination of just compensation, and that you will be afforded a reasonable time frame in which to decide if you are in agreement with the offer we present. Enclosed is a brochure that more fully explains the process.

While an individual negotiator will be assigned to your property as the process continues, please feel free to contact me at () - should you have nay concerns or questions. DDOT looks forward to working with you as we move this project forward toward construction.

Sincerely,

Right of Way Unit Manager

Chapter 8 - Acquisitions

(Example 8-2 – Offer to Purchase Letter)

(date)

Street: _____

Project: _____

Federal Project: _____

RIGHT OF WAY - Dick and Jane Williams

Parcel TNC-001

Mr. and Mrs. Dick Williams

Address

City/State/Zip

Dear Mr. and Mrs. Williams:

The District of Columbia's Department of Transportation (DDOT) is buying right of way for this project and as you were advised in an earlier letter, your property will be affected by the proposed construction. [Our firm _____ has been contracted to purchase the necessary right of way for the project and] or [I am responsible for the purchase of right of way on this project] we will be your point of contact.

An appraiser has determined the fair market value of your property as required by law. This appraiser made a thorough study of the real estate values in your area by confirming sales of similar properties that have taken place over the last several years. Real estate trends and activities that might affect the value of your property were carefully considered. Based upon these studies and the impact of the proposed road construction on your property, DDOT, as evidenced by the attached letter, has established the following fair market value and offer of just compensation:

| | |
|--|--------------------|
| Land and Improvements | \$114,155.00 |
| Damages to Remaining Land & Improvements | <u>\$ 2,520.00</u> |
| TOTAL OFFER | \$116,675.00 |

Enclosed for your review is the title report and a copy of Plan Sheet No. 4 showing outlined in RED the area required fee simple, outlined in ORANGE is the additional needed for a temporary construction easement, outlined in YELLOW is the area for a permanent PEPCO utility easement and outlined in BLUE is the proposed controlled access line.

Also enclosed is an option/purchase agreement setting forth the above consideration, the conveyance conditions, and description of the area required.

Chapter 8 - Acquisitions

Should this offer be acceptable, we would very much appreciate your executing the option/purchase agreement and returning the instrument to me. Also enclosed are Mortgage and Taxpayer Identification Number Forms. Please provide any applicable information and include your Social Security Number/Taxpayer ID in the space provided. This information is necessary to expedite your closing. Upon receipt, we will order a check for the specified amount and prepare a deed for your signature.

You may be entitled to a reimbursement or reduction of your real estate taxes, depending on the circumstances at the time the transfer is concluded; however, should you have any questions pertaining to this, please contact your local treasurer for further details.

I would be glad to arrange a meeting with you to discuss this proposed acquisition. If you have any questions, please call me at (xxx) xxx-xxxx.

Thank you for your consideration of our offer. Through your cooperation, the District's transportation system will remain among the nation's finest. I'll call you within a few days to discuss your decision.

Sincerely,

Name
ROW Acquisition Agent

Enclosures

Chapter 8 - Acquisitions

(Example 8-3 – Approval of Offer of Just Compensation Letter)

Date

Name of Landowner(s): Dick Williams and Jane Williams

Parcel/Case No.: TNC-540

Street: Thomas Nelson Circle

Project Number: _____

The purpose of this letter is to advise you that on behalf of Department of Transportation of the District Columbia, I have approved the sum of SEVEN THOUSAND NINE HUNDRED & 00/100 (\$7,900) for the purchase of the right of way, easements and/or other rights necessary in conjunction with the captioned project. The right of way, easements, and other included items are as shown on sheets _____ of the Plans for the Project.

The following items of payment are included in the above approved monetary compensation:

| | |
|---|--------------------|
| 2,771 square feet in fee simple @ \$1.15 per sq. ft. = | \$3,186.65 |
| 380 square feet in revertible slope easement @ \$1.15 per sq. ft., x 25% = | \$109.25 |
| 163 square feet in temporary construction easement @ \$1.15 per sq. ft. x 15% = | \$28.12 |
| On site improvements: | |
| Three large trees, contributory value = | \$1,500.00 |
| 80 linear feet of 4 foot high, 1 foot wide retaining wall @ \$16 c ft/x .6 = | <u>\$3,072.00</u> |
| | Total \$7,896.02 |
| | Rounded \$7,900.00 |

The representative whose signature appears below as Acquisition Agent, in addition to delivering this written offer of just compensation, will provide the proposed plans and explain the acquisition, the proposed construction, and the effect upon any property remaining.

Acquisition Agent

Right of Way Unit Manager
District Department of Transportation

Chapter 8 - Acquisitions

(Example 8-4 – Mortgage Information Sheet)

DEED OF TRUST/MORTGAGE INFORMATION

(Please Complete and Return This Form)

In order to conclude this transaction, DDOT's Title Company or the District's Office of Attorney General may need to obtain a partial release from all deeds of trust or mortgage loans that you may have on your. This procedure complies with rules of the agreement between you and your mortgage company. Please be advised that your noteholder may request a portion of the agreed-upon compensation. Any division of the agreed-upon compensation must be approved by you as the landowner.

At the time the closing package is prepared, any applicable partial releases will be requested. To keep you informed of the process, you will receive a copy of the transmittal letter to your noteholder. The Title Company will obtain these releases and will also respond to the inquiries and requirements of your mortgage company.

To handle this procedure in the timeliest manner, we need to obtain the current mortgage information on your property. As with all transactions, we will review your ownership of this property through research of courthouse records. The information you provide will update our research, furnish the loan number and ensure the partial release is forwarded to the current mortgage company as soon as possible.

Landowner(s): _____

Parcel No.: _____ Project Ref.: _____

NO OUTSTANDING MORTGAGES EXIST ON THIS PROPERTY

DEED OF TRUST/MORTGAGE

Name of Mortgage Company/Bank/Individual Noteholder to which/whom you make payment:

Account No./Loan No.: _____

Address: _____

Comments: _____

DEED OF TRUST/MORTGAGE

Name of Mortgage Company/Bank/Individual Noteholder to which/whom you make payment:

Account No./Loan No.: _____

Address: _____

Comments: _____

Signature

Date

Chapter 8 - Acquisitions

(Example 8-5 – Disclaimer of Partial Property Interest)

DISCLAIMER

I/We, _____, the fee owner/owners of that certain land, identified as Parcel _____, required for the construction, reconstruction, alteration and maintenance of Project _____, do hereby, as evidenced by my/our signature/signatures below, disclaim any interest in the _____ located on such property, which structure is owned by _____. By executing this disclaimer, I am/We are not disclaiming any interest I/we own in the land on which the _____ is located nor in the agreement between _____ and me/us

WITNESS the following signature/signatures and seal/seals:

_____ (SEAL)

_____ (SEAL)

Chapter 8 - Acquisitions

(Example 8-6 – Tenant Retention of Improvement)

THIS AGREEMENT, made this ____ day of _____, 20 __, by and between _____, hereinafter designated as Grantor (even though more than one), and the District of Columbia, Department of Transportation, Grantee.

WITNESSETH: THAT WHEREAS, the Grantee proposes to or has acquired fee simple title to that certain land described as follows, which land now or formerly belonged to (landowner), and is needed for the construction, operation and maintenance of ____ Street, Project _____:

WHEREAS, a (Building/Improvement), hereinafter referred to as improvement, belonging to the Grantor is situated upon the hereinabove described land and (landowner) has disclaimed any interest in and to the improvement, and

WHEREAS, the Grantor, as evidenced by his signature to this instrument, disclaims any interest in and to the above described land; and

WHEREAS, it is the desire of the Grantee to have the improvement removed from the hereinabove described land; and

WHEREAS, it is the desire of the Grantor to retain ownership of and remove the improvement from the above described land.

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00) cash in hand paid by the Grantee to the Grantor, receipt of which is hereby acknowledged, and the additional consideration \$_____ to be paid to the Grantor by the Grantee, the Grantor hereby agrees to remove the improvement from the hereinabove described land within ____ days from the date of this instrument or on or before _____. It is understood and agreed between the parties to this instrument that should the improvement not be

Chapter 8 - Acquisitions

removed within the specified period, that although the Grantor will remain entitled to the monetary sum specified in this agreement, upon payment thereof, all rights, title and interest in and to the improvement will forthwith vest in the Grantee who will remove and dispose of the improvement as it sees fit.

There have been no other promises or considerations not set forth in this agreement.

WITNESS the following signature and seal:

_____ (SEAL)

_____ (SEAL)

Chapter 8 - Acquisitions

(Example 8-7 – Purchase of Tenant- Owned Improvement Agreement)

THIS AGREEMENT, made this _____ day of _____, 2006 by and between (tenant), Grantor (even though more than one), and the **DISTRICT OF COLUMBIA**, Department of Transportation, Grantee.

WITNESSETH: THAT WHEREAS, the Grantee proposes to or has acquired fee simple title to that certain land described as follows and which land now or formerly belonged to (landowner) and is needed for the construction, operation and maintenance of (Street), Project _____: (Parcel Description)

WHEREAS, a building identified on the plans for the Project as D-_____; and, belonging to the Grantor is situated in whole upon the hereinabove described land and (landowner) has disclaimed any interest in and to the building; and,

WHEREAS, it is the desire of the Grantee to acquire title to the building so that same may then be removed from the hereinabove described land; and,

WHEREAS, the total value of the building and appurtenances as determined by the Grantee is \$ _____ and the Grantor has concurred in this valuation.

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00) cash in hand paid to the Grantor by the Grantee, receipt of which is hereby acknowledged, and the additional consideration of \$ _____ to be paid to the Grantor by the Grantee, and the Grantor hereby grants and conveys unto the Grantee with general warranty all his rights, title and interests in and to the building and appurtenances.

The Grantor hereby agrees to vacate and remove all personal property from the building within _____ days from the date of this agreement or on or before _____.

Chapter 8 - Acquisitions

The Grantor hereby agrees that when the building is vacated, none of the realty is to be removed from the property.

There have been no other promises or considerations not set forth in this agreement.

WITNESS the following signature and seal:

_____ (SEAL)

_____ (SEAL)

(Notary Statement)

Chapter 8 - Acquisitions

(Example 8-8 – Posting Unknown Owner)

Example 8-8

DATE _____

TO WHOM THIS MAY CONCERN:

A representative of the District of Columbia Department of Transportation has made a diligent search in order to contact or locate the whereabouts of the owner or owners of this property. Having been unable to locate the owner or owners, and in order for the Mayor to gain title to the land for the construction of _____, Project _____, a Declaration of Taking will be filed with the Clerk of the Superior Court of the District of Columbia for the benefit of the owner or owners.

(signed) _____, Right of Way Unit Manager

District Department of Transportation
941 North Capitol Street, NE
Suite 2300
Washington, DC 20002
Telephone _____

Chapter 8 - Acquisitions

(Form ACQ-REPORT)

d.

DISTRICT DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY ACQUISITION REPORT

STREET: _____

PROJECT : _____

PARCEL : _____

LANDOWNER: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

TELEPHONE HOME: _____ BUSINESS: _____

LANDOWNER REPRESENTATIVE

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

TELEPHONE: _____ FAX: _____

EMAIL ADDRESS: _____

PARCEL SUMMARY

ACQUISITION: FEE EASEMENTS

BUILDINGS/IMPROVEMENTS ACQUIRED: YES NO

RELOCATIONS REQUIRED: OWNER (# _____) TENANT (# _____)

RESIDUE ACQUIRED: YES NO

Chapter 8 - Acquisitions

PARCEL: _____

PROJECT: _____

LANDOWNER: _____

TITLE INFORMATION

SSL REF. : _____

TITLE HEADING FOR DEED : _____

SOURCE DEED: DB _____ PG _____ DATED _____

TITLE SEARCH FROM: _____ TO: _____

TITLE COMMENTS _____

PLAN INFORMATION

PLAT NO. _____ PLAN SHEETS _____

PROFILE SHEETS _____

FEE TAKE: _____ Ac. SF

RESIDUE _____ Ac. SF

TOTAL PARCEL _____ Ac. SF

EASEMENTS

PERM. DRAINAGE EASEMENT _____ Ac. SF

PERM. CONSTRUCTION EASEMENT _____ Ac. SF

PERM. _____ EASEMENT _____ Ac. SF

TEMP. CONSTRUCTION EASEMENT _____ Ac. SF

_____ UTILITY EASEMENT _____ Ac. SF

Chapter 8 - Acquisitions

IMPROVEMENTS

PARCEL: _____

PROJECT: _____

LANDOWNER: _____

APPRAISAL

APPRAISER: _____

APPRAISAL TYPE: _____ APPRAISAL DATE: _____

APPRAISED VALUE \$ _____ APPROVED: _____

SPECIAL CONDITIONS: _____

APPRAISAL REVIEW

REVIEW APPRAISER: _____

APPRAISAL APPROVED: _____

SUMMARY OF REVIEW COMMENTS: _____

JUST COMPENSATION

APPROVED: _____

CONSIDERATION STATEMENT: _____

Chapter 8 - Acquisitions

PARCEL: _____

PROJECT: _____

LANDOWNER: _____

NEGOTIATIONS

NEGOTIATOR: _____ ASSIGNED: _____

OFFER MADE: _____ NEGOTIATION COMPLETED: _____

CONTACT DATE: _____ PRESENT: _____

CONTACT DATE: _____ PRESENT: _____

CONTACT DATE: _____ PRESENT: _____

Chapter 8 - Acquisitions

PARCEL: _____

PROJECT: _____

LANDOWNER: _____

RELOCATIONS

NONE: _____

RELOCATION NO. 1

DISPLACEE: _____

OWNER: _____

ADDRESS: _____

TENANT: _____

ADDRESS: _____

ASSURANCE LETTER: _____ 1st VACATION DATE _____

30 DAY NOTICE LETTER: _____ FINAL VACATION DATE: _____

COMMENTS: _____

RELOCATION NO. 2

DISPLACEE: _____

OWNER: _____

ADDRESS: _____

TENANT: _____

ADDRESS: _____

ASSURANCE LETTER: _____ 1st VACATION DATE _____

30 DAY NOTICE LETTER: _____ FINAL VACATION DATE: _____

COMMENTS: _____

Chapter 8 - Acquisitions

PARCEL: _____

PROJECT: _____

LANDOWNER: _____

MISCELLANEOUS

Fencing: None: _____ Fencing is for security: _____

Fence Type: _____ Fence Replacement by: _____

Other Improvements: _____

CLOSING

LANDOWNER'S LEGAL REP: _____ PHONE: ____ - _____

ADDRESS: _____ FAX: ____ - _____

ADDRESS: _____

LIENHOLDER # 1 _____

ADDRESS: _____ LOAN # _____

ADDRESS: _____

LIENHOLDER # 2 _____

ADDRESS: _____ LOAN # _____

ADDRESS: _____

JUDGEMENTS, BACK TAXES, ETC. _____

LANDOWNER SSN/TIN NO. _____

LANDOWNER SSN/TIN NO. _____

COMMENTS: _____

Chapter 8 - Acquisitions

PARCEL: _____

PROJECT: _____

LANDOWNER: _____

CERTIFICATION

This is to certify that this report covers my complete negotiations with this landowner for the right of way required in the project plans, and that (1) the written agreement/deed secured and/or offer covers all of the considerations between the landowner(s) and me and that there were no verbal commitments made (2) the agreement/deed, if any, was reached without coercion, promises, threats, or any other understanding of any kind by either party priory to the said agreement/deed, if any, being executed and (3) I have no direct interest in the property involved and contemplate no future personal interest or benefits from the acquisition of right of way covered by the agreement/deed, if any

Signature: _____ Date: _____

Reviewed By: _____

Chapter 9 – Acquisition of Public Land

Summary

This chapter covers situations in which a property needed as ROW for a project is owned by a governmental agency of the United States of America; the District; a quasi-governmental authority, such as the Washington Metropolitan Area Transit Authority (WMATA); the State of Maryland; or the Commonwealth of Virginia. Special acquisition procedures are necessary and these procedures will vary for the entity that owns or controls the property.

| Section Number | Section Name |
|----------------|--|
| 9.1 | Introduction |
| 9.2 | Federal Lands |
| 9.3 | State of Maryland or Commonwealth of Virginia |
| 9.4 | Washington Metropolitan Area Transit Authority |
| 9.5 | Other District of Columbia Owned Lands |

9.1 Introduction

It is extremely important that DDOT gives an early notice to the controlling agency for any land owned by a governmental entity. The use of eminent domain is not permitted against a Federal, State, District or a quasi-governmental authority. Early coordination and proactive processing of the necessary documents, plans and project information is essential in clearing a project for construction. The following sections of this chapter detail the established interactions with the various agencies most impacted.

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|-------|--|
| EIS | Environmental Impact Statement ¹ |
| FONSI | Finding of No Significant Impact ¹ |
| IPMA | DDOT's Infrastructure Project Management Administration |
| NEPA | National Environmental Policy Act ¹ |
| NPS | National Park Service |
| TPPA | DDOT's Transportation Policy and Planning Administration |
| TOA | DDOT's Transportation Operation Administration |
| WMATA | Washington Metropolitan Area Transit Authority |

¹ 23 CFR 771

Chapter 9 – Acquisition of Public Land

Early notice and coordination should be initiated during the NEPA review phase of project development. Comments should be solicited from the affected agency so that consideration can be given to design refinements during the preliminary plan development stage. In consideration of any changes requested, the agency should indicate its willingness to provide the requested ROW, easement or permit at the appropriate time during the ROW phase.

While each agency may require slightly different information, the ROW Specialist should be prepared to provide the following

- Purpose of the transportation improvement project and the land required
- Interest in the land needed for the project
- Project numbers and appropriate reference
- Map showing the survey of the land needed for the project and relationship to the USA facility
- Legal description of the land to be acquired
- Statement of compliance with NEPA,² National Historic Preservation Act³, Section 4f, and any other Federal environmental laws. For details regarding environmental laws please refer the DDOT Environmental Policy & Process Manual.

9.2 Federal Lands

9.2.1 National Park Service (NPS)

The NPS has control of most of the lands of the United States located in the District. This includes the rivers and waterways located within the boundaries of District. The NPS and District are governed by a jurisdictional agreement that provides for the transfer of property control.⁴ Whenever DDOT requires ROW from an NPS controlled property the following procedures are to be followed (flow chart included at the end of this chapter):

² 42 U.S.C. 4332 et. seg.

³ 16 U.S.C. 470(f) and 23 U.S.C. 138

⁴ 40 U.S.C. 8124 (2005)

Chapter 9 – Acquisition of Public Land

9.2.1.1 Early Notice

DDOT shall provide the NPS representative an early notice that DDOT has begun the project development process for a new transportation improvement or replacement project. The notice shall:

1. Describe the proposed project
2. Anticipate involvement with NPS controlled property
3. Written justification for the need of the NPS property
4. A schedule of project development activities should be provided, if available.

9.2.1.2 Completion of NEPA process

The NPS should be involved at the earliest stage to determine the appropriate level of NEPA document needed. Whenever property transfer from NPS is involved, NPS also has to complete its NEPA process. In such cases, NPS may either become the lead federal agency or may become the “joint lead federal agency” for the NEPA document. In some cases when an EIS is being prepared, NPS may become a cooperating agency. If NPS is the lead agency, then NPS should be involved in all activities in the NEPA process including notices of public involvement activities and development of the design alternatives. A copy of the NEPA document should be provided to the NPS, requesting comments. The NPS should be advised when a ROD, FONSI or CE is issued. It should be noted that NPS typically does not accept CE from FHWA or other agencies. However, NPS may accept/adopt other agency EA and EISs. For more details regarding the environmental process for projects involving NPS (and NPS property) please refer DDOT Environmental Policy & Process Manual. It should also be noted that projects using FHWA (or US DOT) funds that use NPS property also have to comply with Section 4f of the US DOT Act of 1966. In some cases Section 6 of the Land & Water Conservation Fund Act is also applicable.

9.2.1.3 Development of a Plat

DDOT, through the Office of the Surveyor, shall prepare a plat showing the required ROW and will provide the plat along with current engineering plans to the NPS, along with a current appraisal and title information. The NPS representative should review and return comments if any changes are necessary.

Chapter 9 – Acquisition of Public Land

9.2.1.4 Transfer Document by NPS

The NPS representatives shall prepare the exchange agreement and the jurisdiction transfer document and provide the instrument to the DDOT ROW Unit for review and signature.

9.2.1.5 Coordination with NCPC

The NPS representative will prepare the necessary documentation for the transfer and will coordinate the review and concurrence of the NCPC.

9.2.1.6 Recordation

Upon execution by both parties and the receipt of NCPC's recommendation, the exchange agreement and plat should be provided to the Office of the Surveyor for recording in the land records.

Chapter 9 – Acquisition of Public Land

9.2.2 Branches of Military and Veteran Administration

If the required ROW for a project involves property owned by the United States and controlled by one of the branches of military or the Veterans Administration, the negotiations for the necessary agreement is to be handled directly with that agency. Should assistance be required, the ROW Specialist should contact FHWA.

The agency shall be requested to approve the land transfer and provide the appropriate deed or transfer document. The ROW Unit Manager shall review the document and, if necessary, request a legal review by the OAG. If the deed or transfer document is acceptable, the OAG should sign it on behalf of DDOT and have it recorded.

9.2.3 Other Federal Agencies

The transfer ROW required from the United States land controlled by other agencies not listed in Title 23 is to be coordinated and processed by the FHWA. In some cases, agencies have their own authority for granting interests in land and elect to use their own authority and procedures. DDOT should check with Federal agencies to determine the procedures for each agency. All land transfer procedures shall comply with any applicable memorandum of understanding (MOU) or other agreement with FHWA or other Federal agencies. Early notice should be provided to the FHWA for coordination with the affected agency. The same information listed in Section 9.2.2 should be provided to the FHWA for their use in coordinating the acquisition.

If FHWA approves the transfer from the Federal agency to DDOT, the land-controlling agency has 4 months (or longer per approval of extension from FHWA) to designate conditions necessary for the protection and utilization of the land being transferred to DDOT. If the Federal agency is not in agreement with the request, it has the same time limit of 4 months to certify that the proposed transfer of land is contrary to the public interest or is inconsistent with the original purpose of the land.

After approval from FHWA and the land-controlling agency, the ROW Unit formally requests the Office of the Surveyor to prepare and process a transfer of jurisdiction request. This request is to be accompanied by a plat showing the property involved and its relation to adjoining properties. The transfer of jurisdiction plat should contain the geometrics of the area to be transferred; easements; easement conditions, if any; official

Chapter 9 – Acquisition of Public Land

certificates of the transfer; and the action of acceptance of the transfer by DDOT on behalf of the Mayor. Prior to the plat being circulated for signature by the Federal agency and the Mayor, FHWA will secure a certificate of recommendation by the NCPC.⁵

The ROW Unit will prepare the deed of conveyance to be reviewed and certified by the DDOT general counsel. The deed is to be provided to the FHWA for review and processed for signature from the Federal agency. The signed deed is then returned to the ROW Unit for recording and distribution to all relevant parties.

9.3 State of Maryland or Commonwealth of Virginia

Whenever a transportation improvement project crosses into a neighboring State, a special agreement is required regarding the coordination and construction of the project. This agreement should address the requirement of any lands owned by the neighboring jurisdiction and or the need to acquire private property within those jurisdictions.

9.4 Washington Metropolitan Area Transit Authority (WMATA)

Early notice of a future project's ROW requirement from a WMATA owned property should be given during the NEPA review process. When the project is approved for ROW acquisition, the WMATA property is to be acquired in accordance with the normal ROW acquisition process. However, there is an exception which prohibits DDOT from exercising the right to use eminent domain to secure WMATA property.

9.5 Other District of Columbia Owned Lands

If property controlled by an agency of the District, other than DDOT is required as ROW for transportation purposes, the following procedures are utilized in obtaining the property:

- A. Early coordination with the agency of the District controlling the required ROW is necessary to ensure its availability for transportation purposes. An agreement is necessary between that agency and DDOT in regards to the proposed change in use for transportation purposes. This agreement will include data regarding dimensions and area of the land required.

⁵ DC Code §10-111

Chapter 9 – Acquisition of Public Land

- B. The Office of the Surveyor is requested to initiate action that will lead to an official “set-aside” of the specific ROW for transportation purposes. This request is accompanied by the agreed description of the land area involved, including all geometrics.
- C. The Office of the DC Surveyor will prepare a plat of the area involved. The plat will show the detailed dimensions, area, and other pertinent data. The plat is then submitted to the ROW Unit for verification.
- D. After the plat is returned to the Office of the Surveyor, it is sent to the agency having prior control of the property for comments and approval.
- E. When the plat has been returned to the Office of the Surveyor and any objections received have been reconciled, the plat is submitted to the Mayor for execution.
- F. The Mayor orders the plat to be duly executed, which includes a certificate specifically stating that the property delineated thereon is “set-aside” for public transportation purposes and is declared to be absorbed as a part of the street system of the District.
- G. The executed plat is returned to the Office of the Surveyor for recording. The official plat will show the instrument number reference, as well as the date and other identifying notes. Prints of the official plat are provided to the appropriate offices.

The title to the property would not be affected as it continues to reside in the name of the District.

Chapter 9 – Acquisition of Public Land

Chapter Resources

Major Tasks

- Transfer of Jurisdiction for the National Park Service

References

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- United States Code (USC)
www.gpoaccess.gov/uscode/index.html
- District of Columbia Code
<http://dcode.westgroup.com>

Chapter 9 – Acquisition of Public Land

Major Tasks – Transfer of Jurisdiction for the National Park Service

| | |
|---|--|
| Early Notification (EIS Scope Stage or design initiated) | IPMA or TPPA or TOA |
| Comments from NPS on Project Impact | NPS |
| Circulate Draft EIS on Major Projects | IPMA |
| Comments and Public Participation | NPS |
| Notice of Record of Decision on Projects with EIS | IPMA |
| Engineering and Project Design and Reviews | IPMA or TPPA or TOA ROW Unit NPS |
| Preparation of Transfer Documents and Review | DC Surveyor ROW Unit NPS |
| Review and Recommendation of National Capitol Planning and Commission | NPS |
| Approval and Signatures on Plats and Documents | NPS DDOT Director Mayor |
| Recordation of Transfer Plat | DC Surveyor |

Chapter 10 – Relocation Assistance

Summary

This chapter covers the entitlements that are available to eligible individuals, families, businesses and non-profit organizations that are displaced as a result of DDOT acquiring ROW for a transportation project. It addresses the procedures for providing relocation assistance services to the displacees; determining eligibility; calculating benefits; and making the appropriate payments. All relocation activities are to be in compliance with the URA.

| Section Number | Section Name |
|----------------|--|
| 10.1 | Introduction |
| 10.2 | Federal Regulations |
| 10.3 | Relocation Planning at Project Conceptual Stage |
| 10.4 | Public Participation and Involvement |
| 10.5 | Relocation Planning at Pre-Acquisition Stage |
| 10.6 | Providing Relocation Assistance Services (Initiation of Services) |
| 10.7 | Providing Relocation Assistance Services (Duties of Relocation Specialist) |
| 10.8 | Determination of Eligibility for Assistance and Payments |
| 10.9 | Written Notices |
| 10.10 | General Provisions |
| 10.11 | Replacement Housing Payments (RHPs) |
| 10.12 | Moving Costs – Residential Moves |
| 10.13 | Moving Costs – Non-Residential (Business and Non-Profit Organization) |
| 10.14 | Replacement Housing of Last Resort |
| 10.15 | Mobile Homes |
| 10.16 | Functional Replacement |
| 10.17 | Relocation Records |
| 10.18 | Relocation Appeals |

10.1 Introduction

In acquiring the ROW necessary for the construction, reconstruction, alteration, maintenance and repair of the public streets, freeways and other transportation facilities in the District, it is often necessary for individuals, families, businesses and non-profit organizations to be displaced. A comprehensive program of relocation assistance services and benefits has been established to

Chapter 10 – Relocation Assistance

ensure, to the maximum extent possible, the timely and successful relocation of displacees and reestablishment of businesses.

The procedures contained in this chapter are intended to establish a means of providing efficient, cost effective and uniform relocation benefits and services including advisory assistance, moving cost payments, replacement housing payments, and other expense payments to insure that individuals do not suffer disproportionate injuries as a result of a program or project designed for the benefit of the public as a whole.

This manual also outlines the procedures necessary to assure that every displaced individual will have, or will have been offered, a comparable, decent, safe and sanitary replacement dwelling. An appeals process is included to amicably resolve controversies that may arise.

Both the URA and this chapter rely on definitions of words and terms to determine eligibility and available benefits. These definitions will be strictly adhered to by the ROW Unit in making the necessary determinations. A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

Alien not lawfully present in the United States

An alien who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

1. An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and whose stay in the United States has not been authorized by the United States Attorney General; and,
2. b. An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

Agency

The Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

1. Acquiring Agency: A State Agency, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority.
2. Displacing Agency: Any Federal agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

Chapter 10 – Relocation Assistance

3. Federal Agency: Any department, Agency, or instrumentality in the executive branch of the government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.
4. State Agency: Any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more.

| | |
|---|---|
| Business | <p>Any lawful activity that is conducted</p> <ol style="list-style-type: none">1. Primarily for the purchase, sale, lease and/or rental, or any combination of these, of personal and/or real property, or both, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or2. Primarily for the sale of services to the public; or3. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or <p>By a non-profit organization that has established its a non-profit status under applicable Federal or District law.</p> |
| Carve Out | <p>The method used in making a typical homesite 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.</p> |
| Citizen | <p>Includes both citizens of the United States and non-citizen nationals.</p> |
| Comparable Replacement Housing ² | <p>A dwelling that which is</p> <ol style="list-style-type: none">1. Decent, safe and sanitary (defined below).2. Functionally equivalent to the displacement dwelling, in that it performs the same function and provides the same utility. While every feature of a displacement dwelling need not be present, the principal features must be present. Functional equivalency reflects the range of purposes for which the various physical features of a building dwelling may be used. Special consideration will be given to the number of rooms and area of living space. DDOT may consider reasonable trade offs for specific features when the replacement unit is equal to or better than the displacement dwelling.3. Adequate in size to accommodate the occupants or displacee.4. In an area not subject to unreasonable adverse environmental conditions.5. In a location, generally not less desirable than the displacement person's dwelling with respect to public utilities, commercial and public facilities, and is reasonably accessible to the displacee's place of |

² 49 CFR 24.2(a)(6)

Chapter 10 – Relocation Assistance

employment.

6. On a site that is typical in size for residential use development, with normal site improvements, including customary landscaping (The site need not include special features such as outbuildings, or swimming pools or greenhouses).
7. Currently available to the displaced person on the private market. However, a publicly owned or assisted unit may be comparable for a person displaced from the same type of unit. In such cases any requirements of the public housing assistant program relating to the size of the replacement dwelling shall apply.
8. Within financial means of the displaced person.³

Comparable replacement housing is the standard for replacement housing that DDOT is obligated to make available to displaced persons. It is also the standard for establishing owner and rental purchase supplement benefit.

Decent, Safe
and Sanitary
(DSS)
Housing
Dwelling⁴

A dwelling which meets local housing and occupancy codes, is structurally sound, weather tight, and in good repair; meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the FHWA. The dwelling shall:

1. Be structurally sound, weather tight, and in good repair;
2. Contain a safe electrical wiring system adequate for lighting and other devices;
3. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees Fahrenheit) for a displaced person.
4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes. In addition, DDOT shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes.
5. Contain a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully useable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space an utility service connections for a stove and refrigerator;
6. Contain unobstructed egress to safe, open space at ground level; and
7. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

This is the qualitative and safety standard to which displaces must relocate in

³ 49 CFR 24.2(a)(6)(vii)

⁴ 49 CFR 24.2(a)(8)

Chapter 10 – Relocation Assistance

order to qualify for replacement housing payment benefits provided by DDOT. Decent, safe, and sanitary is also an element in the definition of comparable replacement housing, defined above.

Dwelling The place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of condominium or cooperatives housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

Dwelling Site A land area that is typical in size for similar dwellings located in the same neighborhood or rural area.

Family Two or more individuals, one of whom is the head of a household plus all other individuals, regardless of blood or legal ties, which live together and are considered part of the family unit. If two or more individuals occupy the same dwelling with no identifiable head of household, together they shall be treated as one family for replacement housing purposes.

FHWA District of Columbia Division of the Federal Highway Administration

Fixed Payment A fixed moving cost payment as an alternative to a payment for actual moving and related expenses.

Housing of Last Resort Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in §24.401 or §24.402, as appropriate, the Agency shall provide additional or alternative assistance. Any decision to provide last resort housing assistance must be adequately justified.

Incidental Expenses Closing and other costs incidental to the purchase of a replacement dwelling.

Increased Interest Payment The amount which will reduce the mortgage balance on a new mortgage to an amount that will be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling.

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.

Losses Due to Losses not eligible for reimbursement if such loss is the responsibility of the

Chapter 10 – Relocation Assistance

| | |
|---|--|
| Negligence | displacee, the displacee's agent or employees. |
| NEPA | National Environmental Policy Act ⁵ of 1969 |
| Occupancy Requirements for Displacement or Replacement Dwelling | No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including: <ol style="list-style-type: none">1. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or DDOT; or2. Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by DDOT. |
| Person | Any individual, family, partnership, corporation or association |
| Purchase Supplement Payment | The amount which, when added to the acquisition value, equals the cost of comparable replacement housing |
| Rent Supplement Payment | The amount which equals 42 times the difference between base monthly rental and utilities of a displacement dwelling and the monthly rent plus utilities of a comparable replacement dwelling. |
| Replacement Housing Payment | The total of the amounts established for a displacee under the definitions listed in this section |
| Waivers | The Federal agency funding the project may waive any requirements in the regulations not required by law if it determines that the waiver will not reduce any assistance or protection provided to an owner or displacee. Any request for a waiver shall be justified on a case by case basis. |

⁵ 23 CFR 771

Chapter 10 – Relocation Assistance

10.2 Federal Regulations

It is the policy of DDOT to follow and fully comply with the URA, including 49 CFR Part 24, as amended as well as Federal guidance for Federally funded transportation projects. All requirements of 49 CFR 24 are applicable to relocation assistance services and entitlements available to displaced persons whether specifically discussed in this chapter or not, including an assurance that there shall be no duplication of payments to displacees in accordance with 49 CFR 24.3, notices to displacees shall be delivered by certified mail with registered receipt or by an overnight delivery service in accordance with 49 CFR 24.5 and that DDOT shall maintain adequate records and reports of all acquisition and displacement activities in accordance with 49 CFR 24.9. The additional information provided in this chapter is to assist in better understanding the requirements.

10.3 Relocation Planning at Project Conceptual Stage

The ROW Unit is to perform various relocation planning, advisory services and coordination activities in accordance with 49 CFR 24.205. Based on the complexity and nature of the project, when appropriate, these activities should be completed in advance of the actual land acquisition and relocation assistance activities and are implemented to assure that comparable housing is available for all persons impacted by a project. If housing is not available, the ROW Unit will develop a housing plan which will detail the methods and actions that will be taken to provide the needed housing in advance of the project reaching the authority to proceed with ROW acquisition stage.

The ROW Unit also provides information associated with non-residential displacements for planning purposes, which includes the availability of comparable replacement sites required for displaced businesses. DDOT's intent is to locate replacement sites for displaced businesses and it will make a good faith effort to find a functional replacement and suitable site. There is however, no guarantee that a replacement site will be available before the business must vacate the acquired property. In these circumstances, temporary storage may be made available.

Relocations should be planned so that the potential displacement of people and businesses is identified during the early stages of the project, and these issues are addressed properly in an effort to minimize or avoid any adverse affects on the displaced persons⁶ or delays in the project's development. As a project is being planned in its initial stages, relocation activities should also

⁶ 49 CFR 24.205

Chapter 10 – Relocation Assistance

be planned concurrently. Although the beginning stages of relocation planning may be broad, as the project planning progresses the details of the relocation process should be clarified. Planning assures that qualified personnel are in place to provide for needs of any displaced persons.

The first stage of relocation planning begins when the ROW Unit Manager receives a notice that there is a project being developed under the NEPA process for a major project and that a relocation analysis and report is required for the various alignments. Copies of the appropriate maps and/or plans detailing the proposed alternate alignments being considered for the project should accompany the request. A project will be considered to be in the conceptual stage from the time preliminary design concept plans are issued showing alternate location alignments until the Record of Decision for the EIS is issued. For a project in which EA is prepared, the conceptual stage end point is the issuance of a FONSI. For those projects which qualify for a CE, the approval of the CE would end the conceptual stage.

The ROW Unit Manager shall assign a relocation specialist or other assigned representative of DDOT (Relocation Specialist) the task of preparing the RPA, which is subject to the review and approval by the ROW Unit Manager. The necessary data is gathered from field observations, local sources, and other available public information without having to contact the occupants of the building or improvements.

The RPA (per 49 CFR 24.205(a)) (see Example 10-1) shall contain the following information:

1. An estimate of households to be displaced, including owner/tenant status, estimated values and rental rates of properties to be acquired, family characteristics and special consideration of the impacts on ethnic minorities, income levels, the elderly, large families and persons with disabilities.
2. An evaluation of the divisive or disruptive effect on the community, such as separation of residences from community facilities or separation of neighborhoods.
3. Any impact of displacement on housing availability where relocation is likely to take place.
4. The estimated number, type and size of businesses or non-profit organizations that would be acquired with the estimated number of employees that may be affected.
5. An estimate of the availability of replacement business sites. If an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed.

Chapter 10 – Relocation Assistance

6. An assessment of the effect the non-residential displacements will have on the economy and stability of the community.
7. Any major businesses being displaced that will require advance coordination and planning are to be contacted and advised of the studies being made by DDOT and of the opportunities for their input through public involvement meetings.
8. An estimate of available housing in the area that is appropriate to provide housing for the types of families to be displaced. Contact should be made with local real estate firms, listing services, newspapers, housing agencies, local community organizations, etc.
9. A description of special relocation advisory services that will be necessary for any identified unusual conditions, such as a concentration of elderly displacees.
10. A description of the actions proposed to remedy insufficient replacement housing, including, if necessary, housing of last resort. If it is determined that an insufficient supply of housing exists, inquiries should be made of real estate developers, construction firms, public officials and interested parties to determine their willingness to assist in providing the necessary replacement housing and the conditions under which they would be willing to render this service.
11. The outcome of consultation with local officials, service agencies and community groups regarding the impact on the community affected.
12. An estimate of relocation costs for each alternative alignment (49 CFR 24.205(a)), is separated as follows:
 - a. Cost of moving personal property for residential units, businesses and non-profit organizations;
 - b. Cost of replacement housing payments for displaced individuals and families, including typical mortgage interest differentials and closing costs incident to the purchase of replacement facilities;
 - c. Cost potentially incurred by businesses and non-profit organizations in searching for replacement facilities; and
 - d. Reestablishment costs for businesses and non-profit organizations.

ROW acquisitions and displacement of persons from homes and businesses frequently cause social and economic impacts to persons displaced and to the general community through which the project passes. In some instances, it may be appropriate to talk with local officials, community leaders, local planning officials, business leaders, or citizens having special insight

Chapter 10 – Relocation Assistance

and knowledge of the community. The Relocation Specialist making on-site inspections for preparation of the RPA should be observant of the following community characteristics and possible project impacts:

1. Concentration of minority, low income families, or elderly residents.
2. Indications of a cohesive neighborhood being bisected by a street or freeway alignment.
3. Disproportionate displacement of low income, minority, or elderly residents because of the project.
4. Dependency of a large number of residents on public transportation to travel to work, schools or shopping.
5. Acquisition of businesses that provide employment to a significant number of community residents, or are the sole retail source for a product or service, or will diminish the viability of a shopping district.
6. Acquisition of community resources, such as health or recreation facilities, parks, churches, or schools.
7. Diminished access to the above community resources caused by the proposed highway location.
8. Acquisition of housing type in short supply, such as those that accommodate large families or rental housing for moderate income residents.
9. Presence of residents with special needs, such as non-English speaking families or handicapped residents dependent on special services available nearby.
10. Evaluation of business to assess functional replacement requirements.

Conditions such as those above will be included in the RPA along with appropriate conclusions and recommendations. Information about the community and the effects of the proposed project can contribute to a more complete assessment of the social and environmental impacts within the context of a study of overall environmental impacts.

In addition, Presidential Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority and Low Income Populations,” dated February 11, 1994, requires a special focus in transportation planning on environmental and human health conditions affecting minority and low income populations. This Executive Order places stronger emphasis on conditions that have previously been a concern in environmental studies for proposed projects.

Chapter 10 – Relocation Assistance

ROW representatives performing field studies should be alerted to the presence of low income and minority populations, and report any effects as a result of the project of either a beneficial or detrimental nature. The consideration of environmental justice factors is to include the community affected by the proposed highway and not be limited to the ROW acquisition area.

In addition, Executive Orders 11063, 11246, 11625, as well as Title VI and Title VIII of the Civil Rights Act of 1964 must be implemented.

The information provided in the RPA at the conceptual project stage will be incorporated into the environmental document and weighed with other issues in the evaluation. The overall alternative alignment analysis will be outlined in the draft EIS, and comments received at that stage will be considered before a ROD is issued. The ROD issued by the FHWA marks the end of the conceptual stage when an EIS is required.

10.4 Public Participation and Involvement

The ROW Unit should be aware that beginning with early scoping meetings during the NEPA process, the citizens, landowners and tenants will begin to be concerned about the impact of the proposed project on their properties. As appropriate, the ROW Unit Manager should provide a ROW representative at meetings to answer general questions about what will happen if DDOT needs all or a part of their property.

The ROW brochure describing general ROW acquisition and relocation assistance procedures in layman terms should be available for distribution at the meetings and is attached in Appendix E. All discussions with the public at this stage must be generic, as many changes can occur before a final design is selected. Verbal assurances should be given that ample time, as described in the brochure, will be provided when the project reaches the ROW acquisition stage for negotiation of the property purchase and the relocation of their personal property or business.

10.4.1 Corridor Public Hearing

DDOT will present information on real estate acquisition and displacement impacts, and relocation services and benefits at public involvement meetings and hearings. At the corridor public hearing, DDOT should present a summary of relocation program services,

Chapter 10 – Relocation Assistance

benefits and important qualification criteria, and a summary of the following relocation assistance information compiled in the relocation analysis and report:

1. The estimated number of displacements for each classification that would be caused by each of the alignments under consideration;
2. The availability of relocation assistance and services, eligibility requirements and payment procedures.
3. A summary of the process and the methods that will be employed to assure that the housing needs of the displacees will be met. (Distribute DDOT's Right of Way Acquisition for Transportation Project brochure)

10.4.2 Design Public Hearing

At a design public hearing, the presentation should include the following information for projects on which displacements will occur:

1. That no person shall be displaced from a residence until a comparable replacement dwelling is available.
2. The services available under DDOT's relocation assistance program, the address and telephone number of the Relocation Specialist that will be working on the project.
3. The estimated number of individuals, families, businesses and non-profit organizations to be displaced.
4. The estimated number of dwelling units presently available that meet replacement housing requirements.
5. An estimate of the time necessary for relocation and the number of dwelling units meeting the replacement housing requirements that will become available during that period.
6. That DDOT's replacement housing program and relocation assistance program is described in the available brochure. It is important to selectively present items of special importance such as the need to be in occupancy at initiation of negotiations to be eligible for benefits. (Distribute DDOT's Right of Way Acquisition for Transportation Projects brochure)

10.5 Relocation Planning at Pre-Acquisition Stage

After a ROD, FONSI, or a CE approval has been issued approving the continuation of a project's development, the next stage is refining the design and preparation of plans with additional

Chapter 10 – Relocation Assistance

engineering details. Those projects considered to be immediate or minor with regards to the project's environment category will advance directly to the preliminary design plan stage.

When preliminary plans are available under any of the circumstances described above, the Relocation Specialist will prepare a RPA (Example 10-1) or update a previous applicable report prior to the initiation of negotiations. This report should be completed prior to requesting funding for the ROW Acquisition Stage. The pre-acquisition relocation analysis and report at this stage is based primarily on data gathered from interviews. It will provide an inventory of relevant characteristics and circumstances based on the relocation needs of all residential and non-residential displacees. It should also include a review of available comparable replacement housing and replacement sites. This report will serve as a planning tool for future relocation assistance activities and to ensure that comparable replacement housing is available when the actual displacement occurs.

10.5.1 Displacee Interviews

Information for the pre-acquisition relocation analysis and report is obtained from personal interviews conducted by Relocation Specialist with each of the individuals or families to be displaced by the project. The personal housing needs of each potential displaced person will be documented and used to develop a relocation plan. When the Relocation Specialist visits the potential displacee, the Relocation Specialist should explain that DDOT is conducting a data-gathering survey and that the visit should in no way be construed as a notice to move, nor is it a notice of qualification for any relocation benefits.

The following points should be explained to the occupant at the time this contact is made:

1. All information provided is strictly confidential.
2. The persons involved must be in occupancy of the subject property when the DDOT representative makes the written offer for the parcel (unless a notice of Intent to Acquire is issued) to qualify for relocation payments; and
3. The potential displacee should not make any financial commitments concerning replacement housing at this time. The property has not yet been acquired and a premature move could result in disqualification for benefits they would otherwise receive.

Chapter 10 – Relocation Assistance

A Site Occupant Interview form (form INTERVIEW) should be completed for each individual survey and should include the following information for each displacement unit:

1. The name, home address, home and work telephone numbers of the displacee and the best time to call. Any special language needs that may need to be considered for future discussions to ensure a clear understanding.
2. The number of people residing in the dwelling, indicating each person's gender, age, and social security numbers for all adults (an adult is classified as anyone age 18 or older). The lawful citizenship status of each should be questioned, if appropriate.
3. A description of all buildings on the property and a list of all rooms in the dwelling unit. If a mobile home is situated on the parcel, state the exterior dimensions.
4. Any disabilities of the occupants which could affect relocation needs. A disability is a physical impairment that substantially limits one or more of the major activities.
5. A statement as to whether or not the dwelling meets decent, safe and sanitary standards. If the dwelling does not meet the standards, an explanation should be included.
6. The type of displacee (owner or tenant) and identification of the type of dwelling unit currently occupied (house, apartment, room or mobile home). If the displacee is a tenant, determine if the unit is furnished or unfurnished.
7. The gross family income from all sources including wages, interest, social security, welfare (excluding food stamps), disability payments and other untaxed income.
8. The date the displacees occupied the dwelling. Care should be exercised in completing this item as it establishes eligibility for various relocation benefits. For tenants, an outside source, landowner's rental records, etc., should verify the date of occupancy. Conflicting information about occupancy status must be resolved if they affect eligibility.
9. Rent paid and the cost and type of utilities included in the rent should be secured. Determine if a special tenant-landlord relationship exists (e.g., son-father, etc.), and determine if the tenant performs any services in lieu of rent.

Chapter 10 – Relocation Assistance

10. If an owner-displacee has an outstanding mortgage, the monthly payment, interest rate, original amount, term, and the unpaid balance should be secured.
11. The displacee's replacement housing intentions and preferences (e.g., specific location, school district, etc.).

The potential displacee may be reluctant to provide social security numbers and/or information about the family income. The Relocation Specialist should advise the displacee that while the social security number is not required at the present stage it will eventually be needed before any payment can be made. While the displacee does not have to disclose financial information, the Relocation Specialist should explain that financial information is critical in computing the maximum relocation benefits to be offered to the displacee. Without that information, the Relocation Specialist will have to use available rent or property value data to calculate the relocation benefits as best possible. An effort should be made to obtain any additional relevant critical data when the relocation assistance offer is made and the offer adjusted as appropriate.

Each owner, business manager, and non-profit organization representative shall be interviewed. The Relocation Specialist shall obtain specific information relevant to the relocation of the business (49 CFR 24.205(c)). The name and official title of the company representative who will make the decisions for the business shall be ascertained by the Relocation Specialist.

In situations that only personal property move is involved, it is not necessary to interview all displaced tenants. An example of such a case would be a facility that leases individual storage units. The analysis and report should include the number of units being displaced and the availability of storage units in the vicinity. The estimated moving cost can be based on a 15' by 20' unit size.

The "DDOT's Right of Way Acquisition for Transportation Projects" brochure should be given to each displacee interviewed. By compiling the information from each interview, the Relocation Specialist can assess displacement impacts for the entire project and plan orderly and prioritized displacements.

Chapter 10 – Relocation Assistance

10.5.2 Relocation Research and Scope

Following the interview stage, the Relocation Specialist can define the scope of the relocation assistance requirements and analyze the potential problems. Based on the relocation requirements, the Relocation Specialist shall survey the available replacement housing market to estimate the numbers and costs of comparable dwelling units required to meet the housing needs of the displaced persons. If the supply of available housing is estimated to be insufficient, consideration must be given to the means necessary to remedy the deficiency, including the possible use of Housing of Last Resort (HLR).

Adequate research must be conducted in order that the needs of displaced persons are met regarding size (i.e., square footage), price, rental, location and availability (49 CFR 24.2(a)(6)). The accommodations must be comparable to the displaced person's current property and location. The pre-acquisition relocation planning analysis report should be summarized in a narrative style of sufficient detail and complexity needed to explain the anticipated housing needs, the existing housing supply, and the recommended housing solution. Supporting documentation should be attached to the narrative report, as needed.

10.5.3 Relocation Incentive Program

It may be determined that some projects will involve a significant number of displaced families, such as the acquisition of a multi-unit apartment building or complex. When this situation is anticipated or there are numerous retail type businesses which must be relocated, a Relocation Incentive Program should be considered by the ROW Unit.

Incentive programs, which can be tailored for a specific project, can result in a reduction in time required to clear right of way and in administrative, acquisition and legal costs. Significant savings could result from the construction cost as the project's construction could begin sooner and avoid inflationary trends.

Any proposed acquisition or relocation incentive program proposed for use on a project must be approved by the FHWA when federal funding is being used on the project. If approved, the incentive payments will be eligible for federal fund participation (23CFR 710.203(b)(2)(ii) and 23USC 101(2)(3)).

Chapter 10 – Relocation Assistance

If the ROW Unit proposes to use an incentive program on a project, the proposed plan should be included in the Pre-Acquisition Relocation Analysis and Report. The analysis of the proposed program should address the following factors:

- a) Assure that use of incentive payments is permissible under District law.
- b) Assure availability of decent, safe, and sanitary comparable replacement dwelling units.
- c) Identify market trends such as escalating property values and increasing right-of-way costs.
- d) Determine the propriety of using acquisition and/or relocation incentive payments.
- e) Make a public interest finding that clearly demonstrates that the use of incentive payments is cost effective (for example: a comparison of the anticipated cost of the incentive payments to project expenses that would be saved or avoided through the utilization of incentive payments). This can include consideration of such factors as enhanced safety and other benefits to the traveling public created by having a transportation facility in place and operational at an early date.
- f) Description of how payment amounts will be determined, including formula(s) for their computation, payment maximums (caps) and incentive offer expiration limit (for example: Accept the offer with 2 weeks and the incentive is X, accept the offer within 4 weeks and the incentive is $\frac{1}{2}X$.)
- g) Description of safeguards in place to eliminate attempts to coerce property owners/occupants.
- h) Description of actions to monitor implementation.
- i) Identification of those specific performance measures to be used upon project completion to evaluate the effectiveness of incentive payments.

The payment of an incentive payment amount shall in no way affect the displacee's entitlement to relocation assistance services, relocation payments and benefits. The acceptance of the relocation incentive payment by a displacee is optional and any displacee may continue occupancy in accordance with the vacation notice. While participation is voluntary, the program must provide equal treatment for all displacees eligible for the incentive.

Chapter 10 – Relocation Assistance

10.5.4 Pre-Acquisition Relocation Planning Analysis Report

Following completion of the market survey, the data collected will be incorporated into the pre-acquisition relocation analysis and report which, following review and approval by the ROW Unit Manager, shall be disseminated to IPMA and TPPA.

The pre-acquisition relocation planning analysis report is a relocation plan, implemented following the NTP for ROW Acquisition and the initiation of the active relocation assistance stage of the project. The relocation plan must contain the following information:

- A list of potential relocation and hardship problems and the plan of actions to resolve these problems. (This information can be useful in scheduling appraisal and acquisition functions to maximize the time available for dealing with potentially difficult parcels.)
- A statement describing the availability of replacement housing for rent or purchase in the project area and any market trends that might have a negative impact on DDOT's ability to provide adequate relocation assistance.
- An estimate of the time required to clear the project for construction.
- Any additional information that would aid in the identification and/or timely resolution of project delaying relocation problems.

10.5.5 Project Relocation Site Office

In conjunction with the review of the relocation analysis and report, the need to establish a relocation office to service the displacees located on a project will be determined on a project-by-project basis by the ROW Unit Manager. The main criteria for establishing a project office will be whether it would be efficient and responsive to the needs of displacees and an efficient use of staff resources. Generally, there should be more than seven residential displacees before it is considered efficient to have a site office. An adequate sign clearly visible to the public will identify the project site office.

A project relocation office must be easily accessible to project area residents and business owners and shall be open during hours that would best serve the project's displacees. The office should be arranged to afford privacy to displacees during meetings and to other persons having business at the office. At least one Relocation Specialist will be assigned to the office with the primary responsibility of providing relocation assistance. The

Chapter 10 – Relocation Assistance

Relocation Specialist will be required to maintain regular contact with the project's displacees. The following information should be available at a project office:

1. Local ordinances pertaining to housing, building codes and open housing
2. Consumer educational literature on housing, shelter costs and family budgeting
3. Copies of the brochure "DDOT's Right of Way Acquisition for Transportation Projects"
4. A current and continuing list of decent, safe and sanitary replacement dwellings, both for rent and for sale. The list will contain only fair and open housing available to persons without regard to race, color, religion, or national origin.
5. A similar list of available properties and locations for businesses
6. Current data for such costs as security deposits for utilities, leases and closing costs, typical down payments, interest rates and terms, taxes, assessments, etc.
7. Maps showing location of schools, parks, playgrounds, shopping areas and appropriate public transportation routes, schedules and costs
8. Any other important information of value to displacees

10.6 Providing Relocation Assistance Services (Initiation of Services)

When notice to proceed with ROW acquisition has been issued, the Relocation Specialist will coordinate with the acquisition agent regarding early notices to landowners and displacees. For those parcels where the landowner is the displacee, the ROW Unit Manager may consider using a single agent concept. As both relocations and negotiations are highly technical disciplines, the Row Specialist and/or Relocation Specialist chosen must possess knowledge skills and abilities in both. Otherwise, a separate acquisition agent and Relocation Specialist shall work together with the landowner.

The primary goal of advisory services is to assure that all persons to be displaced are successfully relocated and that each and every problem or issue arising from this relocation process is properly addressed. The role of the Relocation Specialist can potentially encompass a wide range of activities. For example, a displaced person could independently find replacement housing but will need advanced payments for a replacement dwelling if the new landowner demands a large deposit. The Relocation Specialist must properly and professionally correspond with the owner as a liaison for the displaced person so that the DSS dwelling remains available. In another instance, the displaced person may have a physical disability that prevents the search for replacement

Chapter 10 – Relocation Assistance

dwelling. The Relocation Specialist shall offer all persons transportation to inspect comparable homes or apartments.

The Relocation Specialist must always give sound assistance and ensure that nothing is contrary to any Federal or District laws and regulations. Every landowner must be fully informed of the detailed requirements involved in receiving relocation benefits and the consequences of not following the recommendations of the Relocation Specialist, i.e., risk of being denied benefits if the landowner moves without the assistance prior approval of DDOT. However, the landowner can conduct an independent search for comparable housing.

The Relocation Specialist must have specific knowledge of not only the project and the area impacted but also the displaced persons situation and needs. Initial interviews are crucial to begin this relationship; afterwards, repeated contact with the persons helps to maintain this relationship. Again, it is the individual displacees whose lives are being disrupted in order for DDOT to provide better transportation for the District as a whole. The displaced person must be treated with all fairness and given exemplary assistance and services.

The written early notice will advise the landowner and displacee that the transportation project will require a portion or the entire property, and one or both will be displaced as a result. If not previously furnished, the brochure “DDOT’s Right of Way Acquisition for Transportation Projects” will be furnished to the landowner and displacee. The displacee should be assured that they will not have to move until they receive further notification from DDOT. Contact information for the Relocation Specialist and acquisition agent should be provided, including telephone numbers, address, and e-mail address. If a relocation site office is to be opened for the project, the location, hours of operations, and contact information should be provided.

10.7 Providing Relocation Assistance Services (Duties of Relocation Specialist)

Relocation advisory assistance services must be offered to every displacee and provided by face to face contact, whenever possible. Any relocation advisory services required will commensurate with the displacee’s needs. The Relocation Specialist may only be required to provide minimum assistance when displacees are well informed, mentally, physically and financially able to manage their displacement and who neither need nor desire DDOT’s assistance. A much greater degree and intensity of services and assistance will be provided to those who are elderly, infirm, immobile or otherwise unable to cope with their displacement or economic problems.

Chapter 10 – Relocation Assistance

In some situations the displacee may specifically state that there is no need for assistance, other than providing payment offers and processing claims. If the Relocation Specialist does not feel the displacee possesses the ability to relocate without help, the Relocation Specialist should make every effort to furnish assistance or refer other service providers having specialized knowledge, skills and programs.

10.7.1 The Relocation Specialist will perform advisory services, or arrange for others to provide services, to ensure that the following minimum assistance requirements are met.

1. Follow up on the interview to determine the relocation preferences and intentions of each person being displaced. Determine the displacee's eligibility for supplemental housing benefits based on occupancy status and duration. Based on the determined eligibility, develop a replacement housing payment determination to be offered to displaced landowners jointly with DDOT's offer to purchase and to tenants within 7 days following the offer to the landowner. Provide assistance to displacees as is necessary and proper to facilitate securing replacement housing and any monetary benefits for which the displacees may be eligible.
2. Explain the relocation eligibility requirements and the procedures for obtaining such relocation assistance. This will include a personal contact with each person. These actions are taken in the normal course of the pre-acquisition and negotiations phases.
3. Fully explain the procedures for filing a claim for reimbursement of eligible costs and the documentation required to support each type of payment. Displacees are to be advised that payments are not considered income for tax purposes.
4. Provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings. Explain that no one can be required to move unless a comparable replacement dwelling is available.
5. Inform the person of the specific, comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of relocation payments. The basis for the determination should be explained to the displacee.
6. Provide reasonable opportunity to minority persons to relocate to DSS replacement dwellings not located in areas of minority concentration, that are within their financial means. This policy, however, does not require DDOT to

Chapter 10 – Relocation Assistance

provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

7. Offer all displacees, especially the elderly and disabled, transportation to inspect housing to which they are referred.
 8. Provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial properties and locations for businesses.
 9. Assist any person displaced from a business to obtain and become established in a suitable replacement location. Obtain information pertaining to the business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
 10. Minimize hardships to persons adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available and such other help as appropriate.
 11. Supply persons to be displaced with appropriate information concerning Federal and District housing programs, disaster loans and other similar programs administered by Federal and District agencies. Explain the appeal procedure established in Section 10.17 and afford the displacee ample opportunity to pose questions regarding information provided during meetings and/or arising from the brochure.
 12. Determine if a business has a need for an outside specialist to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
 13. For businesses, every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.
 14. Determine a time estimate required for the business to vacate the site and any anticipated difficulty in locating a replacement site. Assist the displacee by referencing applicable portions of the brochure and fully explaining the moving procedures and related costs.
 15. Plan for any advance relocation payments required for the move and the required documentation to receive advance payments.
- 10.7.2 The Relocation Specialist will notify the displacee in writing of the availability of comparable replacement housing, even though the displacee may have no intention or desire to relocate into the specific dwelling unit being referred. The Relocation Specialist

Chapter 10 – Relocation Assistance

can fulfill this requirement by informing the displacee of the comparable replacement housing utilized in the supplemental evaluation and other lower priced comparables. The Relocation Specialist can then tailor continuing relocation efforts to locating comparable replacement housing that meets the particular desires of the displacee.

10.7.3 The Relocation Specialist should develop several sources of information for replacement housing. These sources will include but are not limited to the following:

- Real estate brokers and boards of realtors;
- Multiple listing services;
- Real estate developers;
- Housing and Urban Development (HUD) and Veterans Administration (VA) area and regional offices;
- Builders and construction associations;
- Real estate management firms;
- Public housing agencies;
- Newspaper and Internet advertisements;
- Mobile home dealers; and
- Banks and other lending institutions.

10.7.4 The Relocation Specialist should maintain contact, exchange information and coordinate its relocation activities with other displacing agencies and with community organizations rendering services useful to displaced persons. Such agencies should include but not be limited to Social Welfare Agencies, Urban Renewal Agencies, Redevelopment Authorities, Federal Housing Administration, VA, Small Business Administration, Department of Community Affairs, and HUD. Local private non-profit housing service organizations and other community organizations should also be contacted and informed of general displacement activities and needs.

10.7.5 Once the displacee locates comparable replacement housing, the Relocation Specialist should be sufficiently knowledgeable in real estate practices to guide the displacee through the procedures necessary to obtain this housing. It is not the responsibility of the Relocation Specialist to assume the role of the various real estate professions. The Relocation Specialist should, however, counsel the displacee concerning lease and purchase agreement provisions, security deposits, earnest money, mortgages and other

Chapter 10 – Relocation Assistance

forms of financing, closing costs and settlement procedures. The Relocation Specialist should advise the displacee to enter a DSS inspection clause in any lease or purchase agreement for comparable replacement housing.

10.7.6 It is the duty of the Relocation Specialist to ensure that the displacee receives all payments and benefits to which the displacee is legally entitled. In order to facilitate the payment process, the Relocation Specialist shall assist the displacee in completing all required forms as well as obtaining any necessary supporting documentation for the payment.

10.7.7 Immediately after each contact with the displacee, the Relocation Specialist shall enter on the contact record a summary of topics discussed and conclusions or agreements reached. The record should indicate the following:

- Date of the contact;
- Person contacted;
- Topics discussed;
- Displacee's opinions;
- Notation of available replacement housing offered, if any; and
- Any other pertinent information obtained during the contact.

10.8 Determination of Eligibility for Assistance and Payments

10.8.1 The following four categories of person (see definition) can receive relocation advisory services:

1. Persons occupying real property to be acquired for the project. Most persons needing advisory services are in this category. These individuals actually reside or do business on the proposed project site. This group includes landowners and tenants of residences, and owners and tenants of businesses and non-profit organizations.
2. Persons whose real property is adjacent to the project site and could experience substantial economic injury by the project. The acquisition of property adjacent to a business may reduce its clientele, limit accessibility or in other ways may cause the business substantial economic harm. These persons are not entitled to relocation payments; however, businesses in this instance may need advisory services for consultation on space needs, current market trends, traffic patterns etc.

Chapter 10 – Relocation Assistance

3. Persons who move or move personal property from real property not being acquired for the project. This would most typically involve businesses with an owner living nearby the business location but chooses to move where the business will be located.
4. Persons who move onto the property after acquisition and are aware that they will have to move due to the project. These individuals are NOT entitled to relocation payments once the project requires that they move. They can, though, receive advisory services.

10.8.2 The following categories of residential displacees may be entitled to replacement housing payment:

1. The landowner that has been in occupancy for more than 180 days at the initiation of negotiations for the acquisition of the property, or at the time a written notice of intent to acquire is delivered by the Relocation Specialist.
2. The landowner that has been in occupancy for more than 90 days and less than 180 days at the initiation of negotiation for the acquisition of the property, or the time a written notice of intent to acquire is delivered by the Relocation Specialist
3. The tenant that has been in occupancy for more than 90 days at the initiation of negotiation for the acquisition of the property, or at the time a written notice of intent to acquire is delivered by the Relocation Specialist.

10.8.3 Partially Eligible Occupants

A person who occupies a dwelling prior to its acquisition by DDOT but did not occupy it for more than 90 days to gain full eligibility, may still qualify for a HLR rent supplement when a comparable rental is not available within their financial means. For these persons, a rent supplement computation using the base rent must be computed and offered. Regardless of the amount, an offer under these circumstances must be documented using housing of last resort procedures.

10.8.4 Property Owner's Responsibilities (Certification of Citizenship)

In order to be eligible for relocation payments and/or relocation advisory assistance, every displaced person must certify one of the following:

- Individual. The person is (1) a citizen of the United States, (2) a National of the United States, or (3) an alien lawfully present in the United States.

Chapter 10 – Relocation Assistance

- Family. Each member of the person’s family is (1) a citizen of the United States, (2) a National of the United States or (3) an alien lawfully present in the United States. Certification of family members can be made by the head of the household on behalf of the other members.
- Unincorporated Businesses or Non-Profit Organizations. Each owner is (1) a citizen of the United States, (2) a National of the United States, or (3) an alien lawfully present in the United States. Certification may be made by the principal owner, manager or operating officer on behalf of others with ownership interest.
- Incorporated Business or Non-Profit Organization. The entity is authorized to conduct business within the United States.

If any members of a household or any landowners of an entity listed above are found to be ineligible, no relocation payments may be made to these persons (49 CFR 24.2(a)(2)). Any payments for the household or business entity shall be computed based on the number of eligible individuals in the household or a part of the business entity.

10.8.5 Aliens not Lawfully Present in the United States

If the Relocation Specialist has reason to believe that lawful alien status is invalid, the Relocation Specialist shall obtain verification of alien status from the Immigration and Naturalization Service (INS). Verification requests require the individual’s full name, date of birth, alien number and a copy of the alien’s documentation. In the event the Relocation Specialist has reason to believe citizenship or nationality status is invalid, the Relocation Specialist shall request evidence of United States citizenship or nationality from the individual and, if necessary, verify the validity with the issuer.

Relocation payments will not be provided to an individual who has not provided certification discussed above or who the ROW Unit has determined to be ineligible (49 CFR 24.2(a)(2)). The ONLY exception to this standard is if the individual can sufficiently demonstrate that the denial of these benefits will result in unusual and extreme hardship to the individual’s spouse, parent or child who is a citizen of the United States or an alien lawfully admitted to permanently reside in the United States. This “unusual and extreme hardship” is defined as either of the following:

Chapter 10 – Relocation Assistance

- A significant negative impact on the health or safety of the spouse, parent or child.
- A significant negative impact on the continued existence of the family unit of which the spouse, parent or child is a member.
- Any other impact that the ROW Unit determines will negatively impact the spouse, parent or child.

10.9 Written Notices

Written notices must be furnished to each displaced person to ensure full understanding of the relocation assistance entitlements and services available. In accordance with 49 CFR 24.5, notices shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice 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. A copy of the notices must be placed in the project files after delivery to each recipient. The following describes each type of notice:

10.9.1 Notice of Intent to Acquire

1. The purpose of the notice of intent to acquire is to establish eligibility for relocation entitlements prior to the initiation of negotiations for the parcel (49 CFR 24.203 (d)). It is utilized in exceptional circumstances to relieve hardship to displacees. It is primarily applicable to residential owners but can also be applicable to tenants and owners of unimproved properties.
2. The ROW Unit Manager must determine that a hardship exists for the occupants of the property in order to utilize the notice of intent to acquire. See Chapter 3 for the complete requirements for a hardship acquisition to be approved.
3. When the notice of intent to acquire is furnished to a landowner, it must also be furnished to any tenants within 15 days. When the notice is furnished a tenant, the landowner must simultaneously be furnished with a copy of such notice sent by certified or registered first-class mail, return receipt requested.
4. The notice of intent letter will include a statement regarding eligibility, the anticipated date of initiation of negotiations for the acquisition of the parcel, and how additional information on relocation assistance benefits and services can be obtained.

Chapter 10 – Relocation Assistance

5. The notice of intent to acquire will be issued only after authorization is received to initiate negotiations on the project, or on individual parcels for advance acquisition (See Chapter 3). When the notice of intent is issued, every effort should be made to acquire the property as soon as possible to prevent possible subsequent tenant occupancy and to minimize rental vacancy loss for the landowner.

10.9.2 Notice of Replacement Housing Payment

Residential owners and tenant occupants will be advised in person confirmed in writing by registered first-class mail, return receipt requested certified mail of the amount of the maximum RHP for which they are eligible (49 CFR 24.204(a)). This notice will also provide the specific, comparable replacement dwelling which was used as the basis for the purchase or rental supplement calculation, and that it is available for occupancy. Should the comparable replacement dwelling not be on the market in a sufficient time for the displacee to enter into a purchase agreement or lease, an alternative dwelling will have to be found and offered as the comparable replacement dwelling. When feasible, the RHP should be delivered at the time of the initiation of negotiations for the parcel.

If the maximum purchase or rent supplement payment cannot be established prior to the initiation of negotiations due to unusual circumstances which exist, such as large household size, low family income, unusually large number of rooms in the existing dwelling, absence of available comparable dwellings, or any combination of these, the landowners will be fully advised of entitlements during the first negotiations contact. They will also be advised that they will not be required to move until at least 90 days after the date when comparable replacement housing is offered and they are informed of the maximum replacement housing benefit amount for which they are eligible. Tenants for whom payment amounts are not yet established will be similarly advised. Before any payment is made the Relocation Specialist shall inspect the replacement dwelling to ensure it meets DSS requirements.

Chapter 10 – Relocation Assistance

10.9.3 90-Day Assurance Notice

The construction or development of a transportation project must be scheduled to the greatest extent practicable for assurance that no person lawfully occupying real property will be required to move from a dwelling, business or non-profit organization for at least 90 days from the date that the written offer for the property is made by DDOT.

A 90-day assurance notice will be issued when a written offer for the property is made. In the case of a residential displacee, the 90-day assurance notice will be issued on or after the date a written offer for the property and the comparable replacement housing offer has been made. A minimum 90-day assurance notice will state that the displaced person will not be required to move from a dwelling, business or non-profit organization before a specific vacation date. The 90-day assurance notice will further state the displaced person will be given a final specific date by which the property must be vacated in a final written notice to be issued at least 30 days in advance of that specific vacation date (See Example 10-2).

The final vacation notice may be given to the displaced person at the time DDOT has legal possession of the property, provided the specific vacation date is at least 90 days after the date the written offer for the property was made and at least 30 days in advance of the date the property must be vacated. No final written notice will be required where a displaced person moves prior to the final notice being issued.

10.10 General Provisions

10.10.1 Requirements to Receive Payment

In addition to length of occupancy provisions, the displaced person must occupy a DSS dwelling, as defined in Section 10.1, within one year, beginning on the following dates:

- a. Owner-occupant of 180 days or more. The date on which the landowner received payment of the entire consideration for the acquired dwelling in negotiated settlements; or in the case of condemnation, the date on which the Declaration of Taking was filed, and the amount set forth in the declaration was made available for the benefit of the landowner.
- b. Tenant-occupant of 90 days or more. The date on which the move occurs. An Occupancy Affidavit (form OCCUPY) shall be secured as evidence of occupancy.

Chapter 10 – Relocation Assistance

A displaced person who cannot occupy the replacement dwelling within a 1-year time period because of construction delays beyond reasonable control will be considered to have purchased and occupied the dwelling site as of the date of the contract to purchase. The RHP under these conditions may be deferred until replacement housing is actually occupied.

Upon relocating, the displacee must properly complete the appropriate Rental Replacement Housing (RHP) application (form RHP Apply) to receive an RHP and submit it to the Relocation Specialist. The application must be filed no later than 6 months after the expiration of the 1-year period specified in the previous paragraph. In condemnation cases, the 1-year period is extended 6 months after final adjudication. The ROW Unit must stamp the application to show the date of this receipt. If both husband and wife hold title to property or there is more than one owner-occupant, each owner must sign the application for payment. In the case of tenant-occupants, each must sign the application for payment.

The payment may be made directly to the displaced persons named on the application for payment. On written instruction from a tenant-displacee, payment may be made to the lessor for rent. For an owner, payment may be made to the seller or lending agency at closing of the replacement property. If payment is made at closing, it will be personally delivered by the Relocation Specialist, who will remain present to assure that the full purchase supplement amount is credited to the purchase of the replacement dwelling. If this is performed, the occupancy requirement will be considered met at the completion of closing, providing an occupancy agreement has been signed.

10.10.2 Disbursement of Rental Replacement Housing Payment

The rental payment, in the amount of \$5,250 or less as determined in Section 10.9 shall be paid in a lump sum, unless the ROW Unit Manager determines that it should be paid in installments.

Chapter 10 – Relocation Assistance

10.10.3 Duplication of Payment

A person is not eligible to receive relocation payments if that person receives a payment under Federal, State or local law which is determined to have the same purpose and effect as payments under these regulations.

10.10.4 Relocation Payments Not Considered Income

No relocation payment received by a displaced person shall be considered as income for the purpose of the Internal Revenue Code or for the purpose of determining the eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing (49 CFR 24.209).

10.10.5 Withholding of Relocation Payment

When a displacee is advanced any relocation payment, that amount should be withheld from the total relocation payment to which the displacee is otherwise entitled. No relocation payment shall be withheld to satisfy an obligation to any other creditor or for any other purpose.

10.10.6 Property Not Incorporated in the Project

When relocation is made necessary by an acquisition for the project, even though the property is not included in the final project or ROW, relocation payments shall be made to the occupants of the property, providing that all other eligibility requirements are fulfilled. Relocation assistance services may only be made available to persons occupying property adjacent to property being acquired for a project. These services can only be used after it is determined that such person is caused substantial economic injury because of the acquisition.

10.10.7 Refusal of Services

A displacee can refuse relocation services and still be eligible for payments. There is no requirement that the displacee must accept the offer of services. It is necessary that the replacement dwellings meet DSS requirements and that time restraints are adhered to. Should payments be refused, the file should be so documented and remain open until the end of the claim period.

10.10.8 Civil Rights and Equal Opportunity Requirements

Chapter 10 – Relocation Assistance

1. All aspects of the relocation assistance program of DDOT shall be conducted without regard to race, color, religious creed, ancestry, national origin, age or sex. DDOT, through its field representatives, should advise all claimants of this policy of nondiscrimination. Displacees who feel that they have been discriminated against because of any of the factors listed shall be advised to provide in writing to explain their situation to the ROW Unit Manager.
2. Replacement housing listings referred to persons displaced shall be available without regard to race, color, religion, ancestry, national origin, age or sex. The ROW Unit shall make parties providing listings aware of this requirement. If any instance of discrimination against displacees by listing agencies or other parties providing listings is reported, the ROW Unit Manager shall attempt to ascertain the facts of the case. If the charges of discrimination are valid, the listing agency shall be so notified, and the listing will no longer be used.
3. Independent contractors employed by the displacee for the purpose of moving the personal property, or to perform any other services related to the relocation, will be expected to observe nondiscrimination statutes and policies. If any incidence of discrimination is observed or reported, the contractor involved shall be asked to explain actions taken involving the particular displacee. Appropriate further action will be taken as required by relevant laws and policies.
4. Availability of financing and access to social services, which may be required by the displacee, shall be on a nondiscriminatory basis.
5. Relocation activities will comply with the applicable Federal laws and implementing regulations listed in 54 Federal Register 8932 §24.8.

10.10.9 Payment after Death

A RHP is personal to the displaced person (49 CFR 24.403(f)). If the deceased displaced person lived alone and the complete payment has not been made, there will be no additional payments to heirs or assigns except for the following:

- The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

Chapter 10 – Relocation Assistance

- The full payment should be disbursed in any case in which a member of a displaced family dies and the other family members(s) continue to occupy the replacement dwelling selected in accordance with these regulations.
- Any portion of an RHP necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

10.10.10 Change of Occupancy

If a tenant, after moving to a DSS dwelling, relocates within the 1-year period to a higher cost rental unit, another claim may be presented for the amount in excess of that amount which was originally claimed not to exceed the total rent supplement originally computed.

10.10.11 Decent, Safe and Sanitary Inspection

Federal law requires that no RHP may be made for a replacement dwelling that is not DSS. Before a payment may be made, the Relocation Specialist must inspect the actual replacement dwelling to assure that it meets the criteria of DSS and comparable housing discussed throughout this chapter. This would include the appropriate modifications to reasonably accommodate persons with a disability as determined during the interview. (see section 10.5.1)

Replacement housing also must be inspected to determine its acceptability before referring it to displaced persons. When inspecting potential replacement housing, the following areas merit particular attention: porches, stoops and exterior stairs, roofs, electrical system, foundations and plumbing. The Relocation Specialist should caution displaced persons from becoming financially obligated to a replacement dwelling until the inspection has been performed. If the dwelling does not meet the standards of DSS housing, the unit can still be used as replacement housing if and only after the deficiencies are corrected. The cost to correct DSS deficiencies may be included as part of the purchase supplement payment to the extent that they do not bring the cost of the dwelling above the price of the comparable. The costs of repairs and improvements undertaken for the desires of the displaced person however and are not necessary to correct the DSS deficiencies are not included in the purchase supplement computation.

Chapter 10 – Relocation Assistance

This inspection of the replacement dwelling is to be made to the extent necessary to obtain the information to accurately complete the DSS Inspection form (form DSS). A copy of the Relocation Specialist's contact report (see Example 10-4) showing the dates and substance of all contacts with the displacee must accompany this completed form. This inspection is made solely for the purpose of determining the eligibility of relocated individuals and families for payment under this section and is not a representation for any other purpose.

10.10.12 Multiple Occupancy of Same Dwelling Unit

1. If eligible multiple occupants occupy the same dwelling unit, they will be considered to constitute a family for relocation purpose, if a comparable replacement dwelling is available.¹ The occupants are entitled to only one replacement housing or rent supplement payment. If a comparable replacement housing is not available, the replacement housing or rent supplement payment for each occupant will be based on housing which is comparable to the combined total living space privately occupied by each occupant plus common rooms which are being shared with other occupants.
2. If the ROW Unit determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.
3. If eligible multiple occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Relocation Specialist, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling unless otherwise justified by the Relocation Specialist. The prorated share to which each occupant is entitled shall be determined by calculating the living space each occupant utilizes. The prorated percentage should be calculated by determining the square footage of space privately used by each occupant and adding their portion of the common areas and dividing by the total area of the dwelling. The calculated percentage multiplied times the computed total replacement housing or rent supplement payment will determine each occupant's maximum entitlement.
4. If all individuals displaced from one dwelling do not relocate into DSS housing, those individuals who do not relocate into DSS housing will be paid a prorated

¹ 49CFR24.403(5)

Chapter 10 – Relocation Assistance

share of the appropriate payment they would have received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

10.11 Replacement Housing Payments (RHPs)

The following guidelines are to be used to determine the types of relocation benefits that the displacee may be entitled to and to provide additional eligibility information.

RHP are made only to displaced persons who occupied property acquired for the project as their primary place of residence or to those displaced persons who have to remove personal property from the acquired property. These payments are for housing which is decent, safe and sanitary, adequate for their needs and comparable to the housing from which they are being displaced, as further described in this chapter. The term “decent, safe and sanitary” (DSS) refers to the physical conditions of the replacement dwelling and its effect on the health and safety of the occupants. The term “comparable” refers to a dwelling that, in addition to DSS, is functionally equivalent to the displacement dwelling; adequate in size to accommodate the displaced person; located in an area without unreasonable adverse environmental conditions; reasonably accessible to the displaced person’s place of employment; located in a typical residential area; currently available to the displaced person; and within the financial means of the displaced person.

For displaced persons with a disability, physical impairment that substantially limits one or more of the major life functions, the replacement DSS dwelling must include reasonable accommodations for those disabilities. This may include doors of adequate width, ramps or other assistance devices to transverse stairs, etc. Additional accommodations may include modifications to kitchen and bathroom items for wheelchair accessibility and heights. Should the disability involve devices that can be relocated from the displacement dwelling (ie.hearing impaired device) then such items should be included in the moving expense reimbursement, even if it was considered realty.

In the event that no comparable replacement DSS dwelling has the amenities to accommodate the disabled displaced person, the cost of making the necessary modifications shall be estimated and included in the RHP offered to the displacee.

Chapter 10 – Relocation Assistance

The time limit for the purchase or rental of replacement dwelling is 1 year; DDOT may extend the 1-year period for good cause (49 CFR 24.207(d)). For displaced owner-occupant, the year begins on the later of either (1) the date the person receives final payment for the acquired dwelling or, in the case of condemnation, the date the required amount is deposited with the court, or (2) the date the displacement. Payments will only be made if the displaced person files a claim for the payment within 18 months of the beginning of the 1-year period. Should DDOT disapprove a claim based on untimely filing or other grounds, written notice shall be promptly given to the displaced person providing the basis of the determination and the procedure for appealing the decision.

Individuals and families displaced from a dwelling are eligible for purchase or rental supplement payments in accordance with the provisions of this section. The purpose of the supplement is to enable the displaced household to relocate to decent, safe and sanitary replacement housing that is within financial means. The specific type of payment will depend on the status as either landowner or tenant and length of occupancy at the acquired dwelling. There are also conditions for payment, including the requirement that the displacee occupy replacement housing that meets DSS standards and submit a claim within the required period.

As indicated in Section 10.7, one of the duties of the Relocation Specialist is to maintain information regarding DSS dwellings available for rent or sale. When the appraisal for a property with an owner-displacee has been submitted for review, a copy shall be provided to the relocation specialist.

The Relocation Specialist shall use the site occupant interview information to select comparable replacement dwellings. When possible, three comparable replacement dwellings should be documented and evaluated. Based on the selection of the most comparable, the Relocation Specialist will calculate the various benefit amounts that are available to the owner-displacee. Should reasonable accommodations for persons with a disability not be present in the comparables, then the cost to make the necessary accommodations in doors, baths, kitchen, etc. should be included in the relocation calculations. The calculated relocation benefits can then be presented to the landowner with the offer to acquire the property for the just compensation amount. It is the responsibility of DDOT to provide a comparable replacement dwelling, which enables the displacee to relocate to the same ownership or tenancy status as prior to displacement. The displacee may voluntarily relocate to a different ownership or tenancy status. The ROW Unit

Chapter 10 – Relocation Assistance

may also provide a dwelling, which changes the status of the displacee with their concurrence, if a comparable replacement dwelling of the same status is not available.

10.11.1 Eligibility for Replacement Housing Payments

In addition to the requirements discussed in Section 10.8, other specific rules concerning the eligibility for and computation of RHP exist. If payments within the limits discussed below are not adequate to accomplish the relocation, DDOT is required to use Housing of Last Resort (HLR).

1. Payments for 180 Day Owner-Occupants

A displaced person must have occupied the dwelling prior to its acquisition by DDOT for at least 180 days immediately prior to the initiation of negotiations to be eligible for this category of payments. The owner-occupant will be eligible for a purchase supplement payment plus increased mortgage interest and incidental expenses or a rental assistance payment (See Section 10.11.2 for methods of computation).

- a. Purchase Supplement. This is a payment, not to exceed \$22,500, when added to the acquisition cost, equals the cost of comparable replacement housing and is to assist in the purchase of replacement housing (49 CFR 24.401(b)).
- b. Rental Assistance. This is a payment to assist in the rental of a comparable replacement dwelling. It is based on the difference between the determined market rent for the acquired dwelling and the rent for a comparable rental dwelling available on the market, multiplied 42 months. This payment is generally limited to this amount for a person eligible for a purchase supplement payment since sufficient funds are available for home ownership to continue. It is premised on the concept that rental, rather than purchase, of a comparable replacement dwelling is a decision that is unrelated to the acquisition of the acquired property.

2. Payments for 90 Day Occupants and 90 to 179 Day Owner-Occupants

Both a displaced residential tenant being displaced for at least 90 days immediately prior to the initiation of negotiations and a displaced owner-occupant who occupied the dwelling (but moved from at least 90 but less than

Chapter 10 – Relocation Assistance

180 days prior to the initiation of negotiations) are eligible for this category of payments. Persons within these categories may be eligible for either a rental-assistance payment or downpayment assistance. The follow provides clarification of each type of payment:

- a. Rental Assistance. This is a payment, not to exceed \$5,250, to assist in the rental of a comparable replacement dwelling. The payment is based on the difference between the monthly rent plus utilities necessary to rent a comparable replacement dwelling, as determined by the Relocation Specialist, and the monthly rent plus utilities for the displacement dwelling. The utilities to be considered for computation purposes include heat, light, water and sewer.
- b. Downpayment Assistance. This is a payment, not to exceed \$5,250, to assist with a downpayment on the purchase of a comparable replacement dwelling. The actual payment is limited to the amount the displaced person would have received for a rental assistance payment.

A 90 to 179 day owner-occupant may not receive a downpayment assistance payment which exceeds that which would have been received if the displacee had been a 180 day owner-occupant. A 180 day owner-occupant is not eligible to receive downpayment assistance.

3. Special Circumstances

The URA provides that no displaced person shall be denied eligibility for RHP solely because of an inability to meet occupancy requirements due to reasons beyond control. Special circumstances make it impossible for a displaced person to satisfy the occupancy requirements of an RHP. These circumstances include a disaster, an emergency, or an imminent threat to public health or welfare, as determined by District or Federal officials, or the lack of available comparable replacement rental housing within the displaced person's financial means. In these cases, rental assistance payments for a period of 42 months will be made.

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a disaster-related loss

Chapter 10 – Relocation Assistance

to the displacement dwelling shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

10.11.2 Replacement Housing Payments

1. Owner-Occupants Over 180 Days

The total RHP is an amount up to \$22,500, equaling the sum of the owner purchase supplement, mortgage interest differential and incidental expenses.

a. Owner Purchase Supplement.

This supplement is the difference between the price actually paid by the displaced person for the comparable replacement dwelling and the price paid by DDOT for the acquired dwelling. The price of the comparable replacement dwelling sets the upper limit of payment computation for the price differential.

The Relocation Specialist will perform the following:

1. Determine displacee eligibility for entitlements.
2. Identify characteristics of the home and the family being displaced, by interview, and inspect the premises. (Use form INTERVIEW to record information.)
3. Determine essential requirements of comparable replacement housing for the displaced household in terms of number of bedrooms and baths, and type of dwelling, location characteristics, special needs, such as one floor plan to accommodate elderly or disabled, etc. (See definition of “comparable replacement housing.”)
4. Conduct a search for comparable replacement housing using resources such as contacts with real estate brokers, published listings and personal observations. The probable selling price of a comparable replacement dwelling will be determined by the Relocation Specialist by analyzing at least three comparable dwellings from the inventory of available comparable replacement dwelling forms (form COMP RHP). These dwellings must be available on the private market and meet the criteria of a comparable replacement dwelling. Less than three

Chapter 10 – Relocation Assistance

comparables may be used for this determination when fewer comparable dwellings are available. The Relocation Specialist performing the determination must provide a full explanation supporting the determination, including a discussion of efforts to locate more than one comparable replacement dwelling. One comparable dwelling, from among those evaluated and considered, will be selected as the basis for the purchase supplement determination. This selection will be made by careful consideration of all factors in the replacement dwellings which meets the needs of the displacee with reference to the elements in the definition of comparable replacement housing.

If comparable DSS replacement housing cannot be located after a diligent search of the market, available non-decent, safe and sanitary replacement dwellings may be used as the basis for the maximum amount of the purchase supplement. In these cases, the maximum payment will be established by obtaining cost estimates from persons qualified to correct the DSS deficiencies and adding this amount to the probable selling price of the available non-DSS replacement housing.

5. Compute price differential as in the following example:

| Example: Computation of Owner Purchase Supplement | |
|--|---------------------|
| <u>Computation</u> | |
| Cost of the Comparable Replacement Dwelling | \$100,000 |
| <i>Less the</i> | |
| Acquisition Price (Acquired Dwelling) | <u>-\$116,500</u> |
| Price Differential | -\$16,500 |
| <u>Actual Payment</u> | |
| Cost of the Comparable Replacement Dwelling | \$116,500 |
| Actual Replacement Cost | \$116,500 (or more) |
| <i>Less the</i> | |
| Acquisition Price (Acquired Dwelling) | <u>-\$100,000</u> |
| Price Differential (Purchase Supplement) | \$ 16,500 |
| If the displaced person spends less than the cost of the comparable dwelling, the price differential is less: | |

Chapter 10 – Relocation Assistance

| | |
|---|-------------------|
| Cost of the Comparable Replacement Dwelling | \$116,500 |
| Actual Replacement Cost | \$114,000 |
| <i>Less the</i> | |
| Acquisition Price (Acquired Dwelling) | <u>-\$100,000</u> |
| Price Differential (Actual Purchase Supplement Payment) | \$ 14,000 |

Note that the DDOT determined owner purchase supplement (Price Differential in above example) is a maximum amount. The actual claim will be based on amount the displacee actually pays for a comparable replacement dwelling, if lower. It is important that displacees understand the “spend to receive” provision at the time they are searching for replacement housing.

Displacee is advised of maximum purchase supplement payment amount, and the address of the most comparable dwelling through a letter (Example 10-3).

The basic concept of owner purchase supplement as presented in the above example is quite simple. However, actual cases are often complicated by the infinite variety of displacee circumstances and living arrangements that are encountered. In addition, the statutory model for the owner purchase supplement is the whole take of a dwelling on a typical size site. In reality, there is a great variety in the types of acquisitions, forms of ownership, and in the physical characteristics of properties acquired. Some of these special situations are described in the following examples. Situations that are not addressed should be brought to the attention of the ROW Unit Manager.

b. Major Exterior Attributes

If the dwelling selected for computing the payment is similar to the displacement property but lacks major exterior attributes (such as a garage, outbuilding, swimming pool, etc.), the appraised value of such items will be deducted from the acquisition cost of the acquired dwelling for purposes of computing the payment. No exterior attributes are to be added to the comparable. However, the added cost of building an

Chapter 10 – Relocation Assistance

exterior attribute at the replacement property occupied may be added to the acquisition cost, provided that the major exterior attributes having the same function are found in the displacement property and in the comparable used to determine the maximum payment. The following calculation shows how a purchase supplement is determined when a major exterior attribute is present:

Example: Major Exterior Attribute (swimming pool)

The appraiser assigned a \$5,000 contributing value for the pool, and a total property value of \$100,000. A comparable house, not having a pool, is listed for sale at \$105,000. After an adjustment for a higher listing value, a probable selling price of \$101,850 is determined for the comparable replacement property. The purchase supplement amount is computed below:

| | |
|--|------------------|
| Comparable Replacement Dwelling (adjusted) | \$101,850 |
| <i>Less the</i> | |
| Acquisition Price (Acquired Dwelling) | \$100,000 |
| Less the value of the pool | \$ 5,000 |
| Adjusted Acquisition Price (Acquired Dwelling) | <u>\$ 95,000</u> |
| Maximum Purchase Supplement | \$ 6,850 |

c. Comparable Replacement Housing Not Available

In the absence of available comparable replacement housing upon which to compute the maximum replacement housing payment, the Relocation Specialist may establish the estimated selling price of a new comparable DSS dwelling on a typical home site. To accomplish this, the Relocation Specialist will contact at least two reputable home builders for the purpose of obtaining firm commitments for the cost of building a comparable replacement dwelling on a typical home site. If the only housing available greatly exceeds comparable standards, a payment determination may be based on estimated construction cost of a new dwelling which meets, but does not exceed, comparable standards.

d. Highest and Best Use Other Than Residential

When the acquired dwelling is located on a site where the FMV is established on a highest and best use that produces a value greater than residential, the purchase supplement payment amount will be determined by deducting the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land which represents a

Chapter 10 – Relocation Assistance

tract typical in size for the area from the probable selling price of the most comparable replacement dwelling listing. The following calculation shows how this amount is determined:

Example: Acquired Dwelling on Commercial Zoned Site

The acquired house (whole take) is on a one-acre site zoned commercial. The typical residential lot in the area is 1/4 acre. The typical 1/4 acre lot is appraised at \$50,000 and the acquired dwelling is valued at \$10,000 as an interim use.

A comparable house on a residentially zoned lot is available for \$70,000 (after adjustment). The maximum purchase supplement amount is determined below:

| | |
|---|-----------------|
| Cost of the Comparable Replacement Dwelling | \$70,000 |
| <i>Less the</i> | |
| Value of the house acquired on 1/4 acre lot | <u>\$60,000</u> |
| Maximum Purchase Supplement | \$10,000 |

e. Mixed Use Properties

1. If the acquired dwelling unit is part of a structure which also includes space used for nonresidential purposes, the amount of the purchase supplement payment will be determined by using only that part of FMV that is attributable to the residential use of the acquired property.

The following calculation shows how this amount is determined:

Example: Displacement Property in Residential and Commercial Use

A grocery store owner lives in a two-bedroom, one-bath apartment above the store. His residential unit has 1,200 square feet of habitable living space. The property is appraised at \$150,000. The appraiser allocated 40 percent of total property value to the residence.

There are three two-bedroom, one-bath units available for sale. The choices are (1) a duplex with two identical units [\$125,000]; (2) a single family house [\$75,000]; and (3) a condo unit in a sixplex [\$50,000].

| | |
|--|-----------------|
| Most comparable replacement dwelling: 1/2 of duplex unit | \$62,250 |
| <i>Less the</i> | |
| Acquired residential portion | <u>\$60,000</u> |
| Maximum Purchase Supplement | \$ 2,250 |

Chapter 10 – Relocation Assistance

If the replacement property is a structure which includes space used for non-residential purposes, only that part of the total cost that relates to the value of the owner's living unit will be used when determining the purchase supplement payment.

2. When the replacement property contains buildings other than residence which are used for nonresidential purposes, the value of these buildings must be carved out of the entire purchase price of the replacement property in order to determine the residential use value. The residential use value will represent the amount paid for replacement housing when determining the purchase supplement payment amount.

The following calculation shows how this amount is determined:

Example: Displacee Purchases Mixed Use Replacement Property

A family displaced from a single-family house (acquisition value \$80,000, purchase supplement \$10,000) contracts to purchase an operating service garage for \$250,000. They will live in the dwelling, which has an estimated value separate from the garage of \$85,000. The displaced family submits a claim for the full \$10,000 maximum purchase supplement amount.

The family is eligible to receive \$5,000, not \$10,000, as a Purchase Supplement Payment.

Before processing the claim for payment, the relocation specialist must determine the value of the dwelling on a lot normal for residential use in the area; this will determine the payment ceiling. The part of the purchase price attributable to the garage operation (\$165,000) is not to be considered in the claim. This should have been explained to the displaced family members before they searched for replacement property.

3. If the acquired property consists of a multi-family structure of which one unit is owner-occupied, the amount of the purchase supplemental payment to the owner-occupant will be the difference between the value of one unit of a multi-family comparable and the value of the owner occupied residential-use portion of the acquired property. If the replacement property is a multi-family structure, only the value of the owner's living unit can be used to determine the purchase supplemental payment, not the entire purchase price. The purchase supplement amount will be the price of one unit of a

Chapter 10 – Relocation Assistance

multi-family comparable or the price of one unit of a multi-family replacement, whichever is less, minus the residential use portion of the acquired property. The following calculation shows how this amount is determined:

Example: Owner Displaced from Condominium Unit

The acquired dwelling is a condominium unit in a building containing three stores and six residential units. The appraised value of the buildings is \$1 million. The value of the displacee's unit is \$120,000.

The purchase supplement is the cost of the comparable condo unit in a similarly configured building having residential and commercial units, less the \$120,000 attributed to the displacement unit.

There may not be a condominium unit on the market in a mixed use, six residential unit buildings. Look for units in buildings having five, four, three, or two units. Use the "most comparable" unit considering the ownership form and configuration of units, as well as other factors.

f. Partial Take of a Typical Residential Site

1. *Remaining land is a buildable site*

If the acquisition of a portion of a typical residential property causes the displacement of the landowner from the dwelling and the remainder is buildable residential site, DDOT will offer to purchase the entire property. If the landowner refuses to sell the remainder which is a buildable site to DDOT, the FMV of the remainder will be added to the acquisition cost of the acquired property for the purposes of computing the maximum purchase supplement payment.

2. *Remaining land is an Uneconomic Remnant*

If the landowner refuses to sell the residue that is an Uneconomic Remnant to DDOT, the value of the take and damages to the remainder will be used in computing the maximum purchase supplement payment.

3. *Larger tract than normal*

If the acquired property is a dwelling on a significantly larger site than typical for residential use in the area, the maximum replacement housing payment is the asking price of a comparable replacement dwelling on a tract typical in size for residential use, less the acquisition price of the acquired dwelling and the value of that

Chapter 10 – Relocation Assistance

portion of the acquired site which represents a typical size residential lot in the area. The following calculation shows how this amount is determined:

Example: Partial Take From Larger than Typical Residential Site

The displacement dwelling is on a one-acre site. Quarter acre lots are typical in the area. The house and 1/2 acres are being acquired. Appraised value: \$125,000 (no remainder damage). The appraiser valued the land at \$20,000/acre. A comparable house on 1/4 acre is available. It is estimated it will sell for \$130,000 (adjusted listing price).

| | |
|--|------------------|
| Comparable replacement dwelling (adjusted) | \$130,000 |
| <i>Less the</i> | |
| Acquired property* | <u>\$120,000</u> |
| Maximum Purchase Supplement Amount | \$ 10,000 |

* \$5,000 value of the 1/4 acres of acquisition area excess to typical lot has been deducted

g. Payment to Occupant with Partial Ownership

1. If a displacement dwelling is owned by several persons and occupied by only some of the landowners, the RHP will be the lesser of:
 - a) The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the comparable replacement dwelling, or;
 - b) The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Relocation Specialist as necessary to purchase a comparable dwelling.

Generally, the circumstances of partial owner-occupants arise when the ownership comes from a family inheritance, where one or more, but not all the heirs occupy the property.

2. If the displaced partial owner-occupants rent rather than purchase a replacement dwelling, they will be entitled to receive a rent supplement payment if they rent and occupy a DSS dwelling in accordance with the provisions of this chapter.

Chapter 10 – Relocation Assistance

3. If unusual circumstances would create an unintended hardship on the occupants with a partial ownership; the full facts along with a recommended solution are to be submitted to the ROW Unit Manager for a determination.

The owner purchase supplement is one of several items in the total replacement housing benefit package for which owner-occupants over 180 days are eligible. The other items are reimbursement of incidental expenses incurred in purchase of replacement housing, and payment for increased interest costs. This benefit package is referred to collectively as the RHP. There is a maximum limit of \$22,500 imposed by law on the total amount for the RHP. However, there is an overriding provision of law that requires comparable replacement housing be made available to displacees. The apparent conflict is resolved by considering claims over \$22,500 under the special authority and controlling rules of HLR (Section 10.14).

h. Incidental Expenses

Incidental Expenses include those reasonable expenses actually incurred by the displaced person in purchasing a replacement dwelling and customarily paid by the buyer. Those expenses eligible for reimbursement (49 CFR 24.401(e)) include the following:

1. Legal, closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
2. Lender, FHA, or VA appraisal and loan application fees.
3. Loan origination or assumption fees that do not represent prepaid interest (limited to amount necessary for balance of existing mortgage for homeowners).
4. Certification of structural soundness, radon and termite inspection when required or when customary for the community in which the displacement occurs.
5. Credit report.

Chapter 10 – Relocation Assistance

6. Owner's and mortgagee's evidence or assurance of title, e.g., title insurance (not to exceed the costs for a comparable replacement dwelling).
7. Escrow agent's fee.
8. District revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
9. Such other costs as DDOT determine to be incidental to the purchase.

No fee, cost, charge or expense is reimbursable as an incidental expense when it is determined to be part of the debt service or finance charge under the Truth in Lending Act. Except when the replacement housing amount is paid into escrow, the combined total of payments under this section will be claimed and paid in a lump sum.

i. Mortgage Interest Differential

The mortgage interest differential payment is to compensate the landowner for increased interest costs which he/she is required to pay for financing the replacement property (49 CFR 24.401(d)). To qualify for this payment, the mortgage on the acquired property must have been a *bona fide* and valid lien in existence for at least 180 days prior to the initiation of negotiations. All *bona fide* mortgages on the dwelling acquired by DDOT will be used to compute the increased interest portion of the RHP.

Home equity loans are valid mortgages on residential real property regardless of how the proceeds from the loans are used. Therefore, they must be included in the computation. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balances on the date of acquisition, whichever is less.

When the property is secured with an adjustable rate mortgage, the mortgage interest rate that is current on the property as of the date of

Chapter 10 – Relocation Assistance

acquisition will be used in the computation. The displaced person will be advised of the approximate amount of this payment as soon as the facts relative to the person's current mortgages are known. The payment will be made at the time of closing on the replacement dwelling, so that the new mortgage can be reduced.

The computation of the payment for increased interest costs will be the 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 that for the mortgage or mortgages on the acquired dwelling. The amount of the increased interest payment will be computed by the Relocation Specialist using the Interest Expense Calculation form (form MORT DIFF) based on:

1. The unpaid mortgage balances on the acquired dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buy down determination, the payment will be prorated and reduced accordingly.
2. The remaining term of the mortgage or mortgage on the acquired dwelling or the term of the new mortgage, whichever is shorter.
3. The interest rate on the new mortgage which shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located. The following calculation shows how this increased interest cost is determined:

| Example: Increased Mortgage Interest Payment | | |
|--|------|----------|
| <u>Facts</u> | | |
| 1. Outstanding balance – acquired dwelling mortgage | | \$43,210 |
| 2. Outstanding balance – replacement | | \$47,000 |
| 3. Remaining term, in months, acquired dwelling mortgage | 212 | |
| 4. Term, in months, replacement dwelling mortgage | 360 | |
| 5. Interest Rate – acquired dwelling mortgage | 7.5% | |
| 6. Interest Rate – replacement mortgage | 8.0% | |
| <u>Determination</u> | | |
| 1. Monthly payment required to amortize a loan of \$43,210 in 212 months at an annual rate of 7.5% | | \$368.38 |
| 2. Amount of reduced loan having a monthly payment of \$368.38 for 212 months at interest rate of 8% | | \$41,749 |

Chapter 10 – Relocation Assistance

| | |
|--|----------|
| 3. Increased Mortgage Interest Payment: \$43,210 - \$41,749 | \$ 1,462 |
|--|----------|

For partial acquisitions where the acquired or replacement dwelling is located on a tract larger normal for residential use in the area, the interest payment will be reduced to the percentage ratio that the respective acquisition price bears to the value of the part of the property normal for residential use property, except the reduction will not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance. The interest payment on the multi-use properties will be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

If the dwelling is located on a tract where the FMV is established on a highest and best use other than residential and if the mortgage is based on residential value, the interest payment will be computed as provided in the appropriate sub-section above. If the mortgage is obviously based on the higher use, however, the interest payment will be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

The increased interest amount can be paid to the displaced individual or family. On written instruction from the displacee, it can be paid to the mortgagee of the replacement dwelling. Upon specific request, DDOT can make an advance payment into escrow prior to the displacee moving.

j. Rental Assistance Payment

The rental RHP (rental assistance) is the difference in rent before and after relocation (if any) for a period of 42 months (49 CFR 24.402(b)). A maximum amount is determined by the Relocation Specialist based on the rent of a comparable available unit. This payment, not to exceed \$5,250, is based on the difference between the monthly rent and utilities necessary to rent a comparable replacement dwelling, as determined by the Relocation Specialist and the monthly rent and utilities for the

Chapter 10 – Relocation Assistance

acquired dwelling. Utilities include heat, light, water and sewer. If the payment exceeds the \$5,250, housing of last resort must be used.

Example: Rental Assistance Payment (basic)

| | |
|---|-----------------|
| Determining of Maximum Payment | |
| Rent on available comparable rental unit, including utilities | \$ 775 |
| <i>Less the</i> | |
| Displacee's current monthly rent, including utilities | <u>-\$ 650</u> |
| Monthly rent difference | \$ 125 |
| Multiplied by 42 months | |
| Maximum Rent Supplement Amount | \$5,250 |
| If the displacee spends less than the cost of comparable rental unit then the rent supplement is less | |
| Rent of replacement unit actually occupied (including utilities) = | \$ 740 |
| <i>Less the</i> | |
| Displacee current monthly rent, including utilities | <u>-\$5,650</u> |
| Monthly Rent Difference | \$ 90 |
| Multiplied by | |
| Actual Rent Supplement Amount (\$90 X 42 months) = | \$3,780 |

The tenant is advised of this maximum amount and the specific rental unit on which it was based. When the tenant displacee rents a replacement unit, the actual amount claimed is based on the lower of the rent on the identified comparable unit, or the unit the displacee actually rents and occupies. The rental assistance amount actually paid is subject to the same "spend to receive" limitation as applicable to owner purchase supplements. The tenant displacee should be advised of this provision.

The relocation assistance program assures that housing will be available within a displacee's financial means. For tenants whose gross household income is classified as "low income" by HUD, housing within financial means will be based on thirty percent of gross household income (49 CFR 24.402(b)(ii)). Therefore, tenants paying thirty percent or more of their income in rent and utilities before relocation will have the rent supplement determined on monthly income, not rent paid.

Example: Rent Supplement (low income)

Chapter 10 – Relocation Assistance

Some facts as above example except of 30 percent of displacee gross monthly household income from all sources = \$510 (income = \$1,700)

Determination of maximum payment:

Rent on available comparable rental unit, including utilities \$600

Less the

30% of displacee income -\$510

Monthly rent difference: \$ 90

Multiplied by

Maximum Rent Supplement Amount (\$90 X 42 months)= \$3,780

The displacee rented a \$575 replacement unit as in above example. The actual amount claimed is thus \$2,730 because of the “spend to receive” provision ($\$575 - \$510 = \$65 \times 42 \text{ months} = \$2,730$)

In determining the maximum rent supplement the relocation specialist will follow the same list of steps outlined in Section 10.11.2 for the owner purchase supplement. Two additional data items must be determined for a tenant displacee. Monthly gross income must be identified, to determine if the displacee is classified as “low income,” and requires housing within their financial means. In addition, utility costs (heat, light, water and sewer) must be determined if they are not included in stated rent.

The Relocation Specialist should explain the relevance of income and ask for verification, by way of pay stubs, W-2 statements, etc. If the displacee declines to provide income verification, the rental assistance payment should be based on rent actually paid.

Utilities are a necessary cost of housing and thus part of the determination of the rental benefit. Utility costs (heat, light, water and sewer) are to be added to the rent for the displacement determined comparable, and the replacement dwellings to the extent they are not included in the stated rent. Information may be secured or verified by billing statements or utility company records. If actual billings cannot be determined, the utility company may provide average costs for units of different types and sizes.

Chapter 10 – Relocation Assistance

k. Special Situations – Subsidized Housing

HUD Section 8 Housing Assistance Program

Section 8 is a rent subsidy program funded by HUD to enable low-income families to rent privately owned DSS housing. Section 8 is administered by local housing agencies. Landlords receive a subsidy representing the difference between thirty percent of an eligible tenant's adjusted gross household income, and reasonable housing rent as determined under program rules. There are three types of Section 8 housing:

1. A certificate based on the income of the recipient and the rent paid;
2. A voucher, which pays a specific amount toward the recipient's rent; and
3. Market rehab unit.

The first two program types are portable, meaning the benefit moves with the recipient. The market rehab type stays with the housing facility.

Tenants receiving Section 8 housing benefits before displacement.

Section 8 assistance has a feature that is superior to the relocation rent supplement in that it is not limited to 42 months, but continues as long as the recipient household is income eligible. The Relocation Specialist should make every effort to relocate existing Section 8 recipients to units which their Section 8 benefits will continue. If a normal relocation rent supplement is paid, the local housing agency may consider this income, and disqualify the displaced household from eligibility for Section 8. It may be difficult to reenter the program, as there is usually a long waiting list. The Relocation Specialist should closely coordinate with the administering local housing agency.

In order to transfer Section 8 benefits the recipient must relocate to a DSS unit in which the owner agrees to participate in this program. Local housing agencies generally maintain current lists of participating owners

Chapter 10 – Relocation Assistance

and properties. The criteria below will apply, corresponding to the type of Section 8 program displacee is receiving:

- a. For the certificate program, rent must be less than the ceiling set as fair market rent in the HUD schedule for the local area. Housing agencies will provide a copy of the current HUD established local schedule.
- b. For a recipient in the voucher program Section 8 will pay up to the housing authority approved payment standard in the area. This usually eighty to one-hundred percent of the fair market rent in subdivision 1 of this subsection. The recipient may pay the landlord the difference if actual rent is higher than the standard.
- c. Market rehab Section 8 recipients may remain in Section 8 on concurrence of the local housing agency and the landlord.

In determining the rent supplement amount, assume utility costs are the same as before relocation. An effort should be made to use a comparable replacement dwellings meeting Section 8 criteria. The standard base monthly rent should be used, which is the lower of the following: existing rent before subsidy, market rent, or thirty percent of income. Under the Section 8 certificate program, rent paid should be the same as thirty percent of income. However, this will not always be the case in the voucher program. An example is provided below:

Example: Rent Supplement – Section 8 Voucher Program

Facts before Relocation

| | |
|--|---------------|
| Displacee household income | \$1,000/month |
| 30% of income | \$ 300/month |
| Fair market rent and contract rent | \$ 550/month |
| Actual rent paid (Section 8 Voucher = \$225) | \$ 325/month |

After Relocation

Displacee moves to comparable housing at \$550/month and retains Section 8 Voucher paying \$225 to landlord. DDOT pays rent supplement on incremental difference between 30 percent of income (\$300) and actual replacement rent (\$325). $(\$325 - \$300) \times 42 \text{ months} = \$1,050$

Chapter 10 – Relocation Assistance

The Relocation Specialist will inform the displacee of the RHP, both with and without Section 8 participation, and advise the following options:

1. Accept DDOT conventional rent supplement, which is limited to 42 months, and may disqualify the displacee of Section 8 in the future.
2. Receive downpayment subsidy of \$5,250 to assist in purchase of a replacement dwelling.
3. Retain Section 8. DDOT will pay rent supplement only to the extent of any difference between Section 8 subsidy and base monthly rent (as in above example). In most cases, the DDOT payment will be \$0. Tenants should be encouraged to accept this option if they plan to continue to rent and have no prospects of significant increase of income.

Tenant Not on Section 8 Before Displacement

1. Determine rent supplement based on comparable unsubsidized housing, and the lesser of existing rent, market rent, or thirty percent of income if classified as low income by HUD. This is a conventional rent supplement situation. If the tenant moves to Section 8 housing as a replacement, recalculate based on the net increase (if any) in monthly housing costs to the displacee after applying the Section 8 subsidy.
2. If the tenant displacee is paying little or no rent because of family relationship with the landowner, market rent may be used to determine the rent supplement. However, if the low rent favorable to the displacee merely results from long tenancy the actual rent will be used.
3. The replacement rent is subject to a limit of \$5,250. However, just as with the landowner RHP, a higher computed payment could be paid under authority of HLR.

1. Downpayment Assistance

Chapter 10 – Relocation Assistance

This payment is intended to assist a displaced person with a downpayment on the purchase of a replacement dwelling (49 CFR 24.402(c)). Only tenants occupying the acquired dwelling for 90 days or more and 90 to 179 day owner-occupants are eligible for downpayment assistance. Owner-occupants of 180 days or more are not eligible for this payment. Eligible expenses include the required downpayment and all incidental costs necessary for purchase. (Incidental costs are the same as those for owner-occupants and are listed in Section 10.11.2.)

A displaced tenant eligible for a rental RHP who elects to purchase a replacement dwelling in lieu of accepting such rental assistance payment may elect to apply the entire computed payment to the purchase of a replacement dwelling. This payment may be increased to any amount, not to exceed \$5,250, for the purchase of a replacement dwelling and related incidental expenses.

DDOT has a responsibility to enable a displacee to relocate to housing of the same tenancy or ownership status as was occupied before displacement. Efforts will be made through relocation advisory assistance and the downpayment benefit to assist a tenant to move to ownership, but the achievement of ownership by tenants is not a program requirement.

Note: This payment for a 90 to 179 day owner-occupant requires an additional step to establish payment eligibility and limitations. The downpayment assistance cannot exceed the amount that would have been received under the RHP computation for a 180-day owner. Therefore, an RHP must be computed as if the displaced person were a 180-day owner-occupant. The computed amount would include estimates of a price differential, incidental expenses and mortgage interest differential, as appropriate.

A displaced owner-occupant who initially rents a replacement dwelling and claims and receives a rental assistance payment remains eligible for

Chapter 10 – Relocation Assistance

an RHP or down payment assistance payment, if applicable, provided the displacee purchases and occupies a DSS replacement dwelling during the 1-year eligibility period. Such an RHP payment or downpayment assistance payment shall be computed in the usual manner but shall be reduced by the amount of the rental assistance payment already received by the displacee.

10.11.3 Purchase of Replacement Dwelling

For the purpose of this chapter, a displaced person “purchases” a dwelling under 49 CFR 24.403(c) and the following circumstances:

1. An existing DSS dwelling is acquired.
2. A life estate in a retirement home is purchased. The actual cost will be entrance fee plus any other monetary commitments to the home, except periodic service charges may not be considered. The RHP is limited to the reasonable cost of purchasing a comparable replacement dwelling less the acquisition cost of the acquired dwelling.
3. A dwelling previously owned or acquired is relocated or rehabilitated, or both. The basis for determining the purchase supplement will be the current value of the dwelling at the time of relocation.
4. Construction is completed or contracts have been executed for the construction of a new dwelling on a site owned or acquired. The actual cost provision limits the reimbursable construction cost to only those costs necessary to construct a dwelling comparable to the one acquired. The costs of adding new features that clearly exceed comparable features in the displacement dwelling are not eligible for reimbursement. Eligible costs of the site will be limited to the current residential FMV of the replacement site rather than what the displaced person actually paid for it.
5. Any person who has obtained legal ownership of a replacement dwelling or land upon which the replacement dwelling is located, constructed or relocated to, either before or after displacement and occupies the replacement dwelling after being displaced, but within the time limit specified is eligible for an RHP if the replacement dwelling meets the decent, safe and sanitary standards. The current FMV of land and dwelling will constitute the “actual cost” in the replacement housing determination.

Chapter 10 – Relocation Assistance

When the replacement dwelling has DSS deficiencies, the cost to correct such deficiencies may be added to the current FMV of a previously owned dwelling, or the purchase price of the acquired replacement dwelling.

10.11.4 Advance Replacement Housing Payments in Condemnation Cases

An advance RHP may be paid to a landowner if the payment of the acquisition price for the displacement dwelling is delayed pending the outcome of condemnation proceedings. A provisional RHP may be determined by using the amount of the Declaration of Taking as the acquisition price. Payment can be made upon the owner-occupant signing the agreement with the following terms:

1. Upon final determination of the condemnation proceedings, the RHP will be recomputed using the acquisition price determined by the court.
2. If the amount awarded by the court for the value of the residential unit exceeds the Declaration of Taking amount, the displacee will make a refund for any excess RHP resulting from the court judgment. The difference in the RHP will be deducted from the court award before final payment is made. However, in no event will the refund be more than the amount of the RHP advanced. If the landowner fails to execute the provisional RHP agreement, the RHP will be deferred until the case is adjudicated.

10.12 Moving Costs – Residential Moves

A displaced individual or family is entitled to receive a payment for moving personal property (49 CFR 24.301). The displacee has the option of a payment based upon the actual reasonable moving expenses (commercial move or self-move), a fixed payment that is based on DDOT's room count schedule, or, in unusual circumstances, any combination of the above. An example of an unusual circumstance would be a commercial mover that will move the household items, but will not move certain personal property stored in a shed. The displacee can move the items from the shed as a self-move.

The Relocation Specialist should explain the options at the initial meeting where relocation entitlements are discussed. The two move options, actual cost and the moving room count schedule, each have features that a displacee should carefully consider before making a choice. The Relocation Specialist should not expect a decision until the displacee has been advised of the

Chapter 10 – Relocation Assistance

amount of payment that would allow under the schedule and has an opportunity to secure an estimate for a commercial move.

During the initial meeting the Relocation Specialist should make a count of all rooms and storage areas containing personal property. In the case of tenant, the Relocation Specialist should determine if the furniture and/or appliances are owned by the tenant or landowner. If the personal property is owned by both, the Relocation Specialist shall compile a separate list of landowner personal property which will require moving. The tenant's room count will be adjusted to reflect room in which the landowner provided the furniture or appliances.

After the initial meeting the Relocation Specialist will arrange one or two commercial movers to meet with the displacee and provide a move estimate. The Relocation Specialist will assure that all bids or estimates received are based upon the same move specifications and personal property inventory. DDOT may pay the cost of obtaining bids or estimates, if necessary. DDOT retains the right to reject any and all bids. The Relocation Specialist will provide the displacee with the amount of the lowest commercial move estimate and the fixed payment for a self move based on the room count schedule. A decision is requested from the displacee within a reasonable period of time.

The displacee is required to file a written Move Reimbursement Application, (form MOVE APP) which the Relocation Specialist will assist on completing and obtain the ROW Unit Manager's approval prior to the date on which the move is to be accomplished. After the move has been completed, the displacee must complete and submit a Residential Claim for Moving and Related Expenses (HUD form 40054), within 18 months (based on 49 CFR 24.207(d)) after the later of the following dates:

1. The date the displacee moves from the real property, or moves personal property from real property; or
2. The date of acquisition.

For relocation program purposes, a "family" is defined as two or more persons who share the same dwelling unit. Two or more occupants who share the same dwelling unit before displacement may relocate into separate units. If the move to separate units resulted from unavailability of units that will accommodate all persons, the occupants may each be reimbursed either on an actual cost basis or on a self-move (room schedule), which includes a dislocation allowance for each family. When the move into separate dwelling units is a voluntary decision

Chapter 10 – Relocation Assistance

and a single comparable dwelling unit is available, they may be reimbursed on a prorated share of the estimated cost of a single move as determined by the Relocation Specialist. The alternative would include using the room schedule move payments and basing the calculation on the number of room actually occupied by each occupant plus community rooms utilized by each occupant.

10.12.1 Actual Reasonable Moving Expenses

Move Performed By Commercial Mover

1. If a displaced individual or family desires to have the move performed by a commercial mover, bids or estimates from two reputable moving companies are needed. The maximum payment will be the amount of the lowest acceptable bid or estimate. Since the displaced individual or family has the right to engage the services of any company, DDOT will pay the amount of receipted bills, but not to exceed the amount of the approved low bid or estimate.
2. If the actual cost of the moves exceeds the estimate amount, the excess amount may be paid, if sufficient documentation is presented with the claim to document unanticipated moving costs and the ROW Unit Manager determines if payment is warranted.
3. The displacee may submit an unpaid mover's bill, along with the residential claim for moving and related expenses form (HUD-40054) to the Relocation Specialist for direct payment to the mover by DDOT.

Self Move

An actual cost move may be carried out by the displacee in a self-move for actual, reasonable, and necessary cost expended. The Relocation Specialist should work with the displacee to determine an amount necessary to move the personal property. The displacee may be reimbursed for time spent moving. The hourly rate of the displacee's time should be reasonable and should not exceed the rates paid to skilled packers and movers of local moving firms. Receipts or other evidence of expenses are necessary for reimbursement. Displacees may not move themselves based on the cost of a commercial move. Eligible residential moving costs (based on 49 CFR 301(g)) include the following:

1. Transportation of personal property up to 50 miles, unless the ROW Unit Manager determines that relocation beyond 50 miles is justified

Chapter 10 – Relocation Assistance

2. Transportation of persons up to 50 miles, at a mileage rate determined by the Internal Revenue Service, or actual reasonable cost. Special transportation, such as an ambulance for infirm displacees, may also be approved.
3. Payment to a commercial mover for completing all or part of the move.
4. If an actual cost self-move, payment for rental vehicles or equipment such as trucks, pads, dollies, etc
5. Packing, crating and unpacking of personal property
6. Payment for the storage of personal property not to exceed 12 months, if justified, unless the ROW Unit Manager determines that a longer period is necessary. Storage costs cannot be paid if the site is owned, leased or controlled by the displacee.
7. Insurance premiums to cover the value of personal property for damage or loss during the move or during necessary storage
8. Replacement value of personal property lost, stolen, or damaged in the process of moving (through no fault or negligence of the displaced person, or an agent or employee of the displaced person) when insurance is not reasonably available
9. Compensation paid to persons employed to help conduct the move.
10. Payments to disconnect, dismantle, reassemble and reinstall household appliances and equipment, such as washer, dryer, telephone, etc

The following costs (based on 49 CFR 24.301(h)) are ineligible for reimbursement as residential move expenses:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;
2. Interest on a loan to cover moving expenses;
3. Personal injury;
4. Expenses for searching for a replacement dwelling;
5. Additional expenses of living in a new location; and
6. Refundable security and utility deposits.

10.12.2 Moving Room Count Schedule

In lieu of a payment for actual costs, a displaced individual or family who occupies the acquired dwelling may choose to be reimbursed for moving costs based on a moving room count schedule established by DDOT. The schedule is revised

Chapter 10 – Relocation Assistance

periodically by the ROW Unit, based on an annual survey of movers, to reflect current costs. The schedule is to be submitted to the FHWA and may be used by all acquiring agencies with agreement coordinated by the FHWA.

The room count used will include occupied rooms within the dwelling unit plus personal property located in attics, unfinished basements, garages and outbuildings, or significant outdoor storage. Spaces included in the count must contain sufficient personal property as to constitute a room in the Relocation Specialist's opinion.

The table below is a schedule for illustration purposes, only:

| | 1st Room | 2nd Room | Additional Rooms |
|---------------------------------|----------------------------|----------------------------|-------------------------|
| Occupant Owns Furniture | \$300 | \$500 | > \$100 |
| Occupant does not Own Furniture | \$225 | \$260 | > \$35 |

Note:

1. As the schedule is revised periodically, the current schedule should be used.
2. A "room" may include outside storage, garage or basement that contains personal property.

The moving cost payment for a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons shall be limited to \$50.

The cost to move a retained dwelling, any other structure or any item determined to be real estate prior to the move, is not a reimbursable moving cost. However, if an owner-occupant retains the dwelling, including a mobile home, and chooses to use it as a means of moving personal possessions and furnishings, the owner-occupant may receive a moving cost payment based upon the moving room count schedule.

10.13 Moving Costs – Non-Residential (Business and Non-Profit Organization)

Non-residential relocation payments are intended to compensate a business or a non-profit organization caused to move by a transportation project. Payments may be made to the landowners, owner/occupants, and tenants. These payments are subdivided into three categories: moving expense payments, search costs, and reestablishment expense payments. As with residential move payments, each type of payment has its own set of specific requirements.

Chapter 10 – Relocation Assistance

The operator of a displaced business or non-profit organization is entitled to receive payment for the following categories of actual costs associated with moving:

1. Actual moving costs for relocating all personal property including machinery, equipment and fixtures and disconnect/reconnect costs
2. Search costs for a replacement location not to exceed \$2,500
3. Reestablishment expenses not to exceed \$10,000

All moving expenses will be actual and reasonable. To assure this, the Relocation Specialist will monitor the process of conducting inventories, developing move specifications, securing commercial moving bids and estimates and observing the conduct of the move. Emphasis will be directed toward moves that are of a complicated nature or involve a substantial expenditure.

As an alternative to the actual cost reimbursement as explained above, the displaced business or non-profit organization that meets certain criteria may choose to receive a fixed payment in lieu of actual moving expenses of not less than \$1,000 or more than \$20,000. The specific amount is based on the net income (Section 10.13.10) of the displaced business or non-profit organization. The reimbursable actual moving expenses and the fixed payment in lieu of moving expenses are explained in detail in the remainder of this section.

10.13.1 Certified Inventory

The owner of the displaced entity will prepare an inventory of the items to be actually moved. The inventory will be certified as true and correct as of a specific date by the person making it, as well as the owner of the business. The inventory will be provided to the Relocation Specialist along with the moving cost application. The inventory will be checked against DDOT's approved appraisal for the real property to preclude the possibility of paying to move items which have been classified as real property. This inventory will also be furnished to all interested bidders in order to ensure that all bids are based on moving the same personal property.

In a complex or expensive move the Relocation Specialist will visually confirm the accuracy of the inventory as an element of monitoring the move.

Chapter 10 – Relocation Assistance

10.13.2 Actual Reasonable Moving Costs

The following expenses are eligible for reimbursement as moving costs if they are reasonable (49 CFR 24.301(g)) and are actually incurred during the moving process:

1. Transportation costs for moving the personal property. The transportation charges will normally be reimbursed for up to the first 50 miles of travel. When the move exceeds 50 miles, all estimates should be prepared based upon a move of 50 miles. Similarly, the mover's bill must be detailed to show transportation costs for the first 50 miles as well as the cost for the remainder of the distance. When the ROW Unit Manager determines that the business cannot be relocated within a 50-mile limit, reimbursement will be allowed to the nearest adequate and available site.
2. Packing, crating, unpacking and uncrating the personal property.
3. Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property. This includes connections to utilities available nearby. It also includes modification of the personal property necessary to adapt it to the replacement structure, the replacement site or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property.
4. Storage costs not to exceed 12 months, including moving in and out of storage. Storage costs for a longer period may be approved if the ROW Unit Manager determines that a longer period is necessary. Costs for storage of personal property on a site owned, leased or controlled by the displaced person are not eligible.
5. Insurance for replacement value due to the loss, theft or damage to the personal property in connection with the move and necessary storage. Where insurance is not reasonably available, the replacement value of property lost, stolen or damaged in the process of moving may be paid, unless the loss results from fault or negligence of the displaced person, their agent, or employee.
6. Any license, permit or certification required at the replacement location. The payment may be based on the remaining useful life of the existing permit, license or certification.
7. Professional services necessary for planning the move, moving and installing personal property at the replacement location. This can include the displacee's time, provided the claim is well documented.

Chapter 10 – Relocation Assistance

8. The relettering of signs and the cost of replacing stationery on hand at the time of the move that are made obsolete by the acquisition.
9. Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
10. 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 ROW Unit Manager a reasonable pre-approved hourly rate may be established.
11. Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the ROW Unit Manager.
12. Other moving related expenses that are not listed (following list below) as ineligible as determined to be reasonable and necessary.

The following items are ineligible for reimbursement (based on 49 CFR 24.301(h)) as moving costs:

1. Any additional expense incurred because of operating at a new location except as provided as a business reestablishment expense.
2. Cost of moving structures, improvements, or other items of realty retained by the owner.
3. Physical changes to the real property at the replacement location of a business or non-profit organization except as provided for in the previous list in this section.
4. Interest on loans to cover moving expenses.
5. Loss of goodwill.
6. Loss of trained or skilled employees, or both;
7. Loss of business or profits, or both; and
8. Personal injury

10.13.3 Moves Performed By a Commercial Mover

The Relocation Specialist will secure two independent bids or estimates from reputable and qualified moving companies and DDOT will pay for the estimates, if necessary. The movers will be provided with the certified inventory of the personal property to be moved. Arrangements will be made for an inspection of the site from which property will be moved. Bids will be solicited with the understanding that DDOT has the right to reject

Chapter 10 – Relocation Assistance

any and all bids. It is incumbent upon the Relocation Specialist to see that all bids received are based on the certified inventory and move specifications. The maximum payment will be limited to the lowest acceptable bid. The displacee has the right to engage any moving company to accomplish the move, and DDOT will pay the amount of the move supported by receipted bills not to exceed the amount of the approved low bid.

10.13.4 Self Move

Businesses and non-profit organizations have the option of performing a self move. When DDOT can obtain two acceptable bids or estimates from qualified moving firms based on the certified inventory, the business owner may be paid the actual reasonable moving cost, not to exceed the amount of the low bid. If such bids or estimates cannot be obtained, the business may submit a bid based on the actual, reasonable, and necessary expenses for a self-move. Labor is to be charged at the actual rates paid by the business, but not to exceed the rate charged by local moving firms for the same services. Receipts or other evidence of expenses must be submitted to support actual cost before payment is made.

In the case of a low-cost, uncomplicated move, the Relocation Specialist may prepare a justification for a lump sum payment. The amount justified and approved by the ROW Unit Manager shall be presented to the owner as an alternative payment not to exceed \$2,500. It is possible to have a business move in which part of the move is a self-move and the other part is performed by a commercial move.

10.13.5 Low Value, High Bulk Personal Property

When personal property (49 CFR301(g)(18)) which is used in connection with the business to be moved is of low value and high bulk, such as firewood, sand, gravel, etc., and the estimated cost of moving would be disproportionate in relation to its value, the Relocation Specialist may negotiate with the business owner for an amount not to exceed the lesser of:

1. The amount which would be received if the personal property were sold at the site; or
2. The replacement cost of a comparable quantity delivered to the new business location.

Chapter 10 – Relocation Assistance

However, the business owner retains the right to have the property moved, if desired.

10.13.6 Actual Direct Losses of Tangible Personal Property

- A. A displaced business (also non-profit organization) owner may choose not to move certain business personal property to the replacement site. Items may be obsolete, not functional, or very bulky. The cost to move such items may exceed their value. The actual direct loss claim allows the business owner to dispose of such property, and be reimbursed for any resulting cost or loss, up to an estimated cost to relocate them (49 CFR 24.301(g)(16)). Payments for actual, direct losses can be made only after an effort has been made by the owner to sell the item.

When the item is sold, payment will be determined in accordance with subsection B or C of this section. If the item cannot be sold, the owner will be compensated in accordance with subsection D of this section. The sales prices and the cost of advertising and conducting the sale must be supported by copies of bills, receipts, advertisements, offers to sell, auction records and other data supporting the bona fide nature of the sale. This payment is calculated two ways, corresponding to whether or not the item not moved is replaced with an item serving the same function at the replacement business site.

- B. If an item of personal property which is used in connection with the business is not moved but is replaced with a comparable item at the new location, the payment will be the lesser of:
1. The replacement cost minus the net proceeds of the sale. Trade-in value may be substituted for net proceeds of sale where applicable; or
 2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles.

Chapter 10 – Relocation Assistance

Example: Direct Loss of Tangible Personal Property Item Replaced (Substitute Equipment Payment)

Speedy Printing Co.

Item not moved – old printing press

| | |
|-------------------------|-----------------|
| Cost of Substitute Item | \$31,000 |
| PLUS: Installation Cost | <u>\$ 1,000</u> |
| TOTAL COST | \$31,000 |

| | |
|--|-----------------|
| Proceeds from sale of old printing press | \$15,000 |
| LESS: Cost of the Sale | <u>\$ 1,500</u> |
| Proceeds of Sale | \$13,500 |

NET LOSS (\$31,000-\$13,500) \$17,500

Estimated cost to move and reinstall old printing press \$ 8,000

Speedy Printing Co. is paid \$8,000. The payment cannot exceed the estimated cost to move the old printing press.

- C. If the item is not to be replaced in the reestablished business, the payment will be the lesser of:
1. The difference between the market value of the item in place for continued use at its location prior to displacement less its net proceeds of the sale; or
 2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles.

Example: Direct Loss of Tangible Personal Property Item Not Replaced

The Speedy Printing Co. has an obsolete collating machine. They have kept it primarily as a back up for a newer machine. They do not need it at the relocation site and want to sell it before they move. They payment would be as follows:

Speedy Printing Co.

Item not moved – collating machine

| | |
|---|----------------|
| Market value in place for continued use | \$5,000 |
| LESS: Net proceeds of sale from site (after selling expenses) | <u>\$3,000</u> |
| Net Loss | \$2,000 |

Estimated cost to move and reinstall the item \$3,000

Direct Loss claim (use net loss): \$2,000

Note that the direct loss claim is the lower of the cost to move, or net loss on sale.

Chapter 10 – Relocation Assistance

The direct loss of tangible personal property option allows the business to modernize equipment, or regain cash value for unneeded equipment. The cost to DDOT is no more, and may be less, than if the items were moved.

As the direct loss benefit calculations are based on estimated, rather than actual cost to move, they can be highly speculative. A Relocation Specialist should be engaged, and paid, to perform move estimate of equipment that is complex, bulky or otherwise expensive to move. Another speculative element is in the estimated value for continued use at the existing location. This will usually be the same as the salvage value for equipment that is obsolete and not functioning. However, an item not relocated or replaced may have significant value for continued use if it is in use and in good condition. A Relocation Specialist should be employed to perform the estimate.

- D. If a sale is not effected under subsection B or C of this section because no offer is received for the property and the property is abandoned, payment for the actual direct loss of that item may not be more than the FMV of the item for continued use at its location prior to displacement or the estimated cost of moving the item 50 miles, whichever is less, plus the cost of the attempted sale, irrespective of the cost to DDOT of removing the item.
- E. The owner will not be entitled to moving expenses or losses for the items involved if the property is abandoned with no effort being made to dispose of it by sale, or by removal at no cost. DDOT may allow exceptions to this requirement for good cause.
- F. The cost of removal of personal property by DDOT will not be considered as an offsetting charge against other payments to the displaced person.
- G. If performing a business relocation involving personal property that is obsolete, non-functional and bulky, the Relocation Specialist should follow the following process:

Chapter 10 – Relocation Assistance

1. Interview the business owner. Determine the critical relocation needs, including replacement site, special permits, clientele, etc. Determine the intentions of the business owner to relocate, or discontinue operations.
2. Tour the site with the business owner. Note specialized or complex equipment that appears older or not operational. Ask about function of equipment, if it is not obvious.
3. Explain the full range of benefits including move expenses, reestablishment cost reimbursement, search expense reimbursement, etc.
4. Explain the direct loss option if it is relevant to the move situation. Ask the business owner to identify specific items that might be sold from the site, or traded in on newer equipment in the process of moving.
5. Obtain all identifying information on direct loss items including make, model, function, age, and condition. Take photos of all such items.
6. Secure estimates of the cost of relocating the specific identified items, including detach and reinstall costs.
7. Determine value of items for continued use at the displacement site. This may require a specialist appraisal.
8. Coordinate with business to sell property from the site in a manner likely to yield the highest net proceeds. Obtain all documents and receipts reflecting cost of sale.
9. Secure data on purchase of substitute equipment including function, cost, delivery, setup and installation charges. If item is traded in, obtain trade in value. Ask for copies of receipted invoices.
10. Determine direct loss amount using information gathered in above steps, and applying formula in above examples.
11. Advise displacee of amount, and secure decision of moving or not moving the item in question.

10.13.7 Searching Expenses

- A. A displaced business or non-profit organization is entitled to reimbursement for actual expenses, not to exceed \$2,500 (49 CFR 24.301(g)(17)), as a part of their actual moving cost reimbursement. The ROW Unit Manager shall determine if the charges, which are incurred in searching for a replacement location are reasonable. Eligible expenses include:

Chapter 10 – Relocation Assistance

1. Transportation. A mileage rate determined by the IRS will apply to the use of an automobile.
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 site.
5. Time spent in obtaining permits and attending zoning hearings; and
6. Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

- B. Documentation for a moving search claim will include expense receipts and logs of times, dates and locations related to the search.

10.13.8 Reestablishment Expenses

- A. A business or non-profit organization may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred in reestablishing operations at a replacement site (49 CFR 24.304). A business or non-profit organization that elects a fixed payment in lieu of actual moving expenses is not eligible for a reestablishment expense payment.
- B. Reestablishment expenses must be reasonable and actually incurred. Eligible items (49 CFR 24.304(a)) may include the following:
1. Repairs or improvements to the replacement real property as required by government, Federal or District, code or ordinance (i.e., sprinkler system, handicap access, etc.);
 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 (new signage, not relocated signs paid as a moving cost, can be reimbursed as a reestablishment item);
 4. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;
 5. Licenses, fees and permits, when not paid as part of moving expenses;

Chapter 10 – Relocation Assistance

6. Advertisement of replacement location;
7. Increased costs of operation, during the first 2 years, at the replacement site for such items as:
 - a. Lease or rental charges
 - b. Personal or real property taxes
 - c. Insurance premiums
 - d. Utility charges, excluding impact fees
8. Other items that the ROW Unit Manager determines to be essential to the reestablishment of the business.

It should be evident from the inclusive list and examples that it is not difficult for the displaced business to qualify for the maximum claim amount of \$10,000. Note that there are no individual category items limits, so the claim ceiling may be reached with one or two of the eligible expense categories. The ROW Unit has a responsibility to administer this benefit in a manner that is equitable, consistent and in compliance with the URA. Therefore, all claims for the reestablishment need to be supported by receipted bills, and clearly referenced to one of the above categories.

Also note that reinstallation of signage (item 3), and transferring licenses, fees and permits (item 5) may be paid as a moving expense. If appropriate, these items should be considered as moving expense items and they will not be subject to the \$10,000 reestablishment ceiling.

The business reestablishment expense benefit can be essential to displaced small businesses which will incur many other unreimbursable direct and indirect costs. The Relocation Specialist should assist the business owner in identifying legitimate expenses that can be paid with the entitlements.

- C. A non-exclusive listing of ineligible reestablishment expenditures (49 CFR 24.304(b)) includes the following.
 1. Purchase of capital assets, such as office furniture, filing cabinets, and machinery or trade fixtures.

Chapter 10 – Relocation Assistance

2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.
3. Interest on money borrowed to make the move or purchase the replacement property.
4. Payment to a part-time business in the home which does not contribute materially to the household income.

10.13.9 Fixed Payment in Lieu of Actual Costs

- A. A displaced business or non-profit organization, meeting eligibility criteria, may receive a fixed payment in lieu of a payment for actual moving and related expenses (49 CFR 24.305). It is a payment based only on income of the business or non-profit organization and has no relationship to the cost of the actual relocation. The amount of this payment is equal to the entity's average annual net earnings (as computed in accordance with subsection E) but shall not be less than \$1,000 or more than \$20,000.

- B. Criteria for Eligibility

For an owner of a displaced business or a non-profit organization to be entitled to a payment in lieu of actual moving and reestablishment expenses, the Relocation Specialist must determine that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, it vacates or relocates from its displacement site.
2. The displaced business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Relocation Specialist determines, for a stated reason, that it will not suffer a substantial loss of its existing patronage.
3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by DDOT and which are under the same ownership and engaged in the same or similar business activities. (For purposes of this rule, any remaining business facility that did not contribute materially to the income of the displaced person

Chapter 10 – Relocation Assistance

during the two taxable years prior to displacement shall not be considered an “other entity.”)

4. The business is not operated at displacement dwelling or site solely for the purpose of renting such dwelling or site to others.
5. The business contributed materially to the income of the displaced person during the two taxable years prior to displacement. However, DDOT may waive this test for good cause. A part-time individual or family occupation in the home that does not contribute materially to the displaced owner is not eligible.

The application of the above criteria sometimes presents difficulty, particularly in items 2 and 5. The term “substantial loss of patronage” requirement is to be assumed to be satisfied unless there is a specific reason evident for loss of patronage not to occur. This is an acknowledgement that involuntary displacement is bound to cause disruption of a business clientele and income. The term “contribute materially” has a specific definition found at the beginning of this chapter. Note that the four-part definition is very specific and sets a low threshold of eligibility. Only minor economic activities would not qualify as contributing materially to income.

Fixed payment eligibility is based solely on the above stated criteria. Eligibility is not dependent on any relationship of the amount of the payment to the amount of relocation expenses that would otherwise be eligible for reimbursement.

- C. In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered (49 CFR 24.305(b)), including the extent to which:
 1. The same premises and equipment are shared;
 2. Substantially identical or interrelated business functions are carried out and business and financial affairs are co-mingled;
 3. The entities are held out to the public and to those customarily dealing with them, as one business; and
 4. The same person, or closely related persons own, control, or manage the affairs of the entities.

Chapter 10 – Relocation Assistance

These conditions are all indications that there is actually only one business to relocate. The ROW Unit Manager will make a decision after consideration of all the above items and so advise the displacee.

- D. A displaced non-profit organization may choose a fixed payment of \$1,000 to \$20,000 in lieu of the payments for actual moving and related expenses (49 CFR 24.305(d)) if the ROW Unit determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A non-profit organization is assumed to meet this test, unless the ROW Unit Manager determines otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses.

Gross revenues for a non-profit organization include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are for administrative support, such as rent, utilities, salaries, advertising and other like items, as well as fund raising expenses. Operating expenses are not included in administrative expenses.

- E. Payment Determination

The term “average annual net earnings” means one-half of all net earnings of the business before Federal and District income taxes, during the two tax years immediately preceding the tax year in which the business is relocated (49 CFR 24.305(e)). If the two years immediately preceding displacement are not representative, the Relocation Specialist may use a period that would be more representative. For instance, proposed construction may have caused recent outflow of business customers, resulting in a decline in net income for the business.

The term “average annual net earnings” include any compensation paid by the business to the owner, spouse, or dependents during the 2-year period. In the case

Chapter 10 – Relocation Assistance

of a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, his wife and their children shall be treated as one unit.

If the business or non-profit organization was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. The amount of the payment is averaged annual net earnings for the business for the two tax years preceding the year displaced, as in the following example:

| Example: Fixed Payment In-Lieu of Actual Cost | | |
|--|--|----------|
| Joe's Barber Shop – displaced 2005 | | |
| Net Earnings: | 2005 (1/2 year) | \$ 7,000 |
| | 2004 | \$18,500 |
| | 2003 | \$16,500 |
| Fixed Payment: | $\frac{\$18,500 + \$16,500}{2 \text{ years}}$ (average annual net earnings)= | \$17,500 |

Joe is eligible for the \$17,500 fixed payment even if he does not relocate the business. If the business is relocated and actual move cost is greater than \$17,500, the claim will not be changed. The displacee has accepted this payment option “in lieu of” all other entitlements.

The displacee must provide documentary verification of net earnings (income) to be eligible for any in-lieu claim over the \$1,000 minimum level. The Relocation Specialist should ask for certified copies of local or Federal tax returns or (certified public accountant) CPA-certified financial reports. Other supporting data may be acceptable on approval of the ROW Unit Manager.

In determining net earnings (income), include income before taxes. Also, include any salary paid to the business owner, the owner's spouse, and dependents.

Chapter 10 – Relocation Assistance

Many specific questions can arise in determining income, and these should be resolved in consultation with the ROW Unit Manager to assure consistency in administering the program.

F. Steps to Complete the Process

In performing a business relocation, the Relocation Specialist shall gather the necessary information in order to calculate available entitlements and advise the displacee of the specific amounts for the options that are available. In preparing the entitlement calculation the Relocation Specialist will perform the following:

1. Interview the business owner. Determine the critical relocation needs, including replacement site, special permits, clientele. Determine the intentions of the business owner to relocate, or discontinue operations.
2. Tour the site with the business owner. Note specialized or complex equipment, inventory storage, offices.
3. Explain the full range of benefits including moving expenses, reestablishment cost reimbursement, search expense determination, etc.
4. Explain the in-lieu fixed payment option. If there is interest, secure information necessary for an eligibility determination
5. If eligible and displacee is interested, secure income facts and necessary documentary verification for income.

For the owner of a business or non-profit organization to be entitled to this fixed payment, the owner must provide information to support the net earnings of the business or non-profit organization. Local or Federal tax returns for the tax years in question are the best source of this information. However, certified financial statements can be accepted as evidence of earnings. The tax returns furnished must either be signed and dated or accompanied by a certification from the business owner that the returns being furnished reflect the actual income of the business as reported to the IRS or the DC Department of Taxation for the periods in question. The business owner's statement alone would not be sufficient if the amount claimed exceeded the minimum payment of \$1,000.

The fixed payment in-lieu of actual cost will be particularly attractive to displaced businesses in the following circumstances.

Chapter 10 – Relocation Assistance

1. Business owner is contemplating retirement, or otherwise has decided to discontinue operations.
2. In-lieu payment amount significantly exceeds cost of moving the business.
3. Business owner desires administrative simplicity of not having to support actual move costs
4. Business owner faces loss of clientele, and cash payment will help sustain business after relocation.

10.13.10 Payment of Moving Expenses

The displacee is required to file a written request for anticipated moving and related expenses, which the Relocation Specialist will assist on completing, and obtain the ROW Unit Manager's approval prior to the date on which the move is to be accomplished. After the move has been completed, the displacee must complete and submit either a claim for Actual Reasonable Moving and Related Expenses – non residential (HUD-40055) or a claim for Fixed Payment in lieu of Payment for Actual non-residential moving and related expenses (HUD-40056), within 18 months (based on 49CFR24.207(d)) after the later of the following dates:

1. The date the displacee moves from the real property, or moves personal property from real property; or
2. The date of acquisition.

There may be occasions when the move must be accomplished at more than one time. (i.e. move modular furniture and later move employee's files, boxes, etc.) When circumstances warrant the moving and related expenses can be paid in advance or at multiple times.

10.14 Replacement Housing of Last Resort

10.14.1 A. Utilization

The URA requires that comparable DSS replacement housing within a person's financial means be made available before that person may be displaced by project. When such housing cannot be provided under the provisions for RHP (Section 10.11), the URA provides for Housing of Last Resort (HLR) (49 CFR 24.404). HLR is the legal and administrative authority to provide comparable housing when

Chapter 10 – Relocation Assistance

it is not otherwise available. HLR involves the use of payments in excess of statutory maximums or the use of other unusual methods of providing comparable housing.

HLR can be very costly in terms of entitlement amounts, project lead time, and staff resources. It is particularly costly if project advertising dates have to be deferred while housing solutions are planned and implemented. This requires DDOT to make a determination that there is a reasonable likelihood that the project cannot proceed with construction in a timely manner because a comparable replacement dwelling(s) will not be available to a person(s) to being displaced. Two strategies can be employed to limit the need for HLR or expedite the provision of HLR, when needed. These are comparability review, and early identification of need.

B. Comparable Review

The HLR should be considered applicable only after a careful review is made of the specific requirements of comparability. DDOT is obligated to enable every displacee to relocate to comparable replacement housing. However, care should be taken to ensure that the flexibility that is provided in the definition of comparable replacement housing is utilized and that unnecessary upgrading is avoided, particularly in potential HLR situations. Before determining a benefit under HLR the Relocation Specialist should review the comparability requirements in reference to the specific displacee needs, and available housing resources.

Special attention should be given to the concept of “functional equivalency.” This key term in the definition allows for a range of housing that differs in some physical aspects from the acquired dwelling. The important point is that the comparable replacement dwelling performs the same function, and provides the same utility, as the dwelling acquired. It is not necessary that the comparable dwelling must be a tape measure comparison to the property acquired.

Reasonable tradeoffs may be made in specific features when the dwelling is “as good or better” on an overall basis and satisfies basic needs as to bedrooms and living space. For instance, a garage work area may substitute for basement workshop. Generally, a comparable dwelling should have an equivalent number of

Chapter 10 – Relocation Assistance

rooms and living area. However, a smaller DSS dwelling (which by definition must be “adequate to accommodate” the displacees), may be considered functionally superior to a larger dwelling in substandard condition. The emphasis is on functional, not physical, equivalency.

Several of the elements of comparable replacement housing deal with the specific needs of a displaced person or family, including financial means, access to employment and access to public and commercial facilities. The needs of potential HLR displacees should be identified and critically evaluated. For instance, a displacee that has a car and presently commutes 15 miles to work, has a greater range of potential “comparable housing” than a neighbor next door who does not have a car and relies on public transit. Also a displaced family may need to remain in the same school district.

C. Early Identification

The best approach is to identify the potential need for HLR early in the relocation process, and intensify efforts to identify and provide housing under normal program parameters. Most HLR cases involve unusual displacee needs, such as large family, very low income, disabled or elderly displacee. These conditions are usually identified at the initial displacee contact. Initial interviews should be performed as early as possible and explore all conditions relevant to housing needs.

Potential HLR cases identified in the initial contact should be set aside from the overall caseload and marked for priority service. Early identification and action will enable the broadest possible range of housing alternatives to be considered. It will also provide the greatest opportunity for the housing market to produce an existing dwelling meeting displacee’s needs, and avoid the need to select upgrading housing, or to construct new housing. HLR is applicable when:

1. Comparable replacement housing is not available on the housing market.
2. Comparable replacement housing is available, but:
 - a. The computed RHP exceeds the \$22,500 limitation.
 - b. The computed rent supplement exceeds the \$5,250 limitation.

Chapter 10 – Relocation Assistance

3. Comparable housing is not available within the financial means of a displaced person who is ineligible to receive an RHP because of failure to meet length of occupancy requirements.

10.14.2 Planning for Housing of Last Resort

When a project appears to include persons who cannot readily be moved using the replacement housing program entitlements and procedures, i.e., when there is a unique housing need or when the cost of available comparable housing would result in payments in excess of the statutory payment limits (\$22,500 or \$5,250), DDOT will consider using HLR. Of particular concern are large families, low-income persons (especially families), the elderly or handicapped, other persons with physical, social or emotional problems, tight or volatile housing markets, large older dwellings, a large number of substandard dwellings within the project area, and similar situations. As the preceding list makes apparent, the need for HLR cuts across economic lines and is not limited to displaced persons with low incomes.

Using HLR effectively requires planning. The ROW Unit will develop a HLR plan delineating the needs of the displaced persons, the proposed method(s) of providing necessary housing, and consideration of the needed level of funding. Early advance planning will provide sufficient time for the ROW Unit to consider a broad range of possible HLR alternatives and to avoid costly delays in construction.

The ROW Unit should try to plan a solution that will accommodate a displaced person's long-term housing needs. Persons receiving last resort assistance often are in tenuous positions and may find it difficult to maintain their situation after some period of time passes. One way of providing greater stability for some persons is to assist them to become homeowners. In this instance, the displaced person likely will need assistance in obtaining financing. In development of the HLR plan, innovative approaches and methods for the provision and financing of replacement housing will be considered. This HLR plan should include:

1. Consideration of requirements of local zoning and building codes with references to methods proposed to provide comparable housing;
2. Discussion of how, when and where housing will be provided;

Chapter 10 – Relocation Assistance

3. Consideration of environmental suitability of the location of the proposed housing, including consideration of environmental justice issues;
4. How housing will be financed and the amount of funds to be used for such housing from all funding agencies and private sources;
5. Prices for the housing to be rented or sold is within the financial means of the families and individuals to be displaced;
6. Arrangements for maintaining rent levels appropriate for the persons to be relocated;
7. Arrangements for rental housing management;
8. Disposition of the proceeds from rental, sale or resale of such housing;
9. How the construction will be monitored; and
10. Any other comments pertinent to providing replacement housing.

The Relocation Specialist will obtain information about the needs, preferences and intentions of the displaced person through in-depth interviews before planning housing solutions. There may be several possible solutions for each displaced person or group of displaced persons. After discussing HLR proposals with the displaced person and receiving their concurrence, the ROW Unit should obtain their written consent before implementing the chosen solution. In the absence of a displaced person's written agreement, the potential exists for a substantial expenditure on a proposal (construction of a house, for example) which the displaced person later may prove unwilling to accept.

HLR cases are often identified during the process of providing relocation services and benefits. They may arise from unique circumstances that affect a displaced household. The relocation plan in these cases will consist of a summary of the specific relocation problems, a discussion of methods considered and a detailed statement of the method, estimated cost and time required implementing the recommended solution.

10.14.3 Methods for Providing Housing of Last Resort

DDOT has broad latitude in how to use HLR authority. HLR may be provided on an individual basis (often a single case on a project), for an entire project, or anything in-between. HLR is a tool that is intended to respond to difficult or special needs and,

Chapter 10 – Relocation Assistance

in many cases; the best solution may be the one that does not fit a common mold. Whatever the method, it should be cost-effective. The following is a list of methods (49 CFR 24.404(c)(1)) that DDOT may use to provide HLR:

- Make an offer and payments in excess of the statutory limits of \$22,500 and \$5,250 in the computation of an RHP or Rental Assistance.
- Purchase an existing house and add a bedroom or make any repairs necessary to bring the house up to DSS standards. DDOT may also remove barriers to the handicapped and construct special physical structures such as wheelchair ramps. DDOT may then rent or sell the house to the displaced person.
- Contract for the construction of new housing to be rented or sold to displaced persons for amounts within their financial means.
- Make a provision of a direct loan or use of other financial techniques such as mortgage assistance, mortgage origination, down payment assistance or annuity.
- Move or pay for the move of an existing dwelling to the replacement site.
- Purchase an existing dwelling which is to be rented or sold to the displaced person.

Under special circumstances, consistent with the definition of a comparable replacement dwelling, consideration will be given to providing replacement housing with space and physical characteristics different from those in the displacement dwelling. This may include upgraded, but smaller replacement housing that is DSS and adequate to accommodate families displaced from marginal or substandard housing. In no event, however, will a displaced person be required to move into a dwelling that is not functionally equivalent to the displacement dwelling.

DDOT may enter into cooperative agreements with other Federal or local agency or contract with an individual, firm, corporation, or non-profit association for services in connection with these activities. It is expected that DDOT, to the greatest extent practicable, will utilize the services of Federal or local housing agencies or other agencies having experience in the administration or conduct of similar housing assistance activities.

Chapter 10 – Relocation Assistance

10.14.4 Consequential Displacement

Any person displaced because of the acquisition of real property for a last resort housing project under DDOT's power of eminent domain (including amicable agreements under the threat of such power) is entitled to all eligible entitlements under the relocation assistance provision. This provision is not applicable to an owner-occupant who voluntarily acts to sell the property to DDOT for HLR and owner certifies same in a statement that will be retained in project files.

10.14.5 Last Resort Housing Disbursements

Rental assistance payments made to displacees who rent replacement housing under this section will be paid in annual installments directly to the displacee. However, when in the ROW Manager's judgment, a direct payment or annual payment would not be prudent and in the public interest, other payment option will be arranged. Whenever special payment options are invoked, the file will be documented with the reasons for invoking these options.

Displacees may not be required to accept last resort housing instead of a rent supplement or a purchase supplement for which they may be eligible under normal program provisions. A displacee may choose to accept a conventional purchase or rental supplement in lieu of a last resort housing solution. This is conditioned that all eligibility criteria are met, including rental or purchase and occupancy of a decent, safe and sanitary dwelling.

Displacees who receive a housing or financial payment under last resort housing will be required to certify that they accept the housing or benefit in lieu of rent supplement or purchase supplement for which they would otherwise be eligible.

10.15 Mobile Homes

Mobile homes have special legal and physical characteristics as opposed to conventional housing types. Mobile home occupants are entitled to the same relocation entitlements as apply to all other displacees (49 CFR 24.501). However, certain policy adjustments and special benefit determination methods need to be employed because of the following unique characteristics:

10.15.1 Eligibility – Personality versus Realty

Chapter 10 – Relocation Assistance

A mobile home may have legal status as either real property or personal property depending on factors such as to whether it is permanently affixed to the ground, its condition, and the intention of the owner in placing the mobile home in its present location. A mobile home determined to be real property will be acquired and the occupant, if the owner, will be provided relocation benefits as an owner-occupant displacee.

An initial presumption should be made that a mobile home located on proposed ROW is personal property, and that the present owner will retain ownership and move the mobile home from the ROW. However, in some cases it will be clear that the unit is part of the real property. For instance, the mobile home that is on a concrete foundation with basement and is on a professionally landscaped site would be considered real property. In many cases the distinction is not clear. Legal advice may need be secured from the OAG. Also, the ROW Unit Manager should monitor mobile home personality/realty determinations to assure that they are made on a fair and consistent basis.

A mobile home considered as personal property and not real property may be acquired and relocation benefits provided as an owner-occupant under the following circumstances:

- a. The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost;
- b. The mobile home itself is not and cannot economically be made a DSS dwelling;
- c. The mobile home cannot be relocated because there is no available comparable replacement site; or
- d. The mobile home cannot be relocated because it does not meet mobile home park entrance requirements.

The determination as to whether to acquire an owner-occupied mobile home considered to be personal property should be made promptly after the first contact by the Relocation Specialist has been made with the occupant. In making this determination, consideration must be given to whether the mobile home itself is not a DSS unit because of its physical condition or its size.

Chapter 10 – Relocation Assistance

Under the procedures outlined in this section, it is not intended that an offer be made by the ROW Unit to acquire a mobile home simply because of required utility deficiencies such as hot and cold running water and septic connection. Considering the above, if it is determined by the Relocation Specialist that DDOT has an obligation to offer to acquire the mobile home, the Relocation Specialist is to contact several reputable mobile home dealers in the area to establish the amount that the mobile home would bring if offered for sale on the open market (salvage value or trade-in value, whichever is higher, shall be used when computing the price differential amount). Once this value is established and approved by the ROW Unit Manager, the approved amount will be used for comparison against the amount established as necessary for the displacee to purchase and relocate into a comparable DSS replacement facility. Upon approval of the maximum replacement housing payment, an offer is to be made for the purchase of the mobile home.

Simultaneously, the displacee will be advised of the approved maximum replacement housing payment and the basis for establishing that amount. In the event the displacee refuses DDOT's offer, the files are to be so documented and no further attempt made to acquire the mobile home. This being the case, the mobile home occupant is to be advised of the RHP which is the difference between the established value of the mobile home and that amount necessary to acquire a comparable DSS facility as computed above. Under these conditions the cost to move the mobile home is not an eligible expense.

If DDOT's offer to acquire the mobile home is accepted, the owner must execute an agreement of sale. Upon delivery of the check to the owner, DDOT will obtain title to the mobile home, a bill of sale, an affidavit, or other proof of ownership. Upon relocation of the occupants, the disposal of the mobile home will be handled in the same manner as other acquired buildings.

Chapter 10 – Relocation Assistance

10.15.2 Owner/Tenancy Status: Mobile Home and Site

A characteristic unique to the mobile home payment computation is that there is often a divided ownership of the dwelling unit and its site. A mobile home occupant may own the dwelling but rent the site. Conversely, an occupant may own the site and rent the dwelling unit. Relocation entitlements will conform to this situation by treating the site and the dwelling separately for purposes of determining replacement housing benefits.

10.15.3 Mobile Home Park Displacement

The proposed ROW may include a portion of a mobile home park 49 CFR 24.501(b). The ROW Unit will determine whether a sufficient portion of the park is taken to cause the owner-operator of such park to discontinue business because of not having an economic remainder to conduct operations. If the remainder is not an economic unit as a mobile home park, all occupants of mobile home units will be considered displaced persons eligible for appropriate relocation entitlements, whether or not the residue on which any of the mobile homes are located is acquired by DDOT. The owner-operator may qualify for benefits as a business displacee, as well a residential displacee, if the owner-operator resides in a dwelling on the property.

10.15.4 Moving Expenses

A non-occupant owner of a rented mobile home can be paid for actual, reasonable cost of moving the mobile home or other personal property, or both. If a displaced mobile home owner files a claim for actual moving expenses for moving the mobile home to a replacement site, the reasonable cost of disassembling, moving and reassembling attached items such as porches, decks, skirting and awnings, anchoring of the unit and utility “hook-up” charges are reimbursable. The cost of repairs or modifications to enable the unit to be moved to a replacement site may be paid. The ROW Unit must determine in advance that it is necessary and practical to do so. Payment will be limited to the reasonable costs of moving the mobile home and making necessary repairs or modifications.

Non-returnable entrance fees are reimbursable as part of actual cost moving expenses to an owner or tenant occupant, unless comparable mobile home parks are available which do not require entrance fees. If the mobile home is not moved, the owner-

Chapter 10 – Relocation Assistance

occupant or tenant-occupant may be paid for moving personal property in accordance with the moving room schedule or actual reasonable expenses.

If the owner is reimbursed for the cost of moving the mobile home under these procedures, the owner is not eligible to receive an RHP, or rent supplement to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for a rent or purchase supplement to enable the displacee to secure a replacement site.

10.15.5 Replacement Housing Payments: General

The ownership or tenancy of the mobile home, not the land on which it is located, determines the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home on the mobile home site will determine the occupant's status as a 180-day or 90-day owner or tenant. The mobile home must be occupied on the same site (or in the same mobile home park) for the requisite 90 or 180 days to make the occupant fully eligible for rent or purchase supplement entitlement.

After eligibility determinations are made, the RHP is computed in two parts:

1. If the mobile home is being acquired, the replacement housing, or rent supplement payment is computed for the mobile home unit in accordance with the same procedures for any other dwelling unit.
2. The replacement housing or rent supplement payment is computed separately for the mobile home site in accordance with normal procedures. The payment amount is limited to the maximums according to the displacee's ownership or tenancy of the land.

The sum of the two parts computed above cannot exceed the maximum limitation of the \$5,250 for 90-day owner or tenant-occupants or \$22,500 for 180-day owner-occupants, unless HLR provisions are applicable. Replacement housing and rent supplement offers and payments will be computed in accordance with Section 10.9 (Replacement Housing Payments). The offer will set the maximum limit of the supplemental payment.

Chapter 10 – Relocation Assistance

When determining the purchase supplement payment for an owner-occupant displacee from a mobile home, the cost of a comparable is the reasonable cost of a comparable mobile home, including the site. When a comparable mobile home is not available, the supplement may be determined using a conventional dwelling.

If a mobile home requires repairs or modifications to permit its relocation to another site and the ROW Unit Manager determines that it would be practical to make the repairs or modifications, the cost of a comparable dwelling is the value of the displacee's mobile home plus the cost to make the necessary repairs or modifications.

10.15.6 Replacement Housing Payments; 180-Day Owner-Occupant

A. General

A displaced owner of a mobile home who has occupied the home and site for at least 180 days is eligible for the following as a replacement housing benefit as covered under Section 10.11.

1. The additional cost necessary to purchase replacement housing.
2. Compensation for the loss of favorable financing on the existing mortgage in the financing of such replacement housing.
3. An amount to reimburse the owner for incidental expenses incident to the purchase of such replacement housing.

A displaced owner-occupant of a mobile home eligible for an RHP as shown above who elects to rent is eligible for a rental RHP, not to exceed \$5,250.

B. Acquisition of mobile home and site from owner-occupant

1. The purchase supplement payment will be an amount, if any, which when added to the amount for which the ROW Unit acquired the mobile home and site equals the lesser of:
 - a. The amount the owner is required to pay for a DSS replacement mobile home and site; or
 - b. The amount determined by the Relocation Specialist as necessary to purchase a comparable mobile home and site.
2. Rental RHP.

Chapter 10 – Relocation Assistance

If the owner elects to rent, the rent supplement will be determined by subtracting 42 times the economic rent of the mobile home and site from the lesser of:

1. The amount determined by the ROW Unit necessary to rent a comparable mobile home and site for a period of 42 months; or
2. Forty-two times the monthly rent paid for the replacement mobile home and site.

C. Acquisition of site only: owner-occupant retains mobile home

1. Upon acquisition of the site, but not the mobile home situated upon the site, and the mobile home is required to be moved, the RHP will be the amount, if any, which when added to the amount for which DDOT acquired the mobile home site equals the lesser of:
 - a. The amount the owner is required to pay for a comparable site; or
 - b. The amount determined by the Relocation Specialist as necessary to purchase a comparable mobile home site.
2. If the owner elects to rent, the rent supplement shall be determined by subtracting 42 times the economic rent of the mobile home site from the lesser of:
 - a. The amount determined as necessary to rent a comparable mobile home site for 42 months; or
 - b. Forty-two times the monthly rent paid at the replacement mobile home site.

D. Acquisition of mobile home only: owner-occupant rents site

1. The RHP is to be the amount, if any, which when added to the amount for which DDOT acquired the mobile home equals the lesser of:
 - a. The actual amount the owner is required to pay for a replacement dwelling; or
 - b. The amount determined as necessary to purchase a comparable mobile home, plus the difference in the amount determined by the ROW Unit as necessary to rent a comparable mobile home site for a period of 42 months and 42 times the rent being paid on the site acquired.

Chapter 10 – Relocation Assistance

The entire computed amount may be applied toward the purchase of a comparable mobile home site, if so desired.

2. If the owner elects to rent a replacement mobile home, the rent supplement payment shall be determined by subtracting 42 times the economic rent of the mobile home and the actual rent of the site from the lesser of:
 - a. The amount determined by the ROW Unit as necessary to rent a comparable mobile home and site for 42 months; or
 - b. Forty-two times the monthly rent paid for the replacement dwelling.

E. Acquisition of rental site only: mobile home not acquired

When the site is acquired but not the mobile home, which must be moved, the owner-occupant of the mobile home is eligible for up to \$5,250 as a rent supplement for a comparable replacement site. This rent supplement payment shall be the difference determined by subtracting 42 times the rent on the site being acquired from the lesser of:

1. The amount determined as necessary to rent a comparable home site for 42 months; or
2. Forty-two times the monthly rent paid for the replacement site

The entire computed amount may be applied toward the down payment and incidental expenses on a comparable home site.

10.15.7 Replacement Housing Payment to Tenants of 90 Days or More and Owner-Occupants for 90 to 179 Days

A displaced owner or tenant of a mobile home or site, or both, under this category can receive an RHP not to exceed \$5,250 (except under HLR) to rent a comparable DSS mobile home or site, or both, or make a down payment on either or both, computed as follows:

1. The rental RHP is to be determined in accordance with Section 10.11.
2. If a purchase decision is made, the entire computed rental payment may be applied towards the purchase, including related incidental expenses for a replacement mobile home, site, or both.

Chapter 10 – Relocation Assistance

3. An owner-occupant under this category is entitled to the same RHP as the tenant-occupant, except economic rent of the acquired mobile home and site will be used.

10.16 Functional Replacement

Functional replacement is the replacement of real property, either land, facilities or both, acquired as a result of a transportation project with land or facilities, or both, which will provide equivalent utility (49 CFR 710.509). Functional replacement applies only to publicly owned real property that is in public use.

During the early stages of project development, the ROW Unit Manager should meet with the owning/controlling agency to discuss the effect of a possible acquisition and potential application of functional replacement procedures. The results of discussions and decisions concerning functional replacement should be included in the environmental evaluation required for the project.

The owning/controlling agency has the option of accepting the amount of compensation established by the appraisal process or accepting functional replacement. At the earliest practicable time, the property should be appraised to establish an amount DDOT believes to be just compensation, and shall advise the owning agency of the amount established. The owning agency may waive its right of have an estimate of compensation established by the appraisal process if it prefers functional replacement.

If the owning/controlling agency desires functional replacement, it should initiate a formal request to the ROW Unit Manager, and fully explain why functional replacement would be in the public interest.

If the ROW Unit Manager agrees that functional replacement is necessary and in the public interest, an agreement shall be entered into setting forth the rights, obligations and duties of each party in regard to the facilities being acquired, the acquisition of the replacement site, and construction of the replacement facility. The replacement site and facility shall not include improvements, except those necessary to meet legal, regulatory and reasonable prevailing standards, or an increase in capacity.

Chapter 10 – Relocation Assistance

Upon completion of functional replacement, a statement shall be signed by an appropriate official of the owning/controlling agency and DDOT certifying that the cost of replacement facility has actually been incurred in accordance with the provisions of the executed agreement. The statement shall also certify that a final inspection of the facility was made by the ROW Unit and the owning/controlling agency and that DDOT is released from any further responsibility.

10.17 Relocation Records

The ROW Unit will assemble and maintain records on project, parcel and case levels, showing the basis for major decisions and entitlement determinations. To facilitate project planning a Relocation Project Log (form LOG) is to be set up when appraisal assignments are made. The Relocation Specialist should be notified of the assignment and due dates of the appraisals. Copies of all forms and letters sent to and received from the displacees will be retained for a minimum of 3 years after each displacee has received the final payment to which he or she is entitled. The following specific information will be retained:

1. District and Federal project number and parcel identification
2. Date of initiation of negotiations for property
3. Names and addresses of displaced persons and their complete original and new addresses and telephone numbers
4. Personal contacts made with each displaced person, including for each:
 - a. Date of notification of availability of relocation payments and services
 - b. Name of Relocation Specialist offering or providing the relocation assistance
 - c. Whether the offer of assistance in locating or obtaining replacement housing was declined or accepted and the name of the individual accepting or declining the offer
 - d. Date and substance of all relocation contacts
 - e. Date on which the relocated persons was required to move from the property acquired for the project (including the confirmation or acceptance letter in the parcel file)
 - f. Date on which actual relocation occurred
 - g. Type of tenure before and after relocation
5. For displacements from dwellings
 - a. Number in family
 - b. Type of property
 - c. Monthly rental

Chapter 10 – Relocation Assistance

- d. Number of room occupied
6. For relocated businesses and non-profit organizations
 - a. Type of business
 - b. Whether continued or terminated
 - c. If relocated, approximate distance moved

10.17.1 Moving Expense Records

The ROW Unit will maintain records containing the following information regarding moving expense payments for each displacee:

1. The date the removal of personal property was accomplished
2. The location from which and to which the personal property was moved
3. If the personal property was stored temporarily, the location where the property was stored, duration of such storage and justification for the storage and storage charges
4. Itemized statement of the cost incurred supported by receipted bills or other evidence of expense
5. Amount of reimbursement claimed, amount allowed and an explanation of any difference
6. Data supporting any determination that a business cannot be relocated without a substantial loss of its existing patronage and that is not part of a commercial enterprise having more than three establishments not being acquired
7. When an in lieu of payment is made to a business or non-profit organization data showing how the payment was computed

10.17.2 Replacement Housing Payment Records

The ROW Unit shall maintain records containing the following information regarding RHP for each displacee:

1. The date of receipt of each application for such payment.
2. The date on which each payment was made or the application rejected.
3. Supporting data showing how the amount of the supplement payment to which the applicant is entitled was calculated.
4. A copy of the closing statement to support when replacement housing is purchased.

Chapter 10 – Relocation Assistance

5. A copy of the Truth in Lending Statement and other data, including computations to support the increased interest payment.
6. The individual responsible for determining the amount of the RHP shall place in the file a signed and dated statement setting forth the following:
 - a. The amount of the RHP
 - b. An understanding that the determined amount is to be used in connection with a Federal aid highway project
 - c. There is no direct or indirect present or contemplated personal interest in this transaction nor will any benefit be derived from the RHP and;
7. A statement that the relocated person moved into a DSS replacement dwelling.

10.18 Relocation Appeals

It is anticipated that some persons affected by DDOT's projects will be dissatisfied with the determination as to their eligibility or with the amount of payments or services offered in connection with the ROW Unit's relocation assistance program. DDOT has established these procedures to provide an opportunity to all persons to have their objections heard and considered on an administrative level, without the expense, delay or inconvenience of court adjudication. DDOT's relocation appeal procedure is explained to all potentially interested persons through the ROW brochure "DDOT's Right of Way Acquisition for Transportation Projects" distributed at public information meetings and provided to all displacees.

Persons making the appeal may be represented by legal counsel or any other representative at their expense. However, professional representation is not necessary for an appeal to be heard. The appellant will be permitted to inspect and copy all materials relevant to the matter appealed, except materials which are classified as confidential by DDOT and not subject to FOIA or where disclosure is prohibited by law.

The appeal process consists of two levels: interim and final. An interim appeal is heard by the ROW Unit Manager. If the appellant is not satisfied on completion of the interim appeal, a final appeal may be addressed to the Director of the District Department of Transportation, who will request that the relocation review board hear the matter and forward the recommendations for a final decision.

Chapter 10 – Relocation Assistance

10.18.1 Interim Appeal

When displacees are dissatisfied with DDOT's determination of eligibility, or the entitlement amount offered under the relocation assistance and payments statutes, they may appeal in writing (49 CFR 24.10). The appeal must be submitted to the ROW Unit Manager within 90 days after receipt of the Relocations Specialist's written determination. The ROW Unit Manager will schedule an informal hearing to receive information from the Relocation Specialist and the displacee. A decision will be made following the meeting. A written copy of the determination stating the basis for the decision will be provided to the appellant. A copy of such determination, along with all pertinent information involving the case, is to be maintained in the parcel's file.

10.18.2 Final Appeal

Upon notification of the ROW Unit Manager's determination, if the displacee is still dissatisfied, an appeal in writing may be submitted to the Director, Department of Transportation, at the address provided in the ROW Unit Manager's letter of determination, within 10 days. Upon receipt by the Director, the appeal will be referred to a Relocation Review Board consisting of the Director of the DC Office of Property Management or a designated representative, as chairman, the Associate Director of TPPA or designated representative, and the Chief Engineer of DDOT IPMA or designated representative. Legal counsel for DDOT may also be present.

The Relocation Review Board will schedule a hearing at a time and place reasonably convenient to the appellant. At the hearing all parties will be afforded an opportunity to express their respective positions and submit any supporting information or documents. A court reporter will be present to record and provide a transcript of all information presented at the hearing.

Upon conclusion of the hearing, the Relocation Review Board will furnish the Director of DDOT a written report of its findings. The Director of DDOT will review the report and render a decision, which shall be final. The appellant and his attorney, if applicable, will be advised of the decision in writing, by certified mail, or registered first-class mail, return receipt requested and will be provided a summary of the basis for the Board's decision. If the full relief requested is not granted, the

Chapter 10 – Relocation Assistance

displacee shall be advised of the right to seek judicial review, which must be filed with the court within 30 days after receipt of the final appeal determination.

Chapter 10 – Relocation Assistance

Chapter Resources

Major Tasks

- Pre-acquisition Relocation Planning
- Residential Relocation
- Nonresidential Relocation

Examples

- Relocation Planning Analysis Report (Example 10-1)
- 90-Day Assurance Vacation Letter (Example 10-2)
- Offer of Comparable Replacement Housing (Example 10-3)
- Relocation Contact Report (Example 10-4)
- Scope of Services – Relocation Assistance (See Chapter 16, Example 16-3)

Forms

- Site Occupant Interview Form (form INTERVIEW)
- Comparable Replacement Dwelling (form COMP RHP)
- Decent, Safe and Sanitary Inspection Report (form DSS) [Use 2nd half of COMP RHP]
- Interest Expense Calculation (form MORT. DIFF.)
- Move Reimbursement Application (form MOVE APPLY)
- Occupancy Affidavit (form OCCUPY)
- Relocation Project Log (form LOG)
- Residential Claim for Moving and Related Expenses (HUD-40054)
- Claim for Actual Reasonable Moving and Related Expenses- Non-Residential (form HUD-40055)
- Claim for Fixed Payment in Lieu of Payment for Actual Nonresidential Moving and Related Expenses (Form HUD-40056)
- Claim for Replacement Housing Payment for 180 Day Homeowner (HUD-40057)
- Claim for Rental Assistance or Down Payment Assistance (HUD-40058)

Reference

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html

Chapter 10 – Relocation Assistance

Major Tasks – Pre-Acquisition Relocation Planning

| | |
|---|--------------------------|
| Notified that a Project has been added to Transportation Improvement Program | TPPA IPMA TOA |
| Receive plans or drawing with alternative designs, ROW requirements | IPMA |
| Review ROW and Relocation impacts, prepare relocation planning analysis report, preliminary ROW cost estimate submit to IPMA & TPPA | ROW Unit |
| Provide support to public participation meeting | ROW Unit |
| Update relocation planning analysis report and preliminary ROW cost estimate, as requested | ROW Unit |
| ROD issued, project proceed to design | IPMA TPPA |
| Based on plan distribution at various phases, review and provide comments from ROW and Relocation perspective | ROW Unit |
| Update and provide relocation planning analysis report or preliminary ROW cost estimates, as requested | ROW Unit IPMA TPPA |
| Based on plans prepared for ROW approval, prepare final pre-acquisition relocation planning analysis report and preliminary ROW cost estimate submit to IPMA & TPPA | ROW Unit |
| Project Funding Approved - Authorization to proceed with ROW acquisition issued | TPPA OCFO |

Chapter 10 – Relocation Assistance

Major Tasks – Residential Relocation

| | |
|---|---------------------------------------|
| See separate Tasks for Pre-Acquisition Relocation Planning | ROW Unit |
| Receive copy of Authority to Acquire - Coordinate relocation schedule with ROW Project Manager | ROW Unit OPM Reloc. Spec. |
| Advise displacees of acquisition schedule and conduct interview to update preliminary information | ROW Unit OPM Reloc. Spec. |
| Update file and refine displacee's requirements (owner or tenant) | OPM Reloc. Spec. |
| Coordinate schedule with appraiser | OPM Reloc. Spec. |
| Search market for available replacement housing | OPM Reloc. Spec. |
| For tenant displacee, proceed to find comparable replacement housing | OPM Reloc. Spec. |
| For owner displacee, receive copy of appraisal submitted to reviewer and proceed to find comparable replacement housing | OPM Reloc. Spec. |
| Determine need for housing of last resort, obtain approval | OPM Reloc. Spec. ROW Unit Manager |
| Compute replacement housing payment, obtain ROW Unit Manager approval | OPM Reloc. Spec. ROW Unit Manager |
| Acquisition Agent makes offer to purchase – Relocation specialist make RHP offer | Acquisition Agent OPM Reloc. Spec. |

Chapter 10 – Relocation Assistance

| | |
|--|--------------------------------------|
| Provide written notice to vacate in 90 days with 30 days assurance | OPM Reloc. Spec. |
| Continuous contact with displacee regarding replacement housing and plan to relocate | OPM Reloc. Spec. Displacee |
| Work with displacee to secure moving cost estimates or use room schedule | OPM Reloc. Spec. |
| Work with displacee to finalize replacement housing, loans, etc. | OPM Reloc. Spec. |
| Approve selected replacement housing as DS&S | OPM Reloc. Spec. ROW Unit OCFO |
| Calculate final replacement housing payment & moving cost | OPM Reloc. Spec. ROW Unit OCFO |
| Provide advance payment, if needed | OPM Reloc. Spec. ROW Unit OCFO |
| Establish Move Date | OPM Reloc. Spec. Displacee |
| Approve final RHP & moving cost estimate | ROW Unit Manager |
| Move occurs | Displacee |
| Final inspection of replacement housing for DS&S. Provide report | OPM Reloc. Spec. |
| Inspection of vacated property. Provide report & Turn keys over to ROW Unit Property Manager | OPM Reloc. Spec. |
| Receive and review displacee's claim for RHP and actual moving expenses or fixed payment | OPM Reloc. Spec. |

Chapter 10 – Relocation Assistance

| | |
|---|--------------------------------------|
| Provide final relocation payment to displacee | ROW Unit OPM Reloc. Spec. OCFO |
| Finalize file and submit to ROW Unit | OPM Reloc. Spec. |

Chapter 10 – Relocation Assistance

Major Tasks – Nonresidential Relocation

| | |
|---|-----------------------------------|
| See separate Tasks for Pre-Acquisition Relocation Planning | ROW Unit |
| Receive copy of Authority to Acquire and coordinate relocation schedule with ROW Project Manager | ROW Unit OPM Reloc. Specialist |
| Advise displacees of acquisition schedule and conduct interview to update preliminary information | ROW Unit OPM Reloc. Spec. |
| Update file and refine displacee's requirements | OPM Reloc. Spec. |
| Search market for available replacement sites, provide data for displacee's review | OPM Reloc. Spec. Displacee |
| Continuous contact with displacee regarding replacement site and relocation plan | OPM Reloc. Spec. Displacee |
| Displacee provides inventory of personal property | Displacee |
| Review inventory to determine if any realty or ineligible item are being included | OPM Reloc. Spec. |
| Work with displacee to secure moving cost estimates | OPM Reloc. Spec. |
| Work with displacee to finalize relocation plan, loans, permits, etc. | OPM Reloc. Spec. |
| Establish Move Date or Dates, if must be phased | OPM Reloc. Spec. Displacee |

Chapter 10 – Relocation Assistance

| | |
|--|--------------------------------------|
| Determine reimbursable moving cost estimate, eligibility | OPM Reloc. Spec. |
| Approve moving cost estimate | ROW Unit Manager |
| Move occurs | Displacee |
| Inspection of vacated property. Provide report | OPM Reloc. Spec. |
| Inspection of replacement property. Provide report | OPM Reloc. Spec. |
| Receive and review displacee's claim for actual moving expenses or fixed payment | OPM Reloc. Spec. |
| Provide relocation payment to displacee | ROW Unit OPM Reloc. Spec. OCFO |
| Finalize file and submit to ROW Unit | OPM Reloc. Spec. |

Chapter 10 – Relocation Assistance

(Example 10-1)

RELOCATION PLANNING ANALYSIS REPORT

Street:
Project:
Federal Project:
From:
To:

I. PURPOSE

This report is an estimate of the number of families, persons, businesses, farms and non-profit organizations being displaced by the proposed project; an estimate of available decent, safe and sanitary replacement facilities and other information pertaining to relocation. This report and estimates are made without the benefit of individual contacts with the affected property owners or is based in interviews with the displacees.

This report may be used for the purpose of making a determination as to the type of environmental document that needs to be prepared for the project or to provide information for inclusion in a environmental impact statement. This report will be used to assure that actual relocation assistance provided during the right of way acquisitions are in accordance with federal requirements to implement a relocation plan.

II. ESTIMATE OF EXISTING CONDITIONS AND RELOCATION COSTS

A. Families

1. Number of families displaced and average number of persons per family
2. Tenure of the occupant
3. Types of occupancy (owner/tenant)
4. Estimated income range
5. Minority and/or ethnic groups
6. Handicapped persons

Chapter 10 – Relocation Assistance

7. Elderly persons or large families
8. Effect on community
9. Impact on neighborhood and local housing market
10. Housing of Last Resort
11. Description of available housing in area

B. Businesses, Farms and Non-Profit Organizations

1. Number and description of businesses, farms and non-profit organizations displaced
2. Type of occupancy (owner/tenant)
3. Number of employees
4. Effect on community and local economy
5. Description of available replacement locations

The total estimated cost of relocation for this project is shown on the attached sheet.

III. RELOCATION PLAN

- A. Inspection of the project area

Chapter 10 – Relocation Assistance

- B. Federal or community programs planned for area that could affect replacement facilities.

IV. GENERAL RELOCATION PLAN

- A. Orderly and satisfactory relocation

- B. Special relocation advisory services

- C. Time required to complete relocation

Chapter 10 – Relocation Assistance

(Example 10-2)
90 day Assurance Vacation Letter

Date

Street
Project: 0191
Federal Project:

RIGHT OF WAY - Property of
Parcel
Displacee:

CERTIFIED MAIL

Displacee
Address
Address

Dear _____ :

The District Department of Transportation (DDOT) is buying right of way for this project. The property you are occupying will be affected by the proposed construction. It has been determined that you, your family or your business will need to be relocated from this real property.

To ensure that you receive adequate time to relocate, DDOT hereby assures that you will not be required to move from the subject property before at least ninety (90) days have elapsed from the date of receipt of this letter. Further, you will be given a written notice which will specify the actual date by which the property must be vacated. You will receive this notice at least thirty (30) 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 (90) days from the date such dwelling is made available to you.

With your cooperation, it is DDOT's goal to assist you in your relocation to minimize any inconveniences caused by your move and answer any questions you may have.

Sincerely,

Name
ROW Relocation Specialist

cc: ROW Manager

Chapter 10 – Relocation Assistance

(Example 10-3 – Offer of Comparable Replacement Housing)

Date

Street
Project:
Federal Project No.:

RIGHT OF WAY - Property of
Parcel
Displacee:

Displacee
Address
Address

Dear _____ :

As explained today, you as a displaced owner-occupant are entitled to receive a maximum payment of \$_____ to allow you to purchase comparable decent, safe and sanitary replacement housing. This amount is based on available replacement housing located at _____.

This amount is subject to change if:

1. The housing upon which this amount is based is no longer available for purchase; or
2. You purchase replacement housing, the purchase price of which is less than \$_____ (acquisition price plus replacement housing payment); or
3. You rent replacement housing instead of purchasing; or
4. You retain your existing dwelling and move it to be used as your replacement housing; or
5. The acquisition price for your home site (land, dwelling, improvements and damages to home site, if any) increases, whether determined by the courts or subsequent agreement with the District Department of Transportation (DDOT). If this occurs, your replacement housing payment will be recomputed comparing the increased acquisition price of your home site to the lesser of (a) the available comparable selected by DDOT, or (b) the actual price you pay for replacement housing. If your home site represents only a portion of the total property acquired, your replacement housing payment will be recomputed based on the same portion of value used in determining the original replacement housing payment.

Chapter 10 – Relocation Assistance

You should not move or sign a purchase contract or lease for replacement housing until it has been inspected by your relocation specialist. To receive the replacement housing payment, you must purchase and occupy replacement housing that meets DDOT's standards for decent, safe and sanitary housing within **one year** after the date on which you receive DDOT's final payment for your property as per an executed option, or in the case of a refusal, the date on which DDOT's declaration of taking is filed and the money is made available to you for withdrawal.

You must make application in writing for your replacement housing payment no later than **six months** after the expiration of the one-year period specified. The attached form is provided for making application for your payment.

In addition to the amount of \$_____ you are entitled to compensation for any eligible increased interest costs and incidental expenses incurred in the financing and purchase of replacement housing. Owner's and mortgagee's evidence of title, state revenue or documentary stamps, and transfer taxes will be limited to those costs that would have been incurred in the purchase of a home site costing no more than the amount shown in Item Number 2 on the first page.

If you have any questions concerning your replacement housing payment, contact _____ at _____.

Sincerely,

Name
ROW Relocation Specialist

cc: ROW Unit Manager

Chapter 10 – Relocation Assistance

Form INTERVIEW

CHARACTERISTICS & NEEDS OF DISPLACED INDIVIDUAL OR FAMILY

State Project: 0199-965-104-R201 Federal Project: STP-5403(753) PPMS I.D.: 18975

Landowner: DOROTHY P. NICHOLS, Sterling M. Nichols Parcel: 008

Displacee: _____ TIN #: _____

Complete Address of Property (use landmarks if necessary): _____

Phone No.: _____

Date of Lease: _____ Date of Occupancy: _____

Terms of Lease (Length & Monthly Rent, Etc.): _____

Type of Neighborhood: Rural

Distance to: Shopping Center _____ Public Transportation _____ Church _____

High School _____ Grade School _____ Employment _____

Building Information:

Type of Building (Single Family, Duplex, etc.) _____

Type of Construction (1 sty. frame, etc.) _____

Approximate Age of Structure _____ Lot Size _____

Total No. of Rooms _____ No. of Bedrooms _____ No. of Baths _____

Total Area _____ square feet (Outside Measurement)

Kitchen or Kitchen Area:

Does it contain a sink with hot and cold running water and connected to a sewage system? Yes

Does it contain utility service connections and adequate space for the installation of a stove and refrigerator? Yes

Bathroom:

Is it well lighted and ventilated? Yes

Does it afford privacy? Yes

Does it contain a sink? Yes

Does it contain a bathtub or shower stall? Yes

Does it contain a toilet? Yes

Are they in good working order and properly connected to appropriate water sources and to a sewage drainage system? Yes

General

Does it conform to State and local codes and ordinances? Yes

Does it contain a safe electrical wiring system adequate for lighting and other devices? Yes

Does structure appear to be sound? Yes

Does structure appear to be in good state of repair? Yes

Is there a safe, unobstructed means of egress at all levels? Yes

Does it have a heating system capable of maintaining a temperature of approximately 70°? Yes

If yes, what type? _____

Is it free of any barriers that would prevent reasonable ingress, egress or use of the dwelling by a Handicapped displacee? Yes

In your opinion, does structure meet the standards for decent, safe, and sanitary housing? Yes

If not, could it be made to meet the standards by reasonable repairs? Yes

Explained Relocation Program and eligibility requirements in accordance with Section 404 of the Right of Way Manual. Yes

The above is based on a visual inspection and represents the opinion of the inspector.

Chapter 10 – Relocation Assistance

Interview & Inspection Made by: _____
Title: _____
Date: _____

Chapter 10 – Relocation Assistance

Form COMP RHP

AVAILABLE OR ACQUIRED DSS REPLACEMENT HOUSING

Project: _____ Federal Project: _____ Street _____

Parcel _____

Landowner: _____

Displacee: _____

AVAILABLE REPLACEMENT HOUSING

Comparable No. _____

Address of Property _____

Seller's Name _____ Phone No. _____

Listed By _____ Phone No. _____

Asking Price \$ _____ Adjusted Price \$ _____

Landlord's Name _____ Phone No. _____

Asking Rent \$ _____ Average Utilities \$ _____

REPLACEMENT HOUSING ACQUIRED

Address of Property _____

Date of Occupancy _____

Purchase Price \$ _____ Recording Data: Date _____ Deed Book _____ Page No. _____

Date of Lease _____ Terms of Lease _____

Was assistance in locating or obtaining replacement housing declined accepted

Name of individual declining or accepting assistance: _____

Building Information:

Type of Building (Single Family, Duplex, etc.) _____

Type of Construction (1 sty. frame, etc.) _____

Approximate age of Structure _____ Lot Size _____

Total No. of Rooms _____ No. of Bedrooms _____ No. of Baths _____

Total Area _____ (Outside Measurement)

Kitchen or Kitchen Area:

Does it contain a sink with hot and cold running water and connected to a sewage system? Yes

Does it contain utility service connections and adequate space for the installation of a stove and refrigerator? Yes

Bathroom:

Is it well lighted and ventilated? Yes

Does it afford privacy? Yes

Does it contain a sink? Yes

Does it contain a bathtub or shower stall? Yes

Does it contain a toilet? Yes

Chapter 10 – Relocation Assistance

Are they all in good working order and properly connected to appropriate water sources and to sewage drainage system? _____

Yes

General:

Does it conform to District or locality codes and ordinances? _____

Yes

Does it contain a safe electrical wiring system adequate for lighting and other devices? _____

Yes

Does structure appear to be sound? _____

Yes

Does structure appear to be in good state of repair? _____

Yes

Is there a safe, unobstructed means of egress at all levels? _____

Yes

Does it have a heating system capable of maintaining a temperature of approximately 70°? _____

Yes

If yes, what type? _____

Is it free of any barriers which would prevent reasonable ingress, egress, or use of the dwelling by a handicapped displacee? _____

Yes

In your opinion, does structure meet the standards for decent, safe, and sanitary housing? _____

Yes

If not, could it be made to meet the standards by reasonable repairs? _____

Yes

*******USE BACK FOR PHOTOGRAPHS AND SKETCH OF BUILDING (OUTSIDE NOT TO SCALE)*******

The above is based on a visual inspection and represents the opinion of the inspector.

Interview & Inspection Made By: _____

Title: _____

Date: _____

Chapter 10 – Relocation Assistance

Form MORT DIF

ITEMIZATION OF COSTS INCURRED INCIDENT TO PURCHASE OF REPLACEMENT DWELLING AND COMPUTATION OF MORTGAGE INTEREST DIFFERENTIAL

State Project: 0199-965-104-R201
 Federal Project: STP-5403(753)
 County: Suffolk Districtwide
 PPMS I. D.: 18975

Landowner: DOROTHY P. NICHOLS, Sterling M. Nichols
 Displacee: _____

Parcel: 008

INCIDENTAL EXPENSES (Closing Costs excluding prepaid items)

| | |
|---|-----------|
| Legal cost incurred for title search, preparing conveyance contracts, closing, etc. | \$ |
| Notary Fees | \$ |
| Cost of Survey | \$ |
| Cost of Drawings, Plats, etc. | \$ |
| Recordation of Deed, Deed of Trust, etc. | \$ |
| Appraisal Fee | \$ |
| Professional Home Inspection or Certification of structural soundness | \$ |
| FHA or VA Application Fee | \$ |
| Credit Report | \$ |
| Owner's Title Policy or Abstract of Title | \$ |
| Escrow Agent's Fee | \$ |
| Transfer Taxes | \$ |
| Other | \$ |
| TOTAL INCIDENTAL EXPENSES | \$ |

MORTGAGE INTEREST DIFFERENTIAL

| | | | |
|----|---|----|---|
| 1. | Outstanding balance of mortgage on acquired dwelling | \$ | |
| 2. | Outstanding balance of mortgage on replacement dwelling | \$ | |
| 3. | Number of months remaining until last payment is due for mortgage on acquired dwelling | | |
| 4. | Number of months remaining until last payment is due for mortgage on replacement dwelling | | |
| 5. | Lesser of Line 3 or Line 4 | | |
| 6. | Annual interest rate of mortgage on acquired dwelling | | % |
| 7. | Annual interest rate of mortgage on replacement dwelling (or, if it is lower, the prevailing annual interest rate currently charged by mortgage lending institution in the general area in which the replacement dwelling is located) | | % |

DEVELOPMENT OF MONTHLY PAYMENT

Monthly payment required to amortize a loan of \$ _____ (line 1) in ____ (line 5) months at annual interest rate of _____ (line 6) = \$ (A)

COMPUTATION:

| | <u>Mo.</u> <u>Payment</u> | <u>Term</u> | <u>Rate</u> | |
|--------------|------------------------------|---------------------------|-----------------------|----------|
| Old Mortgage | \$ _____ for (A) | ____ months @ (Line 5) | _____ % = (Line 6) | \$ _____ |

Chapter 10 – Relocation Assistance

New Mortgage \$ _____ for _____ months @ _____ % = \$ _____
 (A) (Line 5) (Line 7)

INCREASED INTEREST PAYMENT \$ _____

Computed by: _____ Date: _____
 (Name) (Title)

COMPUTATION WORKSHEET

To compute the MID, you must determine a monthly payment based on outstanding balance of mortgage on acquired dwelling, the lesser term of acquired dwelling or the replacement dwelling and the interest rate on the acquired dwelling.

Two Ways to Determine Monthly Payment:

1. **Monthly Payment Table** – using interest rate and term to establish a loan factor

$$\frac{\text{_____}}{\text{(Loan Factor)}} \times \frac{\text{_____}}{\text{(Amt. of Mortgage)}} = \$ \frac{\text{_____}}{\text{(Monthly Payment)}}$$

2. **Financial Calculator**

$$\frac{\text{_____}}{\text{(Amt. of Mortgage)}} \text{ for } \frac{\text{_____}}{\text{(Term)}} @ \frac{\text{_____}}{\text{(Int. Rate)}} = \$ \frac{\text{_____}}{\text{(Monthly Payment)}}$$

After determining the monthly payment, use that monthly payment to compute the amount necessary to reduce the mortgage balance on the replacement dwelling to an amount that could be amortized with the same monthly payment as that on the displacement dwelling.

Two Ways to Compute Buydown

1. **Using Loan Factor from Payment Table**

$$\text{a. } \frac{\text{_____}}{\text{(Mon Payment)}} \times 1,000 \div \frac{\text{_____}}{\text{(Loan Factor)}} = \frac{\text{_____}}{\text{(Remaining Balance)}}$$

(Existing Mort.)

$$\text{b. } \frac{\text{_____}}{\text{(Mon Payment)}} \times 1,000 \div \frac{\text{_____}}{\text{(Loan Factor)}} = \frac{\text{_____}}{\text{(Remaining Balance)}}$$

(Replacement Mort.)

2. **Financial Calculator**

$$\text{a. } \frac{\text{_____}}{\text{(Mo. Payment)}} \text{ for } \frac{\text{_____}}{\text{(Term)}} \text{ months @ } \frac{\text{_____}}{\text{(Int. Rate)}} = \frac{\text{_____}}{\text{(Remaining Balance)}}$$

(Existing Mort.)

$$\text{b. } \frac{\text{_____}}{\text{(Mo. Payment)}} \text{ for } \frac{\text{_____}}{\text{(Term)}} \text{ months @ } \frac{\text{_____}}{\text{(Int. Rate)}} = \frac{\text{_____}}{\text{(Remaining Balance)}}$$

(Replacement Mort.)

Subtract (b) from (a) to arrive at the increased interest payment.

If a smaller mortgage than the mortgage balance computed in the buydown is obtained, it will be prorated.

Prorate Formula

$$\frac{\text{_____}}{\text{(Actual Mortgage Obtained)}} \div \frac{\text{_____}}{\text{(Existing Mortgage Balance)}} = \frac{\text{_____}}{\text{(Ratio)}}$$

Chapter 10 – Relocation Assistance

$$\frac{\%}{\text{(Ratio)}} \times \frac{\text{Increased Interest Payment}}{\text{Prorated Interest Payment}} = \frac{\text{Prorated Interest Payment}}{\text{Prorated Interest Payment}}$$

NOTE: If there is more than one outstanding mortgage on the acquired dwelling, separate computations are made for each mortgage and consolidated.

When the property is secured with an adjustable rate mortgage, the interest rate that is current on the date of acquisition must be used.

Chapter 10 – Relocation Assistance

(Form MOVE APPLY)

MOVING COST APPLICATION

- FAMILIES & INDIVIDUALS
 PERSONAL PROPERTY ONLY

Project :
Federal Project:

Landowner _____ Parcel _____

Displacee (Owner/Tenant) _____

Present Address _____ Telephone No. _____

Proposed Address _____

Approximate Distance Between Present and Proposed Address _____

REQUESTED BASIS OF PAYMENT FOR MOVING EXPENSES (CHECK ONE):

FAMILIES AND INDIVIDUALS

- Fixed payment schedule

Conventional Dwelling - _____ rooms = \$ _____

Furnished Unit - _____ rooms = \$ _____

Mobile Home - _____ rooms = \$ _____

- Commercial mover (DDOT will obtain bids. Approval will be based on amount of low bid.)

Pay commercial mover direct

Reimburse displacee

- Self Move (Payment will be based on receipts or other evidence of expenses)

PERSONAL PROPERTY ONLY

- Self Move (Payment will be based on receipts or other evidence of expenses)

- Commercial mover (DDOT will obtain bids. Approval will be based on amount of low bid.)

Signature of Displacee(s)

Date

Payment Computed by: _____ Date: _____

Return to:

Chapter 10 – Relocation Assistance

(Form OCCUPY)

OCCUPANCY AFFIDAVIT

Street:
Project:
Federal Project:

RIGHT OF WAY - Property of
Parcel
Displacee:

This is to certify that _____ has been a tenant on the property located at _____, since _____, 20__, and has paid \$_____ monthly for the last three months.

Signature of Tenant

Signature of Owner

Date

Date

_____ OF _____

The foregoing Affidavit was acknowledged before me this _____ day of _____, 20 __, by _____
Tenant (s)

and _____
Owner (s)

My Commission expires: _____

Notary Public

Residential Claim for Moving and Related Expenses

(49 CFR 24.301 and 24.302)

See back of page for Public Reporting Burden and Privacy Act Statements before completing this form

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB Approval No. 2506-0016
(exp. 10/31/2011)

| | | | |
|----------------------------|----------------|------------------------|-------------|
| For Agency Use Only | Name of Agency | Project Name or Number | Case Number |
|----------------------------|----------------|------------------------|-------------|

Instructions: This claim form is for the use of families and individuals applying for payment of residential moving and related expenses under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). You may be eligible to apply for either (1) a fixed payment (see 24.302), or (2) payment for actual reasonable moving costs and related expenses (see 24.301), or (3) in some cases, a payment based on a combination of moving options (contact Agency). All claims for actual expenses must be supported by receipts or other acceptable evidence. The Agency will explain the differences between the types of moving options and will help you complete this form. HUD provides information on these requirements and other guidance materials on its website at www.hud.gov/relocation. If the full amount of your claim is not approved, the Agency will provide you with a written explanation of the reason. If you are not satisfied with the Agency's determination, you may appeal that determination. The Agency will explain how to make an appeal. All claims for payments must be filed no later than 18 months from the date of displacement (see 24.207(d)).

| | |
|---|-------------------------|
| 1. Your Name(s) (You are the Claimant(s)) and Present Mailing Address | 1a. Telephone Number(s) |
|---|-------------------------|

2. Have All Members of the Household Moved to the Same Dwelling? Yes No
(If "No," list the names of all members and the addresses to which they moved in the Remarks Section.)

| Dwelling | Address (include Apartment No.) | Number of Rooms of Furniture? * | Date Occupied | Date Vacated |
|-----------------------------|---------------------------------|--|---------------|--------------|
| 3. Unit That You Moved From | | | | |
| 4. Unit That You Moved To | | * Excluding bathrooms, hallways and closets. | | |

5. Is This a Final Claim? Yes No

6. Certification of Legal Residency in the United States (Please read instructions below before completing this section.)

Instructions: To qualify for relocation advisory services or relocation payments authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, a "displaced person" must be a United States citizen or national, or an alien lawfully present in the United States. **The certification below must be completed in order to receive any relocation benefits.** (This certification may not have any standing with regard to applicable State laws providing relocation benefits.) **Your signature on this claim form constitutes certification.** See 49 CFR 24.208(g) & (h) for hardship exceptions.

Please address only the category (Individual or family) that describes your occupancy status. For item (2), please fill in the correct number of persons.

RESIDENTIAL HOUSEHOLDS

- (1) Individual. I certify that I am: (check one)
 a citizen or national of the United States
 an alien lawfully present in the United States.
- (2) Family. I certify that there are _____ persons in my household and that _____ are citizens or nationals of the United States and _____ are aliens lawfully present in the United States.

7. Computation of Payment (See 49 CFR 24.301 and 24.302)

Instructions: You may be eligible to apply for either (1) a fixed payment (see 24.302), or (2) payment for actual and reasonable moving costs and related expenses (see 24.301), or (3) in some cases, a payment based on a combination of moving options (see 24.301(b)). The computation table in this section provides you with the ability to compute your payment based on one or a combination of moving options depending on your eligibility and your needs and desires.

A fixed payment is used to compute a payment based on the numbers of rooms of furniture within the displacement dwelling. The Residential Fixed Moving Cost Schedule available at www.hud.gov/relocation, will provide the payment amount for the state in which the displacement occurred. (Note: for persons occupying a dormitory style room or where the move is performed by the Agency at no cost to the displaced person, the payment amount is limited to the amount specified for such moves on the Fixed Moving Cost Schedule.) If you choose to claim a fixed payment, fill in the applicable schedule amount in column 7c Line (3). In some cases, persons who plans to claim only a fixed payment may also be eligible for additional moving options to move personal property located outside the dwelling and not considered in the Fixed Moving Cost Schedule (jungle gym, hot tub, etc.) or for personal property requiring specialized moving assistance within the dwelling (piano, pool table, medical equipment, etc.). In these situations you may also be eligible for a payment based on actual costs for a commercial move and/or self move for these items. Contact the Agency for further assistance. If the Agency determines you are eligible for other moving options in addition to the fixed payment, fill in all applicable claim information requested for the type(s) of moving option specified in the table.

| | 7a. Commercial Move (Actual Costs) (Based on lower of 2 bids) | | 7b. Self Move (Actual Costs) (Not to exceed cost of commercial move) | | 7c. Self Move (Fixed Schedule) (See 49 CFR 24.302) | |
|--|---|------------|--|------------|--|------------|
| | Claimant | Agency Use | Claimant | Agency Use | Claimant | Agency Use |
| (1) Moving Cost Expenses (49 CFR 24.301(g)(1-7); see page 2) (Do not include storage costs listed separately below). [For Mobile Home Owner Occupants also include 24.301(g)(8-10), if applicable.] | | | | | | |
| (2) Storage Cost (Requires prior agency approval) (Not to exceed 12 months) | | | | | | |
| (3) Fixed Moving Cost Schedule Amount (Based on number of rooms of furniture in Item 3). For amount see Moving Cost Schedule available at www.hud.gov/relocation . | | | | | | |
| (4) Other (Explain in Remarks Section) | | | | | | |
| (5) Total Amount of Claim. | | | | | | |
| (6) Amount Previously Received, if any. | | | | | | |
| (7) Amount Requested (Subtract line (6) from line (5)) | | | | | | |
| (8) Total Amount Requested - Combination Moves Only (add applicable columns 7(a)(7), 7(b)(7) and 7(c)(7)) | | | | | | |

Previous versions obsolete.

8. **Certification By Claimant(s):** I certify that this claim and supporting information are true and complete and that I have not been paid for these expenses by any other source. I ask that the amount on line (7) of Item 7 or line (8) of Item 7 for combination moves be paid to me the contractor(s) (as specified in the Remarks Section).

Signature(s) of Claimant(s) & Date:

X

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

To Be Completed by the Agency

| Payment Action | Amount of Payment | Signature | Name (Type or Print) | Date (mm/dd/yyyy) |
|----------------|-------------------|-----------|----------------------|-------------------|
| 9. Recommended | \$ | | | |
| 10. Approved | \$ | | | |

Remarks (Attach additional sheets, if necessary)

Additional sheets attached? Yes No

Eligible Actual Residential Moving Expenses (49 CFR 24.301(g)(1-10))

- (1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.
- (2) Packing, crating, unpacking, and uncrating of the personal property.
- (3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or 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, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
- (4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
- (5) Insurance for the replacement value of the property in connection with the move and necessary storage.
- (6) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- (7) Other moving-related expenses that are not listed as ineligible under § 24.301(h), as the Agency determines to be reasonable and necessary.
- (8) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hookup" charges.
- (9) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.
- (10) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

Public reporting burden for this collection of information is estimated to average 30 minutes per response. This includes the time for collecting, reviewing, and reporting the data. The information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and implementing regulations at 49 CFR Part 24 and will be used for determining whether you are eligible to receive a payment for moving and related expenses and the amount of any payment. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Privacy Act Notice: This information is needed to determine whether you are eligible to receive a payment for moving and related expenses. You are not required by law to furnish this information, but if you do not provide it, you may not receive any payment for these expenses or it may take longer to pay you. This information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The information may be made available to a Federal agency for review.

Claim for Actual Reasonable Moving and Related Expenses - Nonresidential (49 CFR 24 Subpart D)

U.S. Department of Housing and Urban Development

OMB Approval No. 2506-0016 (exp. 10/31/2011)

| | | | |
|----------------------------|----------------|------------------------|-------------|
| For Agency Use Only | Name of Agency | Project Name or Number | Case Number |
|----------------------------|----------------|------------------------|-------------|

Instructions: This claim form is for the use of displaced businesses, nonprofit organizations, and farms that wish to claim a payment for **Actual Reasonable Moving and Related Expenses, including Reestablishment Expenses**, rather than claim a **Fixed Payment**, under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). The Agency will explain the difference between the two payments and will help you complete this form. HUD provides information on these requirements and other guidance materials on its website at www.hud.gov/relocation. If you are eligible for either payment, the Agency will help you to determine which is most advantageous. If the full amount of your claim is not approved, the Agency will provide you with a written explanation of the reason. If you are not satisfied with the Agency's determination, you may appeal the determination. The Agency will explain how to make an appeal. **All claims for payments must be filed no later than 18 months from the date of displacement (see 24.207(d)).**

Attach supplemental pages as necessary. All expenses must be thoroughly identified and be accompanied by receipts or other appropriate documentation to be eligible for payment. Professional services and other claims for time expended based on salaries, earnings or fees related to 49 CFR 24.301(g)(12), 24.301(g)(17)(iii)-(vi), and 24.303(b), must be actual, reasonable, necessary, and should be preapproved by the Agency.

(Eligible Moving Expenses: See 24.301(g)(1)-(7); 24.301(g)(11)-(18) & 24.303; **Ineligible Moving Expenses:** See 24.301(h))

(Eligible Reestablishment Expenses: See 24.304(a); **Ineligible Reestablishment Expenses:** See 24.304(b))

Section A. General

| | | |
|--|---|---|
| 1. Name of Business, Farm or Nonprofit Organization | 2. Name, Title, Address and Telephone Number of Claimant or Claimant's Authorized Agent | |
| 3. Address from which Business, Farm or Nonprofit Organization moved | | |
| 4a. Address to which Business, Farm or Nonprofit Organization moved | 4b. Date Move Started (mm/dd/yyyy) | 4c. Date Move Completed (mm/dd/yyyy) |
| 5. Type of Operation (Check One) <input type="checkbox"/> Business <input type="checkbox"/> Farm Operation <input type="checkbox"/> Nonprofit Organization | 6. Type of Ownership (Check One) <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Nonprofit Organization | 7. Is this a Final Claim? <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No," attach an explanation) |

8. Certification of Legal Residency in the United States (Please read instructions below before completing this section.)

Instructions: To qualify for relocation advisory services or relocation payments authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, a "displaced person" must be a United States citizen or national, or an alien lawfully present in the United States. **The certification below must be completed in order to receive any relocation benefits.** (This certification may not have any standing with regard to applicable State laws providing relocation benefits.) Please address only the category that describes your citizenship status. For item (2), please fill in the correct number of partners. The certification for a nonresidential displaced person may be signed by an owner or other person authorized to sign on its behalf. **Your signature on this claim form constitutes certification.** See 49 CFR 24.208(g) & (h) for hardship exceptions.

NONRESIDENTIAL DISPLACEMENTS

(1) Sole Proprietorship.
 I certify that I am: (check one)
 _____ a citizen or national of the United States
 _____ an alien lawfully present in the United States.

(2) Partnership.
 I certify that there are _____ partners in the partnership and that _____ are citizens or nationals of the United States and _____ are aliens lawfully present in the United States.

(3) Corporation. (Name of Corporation)
 I certify that _____ is established pursuant to State law and is authorized to conduct business in the United States.

Section B. Supporting Data for Moving Expenses (Not identified in Sections C, D, E, F or G) (49 CFR 24.301(d) & 24.301(e)) (Attach supplemental page if additional space is needed and attached receipts for costs incurred.) (Identify if move is commercial move self move or combination move ; if combination move, identify each expense as commercial or self move.)

| Expense Identification | Amount Claimed | For Agency Use Only |
|---|----------------|---------------------|
| (1) | \$ | \$ |
| (2) | | |
| (3) | | |
| (4) | | |
| (5) Total Costs (Include this amount in line (1) of Item 9, Total) | \$ | \$ |

Section C. Supporting Data for Storage Costs (49 CFR 24.301(g)(4))

Is This a Final Claim for Storage? Yes No

Name and Address of Storage Company

| | |
|---------------------------------------|---|
| Date Moved to Storage (mm/dd/yyyy) | Date Moved From Storage (mm/dd/yyyy) |
|---------------------------------------|---|

| Computation of Storage Costs | | |
|---|--------|---------------------|
| Item | Amount | For Agency Use Only |
| Monthly Rate for Storage | \$ | \$ |
| Number of Months in Storage | | |
| Total Storage Costs (Include this amount in line (1) of Item 9, Total) | \$ | \$ |
| Description of Property Stored (List may be attached) | | |

Section D. Supporting Data for Searching Expenses (49 CFR 24.301(g)(17))

| | | Amount Claimed | For Agency Use Only |
|---|---|----------------|---------------------|
| (1) Searching Time | Number of Hours () x Hourly Rate of Earnings () = | \$ | \$ |
| (2) Time Spent Obtaining Permits, Attending Zoning Hearings | Number of Hours () x Hourly Rate of Earnings () = | \$ | \$ |
| (3) Time Spent Negotiating Purchase/Lease of Replacement Site | Number of Hours () x Hourly Rate of Earnings () = | \$ | \$ |
| (4) Transportation (Consult with Agency on allowable rate per mile of personal vehicle) | | \$ | \$ |
| (5) Lodging (Dates: Attach receipts) | | \$ | \$ |
| (6) Fees Paid to Real Estate Broker or Agent, (Excluding fees or commissions related to site purchase) (Attach contract or other evidence) | | \$ | \$ |
| (7) Cost of Meals | | \$ | \$ |
| (8) Other Expenses (Specify and attach receipts) | | \$ | \$ |
| (9) Total Searching Expenses (Add lines (1) thru (9). Include this amount, or \$2,500, whichever is less, in line (1) of Item 9 Total.) | | \$ | \$ |

Section E. Supporting Data for Payment for Actual Direct Loss of Personal Property (List separately each item for which amount claimed in Column (f) is more than \$500. Other Items may be grouped together. The Agency will advise on acceptable method for listing items. Attach additional sheets, as needed.) (49 CFR 24.301(g)(14))

| (a) Identify Personal Property for Which Payment for Actual Direct Loss is Requested | (b) Fair Market Value As Is For Continued Use At Present Location (Attach appraisals or other evidence) | (c) Proceeds From Sale | (d) Value Not Recovered By Sale (Column (b) minus Column (c)) | (e) Estimated Cost of Moving Old Property As Is (To be entered by Agency) (see 24.301(g)(14)(ii)) | (f) Amount Claimed (Lesser of Column (d) or (e)) | (g) For Agency Use Only |
|---|--|---------------------------|--|--|---|----------------------------|
| | \$ | \$ | \$ | \$ | \$ | \$ |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Claimant's Release of Personal Property
I/We release to the Agency ownership of all personal property remaining on the real property.

| | | | | |
|--------------------------------------|-------------------|--|----|----|
| Signature(s) of Claimant(s) or Agent | Date (mm/dd/yyyy) | (1) Total (Add all entries in column (f) above) | \$ | \$ |
| | | (2) Cost of Effort to Sell Property (e.g., advertising) (49 CFR 24.301(g)(15)) | \$ | \$ |
| | | (3) Total Amount Claimed (Add lines (1) and (2). Include this amount in line (1) of Item 9 Total) | \$ | \$ |

Section I. Certification By Claimant(s): I certify that the information on this claim form and supporting documentation is true and complete and that I have not been paid for these expenses by any other source.

| | | |
|--|-----------------------|------|
| Signature(s) of Claimant(s) or Claimant's Authorized Agent | Title (Type or Print) | Date |
| X | | |

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

| 9. Computation of Payment | Amount | For Agency Use Only |
|--|--------|---------------------|
| Item | | |
| (1) Moving Expenses (From Section B, C, D, E, F, G) | \$ | \$ |
| (2) Reestablishment Expenses (From Section H) | \$ | \$ |
| (3) Other (Attach explanation) | \$ | \$ |
| (4) Total Amount Claimed (Add lines (1) thru (3)) | \$ | \$ |
| (5) Amount Previously Received, if any | \$ | \$ |
| (6) Amount Requested (Subtract line (5) from line (4)) | \$ | \$ |

| To Be Completed by Agency | | | | |
|---------------------------|-------------------|-----------|----------------------|-------------------|
| Payment Action | Amount of Payment | Signature | Name (Type or Print) | Date (mm/dd/yyyy) |
| 10. Recommended | \$ | | | |
| 11. Approved | \$ | | | |

Remarks:

Public reporting burden for this collection of information is estimated to average 1.5 hours per response. This includes the time for collecting, reviewing, and reporting the data. The information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and implementing regulations at 49 CFR Part 24 and will be used for determining whether you are eligible to receive a payment for moving and related expenses and the amount of any payment. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Privacy Act Notice: This form is for the use of displaced businesses, nonprofit organizations, and farm operators that wish to apply for a Payment for Actual Reasonable Moving and Related Expenses, including Reestablishment Expenses, rather than apply for a Fixed Payment. (The maximum Fixed Payment is \$20,000.) The Agency will explain the difference between the two types of payments. If you are eligible to choose either payment, the Agency will help you to determine which is most advantageous. If the full amount of your claim is not approved, the Agency will provide you with a written explanation of the reason. If you are not satisfied with the Agency's determination, you may appeal the determination. The Agency will explain how to make an appeal. This information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The information may be made available to a Federal Agency for review.

**Claim for Fixed Payment
in Lieu of Payment for Actual Nonresidential
Moving and Related Expenses**

**U.S. Department of Housing
and Urban Development**
Office of Community Planning
and Development

OMB Approval No. 2506-0016
(exp. 10/31/2011)

(49 CFR 24.305)

| | | |
|---|------------------------|-------------|
| For Agency Use Only Name of Agency | Project Name or Number | Case Number |
|---|------------------------|-------------|

Instructions: This claim form is for the use of displaced businesses, nonprofit organizations, and farm operators that wish to claim a **Fixed Payment**, rather than claim a **Payment for Actual Reasonable Moving and Related Expenses, including Reestablishment Expenses** under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). **The minimum fixed payment is \$1,000; the maximum is \$20,000.** This payment is based on the average net annual earnings of an eligible business or farm operation before income taxes during the 2 tax years prior to the tax year in which it was displaced (see 49 CFR 24.305(e)); or for a nonprofit organization, based on the average of 2 years gross annual revenues less administrative expenses for the two 12 month periods prior to the acquisition (see 49 CFR 24.305(d)). The Agency will explain the difference between the two payments and will help you complete this form. HUD provides information on these requirements and other guidance materials on its website at www.hud.gov/relocation. If you are eligible for either payment, the Agency will help you to determine which is most advantageous. If the full amount of your claim is not approved, the Agency will provide you with a written explanation of the reason. If you are not satisfied with the Agency's determination, you may appeal the determination. The Agency will explain how to make an appeal.
All claims for payments must be filed no later than 18 months from the date of displacement (see 24.207(d)).

Fixed Payment Eligibility: 1. Business: (see 49 CFR 24.305(a)), **2. Nonprofit Organization:** (see 49 CFR 24.305(d)) & **3. Farm Operation:** (see 49 CFR 24.305(c))

Section A. General

| | |
|---|---|
| 1. Name of Business, Farm or Nonprofit Organization | 2. Name, Title, Address & Telephone Number of Claimant or Claimant's Authorized Agent |
| 3. Address from which Business, Farm or Nonprofit Organization Moved | |
| 4a. Date Move Started (mm/dd/yyyy) | 4b. Date Move Completed (mm/dd/yyyy) |
| 4c. Address to which Business, Farm or Nonprofit Organization Moved (If Business, Farm or Nonprofit Organization went out of business, check here <input type="checkbox"/>) | |

| | | |
|--|---|---|
| 5. Type of Operation (check one) <input type="checkbox"/> Business <input type="checkbox"/> Farm Operation <input type="checkbox"/> Nonprofit Organization | 6. Type of Ownership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Nonprofit Organization | 7. Is This a Final Claim? <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No", attach explanation) |
|--|---|---|

Certification of Legal Residency in the United States (Please read instructions below before completing this section.)

Instructions: To qualify for relocation advisory services or relocation payments authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, a "displaced person" must be a United States citizen or national, or an alien lawfully present in the United States. **The certification below must be completed in order to receive any relocation benefits.** (This certification may not have any standing with regard to applicable State laws providing relocation benefits.) Please address only the category that describes your citizenship status. For item (2), please fill in the correct number of partners. The certification for a nonresidential displaced person may be signed by an owner or other person authorized to sign on its behalf.
Your signature on this claim form constitutes certification. See 49 CFR 24.208(g) & (h) for hardship exceptions.

NONRESIDENTIAL DISPLACEMENTS

| | | |
|---|--|---|
| (1) Sole Proprietorship. I certify that I am: (check one) _____ a citizen or national of the United States _____ an alien lawfully present in the United States. | (2) Partnership. I certify that there are _____ partners in the partnership and that _____ are citizens or nationals of the United States and _____ are aliens lawfully present in the United States. | (3) Corporation. (Name of Corporation) I certify that _____ is established pursuant to State law and is authorized to conduct business in the United States. |
|---|--|---|

| Section B. Computation of Average Net Earnings or Net Revenues for Base Period 1/ | Item | Base Period | | | For Agency Use Only |
|--|------|-------------|-------------|---------|---------------------|
| | | Year (yyyy) | Year (yyyy) | Average | |
| Table I. Individual or Sole Proprietor (Relates to IRS Form 1040) | | | | | |
| (1) Net Profit (Or loss) Before Taxes from IRS Form 1040 | | \$ | \$ | \$ | \$ |
| (2) Adjustments (Attach statement) ^{2/} | | | | | |
| (3) Compensation Paid to Owner, Owner's Spouse, and Dependents (List names and amounts to each on a separate page) | | | | | |
| (4) Net Earnings (Add lines (1), (2) and (3)) | | \$ | \$ | \$ | \$ |
| Table II. Corporation (Relates to IRS Form 1120 and 1120-S) | | | | | |
| (5) Taxable Income from IRS Form 1120 (Or ordinary income from IRS Form 1120-S) | | \$ | \$ | \$ | \$ |
| (6) Adjustments (Attach statement) ^{2/} | | | | | |
| (7) Compensation Paid to Principal Stockholders, their Spouses, and Dependents (List names and amounts to each on a separate page) ^{3/} | | | | | |
| (8) Net Earnings (Add lines (5), (6) and (7)) | | \$ | \$ | \$ | \$ |
| Table III. Partnership (Relates to IRS Form 1065) | | | | | |
| (9) Ordinary Income (Or loss) Before Taxes (From IRS Form 1065) | | \$ | \$ | \$ | \$ |
| (10) Adjustments (Attach statement) ^{2/} | | | | | |
| (11) Compensation Paid to Principal Partners, their Spouses, and Dependents (List names and amounts to each on a separate page) ^{4/} | | | | | |
| (12) Net Earnings (Add lines (9), (10), and (11)) | | \$ | \$ | \$ | \$ |
| Table IV. Nonprofit Organization | | | | | |
| (13) Annual Gross Revenues ^{5/} | | \$ | \$ | \$ | \$ |
| (14) Administrative Expenses ^{6/} | | | | | |
| (15) Net Revenues (Subtract line (14) from line (13)) | | \$ | \$ | \$ | \$ |

1/ This is usually the two tax years prior to your displacement. Please consult the Agency.

2/ To the extent that the profit/income entry in Section B, line (1), (5) or (9) has been reduced by an expense that was not incurred in the base period (e.g., a loss carry forward from a previous year, loss carry back from a later year or declared depreciation in excess of actual depreciation) such expense must be added back on line (2), (6) or (10). To the extent that the entry on line (1), (5) or (9) is inflated by an amount not actually earned in the base period (e.g., refund of State or local income taxes or income included under the tax benefit rule because a deduction taken in a previous year was disallowed), it should be entered on line (2), (6) or (10) as a subtraction.

3/ Principal stockholder is one who owns 15% or more of the corporation.

4/ A principal partner is one with a proprietary interest of 15% or more in the concern.

5/ Gross revenues may include membership fees, class fees, cash donations and other fund collections.

6/ Administrative expenses include rent, utilities, salaries and fund raising costs.

| Section C. Computation of Payment | Item | Amount Claimed | For Agency Use Only |
|---|------|----------------|---------------------|
| (1) Amount from line (4), (8), (12) or (15) of Section B (If less than \$1,000, enter \$1,000. If more than \$20,000, enter \$20,000) | | \$ | \$ |
| (2) Amount Previously Received (if any) | | | |
| (3) Amount Requested (Subtract line (2) from line (1)) | | \$ | \$ |

Section D. Certification By Claimant(s): I certify that the information on this claim form and supporting documentation is true and complete and that I have not been paid for these expenses by any other source.

| | | |
|--|-----------------------|------|
| Signature(s) of Claimant(s) or Claimant's Authorized Agent | Title (Type or Print) | Date |
| X | | |

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

To Be Completed by Agency

| Payment Action | Amount of Payment | Signature | Name (Type or Print) | Date |
|----------------|-------------------|-----------|----------------------|------|
| 2. Recommended | \$ | | | |
| 3. Approved | \$ | | | |

Remarks

Public reporting burden for this collection of information is estimated to average 1.0 hours per response. This includes the time for collecting, reviewing, and reporting the data. The information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and implementing regulations at 49 CFR Part 24 and will be used for determining whether you are eligible to receive a fixed moving payment instead of a payment for actual moving and related expenses and the amount of any payment. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Privacy Act Notice: This form is for the use of displaced businesses, nonprofit organizations, and farm operators that wish to apply for a Fixed Payment rather than a Payment for Actual Reasonable Moving and Related Expenses, including Reestablishment Expenses. (The maximum Fixed Payment is \$20,000.) The Agency will explain the difference between the two types of payments. If you are eligible to choose either payment, the Agency will help you to determine which is most advantageous. If the full amount of your claim is not approved, the Agency will provide you with a written explanation of the reason. If you are not satisfied with the Agency's determination, you may appeal the determination. The Agency will explain how to make an appeal. This information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The information may be made available to a Federal Agency for review.

Claim for Replacement Housing Payment for 180-Day Homeowner- Occupant (49 CFR 24.401)

U.S. Department of Housing
and Urban Development
Office of Community Planning
and Development

OMB Approval No. 2506-0016
(exp. 10/31/2011)

| | | |
|---|------------------------|-------------|
| For Agency Use Only Name of Agency | Project Name or Number | Case Number |
|---|------------------------|-------------|

Instructions. This form is for the use of families and individuals applying for a replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) for a 180-day homeowner occupant who elects to buy a replacement home. A homeowner-occupant who decides to rent rather than buy should also use form HUD-40058. The Agency will help you complete this form. HUD also provides information on these requirements and other guidance materials on its website at: www.hud.gov/relocation. If the full amount of your claim is not approved, the Agency will provide you with a written explanation of the reason. If you are not satisfied with the Agency's determination, you may appeal that determination. The Agency will explain how to make an appeal.

All claims for payment by a homeowner-occupant must be filed within 18 months after the latest of: a) the date of displacement or b) the date of final payment for the acquisition of the real property. Displaced 180-day homeowner occupants must purchase and occupy a decent, safe and sanitary replacement dwelling within 1 year after the later of: a) the date of final payment for the displaced dwelling (for condemnation, use the date just compensation deposited in court) or b) the date a comparable replacement dwelling is made available by the agency (see 24.204).

| | |
|---|------------------------------|
| 1. Your Name(s) (You are the Claimant(s)) and present Mailing Address | 1a. Your Telephone Number(s) |
|---|------------------------------|

2. Have all members of the household moved to the same dwelling? Yes No (If "no", attach a list of the names of all members and the addresses to which they moved.)

| Dwelling | Address | When did you buy this unit? | When did you move to this unit? | When did you move out of this unit? |
|-----------------------------|---------|-----------------------------|---------------------------------|-------------------------------------|
| 3. Unit That You Moved From | | | | |
| 4. Unit That You Moved To | | | | |

5. Certification of Legal Residency in the United States (Please read instructions below before completing this section.)
Instructions: To qualify for relocation advisory services or relocation payments authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, a "displaced person" must be a United States citizen or national, or an alien lawfully present in the United States. **The certification below must be completed in order to receive any relocation benefits.** (This certification may not have any standing with regard to applicable State laws providing relocation benefits.) **Your signature on this claim form constitutes certification.** See 49 CFR 24.208(g) & (h) for hardship exceptions.

Please address only the category (Individual or family) that describes your occupancy status. For item (2), please fill in the correct number of persons.

RESIDENTIAL HOUSEHOLDS

(1) Individual. I certify that I am: (check one)
 _____ a citizen or national of the United States
 _____ an alien lawfully present in the United States.

(2) Family. I certify that there are _____ persons in my household and that _____ are citizens or nationals of the United States and _____ are aliens lawfully present in the United States.

| 6. Computation of Replacement Housing Payment (A homeowner-occupant who elects to rent should complete only items 1, 3, 4 & 5) | To Be Completed By Claimant | For Agency Use Only |
|--|-----------------------------|---------------------|
| (1) Purchase Price of Comparable Replacement Dwelling (To be provided by the Agency) | | |
| (2) Purchase Price of the Dwelling You Moved To (Not applicable for owner-occupant who elects to rent) | | |
| (3) Lesser of line 6(1) or 6(2) | | |
| (4) Price Paid by Agency for Dwelling That You Moved From | | |
| (5) Price Differential Amount (Subtract line 6(4) from line 6(3). If amount on line 6(4) exceeds amount on line 6(3), enter 0) This is the maximum amount for a homeowner occupant who elects to rent. | | |
| (6) Incidental Expenses (From line 7(10)) | | |
| (7) Mortgage Buydown Payment and Other Debt Service Costs (To be determined by Agency. See instructions in Item 8) | | |
| (8) Total Amount of Replacement Housing Payment Claim (Add lines 6(5), 6(6), and 6(7)) | | |
| (9) Amount Previously Received, if any | | |
| (10) Amount Requested (Subtract line 6(9) from line 6(8)) | | |

7. Incidental Expenses in Connection With Purchase of Replacement Dwelling (24.401 (e))

Instructions: Enter expenses incidental to the purchase of your new home. Do not include prepaid costs such as real estate taxes. Attach a copy of the closing statement and other receipts.
 * Not to exceed the costs for a comparable replacement dwelling.

| | (a) Claimant | (b) For Agency Use Only |
|--|-----------------|-------------------------------|
| (1) Legal, closing and related costs, including title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees | \$ | \$ |
| (2) Lender, FHA or VA Application and Appraisal Fees | \$ | \$ |
| (3) Loan Origination or Assumption Fees (Not Prepaid Interest). | \$ | \$ |
| (4) Professional Home Inspection, Certification of Structural Soundness, and Termite Inspection | \$ | \$ |
| (5) Credit Report | \$ | \$ |
| (6) Owner's and mortgagee's evidence of title, e.g. title insurance * | \$ | \$ |
| (7) Escrow Agent's Fee | \$ | \$ |
| (8) State Revenue or Documentary Stamps, Sales or Transfer Taxes * | \$ | \$ |
| (9) Other Costs (specify) | \$ | \$ |
| (10) Total Incidental Expenses (Add lines 7(1) through 7(9). Enter this amount on line 6(6)). | \$ | \$ |

8. Mortgage Buydown Payment and Other Debt Service Costs (24.401(d))

Instructions: You are entitled to compensation to cover the additional costs you must pay to finance the purchase of a replacement dwelling. The "buydown" payment covers those costs that result because the interest rate you must pay for a new mortgage is higher than the interest rate on your old mortgage. The maximum buydown payment for which you can qualify is the amount needed to reduce your new mortgage balance to the amount which can be amortized with the same periodic payments for principal and interest as those for your old mortgage. (The Agency is required to advise you of its estimate of the maximum buydown payment and the interest rate, term and amount on which it was computed. You will need to borrow that amount over that term to qualify for the full payment.) If you have more than one mortgage on either your old or new home, complete a separate Item 8(13) for each computation and include the total amount of all such computations on line 6(7). Note: A mortgage on your old home that was in effect for less than 180 days before the Agency's initial written offer of just compensation for the property cannot be used as a basis for payment. Also, if the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations.

| Part A - Information from Mortgage Documents | (a) Old Mortgage | (b) New Mortgage | (c) Lesser of Col. (a) or (b) |
|--|---------------------|---------------------|----------------------------------|
| (1) Outstanding principal balance | \$ | \$ | |
| (2) Annual interest rate of mortgage | % | % | |
| (3) Number of monthly payments remaining on mortgage | Mos. | Mos. | Mos. |

Part B - Computation of Payment (Use mortgage amortization table with 6 decimal places.)

| | |
|--|----|
| (4) Monthly payment required to amortize a loan of \$1,000 in _____ months (8(3)(c)) at an annual interest rate of _____ % (8(2)(b)) | \$ |
| (5) Monthly payment required to amortize a loan of \$1,000 in _____ months (8(3)(c)) at an annual interest rate of _____ % (8(2)(a)) | \$ |
| (6) Subtract line 8(5) from line 8(4) | \$ |
| (7) Divide line 8(6) by line 8(4) (carry to 6 decimal places) | \$ |
| (8) Enter old mortgage balance (amount on line 8(1)(a)) | \$ |
| (9) Multiply line 8(7) by line 8(8) | \$ |
| (10) New loan needed (subtract 8(9) from 8(8)) | \$ |
| Note: If 8(10) is less than 8(1)(b), enter amount from line 8(9) onto line 8(13) and skip lines 8(11) and 8(12) | |
| (11) Divide 8(1)(b) by 8(10) (carry to 6 decimal places) | \$ |
| (12) Multiply line 8(11) by line 8(9) | \$ |
| (13) Enter amount from 8(9) or 8(12), as appropriate (This is the mortgage buydown payment) | \$ |
| (14) Other debt service costs (Reimbursement of purchaser's points and loan origination fees is based on the new loan needed (8(10)), or the actual new loan balance (8(1)(b)), whichever is less. Do not include seller's points or any cost included as an incidental expense in 7(12).) | \$ |
| (15) Add lines 8(13) and 8(14). Enter this amount on 6(7). | \$ |

9. **Certification By Claimant(s):** I certify that the information on this claim form and supporting documentation is true and complete and that I have not been paid for these expenses by any other source. Signature(s) of Claimant(s) & Date

X

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Previous editions are obsolete

To Be Completed by Agency

| | | | | |
|--|-------------------|--|--|-------------------|
| 10. Effective Date of Eligibility for Relocation Assistance (mm/dd/yyyy) | | 11. Date of Referral to Comparable Replacement Dwelling (mm/dd/yyyy) | 12. Date Replacement Dwelling Inspected and Found Decent, Safe and Sanitary (mm/dd/yyyy) | |
| Payment Action | Amount of Payment | Signature | Name (Type or Print) | Date (mm/dd/yyyy) |
| 13. Recommended | \$ | | | |
| 14. Approved | \$ | | | |

Remarks

Public reporting burden for this collection of information is estimated to average 1.0 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and implementing regulations at 49 CFR Part 24 and will be used for determining whether you are eligible to receive a replacement housing payment for a 180-day homeowner and the amount of any payment. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Privacy Act Notice: This information is needed to determine whether you are eligible to receive a replacement housing payment for a 180-day homeowner. You are not required by law to furnish this information, but if you do not provide it, you may not receive this payment or it may take longer to pay you. This information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and implementing regulations at 49 CFR 24. The information may be made available to a Federal agency for review.

Claim for Rental Assistance or Down Payment Assistance

(49 CFR 24.402 and 24.401(f))

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OMB Approval No. 2506-0016
(exp. 10/31/2011)

See back of page for Public Reporting Burden and Privacy Act Statements before completing this form

| | | |
|---|------------------------|-------------|
| For Agency Use Only Name of Agency | Project Name or Number | Case Number |
|---|------------------------|-------------|

Instructions: This claim form is for the use of families and individuals applying for rental or down payment assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and may also be used by a 180-day homeowner-occupant who chooses to rent rather than buy a replacement home. The Agency will help you complete the form. HUD also provides information on these requirements and other guidance materials on its website at www.hud.gov/relocation. If the full amount of your claim is not approved, the Agency will provide you with a written explanation of the reason. If you are not satisfied with the Agency's determination, you may appeal that determination. The Agency will explain how to make an appeal.

Displaced persons must rent/purchase and occupy a decent, safe and sanitary replacement dwelling within one year from the date of displacement for replacement housing payment eligibility (see 24.402(a)(2)). All claims for payments must be filed no later than 18 months from the date of displacement (see 24.207(d)).

| | |
|--|-------------------------|
| 1a. Your Name(s) (You are the Claimant(s)) and Present Mailing Address | 1b. Telephone Number(s) |
|--|-------------------------|

| | |
|--|--|
| 2a. Have all members of the household moved to the same dwelling? <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No", list the names of all members and the addresses to which they moved in the Remarks Section.) | 2b. Do you (or will you) receive a Federal, State, or local housing program subsidy at the dwelling you moved to? <input type="checkbox"/> Yes <input type="checkbox"/> No |
|--|--|

| Dwelling | Address | When Did You Rent/Buy This Unit? | When Did You Move To This Unit? | When Did You Move Out of This Unit? |
|-----------------------------|---------|----------------------------------|---------------------------------|-------------------------------------|
| 3. Unit That You Moved From | | | | |
| 4. Unit That You Moved To | | | | |

5. Certification of Legal Residency in the United States (Please read instructions below before completing this section.)
Instructions: To qualify for relocation advisory services or relocation payments authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, a "displaced person" must be a United States citizen or national, or an alien lawfully present in the United States. **The certification below must be completed in order to receive any relocation benefits.** (This certification may not have any standing with regard to applicable State laws providing relocation benefits.) **Your signature on this claim form constitutes certification.** See 49 CFR 24.208(g) & (h) for hardship exceptions.

Please address only the category (Individual or family) that describes your occupancy status. For item (2), please fill in the correct number of persons.

RESIDENTIAL HOUSEHOLDS

- | | |
|--|---|
| (1) Individual. I certify that I am: (check one) ____ a citizen or national of the United States ____ an alien lawfully present in the United States. | (2) Family. I certify that there are _____ persons in my household and that _____ are citizens or nationals of the United States and _____ are aliens lawfully present in the United States. |
|--|---|

| 6. Determination of Person's Financial Means (Not applicable to 180-day homeowner-occupants who choose to rent. Enter NA in Item 6(6).) | Household Income | |
|---|------------------|-------------------------|
| | Claimant (a) | For Agency Use Only (b) |
| (1) Total number of persons in the household (See item 5(1) or (2)) | | |
| (2) Annual Gross Household Income. (49 CFR 24.2(a)(14)). Enter name of each household member with income (include the income of persons not lawfully present in the U.S.) | \$ | \$ |
| (3) Total Gross Annual Income (Sum of entries in item 6(2)) | \$ | \$ |
| (4) URA low income limit for number of persons in item 6(1). If item 6(3) is greater than item 6(4) - Family is not low-income. See 49 CFR 24.402 (b)(2)(ii) | | \$ |
| (5) Gross Monthly Income (Divide item 6(3) by 12) | \$ | \$ |
| (6) 30% of item 6(5) or "NA". (If gross annual income item 6(3) is greater than URA low income limit in item 6(4), enter "NA".) | \$ | \$ |

7. Determination of Rent and Average Monthly Utility Costs (See 49 CFR 24.402(b))

Instructions: To compute the payment, entries on line (8) must reflect all utility services. Therefore, identify on lines (2) through (5) each utility necessary to provide electricity, gas, other heating/cooking fuels, water and sewer. In those cases where the utility service is not covered by the monthly rent, indicate the estimated out-of-pocket monthly cost. In those cases where the utility service is covered by the monthly rent, enter "IMR" (In Monthly Rent). Determine the estimated average monthly cost of a utility service by dividing the reasonable estimated yearly cost by 12. If a monthly housing program subsidy (e.g., Housing Choice Voucher/Section 8, other) has been provided, enter the applicable amount on line (7).

| Monthly Cost | Unit That You Moved From (For Homeowner-Occupant, rent will be determined by the agency.) | | Unit That You Moved To (Do not complete if claim is for down payment assistance.) | | Comparable Replacement Dwelling |
|---|--|----------------------------|--|----------------------------|---------------------------------|
| | (a) Claimant | (b) For Agency Use Only | (c) Claimant | (d) For Agency Use Only | |
| (1) Rent (The monthly rental amount due under the terms and conditions of occupancy. If utilities are not included in rent, list in item 7(2) to (5)) | \$ | \$ | \$ | \$ | \$ |
| (2) | | | | | |
| (3) | | | | | |
| (4) | | | | | |
| (5) | | | | | |
| (6) Gross Monthly Rent and Utility Costs (add item 7(1) through (5)) | \$ | \$ | \$ | \$ | \$ |
| (7) Monthly Housing Subsidy, if applicable (e.g., Housing Choice Voucher/Section 8, other) | \$ | \$ | \$ | \$ | \$ |
| (8) Net Monthly Rent and Utility Costs (subtract item 7(7) from item 7(6)) (Enter these amounts on the appropriate lines in Item 8.) | \$ | \$ | \$ | \$ | \$ |

| 8. Computation of Payment: If you are filing for down payment assistance, check this box <input type="checkbox"/> and skip item 8(1). | To Be Completed By Claimant (a) | For Agency Use Only (b) |
|--|------------------------------------|----------------------------|
| (1) Monthly Rent and Average Monthly Utility Costs for Unit That You Moved To (From item 7(8), Column (c)) | \$ | \$ |
| (2) Monthly Rent and Average Monthly Utility Costs for Comparable Replacement Dwelling (From item 7(8), Column (e)) (To be provided by the Agency) | | |
| (3) Lesser of item 8(1) or (2) (If claim is for down payment assistance, enter amount from item 8(2)) | | |
| (4) Monthly Rent and Average Monthly Utility Costs for Unit That You Moved From (From item 7(8), Column (a)) (For Homeowner-Occupants who choose to rent, to be determined by the agency.) | | |
| (5) 30% of Average Gross Monthly Household Income (From item 6(6), Column (a)). If item 6(6) is "NA", enter "NA" here. | | |
| (6) Lesser of item 8(4) or 8(5) | | |
| (7) Monthly Need (Subtract item 8(6) from item 8(3)) | | |
| (8) Amount of Payment Claim (Amount on item 8(7) multiplied by 42) (For a Homeowner-Occupant who elects to rent, this amount cannot exceed the difference between the acquisition cost of the displacement dwelling and the cost of a comparable replacement dwelling. See form HUD-40057, item 5(5).) | \$ | \$ |
| (9) Amount Previously Received (if any) | | |
| (10) Amount Requested (Subtract item 8(9) from 8(8)) | \$ | \$ |

9. Certification By Claimant(s): I certify that the information on this claim form and supporting documentation is true and complete and that I have not been paid for these expenses by any other source.

Signature(s) of Claimant(s) & Date

X _____

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

| | | | | |
|--------------------------------------|---|--|---|-------------------|
| To be Completed by the Agency | 10. Effective date (mm/dd/yyyy) of eligibility for relocation assistance | 11. Date (mm/dd/yyyy) replacement dwelling inspected and found decent, safe and sanitary | 12. Date(mm/dd/yyyy) person occupied replacement dwelling | |
| | 13. Payment To Be Made In: <input type="checkbox"/> Lump Sum <input type="checkbox"/> Monthly Installments <input type="checkbox"/> Other Installments (only for down payment assistance) (specify in the Remarks Section) | | | |
| Payment Action | Amount of Payment | Signature | Name (Type or Print) | Date (mm/dd/yyyy) |
| 14. Recommended | \$ | | | |
| 15. Approved | \$ | | | |

Remarks

Remarks continued on a separate page? Yes No

Public reporting burden for this collection of information is estimated to average 1.0 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and implementing regulations at 49 CFR Part 24 and will be used for determining whether you are eligible to receive a payment to help you rent or buy a new home and the amount of any payment. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Privacy Act Notice: This information is needed to determine whether you are eligible to receive a payment to help you rent or buy a new home. You are not required by law to furnish this information, but if you do not provide it, you may not receive this payment or it may take longer to pay you. This information is being collected under the authority of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), and implementing regulations at 49 CFR Part 24. The information may be made available to a Federal agency for review.

Chapter 11 – Settlement and Eminent Domain

Summary

This chapter describes the closing/settlement process for those acquisitions where a voluntary offer acceptance agreement is signed by the landowner and the procedures used to initiate eminent domain proceedings when an agreement cannot be reached with the landowner. Both situations are legal actions which must be coordinated with or handled by the OAG.

| Section Number | Section Name |
|----------------|--|
| 11.1 | Introduction |
| 11.2 | Closings – Voluntary Conveyances |
| 11.3 | Initiation of Eminent Domain Proceedings |
| 11.4 | Trial or Settlement after Filing Declaration of Taking |

11.1 Introduction

The acquisition process followed by the ROW Unit is fully described in Chapter 8, which includes the offer of just compensation for the required ROW. An agreement can be reached at either the offer value or a higher amount provided it is justified and approved in accordance with the administration settlement provisions of Chapter 8, Section 8.13.4. An approved agreement is then processed for closing/settlement as prescribed in this chapter.

If an agreement cannot be reached at either the offer value or a higher amount that the ROW Specialist believes is justified, the offer will be considered refused, and DDOT will have to use eminent domain laws to acquire the property in order to build the project. The procedures for initiating eminent domain and settling the case before trial are described in this chapter. A flow chart for both closing voluntary conveyances and eminent domain proceedings is included at the end of this chapter.

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|--------------|---|
| Condemnation | The process by which real property is taken for public uses by the District’s power of eminent domain, upon the payment of just compensation, but without the consent of the private owner. |
| Deed | A signed instrument in writing, duly executed and delivered, providing for the transfer and conveyance of real estate. |
| OAG | DC Office of Attorney General |

Chapter 11 – Settlement and Eminent Domain

11.2 Closings – Voluntary Conveyances

This final step in the acquisition of ROW involves entering into a binding contract and clearing title. In some instances, only possessory interest needs to be cleared. But in most instances, it is necessary for DDOT to clear any interest created by mortgages or trust deeds, judgments, etc. rather than allowing them to stand upon a transfer of possession.

After the ROW Specialist has obtained the landowner's signature on the voluntary offer acceptance agreement indicating a voluntary agreement for the purchase of the ROW and/or easements, the agreement and related document are sent to the OAG requesting the preparation of a formal purchase contract.

The Row Specialist shall provide the purchase contract to the landowners requesting signatures. Should there be any issues regarding the language in the agreement the landowner or landowner's attorney can be directed to the appropriate attorney in the OAG office for resolution. After any appropriate changes to the agreement have been resolved the agreement is to be executed by all parties, including DDOT. The original agreement is to be returned to the OAG and a copy supplied to the settlement agent, if applicable.

The voluntary offer acceptance agreement and title report/binder shall be the basis for preparation of the closing document. The ROW Unit shall coordinate the preparation of a Deed with the OAG, to include any special conditions in the approved voluntary offer acceptance agreement. The ROW Unit and the OAG shall determine if the closing should be handled by a title company. Multiple closings on the same project, a complicated title report or unavailable staffing would be reasons to use a title company. See Chapter 16 for the procurement of outside title services.

Based upon the type acquisition, the OAG and ROW Unit shall determine the releases that will be needed. For a whole take of fee, the ROW Unit or title company will request a pay-off statement from the mortgage company. For a partial take of fee or significant permanent easement, the settlement agent will request a partial release for the proposed acquisition area. Any fees associated with obtaining the release shall be paid by DDOT.

Should the mortgage company require that a portion of the agreed upon land payment be paid toward the loan, the settlement agent will verify acceptance of the pay down with the landowner. The landowner should be encouraged to negotiate directly with the mortgage company if there is

Chapter 11 – Settlement and Eminent Domain

disagreement with the paydown. If the landowner and the mortgage company cannot agree on the distribution of the purchase payment, DDOT would need to initiate eminent domain in order to complete the acquisition. The court will then decide on the distribution of available money.

Any judgments or delinquent taxes due shall be confirmed by the Row Specialist during negotiations with the landowner, and proof of payment, if already made, shall be obtained. If a judgment cannot be substantiated as being the landowner's, an affidavit shall be prepared and signed by the landowner indicating that the judgment is not against the landowner. Should a judgment be valid and back taxes owed, the closing/settlement statement shall include the payment of these items, with the agreement of the landowner. Should there be multiple landowners, each owner's proportionate share shall be applicable to their individual financial obligations.

The settlement agent must prepare a closing/settlement statement (Form CLOSE) showing the distribution of the compensation, which will allow for proper transfer of property rights. The closing statement along with all updates to the title reports and other supporting documents are to be provided to the ROW Unit following close-out and issuance of the title policy.

The closing of an acquisition may involve some form of payment by the landowner to others, and some of these expenses are reimbursable. These payments can include penalty cost for prepayment of mortgage, notary fees, clerk's fee for recordation of releases, and mortgage company's fees for partial release. Therefore, in an effort to save the landowner from the process of reimbursement from DDOT, the ROW Unit can pay those expenses directly.¹ The landowner should be provided the Landowner's Reimbursable Closing Cost form (form L/O REIMB) if they will have expenses to be reimbursed.

Based upon the closing/settlement statement and satisfaction of title requirements, the just compensation payment agreed upon in negotiations is paid to the landowner and any other party, as agreed upon by the landowner. If the closing is handled by a settlement agent, the agent should within 30 days, after the deed is recorded and funds released, have the title insurance policy issued.

¹ 23 CFR 24

Chapter 11 – Settlement and Eminent Domain

11.2.1 Administrative Settlement is:

- any settlement reached prior to filing a declaration of taking for a parcel
- made or authorized to be made by the responsible DDOT official
- in excess of DDOT's approved estimate of just compensation

11.3 Initiation of Eminent Domain Proceedings

If the Row Specialist determines that further negotiations will serve no useful purpose and the ROW Unit Manager determines the initiation of the eminent domain process is appropriate, a "Second Letter" (See Example 11-1) is hand delivered to the landowner or sent by certified or registered first class mail with return receipt requested. In that letter the landowner will be advised that DDOT shall begin the eminent domain process. The ROW Specialist is to inform the landowner that after the Declaration of Taking has been filed with the court, the landowner may make application to the court for withdrawal of the deposited funds and that any final award would be reduced by the amount withdrawn. The Row Specialist shall also advise the landowner that DDOT stands ready to continue negotiations at any time prior to the actual trial.

The eminent domain procedure is not to be used as a threat to coerce an agreement. The eminent domain process is to be explained as the right of due process for the landowner where differences of opinion of just compensation can be settled.

DDOT shall prepare a "condemnation package" for submission to the OAG and eventual filing with the Registry of the DC Superior Court. The package shall include voluntary offer acceptance agreement, appraisal, review appraisal, title reports and binders, offer letter, acquisition report; plans and plats; title update; and other required evidence and exhibits.

The OAG's attorney will draft the Complaint, Notice of Taking and the Declaration of Taking. The Declaration of Taking shall be prepared in the format established by the OAG and shall include as a minimum the following:

1. Statement of the authority for the taking
2. DDOT establishment of public use and necessity for the acquisition
3. Description of the ROW and/or easements taken and of the property from which the rights are being acquired
4. Type or types of property interest taken

Chapter 11 – Settlement and Eminent Domain

5. Plat of the property taken, and plans of the proposed construction if taking is a partial take
6. Summary of just compensation for the taking
7. Any special language required as a result of building/sign/etc. retention by landowner or any special arrangements

Once the Declaration of Taking has been prepared and approved by the OAG, the OAG will request the Mayor's approval and signature, providing a summary of the ineffectual offer and negotiations with the landowner. A transfer of funds voucher for the amount of just compensation will be prepared and funds will be paid to the Clerk of the Court for the Superior Court of the District. Upon providing the Declaration of Taking and just compensation to the Registry for recording, the ROW Specialist shall have the "notice of taking" document served by process servers. Should it be impossible to locate a landowner or the landowner's representatives, a legal notice shall be published in the local newspaper. The notice will seek information as to contact information about the landowner or in the absence of the landowner any next of kin.

Should the property being condemned be occupied by an eligible displacee, notice that a Declaration of Taking has been filed shall be made to all tenants, and relocation assistance services shall continue to be provided to the displacees. A final notice to vacate shall be sent to the displacees establishing the formal vacation date. This date shall be no less than 30 days from the Declaration of Taking or the original vacation date established with the assurance letter issued earlier. See Chapter 10 on relocation assistance policies and procedures for more information.

Upon the filing of the Complaint, Notice of Taking and Declaration of Taking by DDOT, the OAG will be responsible for the legal proceedings and shall either represent DDOT or approve outside counsel to represent DDOT. The ROW Unit Manager, the appraiser, the review appraiser and Row Specialist will be available to provide technical details about the ROW appraisal and the negotiations. Should additional expert witnesses be needed in the opinion of the attorney selected to prosecute the case, approval shall be obtained from the ROW Unit Manager.

11.3.1 Legal Settlement

A legal settlement is:

Chapter 11 – Settlement and Eminent Domain

- any settlement reached by the legal representative (attorney) to DDOT
- after a condemnation action is filed with the court
- in excess of DDOT’s approved estimate of just compensation

11.4 Trial or Settlement after Declaration of Taking

The Settlement Agreement is to be executed by the landowners and the ROW Unit Associate Director, setting forth a settlement reached after the filing a Declaration of Taking. This agreement will include settlement for the land described in the declaration—only—and cannot include land of a greater area. Any additional property that must be acquired from the same landowner, but not identified in the declaration, must be handled as an entirely separate acquisition and assigned a new parcel/case number.

When an attorney has been authorized to undertake condemnation proceedings, it is essential that the attorney be informed of any further negotiations undertaken by a member of ROW Unit staff. The attorney should be consulted in advance of any offer and informed of any counteroffer and ultimate settlement.

Any proposed settlement of the case prior to trial shall be submitted to the ROW Unit Manager for review with the justification for settlement. The ROW Unit Manager shall review and process the proposed settlement in accordance with the Administrative Settlement, section 8.12 of Chapter 8. If approved, a “Settlement Agreement” shall be prepared by the OAG for execution by DDOT and the landowner.

The amount of any Settlement Agreement must be explained and supported in the same manner and extent as an administrative settlement. Appraisals that have been secured for court testimony by DDOT or the property owner may be considered in addition to the factors listed in Section 8.12.

The assigned attorney and/or Row Specialist will recommend acceptance of a Settlement Agreement to the ROW Unit Manager for approval. They will explain to the landowner that all interest relating to the filing of the Declaration of Taking, whether paid or unpaid, is included and made part of the total agreed upon consideration.

After the Settlement Agreement has been approved by the Associate Director, the signed approval along with a check for additional payment, if applicable, will be sent to the attorney. The

Chapter 11 – Settlement and Eminent Domain

attorney will ask the court to confirm the settlement through a final order. Upon receiving the final order or notice of award, and after all payments have been made, the file record for the parcel shall be closed.

If the case is not settled prior to trial, the attorney shall provide the ROW Unit Manager with a report summarizing the results of the trial and include the amount of the award. An explanation of the evidence presented by both sides shall be included in the report as well as a recommendation for acceptance or an appeal. The ROW Unit Manager shall review the award and trial issues and make a recommendation to the Associate Director to accept or appeal the award.

If award is accepted, the ROW Unit shall request that funds be transferred to the court for the excess amount of the award plus any interest due. The amount of payment due shall be verified with the attorney handling the case.

Upon receiving the final order or notice of award, and after all payments have been made, the file record for the parcel shall be closed.

THIS PAGE INTENTIONALLY LEFT BLANK

Chapter 11 – Settlement and Eminent Domain

Chapter Resources

Major Tasks

- Voluntary Conveyance Closing
- Eminent Domain Proceeding

Examples

- Second letter (see Example 11-1)
- Settlement Scope of Work (See Chapter 16, Example 16-1)

Forms

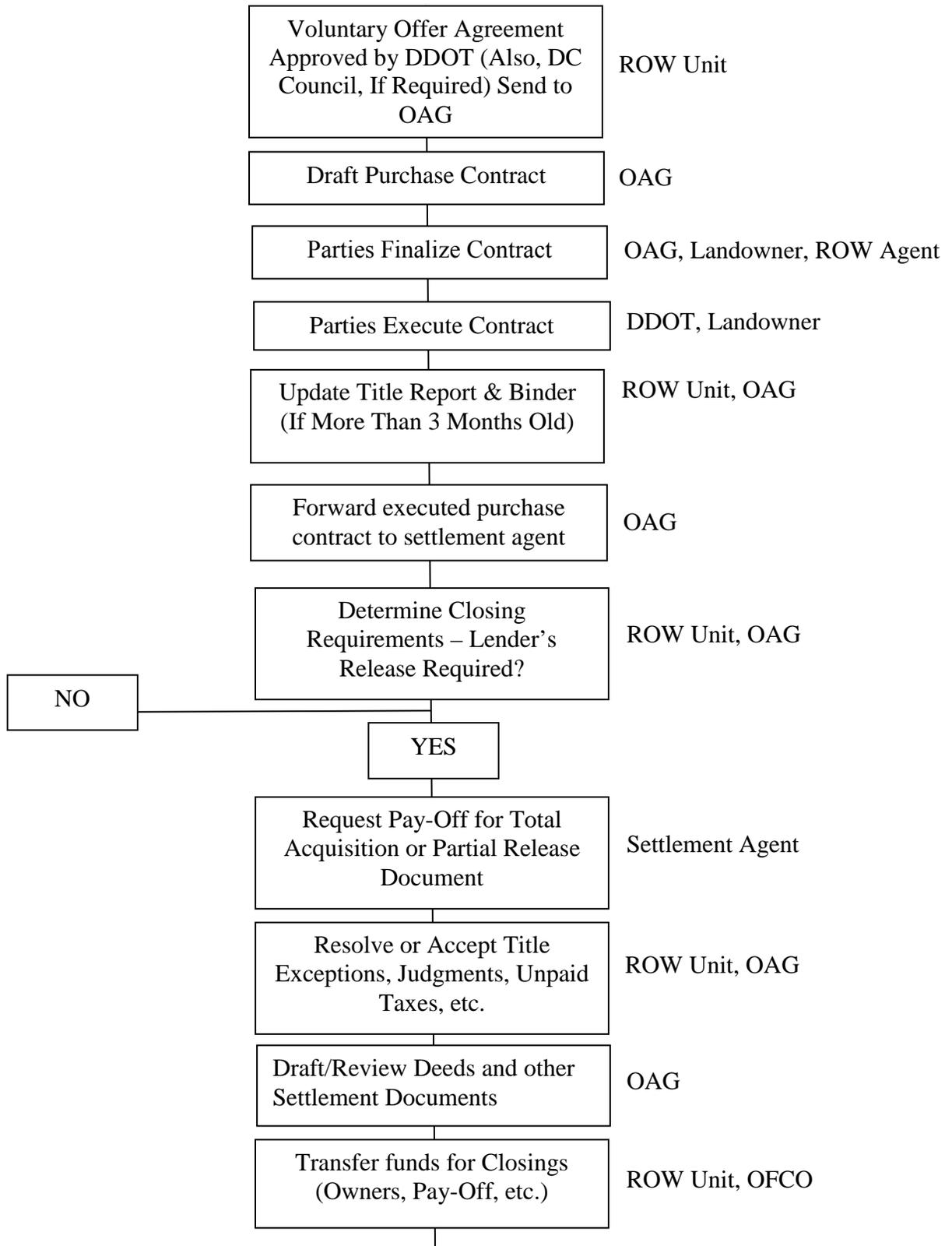
- Closing Statement Form (Form CLOSE)
- Landowner's Reimbursable Closing Costs Form (Form L/O REIMB)

References

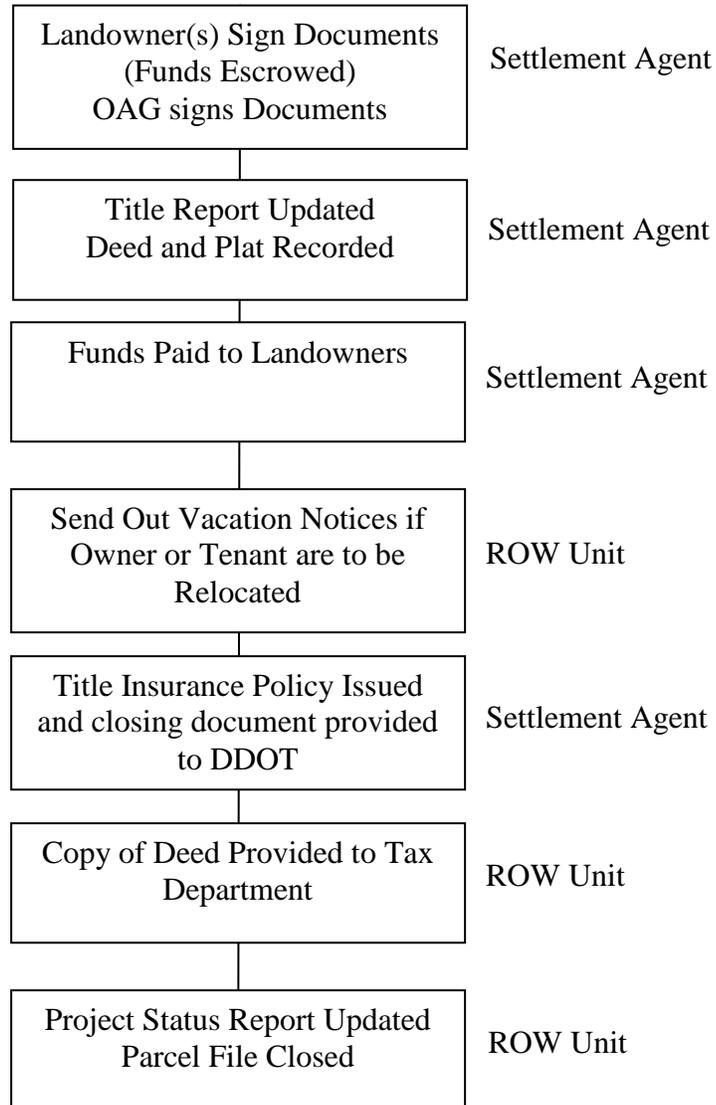
- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- District of Columbia Code
<http://dccode.westgroup.com>

Chapter 11 – Settlement and Eminent Domain

Major Tasks - Voluntary Conveyance Closing

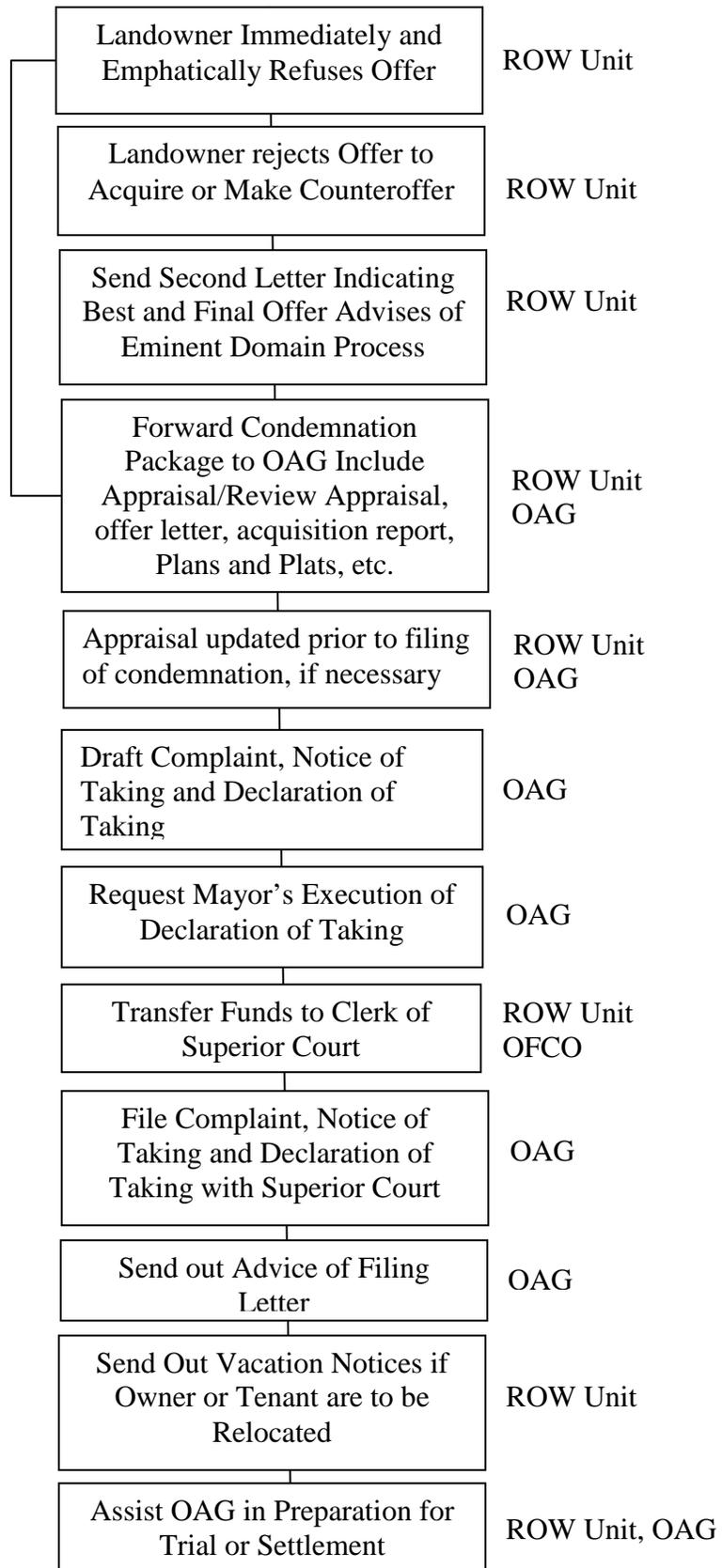


Chapter 11 – Settlement and Eminent Domain



Chapter 11 – Settlement and Eminent Domain

Major Tasks – Eminent Domain Proceeding



Chapter 11 – Settlement and Eminent Domain

[Example 11-1: Second Letter]

Date: _____

Street: _____

Project: _____

Federal Project: _____

Right of Way – Property of Dick A Williams and Jane B Williams
Parcel TNC-003

Mr. and Mrs. Dick A Williams
1000 14th Street, NW
Washington, DC 20009

Dear Mr. and Mrs. Williams:

The offer of \$181,000.00 made by our Row Specialist for the needed right of way is hereby confirmed on behalf of the Director of the District of Columbia's Department of Transportation (DDOT).

Since an agreement has not been reached, it is necessary that we acquire title to the area needed. Therefore, we are proceeding by filing a Declaration of Taking under the eminent domain statutes provided in the District of Columbia Code, as amended. Upon recordation of the Declaration of Taking with the Clerk of the Superior Court of the District of Columbia, title to the right of way will transfer to the District. This includes the land with any and all improvements and appurtenances located thereon.

The full amount of \$181,000.00 shown in the Declaration referred to may be received by making the necessary application to the Court. Payment of this sum will in no way affect your rights under eminent domain proceedings. While these funds are usually paid promptly, delays may occur if there are title problems, releases from deeds of trusts required, back taxes or outstanding liens against the property.

This transaction will be reported to the Internal Revenue Service (IRS). If you are required to file a return, a negligence penalty or other sanctions may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

The filing of the Declaration in no way prevents further negotiations in an effort to reach a mutually satisfactory agreement. Please continue to work with our representative _____. This action is being taken by the DDOT merely to assure proper title in order that the construction may proceed.

Sincerely,

Associate Director
Transportation Policy and Planning Administration

CC: DC Office of Attorney General (OAG)

Chapter 11 – Settlement and Eminent Domain

[Form Close]

Closing Statement

Date of Closing
or Transaction: _____

Type of Payment
 Land Transfer
 Miscellaneous Only (no land)

Street: _____

Project: _____

Ward: _____

Block: _____

Parcel Number: TNC-003

Purchase Price Breakdown
 Land & Improvements: \$ 22,101.00
 Utility Easement: \$ 7,898.00
 Sign: \$ 4,438.00
 Damage to Residue: \$ 146,563.00
 Total: \$ 181,000.00

Property Owner: Dick A Williams and Jane B Williams

Address: 1000 14th Street, NW
Washington, DC 20009

Gross Proceeds\$181,000.00

| | |
|---|--------|
| Retention Value Payment for Building(s) | \$ |
| Mortgage or Deed of Trust | \$ |
| Taxes | \$ |
| Other Liens | \$ |
| Miscellaneous (please list) | \$ |
| Total Deductions | \$0.00 |

Gross Proceeds less Deductions.....\$181,000.00

I certify that the above is a true and correct statement. _____
 (ROW Unit Manager or Title Company)

I certify that I have received the amount of \$ _____, which represents my proportional share of the total consideration less applicable deductions, if any, and a copy of this statement on the date above written.

This is important tax information and is being furnished to the Internal Revenue Service (IRS). If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

 Signature of Landowner
 Dick A Williams
 SSN or Tax ID: _____

 Signature of Landowner
 Jane A Williams
 SSN or Tax ID: _____

Original for Landowner

Copy for DDOT's ROW Unit

Chapter 11 – Settlement and Eminent Domain

[Form L/O REIMB]

Landowners' Reimbursable Closing Cost

Street: _____
Project: _____
Date: _____

RIGHT OF WAY – Property of _____
Parcel No. _____

Right of Way Unit Manager
District Department of Transportation
941 North Capitol Street, NE
Suite 2300
Washington, DC 20002

Dear Unit Manager:

I certify that the following incidental expenses were incurred by me in transferring my property to the District of Columbia, Department of Transportation:

1. Penalty cost for prepayment of recorded mortgage:
Name of mortgagor: _____
Amount of claim: \$_____ (A copy of receipt or cancelled check must accompany this claim.)
2. Recordation of Deed of Release:
Amount: \$_____ (A copy of receipt or cancelled check must accompany this claim.)
3. Notary Fees:
Amount: \$_____ (A copy of receipt or cancelled check must accompany this claim.)
4. Mortgagor's fees or partial release:
Amount: \$_____ (A copy of receipt or cancelled check must accompany this claim.)
5. Clerk's cost for marginal notations on Deeds of Trust:
Amount: \$_____ (A copy of receipt or cancelled check must accompany this claim.)
6. Other incidental expenses: (Please itemize and attach receipts or cancelled checks.)

Total amounts claimed above: \$_____

I have verified the amounts shown above. _____
Landowner's Signature

DDOT Signed: _____
Name

Title

Date: _____

Chapter 12 – Property Management (Pre-Construction)

Summary

This chapter covers the property management functions that must be performed prior to the start of construction of a project. This involves taking possession, controlling, managing, and ultimately disposing of the real and personal property acquired by DDOT as a part of the ROW acquisition process. It includes the management, lease and/or sale of surplus real property, and the lease, sale, salvage, removal or demolition of improvements prior to and after construction.

The property management functions for DDOT assets, owned after construction of the transportation improvements have been completed, are covered in Chapter 17 (Property Management [Post-Construction Assets]).

| Section Number | Section Name |
|----------------|--|
| 12.1 | Introduction |
| 12.2 | Preliminary Project Studies |
| 12.3 | Initial Building and Improvement Inventory |
| 12.4 | Right of Way Acquisition Stage |
| 12.5 | Building and Improvement Data |
| 12.6 | Relocation Coordination |
| 12.7 | Continuation Rent by Owner or Tenant |
| 12.8 | Rental Beyond 180 Days or by Others |
| 12.9 | Possession of Acquired Property |
| 12.10 | Disposal of Improvements and Buildings (includes asbestos and lead paint contamination) |

12.1 Introduction

The primary property management functions occurring during the pre-construction timeframe is the control and disposition of buildings and other improvements. In addition, if the project development time frame permits, the property management specialist or other assigned representative of DDOT (PM Specialist) may arrange for an extended occupancy by the landowner or tenant at the time of acquisition or to lease the property on a short term basis at a fair and equitable rent.

Chapter 12 – Property Management (Pre-Construction)

Management of the property during the pre-construction phase involves maintenance and security of any building or structure on the property, control of pests, removal of hazardous waste, demolition and any other such issues that would hinder construction of the project.

A complete glossary of definitions and acronyms is included as Appendix A in this manual.

Some terms and acronyms used in this chapter are as follows:

| | |
|---|---|
| ACM | Asbestos containing material |
| Air Rights | Real property interests for space located above and /or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way boundaries. These real property interests may be defined by agreement, and conveyed by deed or lease, for the use of the airspace. |
| Air Space | The space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or Project boundaries. |
| DPW | District of Columbia's Department of Public Works |
| Decent, Safe and Sanitary Housing Dwelling ¹ | <p>Meets local housing and occupancy codes, is structurally sound, weather tight, and in good repair; meets local housing and occupancy codes. However, any of the following standards, which are not met by the local code, shall apply unless waived for good cause by the FHWA. The dwelling shall:</p> <ol style="list-style-type: none">1. Be structurally sound, weather tight, and in good repair;2. Contain a safe electrical wiring system adequate for lighting and other devices;3. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees Fahrenheit) for a displaced person;4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person(s). The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes. In addition, DDOT shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes;5. Shall 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 in good working order and properly connected to appropriate sources of water and to a sewage |

¹ 49 CFR 24.2(a)(8)

Chapter 12 – Property Management (Pre-Construction)

drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully useable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;

6. Contains unobstructed egress to safe, open space at ground level;
7. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person;

This is the qualitative and safety standard to which displacees must relocate in order to qualify for replacement housing payment benefits provided by DDOT. Decent, safe, and sanitary is also an element in the definition of comparable replacement housing defined above.

| | |
|-------------------|--|
| IPMA | DDOT's Infrastructure Project Management Administration |
| OPM | District of Columbia's Office of Property Management |
| Project Manager | IPMA or TPPA project manager |
| Residue Parcel | The remainder of a property which DDOT has discretionary authority to purchase by either agreement or eminent domain |
| Rent by Agreement | Used when a short-term continuation of occupancy is allowed by DDOT beyond the normal vacancy date |
| Surplus Parcel | Any property owned by DDOT that is not a part of the operating street ROW or used for other DDOT operations |
| TPPA | DDOT's Transportation Policy and Planning Administration |
| Vacation Date | Final date given to landowner or tenant of land at which time they have to leave the subject property |

12.2 Preliminary Project Studies

The PM Specialist will be expected to provide information during the early stages of a project's development. This could occur during the environmental studies for a major project or at preliminary planning stage for a minor improvement project. The PM Specialist's focus is to provide information with which a decision could be made in regards to an alignment or design being considered for a project.

Alignments and/or designs must be reviewed and analyzed from a multidisciplinary perspective in order to identify social, economic and environmental impacts that will influence location or

Chapter 12 – Property Management (Pre-Construction)

geometric features. Property management issues in the corridor review and field inspection phase should include, but not limited to, the following areas:

1. Identification of possible illegal or contaminating land uses, including dumps, petroleum or chemical spill areas, etc.
2. Identification of potentially contaminated improvements, particularly with asbestos or lead paint.
3. Location of storage tanks, foundations, etc. that may not be recorded on preliminary plans
4. Presence of safety hazards or attractive nuisances that will need to be specifically controlled after acquisition, such as, swimming pools, etc.

Property management observations and findings contribute to the overall environmental evaluation of the corridor. These observations and findings also provide background and insight that is valuable during the active ROW acquisition phase of project development. The following are such examples:

- Encroachments on existing ROW, such as porches, building additions, underground garages, etc.
- Improvements needing asbestos and lead paint inspection and removal before disposal
- Properties and improvements having revenue return potential

12.3 Initial Building and Improvement Inventory

When the proposed improvement plans are developed to the preliminary design plans stage (30%) and circulated for comments, the PM Specialist shall review the plans and compile the initial inventory of buildings and improvements. The inventory should be compiled using the Building and Improvement Report (Form BUILDING-REPORT) with Columns A through E being completed initially. Additional information is added as the PDP continues.

All buildings and improvements located on property being acquired are to be assigned an identification number, and those numbers are to be shown on the plans. The assignment of property identification numbers (PIN) to all improvements is required for inventory and accountability purposes.

All buildings, significant signs, wells, or other significant improvements must be assigned a demolition (“D”) number in the series of 1 through 499; assignments are done upon the receipt of preliminary design plans (30%). Wells, including but not limited to monitoring wells, should have

Chapter 12 – Property Management (Pre-Construction)

the diameter and depth of the well entered on the plan adjacent to the “D” number when this information can be reasonably obtained or is readily available.

The “D” numbers are assigned consecutively starting with the lowest number (D-1, D-2, D-3, etc.) without duplication and run successively starting at the lowest project centerline station. “D” numbers added later are assigned the next consecutive available number for the project.

At any time during the PDP or during ROW acquisition that additional buildings or improvements are identified, they shall be assigned an identification number and added to the Project Building and Improvement Report (Form BUILDING-REPORTS).

Deleted “D” numbers will not be reused or reassigned. Thus, if a building D-4 is eliminated from the Project, D-4 should be removed from the plans by request to the Project Manager and never reused or reassigned on the same project. If the number was inventoried, it is to be accounted for as a deletion on the Building and Improvement Report and should reflect its removal/disposal. All improvements are to be accounted for once inventoried.

Significant improvements are those that typically require specialized equipment for demolition, beyond that normally required for project construction (such as a crane, air hammer, etc.) and are usually bid on an individual item basis. Non-significant items/improvements require no specialized equipment for removal and are typically included as part of regular clearing of parcels.

Identification numbers in the 500 through 999 series will be assigned to underground storage tanks, non-significant advertising signs, non-significant items/improvements, and personal property (such as mobile homes) within the proposed ROW. The series for each class of items is identified in Table 12-1.

Table 12.1: Class Item Series

| Improvement Type | D Series Number | Notation on Project Plans |
|--|------------------------|--|
| Underground storage tanks (UST) | D-500 Series | Location to be plotted and capacity shown adjacent to the “D” number |
| Non-significant outdoor advertising signs | D-700 Series | Locate and describe |
| Non-significant items, personal property, mobile homes, etc. | D-900 Series | Show in or adjacent to the item identified with the “D” number |

Chapter 12 – Property Management (Pre-Construction)

12.4 Right of Way Acquisition Stage

When the authority to proceed with ROW acquisition has been issued, the PM Specialist will make a final review of the approved ROW plans to ensure that all improvements have been identified and are included on the Building and Improvement Report (Form BUILDING-REPORT). Close coordination between the negotiator and Relocation Specialist is required to ensure the timely transfer of vacant properties or properties that must be vacated.

The ROW Unit's PM Specialist is responsible for continuing prudent stewardship over real and personal property assets held and controlled by DDOT. All assets and revenue generated from DDOT's real property must be reported in a consistent and timely manner. A complete and accurate accounting of all improvements on a project is critical. These improvements are to be completely inventoried and their disposition fully and accurately reported prior to the advertisement of construction bids for the project.

12.5 Building and Improvement Data

The PM Specialist will enter building data on the Building and Improvements Report (form Building-Report) on a continuing basis, beginning with the assignment of the identification numbers. The data will be updated as buildings and improvements are removed, demolished, sold, removed by unknown parties or otherwise disposed of during the project. The following specific data entry instructions are for the various classifications of improvements:

A. Mobile Homes

Mobile homes are considered real property if the method of fixture to the ground appears intended to be permanent or a deteriorated condition renders its transportation unsafe and/or unfeasible. They are to be assigned a "D" identification number (1 through 499). Each individual "D" number should have an individual line on the Building and Improvement Report form.

Mobile homes considered to be personal property (when they can be moved) should be shown on the Building and Improvement Inventory Report and assigned a D-900 series number. "Mobile Home" should be indicated in the improvement type column and Personal Property Only should be entered in the Use column. Owner Retention should be selected in the Method of Removal column of the Building and Improvement Report

Chapter 12 – Property Management (Pre-Construction)

form. If a mobile home has been (re)moved from the ROW, the date of removal shall be entered into the Actual Removal Date column on the Inventory.

B. Personal Property

Personal property, such as a boat, automobile, stacked materials, etc., located within the proposed ROW and intended to be/or actually left within the proposed ROW, must be identified on the report. These items will be set up using the D-900 number series. The Improvement Type column should describe the item to be removed, and the Improvement Use column should indicate Personal Property Only. An appropriate entry should be made in the Method of Removal Column. If the personal property has been removed, the date of removal should be entered in the Actual Removal Date column.

C. Underground Storage Tanks

All underground storage tanks (USTs) will be entered on the Building and Improvement Report form using the D-500 number series; multiple USTs on the same parcel will be assigned individual numbers. The capacity of each UST will be entered into the Improvement Type column and the UST area in the Improvement Use column. An appropriate entry should be made in the Method column. Small, above-ground tanks (e.g., home heating oil type) should not be assigned an identification number. Large, above-ground tanks (e.g., tank farm type) should be assigned a regular identification number.

The Building and Improvement Report form should identify the latest status of all parcels with improvements that have been assigned an identification number. Any outstanding, unaccounted improvement(s) could cause construction delay if the building is not vacant, possession of the property has not been gained and/or removed by the time the project construction contract is awarded. The report shall account for all buildings or improvements, reflect that all buildings are vacant (along with all displacees' relocated and personal property moved); are in the possession of DDOT; and have or have not been removed from the ROW. This report should be distributed to update the ROW Unit Manager, negotiators, and the Relocation Specialist involved in the project of the project status.

Chapter 12 – Property Management (Pre-Construction)

12.6 Relocation Coordination

DDOT primarily purchases real property for expanding and upgrading the transportation system. As a result, DDOT frequently becomes a temporary landlord when it acquires properties still occupied by tenants and former landowners. Possession of those acquired properties is a critical step in the timely clearance for construction.

No landowner shall be required to surrender possession of property before receiving just compensation or, in the case of eminent domain, a deposit with the court at the established FMV of the property. In addition, possession may not be required of any occupant prior to expiration of the 30-day assurance period included in the 90-day written notice specifying a vacation date.

Allowing continued use of property beyond the expiration of the vacation date through formal or informal extensions or otherwise should not conflict with project construction advertisement date or utility relocation construction. Any use should be extinguished at least 90 days prior to project advertisement or, in the case of utility relocation conflicts, no later than the timeframe established by the Project Manager for utility adjustment construction to meet project advertisement.

The Relocation Specialist should coordinate closely with the PM Specialist as the negotiations and relocation assistance activities continue. Copies of the vacation notices are to be sent to the PM Specialist. When the Relocation Specialist determines that a landowner or tenant will not be able to complete the move by the official vacation date, a meeting with the PM Specialist shall be arranged to discuss a possible continuation of use beyond that date.

While not a sole determining factor, the time remaining to the proposed project construction advertisement date and the required utility adjustment construction time frame will be the primary consideration. If there is adequate lead time remaining, a continuation of occupancy should be granted and a short-term rental be allowed. If the continuation of occupancy will delay the project construction advertisement and the displaced landowner or tenant has been provided with the required notice to vacate, then eviction should be considered and the relocation status discussed with the ROW Unit Manager.

In the instance of a recalcitrant or dilatory landowner or tenant, possession may have to be obtained by Order for Possession in the Superior Court for the District of Columbia. In such

Chapter 12 – Property Management (Pre-Construction)

instances the effective date of possession should be within the time frame set by the Court or no less than 90 days prior to the construction advertisement date set for the project.

12.7 Continuation Rent by Owner or Tenant

Provided there is no conflict with the project construction advertisement date or utility relocation construction, the original tenant or landowner who is being displaced may be permitted to continue to occupy the property at the expiration of the original vacation date. The extension of the vacation date will be for an additional 30 to 90 days with a monthly Rent by Agreement of the amount to be collected.

The Rent by Agreement amount shall be equal to the landowner's current monthly mortgage payment (principal and interest only) or, in the case of a tenant, an amount equal their existing monthly rent. In the event there is no existing mortgage or monthly rent, fair market rent will be determined and used for the payment amount. The Rent by Agreement amount is not to exceed the fair market rent for the property.

Rent by Agreement for any period beyond the initial maximum 90 day extension period will be at fair market rent and can continue for no more than a maximum of 180 days beyond the expiration of the original vacation date without a formal lease agreement. Periods beyond 180 days require that the formal rental process as set forth in Section 12.8 be followed.

The term for leases for original tenants currently constructing a replacement home or other similar circumstance can be on a month to month basis with a typical 60 days notice of cancellation. There must be a reasonable expectation that the landowner or tenant will be vacating the property in the near future.

Hardship cases involving ability to pay Rent by Agreement amount or the satisfactory progress toward vacating the property made by the displacee need to be reviewed on an individual basis and afforded proper consideration.

If DDOT acquires property with landowners or tenants in occupancy, the services (typically water, sewer, etc.) provided as part of the lease or agreement will remain with the former landowner as rent or other agreed upon payments continue to be collected until either the transfer of title is recorded or a Declaration of Taking is filed under eminent domain.

Chapter 12 – Property Management (Pre-Construction)

Upon transfer of title, either through closing or eminent domain, DDOT will immediately take over from the former landowner the provision of services and collection of rent. This can occur if DDOT acquires occupied property and there is no immediate need to relocate displacees, or the relocation process will be lengthy due to large numbers of displacees, relocation complications or other circumstances. DDOT will remain responsible for the tenant's lease or agreement provisions until the established vacation date or Rent by Agreement period ends.

12.8 Rental Beyond 180 Days or by Others

12.8.1 There are two types of potential tenants who rent during the ROW acquisition phase: short term and long term. A short-term occupant is most commonly the original tenant. In this situation, the Rent by Agreement provisions as described in Section 12.7 may be less than the fair market rent. Although short term, it is in the best interest of DDOT to keep the property occupied in order to prevent vandalism and to keep an attractive property maintained within the surrounding community.

A long-term tenant's lease is based on the current fair market rental value. This value can be determined by rates of similar properties in the area. Long-term tenants occupy the property when a project will not begin construction until well in the future, the construction date for the project is postponed or the project is cancelled. Operating expenses, including maintenance, utilities, and adequate insurance coverage, are borne by the tenant renting such property. The Lease is negotiated by the ROW Unit.

Residue property not needed for the construction staging may be formally leased through a Lease; this includes surplus property or certain air rights. The revenue derived from Leases prior to construction is subject to Title 23 funds and should be tracked according the Post Property Management receipt process found in Chapter 17. The Lease is used for improved or unimproved property and all lease types: residential, business/commercial, nonprofit, vacant land, etc. Each situation requires approval from the ROW Unit Manager, who will seek FHWA concurrence when applicable.

A request for approval to lease property will be made to the ROW Unit Manager after completion of review by the PM Specialist. The request for lease during the acquisition by persons or entities other than the occupant will require circulation for review and

Chapter 12 – Property Management (Pre-Construction)

approval as outlined in Section 12.8.2. Once the lease request for the property has been circulated and approved for leasing, it will typically not require additional circulation for continued leasing unless significant time has elapsed between leases.

Approval to lease will be based on a review of supporting facts and documentation submitted with the lease request, including necessary circulation within DDOT to ensure the feasibility of leasing the property. Documentation will include the recommended term, rental rate (supported by FMV), the proposed use, marked plan sheet of area to be leased, project advertisement date, if appropriate, Rental Application for residential leases, any local permits needed, etc. Upon approval, a lease identification number will be assigned by the ROW Unit, and a Lease will be prepared. The lease number assigned will be used on all correspondence.

The general Lease Agreement, approved by the OAG, should be modified to fit the lease type; all major clauses should remain in the lease, especially the Title VI related clause and reference(s). The lease agreement will typically have a term of 12 months and be effective on the first day of the following month. The lease will be executed by the lessee, notarized and then submitted to the ROW Unit for final review and execution by the Associate Director of TPPA. The Associate Director of TPPA is the delegated authority to lease property. No rent is to be accepted until the lease has been fully executed.

The prescribed rent will be payable monthly, in advance, on the first day of the month or year without demand. No security deposits will be required for leases. This removes the need to administer escrow accounts, which are not cost effective to manage the risk of nonpayment. The ROW Unit will manage and monitor all leases, promptly send a notice of delinquent rent, and collect the rent and any late penalty. Failure by the lessee to pay under the terms set forth in the lease should result in cancellation of the lease and proper notification under the terms of the lease. The notice will be delivered by certified mail with return receipt or by a reputable overnight delivery service. If the rent delinquency is not corrected in the notice period, the ROW Unit will take steps to cancel the lease, gain repossession of the property, and recover past rent due and costs. Any outstanding, uncollected rent shall be formally referred to OAG for action. All rents will be collected and transmitted to DDOT.

Chapter 12 – Property Management (Pre-Construction)

Operating leased ROW requires special attention with respect to use, term, conditions of cancellation, time to vacate, etc. If a property is leased prior to project construction, the lease term and other provisions are directly dependent on the construction advertisement date or proposed DDOT usage. Upon vacation of the property, the ROW Unit will inspect and take possession of the property, including any improvements, and post the property with No Trespassing Sign(s) as appropriate and prescribed.

12.8.2 Rental Request Circulation

Whenever the rental of a property acquired in connection with a current project is contemplated to extend beyond 180 days or is requested by a party that was not an occupant prior to the acquisition, the ROW Unit shall circulate a notice (Example 12-1) to obtain review and comments from representatives of DDOT's units and offices of the District government. The purpose of the circulation of rental notice is to ensure that other agencies of DDOT and the District government have no need to utilize the property before the end of the proposed rental period. The notice of intent to rent shall include the following:

- Description of property and limits of rental area, if appropriate (copy of plan sheet or DC map should be marked)
- Proposed period of rental
- Intended use
- Any special considerations

The notice of intent to rent shall be circulated to the following administrations within DDOT and the District government:

- DC – DPW
- DDOT – IPMA
- DC – OPM
- DDOT –MTA
- DDOT – TPPA
- DDOT – TOA
- DDOT – UFA
- DC - WASA

Chapter 12 – Property Management (Pre-Construction)

The notice should be circulated via email to the designated representative of these units. Failure from units to respond within the specified time period will be considered as concurrence. Comments received will be reviewed with the ROW Unit Manager, and the ROW Unit will proceed in accordance with the recommendations. Should an agency of the District government have a temporary need for the property, the ROW Unit should provide the terms, conditions and time limits for that unit, and request acknowledgement.

12.9 Possession of Acquired Property

Immediately prior to settlement, the title company will advise the ROW Unit of the scheduled date of settlement so that the PM Specialist may inspect the property before such settlement, if vacant. If the property is improved, the premises are not inspected until the relocation of the displacee or personal property is complete.

The PM Specialist must take the necessary actions in order to assure the ROW is secured. If vacant, the property is immediately secured, including boarding up of the ground and basement levels, if necessary. The PM Specialist shall take all reasonable steps to assure physical possession and control. The ROW must be maintained to prevent vandalism, illegal dumping, or disposal of any rubble or debris. Efforts to prevent such activity include fencing the ROW, coordinating with the local police department and even early demolition (if it will not adversely affect the community).

When the PM Specialist is advised that settlement has occurred on an occupied parcel and title has been transferred or the Declaration of Taking has been filed, the PM Specialist shall coordinate with the Relocation Specialist to issue the 30-day assurance letter, establishing the official vacation date.

The Relocation Specialist will advise the PM Specialist when the displacees have completed their relocation and vacated the acquired property. The lock keys and overall control of the acquired property shall be turned over to the PM Specialist. The PM Specialist shall inspect the vacated property to ensure that no potentially hazardous personal property has been left behind by the displacee and that all items of realty are present. The PM Specialist should complete the Improvement Record (Form IMPR INSP) and update the Building and Improvement Report.

Chapter 12 – Property Management (Pre-Construction)

Once formal possession of an improvement has been taken, arrangements should be made to have it inspected for asbestos and lead paint. All utility companies providing service shall be notified in writing to have services discontinued, and wires, pipes, etc. removed unless the PM Specialist determines that service is necessary to maintain the building or improvement (i.e., fire protection, alarm system, etc.). Improvement Record (Form IMPR INSP) will document the current condition.

12.10 Disposal of Improvements and Building

12.10.1 The timely and efficient removal of acquired improvements, including buildings, from the proposed ROW is important to maintaining the construction advertisement schedule and minimizing the cost of roadway construction. Therefore, planning for improvement removal should take place at the earliest possible time in the ROW acquisition phase. However, no action should be taken to remove any improvement until DDOT has title and legal possession, and all improvements (primarily buildings) have been inspected for asbestos and lead paint.

The first option for the removal of improvements from the ROW lies with the landowners of the improvements. At the time of negotiations, landowners have the option of retaining improvements and removing them from the ROW. If improvements are not retained by the landowner, and the project construction schedule allows time, the buildings should be advertised for public sale, typically by sealed bid sale. If no bids are received, or if the cost of public sale including advertising would be excessive in relation to the likely net proceeds, the buildings may be disposed of by negotiated sale.

As a part of the project construction contract, the most effective improvement removal method beyond owner retention or sale is through demolition. Improvements requiring removal prior to the project construction for utility relocation; that present a danger to the public; or are an attractive nuisance should be dealt with expeditiously. A separate demolition contract, secured through the normal contracting process, is typically the most efficient method to clearing the parcel. Temporary measures, such as boarding, fencing, removal of hazards, etc., may suffice depending on circumstances. No demolition contract should be awarded

Chapter 12 – Property Management (Pre-Construction)

when it overlaps a project advertisement date without the Associate Director's approval.

12.10.2 Asbestos Contamination

Every building and selected improvements (such as tanks, pipes, etc.) acquired by DDOT will be inspected for asbestos after vacation by the original landowner or occupant before it is leased, sold, used or demolished. Improvements retained by the landowner at the time of negotiations do not require inspection. DDOT does not take title to or possession of buildings that are retained by their owners; thus, DDOT has no responsibility with regard to their condition or use. Notwithstanding this, the landowner retaining the building or improvements will be required to relinquish any claim against DDOT for damages or losses due to the presence of asbestos, and the landowner is responsible for compliance with applicable law, rules, etc.

Improvements that contain Category I and II non-friable asbestos in good condition, as defined later in this Section, may be disposed of with proper disclosures to the prospective buyer who will assume all liability and indemnify DDOT and the District from all future claims.

The inspection should not be made until the improvement has been vacated and possession is taken by the ROW Unit, thus close coordination between the Relocation Specialist and the PM Specialist is important. The PM Specialist is to arrange for a consultant firm to perform the asbestos and hazardous material inspection once possession of the improvement has been taken. The PM Specialist should provide any keys or pertinent information necessary to gain access to the improvements. Once the inspection has been completed, a copy of the report will be provided to the PM Specialist and ROW Unit Manager. The Asbestos Inspection Report will indicate the presence of asbestos, its location, amount, type and condition, and the estimated cost of removal.

DDOT may sell, for removal, buildings that contain the following two categories of non-friable asbestos:

Chapter 12 – Property Management (Pre-Construction)

Category I: Asbestos containing packing, gaskets, resilient floor covering and asphalt roofing containing more than 1% asbestos as identified on the asbestos report. The material must be non-friable (cannot be crumbled, pulverized, or reduced to powder by hand pressure) and in good condition.

Category II: Any asbestos containing material (ACM), excluding Category I above that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure. Further, the ACM must be in good condition and not have a probability of becoming friable.

Improvements containing non-friable Categories I and II asbestos may be leased or moved without removal of the ACM but may not be sold for dismantling on site for salvage. This activity may disturb ACM and render it friable.

All sales agreements for improvements containing asbestos will include the following clause:

“The purchaser(s), by signature(s) below, acknowledge(s) the property to contain non-friable asbestos containing material in good condition, and acknowledge(s) receipt of a copy of DDOT’s asbestos inspection report for the property being conveyed. Purchaser(s) covenant(s) and agree(s) to hold harmless the seller from any tort liability claims as provided by law, both personally and those brought by third parties. This shall include but is not limited to, injury from contact with hazardous materials, such as asbestos, etc., that may be present on the property. The purchaser(s) accept(s) responsibility for removal of asbestos or other hazardous material in accordance with federal and district laws and regulations.”

DDOT will, as indicated in the above clause, provide the purchaser with a copy of the asbestos inspection report. On request, references will be provided to regulatory agencies and licensed asbestos removal companies. Refer to Chapter 17 (Property

Chapter 12 – Property Management (Pre-Construction)

Management [Post-Construction Assets]) for information on hazardous material disclosure and notification responsibilities with regard to lessees.

DDOT will not sell, under any circumstances, improvements that contain regulated ACM identified in the inspection report. These buildings should be turned over to a contractor for demolition and removal of the ACM or be placed in the project construction contract for ACM removal and demolition.

Regulated ACM is defined as the following:

1. Friable asbestos material; or
2. Category I non-friable asbestos that has become friable, or that will be or has been subjected to sanding, grinding, cutting or abrading; or
3. Category II non-friable asbestos containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by forces expected to act on the material in the course of removal or demolition.

In an instance that a purchaser is willing to pay the cost to have the regulated ACM removed; post a bond in the amount of the removal cost in addition to the sale price; or provide a performance bond for the cost of removal of the cleaned improvement; the improvement can be sold after being cleaned. The ACM must be removed through DDOT's oversight in order to assure proper removal.

12.10.3 Lead-Based Paint Contamination

DDOT is subject to requirements of the HUD and the EPA regulations regarding lead paint hazards in acquired improvements, usually buildings or storage tanks.

The PM Specialist is to arrange for a contractor to inspect for lead-based paint as well as for asbestos. DDOT's responsibility is to provide full disclosure of known lead hazards and the opportunity for a prospective buyer to inspect the property to assess any risks. Specifically, DDOT must do the following:

1. Disclose to purchasers and/or lessees lead paint hazards that are known to DDOT.

Chapter 12 – Property Management (Pre-Construction)

2. Provide purchasers and/or lessees with any reports pertaining to the presence of lead-based paint and hazards in or on DDOT owned property.
3. Provide prospective purchasers a 10-day opportunity to conduct a risk assessment or inspection at the buyer's expense.
4. Provide purchasers and lessees with a copy of a Federally approved information pamphlet.

The Federally approved form to accomplish the above requirements is in Appendix B. All parties should attest to the fulfillment of the required disclosures and options. The ROW Unit Manager will sign on behalf of DDOT.

Note: The policy with regards to lead paint is for notification and disclosure, as opposed to removal and disposal, and is also applicable to asbestos.

12.10.4 Attractive Nuisances

DDOT has a responsibility to protect the public from any hazardous conditions that exist on the property at the time of the transfer of title or that arise after the transfer of title. Thus, it is important that the PM Specialist notes these conditions during the inspection at the time possession is taken of the property, especially with regards to improvements on a property. Follow-up inspections should be conducted every 30 days to assess the conditions, risk, etc. A record will be made of inspections indicating the date and time and any safety related conditions that are found, and this record will be placed in the parcel file.

Special attention should be given in the inspection to presence of any attractive nuisance on the property. This condition, such as a swimming pool, open building foundation, etc., may be particularly attractive to children or other vulnerable persons for use. Any condition that imperils public safety must be corrected as soon as it is identified. Correction may require removal by DDOT or DPW forces or special contract, or by securing the property by additional fencing, boarding or locking.

Improvements on all projects will be inspected to determine if rodent control measures are needed. The inspection will be done by the PM Specialist with assistance, if needed, from the Health Department. Each property should be

Chapter 12 – Property Management (Pre-Construction)

inspected at the time DDOT takes physical possession, or as soon thereafter as possible, and before demolition of improvements. Improvements that are retained by the owner need not be treated.

Rodent control measures or treatment will be by baiting, or baiting and dusting, and will be performed by a properly licensed exterminator. The PM Specialist should arrange for an on-call rodent control contract with a licensed exterminator or firm. This is usually the most economical and effective means to perform this function. Contracts should be made on a yearly basis. The selection and contract process shall conform to requirements of the District's procurement policy.

After a need for rodent control on certain improvements has been identified, the PM Specialist will give written notification to the contract exterminator, including all pertinent information about the nature and location of the infestation. The notice should be provided in duplicate and the contractor asked to submit one copy attached to the bill for service.

Whenever possible, the PM Specialist or other assigned representative of DDOT should accompany the exterminating company when treatment is applied in order to provide access to the property and inspect the work.

12.10.5 Owner Retention

All landowners are to be given the option of retaining their improvements during negotiations. The choice must be exercised before DDOT has accepted an option/purchase agreement or a Declaration of Taking has been filed. In the case of an owner that desires to retain the improvement, but is unwilling to accept DDOT's offer to purchase the property, a Negotiated Sales Agreement (Form SALE) must be executed prior to or at the time the Declaration of Taking is being filed. In any case, the ROW acquisition report shall reflect the owner's intention. If the owner does not retain the improvements at the time of negotiations, the owner will be treated as any other interested party for the sale of improvements. It shall be the PM Specialist's responsibility to carry out the terms and conditions of the agreement made by the negotiator or Relocation Specialist.

Chapter 12 – Property Management (Pre-Construction)

If a residue parcel is large enough to support a self-sustaining use and has improvements that contribute to it, the improvements typically are to remain a part of the residue and disposed of with the residue. Improvements located on a non-self sustaining residue may either be retained by the owner, disposed of separately by sale or demolished.

The retention value will be established at the time an owner indicates a desire to retain an improvement. The Retention Value Form (Form RETENTION) will be prepared determining the retention value and amount of performance bond. If there is specialized equipment in the improvement, the retention value may have been determined and included in the appraisal of real property because of the greater likelihood of retention.

Parcels on which there are groupings of improvements with related uses may be grouped for retention or sale. An owner or purchaser will be offered the group--not individual improvements--first.

12.10.6 Disposal by Sale

Improvements not retained or identified for priority demolition can be sold provided the sale and removal will not impact project construction advertisement or construction. Improvements having significant value and/or public interest should be offered for public sale first (usually a sealed bid sale, advertised action, etc., with the public invited to the bid opening to comply with all Federal and District contract regulations) and then by negotiated sale. No DDOT owned improvements; contents of any DDOT owned improvements; or any property owned by DDOT will be sold or given to employees of DDOT or their relatives. Property acquired for federally funded projects may be sold for FMV, if possible, but may also be sold below FMV by auction sale, public sale or negotiated sales as outlined below with the proceeds deposited into a Title 23 fund and receipt provided to FHWA.

A. Auction Sale

The PM Specialist will select an auctioneer as needed. Selection will be in compliance with the procurement policy. Auctioneers should be selected based

Chapter 12 – Property Management (Pre-Construction)

on consideration of experience, qualifications, and fees. The amount of fee will not be based on the dollar volume but will be set on a fixed fee per unit basis.

Auctions will be advertised in local newspapers. A print of the advertising copy will be forwarded to the ROW Unit Manager and to the ward representative in whose area the sale will take place. Upon conclusion of the sale, all proceeds will be received and forwarded to the OFCO reflecting the appropriate project credit. A copy of the completed “sale package” reflecting the results, revenue, costs, etc., will be placed in the appropriate ROW parcel files.

B. Public Sale

A notice of sale by sealed bid will be published in local newspapers in the area of the project and a sign advertising the property for sale placed on the property simultaneously. Proposal forms, etc., and return envelopes will be prepared and distributed to prospective bidders on request. A copy of the advertisement and proposal forms and a description of the improvements to be sold will be sent to the ROW Unit Manager and to the ward team in whose area the improvements to be sold are located.

A performance bond for the removal of each improvement will be set. It will be based on the cost of removing asbestos and the building from the ROW and any reasonable costs associated with recovery in redress of remedy should the successful bidder fail to perform. This bond is not to be an arbitrarily imposed penalty.

The bids will be opened by the PM Specialist promptly at the prescribed time and recorded by witness of at least two DDOT employees. Immediately after the bids have been opened and the successful bidder selected, all bids will be tabulated, reviewed, and/or approved, and a report will be submitted to the ROW Unit Manager. All improvements included in the sale will be accounted for in the report.

All bidders will be notified in writing of the results of the sale and provided a copy of the tabulation of the bids. The successful bidder will be advised of the

Chapter 12 – Property Management (Pre-Construction)

acceptance of the bid and be requested to submit separate certified/cashier's checks or money orders for the purchase price and the performance bond within 5 days of this notification. On receipt of payments, the PM Specialist will send a NTP to remove the improvement(s), typically within 30 days, along with building keys.

The payment for the improvement(s) purchase and performance bond will be received and transmitted to the OCFO. Performance bonds are not to be held in the ROW Unit office. The performance bond will need to be tracked by OCFO as an individual performance bond. After the improvements are satisfactorily removed and the property has been inspected by the PM Specialist, the performance bond shall be returned to the successful bidder by OCFO. In the event that the buyer fails to perform, the OCFO will be notified by the PM Specialist and the performance bond has been forfeited and that the funds should be credited to the project (not revenue) to offset the cost of removal.

C. Negotiated Sale

Improvements are normally sold by negotiated sale after efforts to sell by public sale have been unsuccessful or it has been determined the value or public interest do not justify the cost, etc., of a public sale. The ROW Unit Manager makes the determination and decision to waive public sale; the files should document this waiver. The Negotiated Sales Agreement (Form SALE) will be used for all negotiated sales.

12.10.7 Acquired Improvements Used as Replacement Housing

An improvement, primarily a residential building, not retained by its previous owner may be given priority and sold as a replacement facility to any person displaced as a result of the project. An improvement will only be sold on this basis if it is capable of being economically restored to the condition required for occupancy. In the case of a residential displacee, it must be capable of being brought to a DSS condition.

All improvements are subject to the same sale conditions with regard to timeliness; asbestos inspection and lead paint contamination; and the requirements of removing it from the ROW. Prospective displacee purchasers must agree that the building will

Chapter 12 – Property Management (Pre-Construction)

be their replacement facility and must own or hold an option on a suitable replacement lot to which the building can be moved.

12.10.8 Disposal by Demolition Contract

Improvements that have not been removed from the ROW as a result of the methods discussed in the above sections; which present a danger to public safety; which are an attractive nuisance; are a blighting influence to the community; or require early removal for the relocation of utilities may be removed by a separate demolition contract. The Associate Director of TPPA or Chief Engineer of IPMA will authorize the use of a separate demolition contracts.

Demolition contracts will be secured through the Office of Contracts and Procurements (OCP) and will utilize its procurement processes. One set of plans outlined in red showing all buildings to be demolished will be provided. A tabulation of the buildings included in the contract will be prepared showing plan sheet number, station number location, parcel number, identification number, type of building, street address, former landowner's name and work to be done. An estimate of demolition cost should be made for evaluation of the bids. The demolition contract will specify that the contractor will not lease or occupy any building included in the contract.

12.10.9 Disposal by DDOT Forces

DDOT or DPW forces may be used to remove improvements on DDOT property in an emergency situation. The emergency may be in the nature of a public hazard or attractive nuisance. Any removal by DDOT or DPW forces is subject to requirements contained in this chapter for asbestos, lead-based paint, etc. The PM Specialist will report the cost of the removal of buildings by DDOT or DPW forces as a charge against the project.

12.10.10 Salvage from Buildings

The value of mechanical or architectural parts that are salvageable from buildings is recovered through the sale of the whole building. Therefore, salvageable items (such as furnaces, water heaters, etc.) will not be removed and sold separately from the improvement. If items of significant value are vulnerable to theft or damage, such as

Chapter 12 – Property Management (Pre-Construction)

stained glass windows, the items may be removed and sold separately by the PM Specialist.

The exception to not selling salvageable items is if the building has been advertised for sale, no bids are received, and attempts to negotiate a sale are unsuccessful. In no circumstance can the removal of any part, attachment, etc., of a building or improvement be allowed, especially if it will cause any environmental contamination, such as causing asbestos to become friable or have the expectation that it will become friable, or have the potential to cause any type of contamination, such as the release of regulated gases, etc.

Chapter 12 – Property Management (Pre-Construction)

Chapter Resources

Major Tasks

- Possession of Building or Improvement

Example

- Circulation Letter (see Chapter 17 - Example 17-1)

Forms

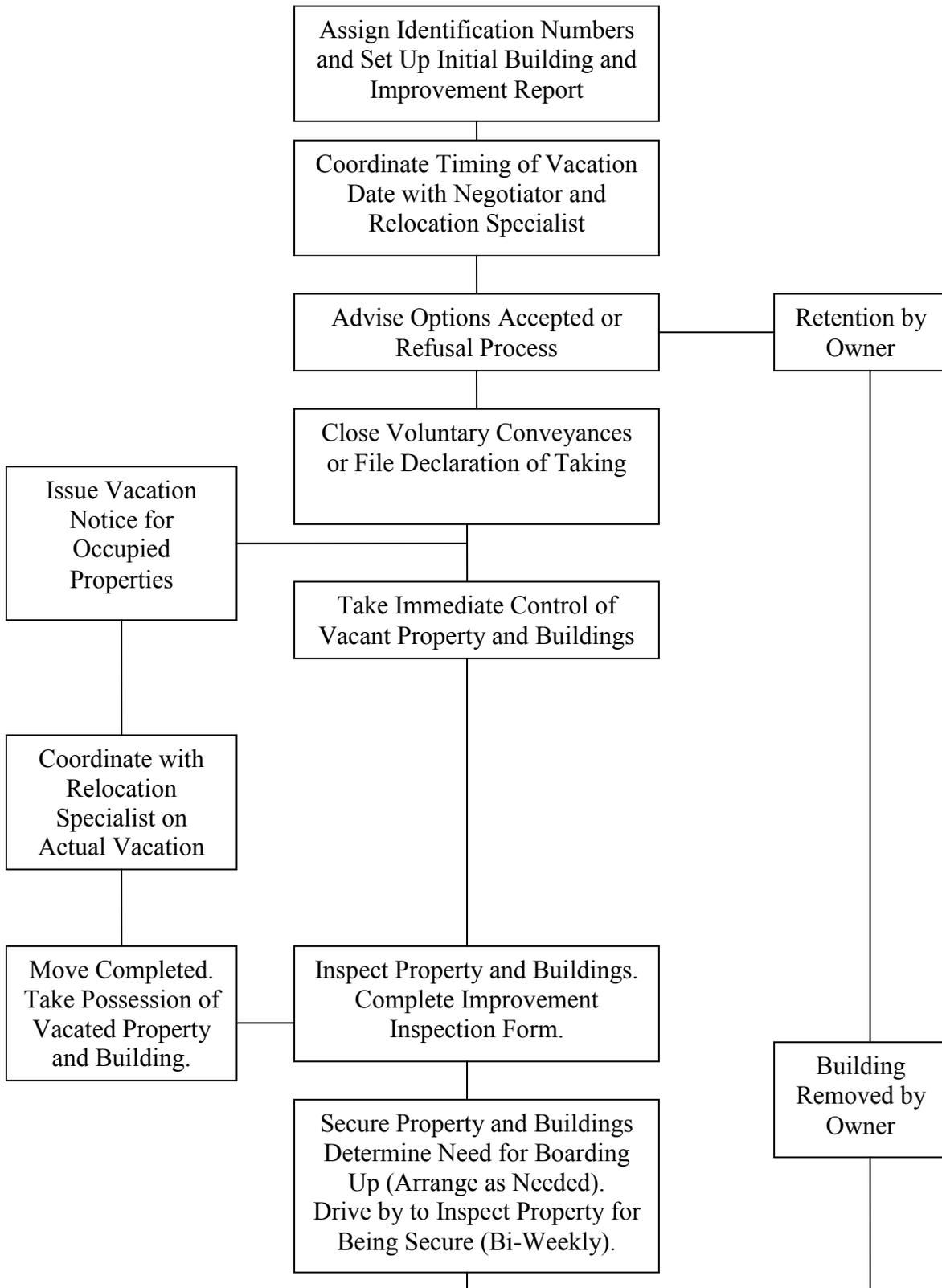
- Building and Improvement Inventory (Form BUILDING-REPORT)
- Lease (coordinate with OAG)
- Retention Value Form (Form RETENTION)
- Improvement Record Form (Form IMPR INSP)
- Negotiated Sales Agreement (Form SALES)

References

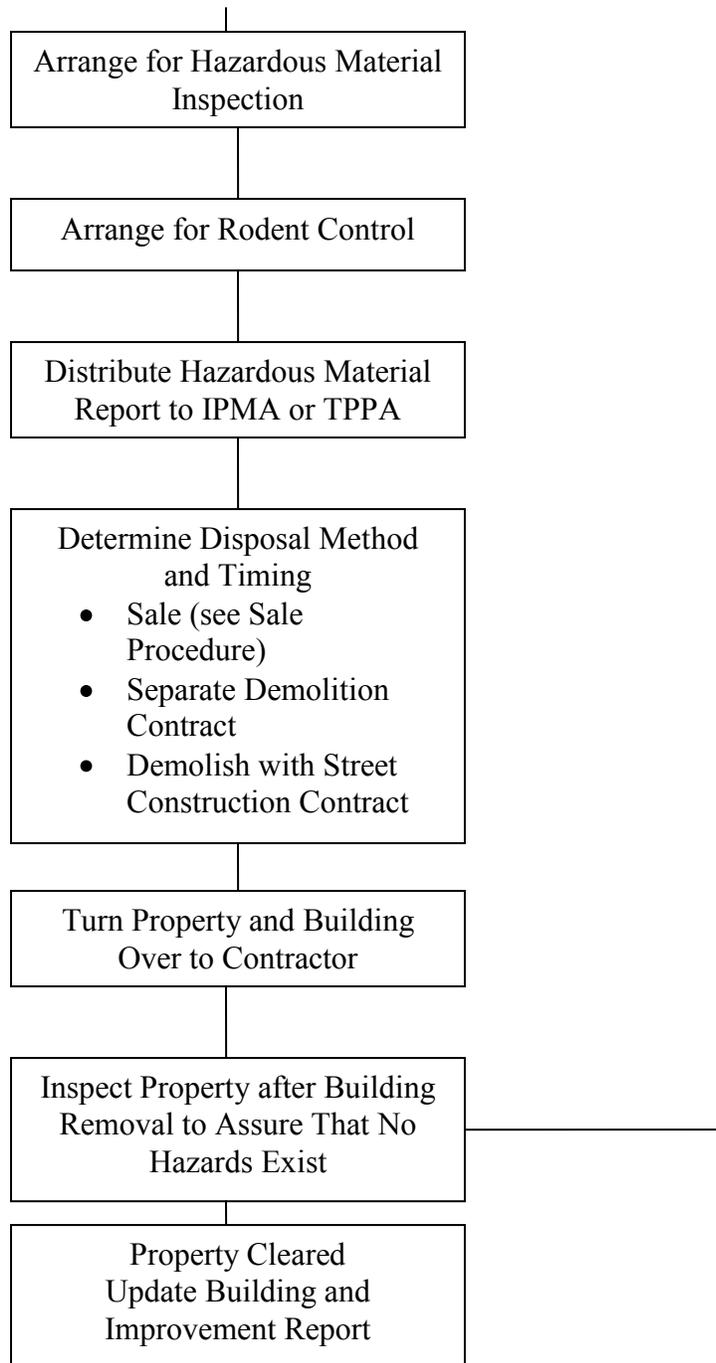
- Pamphlet providing information on lead-based paint (refer to Federal agencies that handle such hazards, such as the US Department of Housing and Urban Development)
- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- District of Columbia Code
<http://dccode.westgroup.com>

Chapter 12 – Property Management (Pre-Construction)

Possession of Building or Improvement



Chapter 12 – Property Management (Pre-Construction)



Chapter 12 – Property Management (Pre-Construction)

(Example 12-1)

| | |
|--|----------------------------------|
| MEMORANDUM | |
| DATE: | Street: |
| TO: DDOT IPMA Representative DDOT MTA Representative DDOT TPPA Representative DDOT TOA Representative DDOT Urban Forestry Administration DC Department of Public Works Representative DC Office of Property Management Representative DC Office of Parks and Rec. Representative [Ward Representative] as appropriate [Deputy Mayor P&ED] as appropriate | Project: Federal Project No.: |
| FROM: ROW Unit Manager | |
| RE: Residue/Surplus Property (Address of Property) (Former Property Owner and Parcel) | |

The Right of Way Unit of DDOT is considering the sale/lease of the property described above and marked in RED on the attached plan.

We have no objection to the disposal or use of this property from a right of way standpoint. Please review this request and indicate your recommendation below.

Please contact _____ at _____ regarding any questions or additional information needed.

We would like to have your comments by _____.

Attachments

| |
|--|
| TO: ROW Unit Manager |
| I have reviewed this request and recommend the following: |
| <input type="checkbox"/> Approve for Sale / Lease |
| <input type="checkbox"/> Retain for Future Needs |
| Signed: _____ |
| Date: _____ |
| Comments: _____ |
| |
| |
| |

Chapter 12 – Property Management (Pre-Construction)

(Form BUILDING)

DDOT
ROW Unit
Building and Improvement Inventory

11W-500

| Sheet No. Project Date | Parcel No. Landowner (last name, first) | Building No. | Plan Sheet No. | Station / Side | Building / Improvement / Structure (BIBS) Type | Building Size (sq.ft.) | Occupancy (owner, tenant, vacant) | Closing or Decision Date | Vacation Date | | Possession Date | BVI# Security# | Increase Materials | Removal Use No. | Notice # Project Contract Plan No. | Comments |
|------------------------------|--|-----------------|-------------------|-------------------|---|------------------------------|---|--------------------------------|---------------|--------|--------------------|-------------------|-----------------------|--------------------|---|----------|
| | | | | | | | | | Notice | Actual | | | | | | |
| Summary | | | | | | | | | | | | | | | | |

(Items see sheet 2 and 3)

Chapter 12 – Property Management (Pre-Construction)

12-12B

**DDOT
ROW List
Building and Improvement Inventory**

Street
Project
Date

| Parcel No. | Landowner (last name, first) | Building No. | Owner Records | | Site of Building Improvement or Structure | | | Special Demolition Criteria | | | | | | | | | |
|------------|------------------------------|--------------|---------------------------|---------------------|---|---------------------------------------|-------------------------------------|-----------------------------|--------------|---------------------|---------------------|-------------------------------------|---------------------|--------------------------|------------------------|----------|--|
| | | | Order of Threat to Public | Agreed Removal Date | Actual Removal | Building/Improvement to be demolished | Building/Structure to be Demolished | Agreed for Sale | (S) Accepted | Agreed Removal Date | Actual Removal Date | Building/Structure to be Demolished | Contract Advertised | Contract Completion Date | Actual Completion Date | Contract | |
| | | | | | | | | | | | | | | | | | |

Building Disposition

Chapter 12 – Property Management (Pre-Construction)

RW-300

**DDOT
ROW Unit
Building and Improvement Inventory**

Street
Project
Date

| Parcel No. | Landowner (last name, first) | Building No. | ES&I Included Building and Inspection | Hazardous Material Inspection Requested | Hazardous Material Inspection Date | Hazardous Material Report Received | ACM Found | Lead Based Paint Found | Other Hazardous Materials Found | Mitigation Plan Complete | Hazardous Material Removal by Separate Contract | Hazardous Material Mitigation Complete | Comments |
|------------|------------------------------|--------------|---------------------------------------|---|------------------------------------|------------------------------------|-----------|------------------------|---------------------------------|--------------------------|---|--|----------|
| | | | | | | | | | | | | | |

Hazardous Materials

Chapter 12 – Property Management (Pre-Construction)

(Form RETENTION 1 of 2)

Retention Value of Improvement(s)

Street: _____

Project: _____

Federal Project No.: _____

Parcel No.: _____

Landowner: _____

Address of Property: _____

Location of Parcel: _____

Shown on Plan Sheet No.: _____

Does landowner own land on which to relocate the building? Yes No

| Building No. | Description | Retention Value |
|--------------|-------------|-----------------|
| | | |
| | | |
| | | |
| | | |

Performance Bond Required: Yes No

Total Retention Value _____

Remarks:

I certify to the best of my knowledge and belief that the information contained herein is true and that I have no direct or indirect, present or contemplated future personal interest in the land and/or improvements contained on the captioned property

Date: _____

Signature: _____

Title: _____

Approved by District Department of Transportation

Date: _____

By: _____

Title: _____

Chapter 12 – Property Management (Pre-Construction)

Retention Value Analysis

(Form RETENTION 2of 2)

Street _____

Parcel _____

Project _____

Federal Project No. _____

Retention Item Owner _____

Street Address _____

City _____

State _____

Zip _____

Landowner _____

Street Address _____

City _____

State _____

Zip _____

Description of Improvement

A) Estimated Replacement Cost New \$ _____

B) Less Depreciation \$ _____

C) Estimated Depreciated Value...(A-B or Fair Market Value) \$ _____

D) Cost to Move and Re-Establish \$ _____

E) Retention Value...(C-D=E) \$ _____

F) Amount Due Owner if Item Relocated...(C-E or Line D) \$ _____

Evaluator _____ Date _____

Estimated Cost New (Source):

Estimated Cost to Move and Re-Establish (Source):

Note: If the cost to move and re-establish exceeds FMV

Retention value = \$1.00 Recognition Value.

Approved By _____

Date _____

Chapter 12 – Property Management (Pre-Construction)

(Form IMPR INSP)

RIGHT OF WAY IMPROVEMENT RECORD

Street: _____

Project No: _____

Federal Project No: _____

Parcel No: _____

Landowner: _____

Shown on Plan Sheet No: _____

Building No. & Description: _____

Actual: Vacation Date: _____

Possession Date: _____

Recommended Method of Disposal: _____

REPORT OF IMPECTION OF PREMISES

Condition of Building: _____

Utility Service Cut Off? Yes No Removed from Building? Yes No

Personal Property Belonging to Previous Owner Remaining in Building: _____

Below are listed items located in D-_____, when building was posted and key secured from owner tenant other, by _____ PM Specialist on _____ at _____ am/pm.

Furnace – Make _____ Serial # _____

Hot Water Heater – Make _____ Serial # _____

Water Pump – Make _____ Serial # _____

Exhaust Fan – Make _____ Serial # _____

Dishwasher – Make _____ Serial # _____

Garbage Disposal - Make _____ Serial # _____

Built-In Range – Make _____ Serial # _____

Cook Tops – Make _____ Serial # _____

Heat Pump and/or AC Units – Make _____ Serial # _____

Other _____

Other _____

This is to certify that, to the best of my knowledge, all of the above shown information is correct.

Date: _____ Signature: _____ Title: _____

(Person Inspecting Building)

Chapter 12 – Property Management (Pre-Construction)

(Form SALES)

| | |
|-------------------------|-------|
| Route: | _____ |
| Project | _____ |
| : | _____ |
| Federal Project: | _____ |
| Landowner: | _____ |
| Parcel: | _____ |
| Date: | _____ |

NEGOTIATED SALE OF BUILDING(S) AGREEMENT SALE TO PREVIOUS OWNER AT RETENTION VALUE

I / We, _____ (Buyer), hereby pay the sum of \$_____ in full for building number _____ located at _____ and have deposited a Work Performance Bond in the form of certified check, cashier's check or money order made payable to **the Chief Financial Officer of the District of Columbia**, in the amount of \$_____.

The Buyer agrees to remove the building and/or material from the right of way within the thirty (30) day period as set forth in their entirety and in no case is the building to be cut off at the right of way line and balance of the building left in its original location. The Buyer further agrees that title to the building and/or material will remain in the name of the District of Columbia until such time as they have been removed from the right of way. In the event that the building and/or material is not removed within the thirty (30) days specified herein, the Buyer understands and agrees that he will forfeit the total sale amount and Work Performance Bond.

The Buyer further understands that the District Department of Transportation will not be responsible for the condition of the building and/or material.. The building and/or material are sold "as is" and no guarantee or other representations have been made.

The Buyer further agrees that the removal shall include the satisfactory disposal of all material.. The building is to be completely removed down to the noncombustible portion of the foundation thereto, leaving the premises in a condition satisfactory to the District Department of Transportation. All debris and rubble must be removed from the right of way. Where the building is not demolished but removed to another location, this shall include the satisfactory leveling of any excavations made in connection with the movement of the building.

And further witnesseth, that the Buyer hereby agrees to protect and indemnify the District of Columbia from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the District of Columbia by reason of the buyer's retention of any building hereon and by reason of any action of the buyer in its use, dismantling or excavation of said building that creates any presence of exposure of Hazardous Wastes and Toxic Substances as defined under the Comprehensive Environmental Response, Compensation and Liability Act as modified by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substance Control Act or applicable district law and any other applicable federal, state or local laws and their regulations now in force or hereafter enacted relating to hazardous waste disposal and toxic substances. The Buyer agrees to comply with all applicable federal and district laws, codes, policy, and procedures.

Chapter 12 – Property Management (Pre-Construction)

It is understood and agreed that the Buyer will disclose the above terms and conditions relating to hazardous materials to any and all parties involved in the removal and or disposal of said materials. Any reconveyance or rights obtained by this agreement shall fully disclose all terms and conditions mentioned herein.

The Buyer further states that he is not an employee of the District Department of Transportation, nor was he employed in connection with the appraisal and/or acquisition of the right of way or employed in connection with the sale of improvements from the right of way of the above project.

Dated this _____ day of _____, 20____.

Signed

Address

Chapter 13 – Railroad Companies

Summary

This chapter covers those situations in which a project involves a crossing or encroachment on a railroad company's operating ROW. A special construction agreement is required to establish the terms and conditions for the constructing the project.¹ In the case of a longitudinal encroachment along the railroad's operating ROW or the need to acquire a portion of the railroad's non-operating ROW, the agreement should cover both the construction requirements and the payment procedure of just compensation for the property to be acquired.

| Section Number | Section Name |
|----------------|---------------------------------|
| 13.1 | Introduction |
| 13.2 | Railroad Rights |
| 13.3 | Railroad Operation Status |
| 13.4 | Railroad Construction Agreement |
| 13.5 | Railroad Force Account Work |

13.1 Introduction

It is extremely important that DDOT provide an early notice to any operating railroad company that may be affected by a project. Early coordination and proactive processing of the necessary documents, plans and project information in a timely manner is essential to clearing the project for construction. The following sections of this chapter detail the interactions and coordination with the railroad companies and their representatives.

A complete glossary of definitions is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|-----------------|---|
| FHWA | District of Columbia Division of the Federal Highway Administration |
| IPMA | DDOT's Infrastructure Project Management Administration |
| OCFO | District of Columbia Office of the Chief Financial Officer |
| Project Manager | Person managing the project from IPMA, TPPA or TOA |
| TPPA | DDOT's Transportation Policy and Planning Administration |
| TOA | DDOT's Transportation Operation Administration |

¹ 23 CFR 646 and 23 CFR 635.309

Chapter 13 – Railroad Companies

13.2 Railroad Rights

The rights of a railroad company include the non-interruption of an active rail corridor. For this reason, the acquisition of ROW from an active railroad line presents unique circumstances that can make negotiations complex. The circumstances include the following:

1. Laws exist which address railroad issues only.
2. A finite number of railroad companies exist. As a result, DDOT must negotiate continually with these companies.
3. Railroad companies have the right to an uninterrupted active rail line.
4. A coordinated construction agreement on active lines must exist between DDOT and the railroad companies.¹
5. Railroad companies can be multi-state or international companies with their own multi-level approval process, making for a lengthy negotiation process.
6. Railroads utilize their own engineering staff or consultants to review, approve, and request changes to DDOT's plans.

13.3 Railroad Operation Status

Railroad lines are classified as active, inactive, or abandoned. The procedures differ for each operational status.

13.3.1 Active Railroad Lines

Active railroad lines are operational where there is train activity along the tracks. A written agreement is required between DDOT and the railroad company of an active railroad line affected by the project. The agreement will cover a plan to minimize interruptions due to the project and the requirements to be placed on the project's constructor.

The construction agreement is to be coordinated between DDOT and the railroad company during the ROW acquisition stage of the project. The construction agreement can provide the necessary right of entry or temporary construction easement for the project construction. A permanent easement or deed is required to convey railroad property interests for street ROW, or other ROW (e.g. a bike trail). Provided that the railroad and DDOT agree on the monetary consideration, the process is to continue like any other acquisition having just compensation established by DDOT by negotiating with

Chapter 13 – Railroad Companies

the railroad company and eventually closing the conveyance or using the eminent domain process.

13.3.2 Inactive Railroad Lines

Inactive railroad lines are non-operational lines with no train activity along the tracks but the line has not been officially abandoned. The ROW Unit shall ascertain from the railroad company the official status of a railroad line that appears not to be used. If abandonment is pending, the railroad company may agree to proceed under that process and have the ROW acquired for the payment of just compensation. A construction agreement may be necessary for an inactive line in order to maintain the integrity of the railroad line for future use.

13.3.3 Abandoned Railroad Lines

Abandoned lines occur after a railroad company petitions for abandonment of rail services, and the United States Surface Transportation Board approves the petition. Abandoned lines may also occur when parts of a railroad corridor have been sold, leaving fragmented segments with no utility as a corridor. Abandoned lines do not require a construction agreement, and the normal ROW acquisition process is to be followed.

13.4 **Railroad Construction and Maintenance Agreement (Agreement)**

If a project affects a railroad company's active or inactive line, DDOT's IPMA, TPPA or TOA Unit should include the affected railroad company's engineering department or consultant representative in the review process of the construction plans. The formal plan reviews at 30 percent, 65 percent and 90 percent should be coordinated through the ROW Unit and provided to FHWA for review. Larger railroad companies have designated consultant firms to coordinate transportation and development projects on their behalf. These representatives should be contacted as early as possible in the project development process.

Based on plan reviews, the railroad company may make recommendations, and DDOT may modify their plans based on acceptable recommendations. As any construction on railroad property contains restrictions and conditions regarding construction operations on railroad property, a construction agreement is always required. A copy of the fully executed construction agreement is to be provided to IPMA, TPPA or TOA for inclusion in the project construction bid documents.

Chapter 13 – Railroad Companies

As soon as the railroad company provides plan review comments on the 65 percent submission design plans and all issues with regards to the plan design are resolved, the ROW Unit is to initiate the preparation of the Agreement through IPMA. The Agreement shall be drafted by IPMA or the railroad's consultant representative depending on agreed upon procedures. The draft Agreement shall be sent to the DDOT's Office of General Counsel and the Project Manager from IPMA, TPPA or TOA for review and comments. The railroad force account estimate should be sent to the Project Manager from IPMA, TPPA or TOA for review and comments.

The Agreement should define the following:

1. A description of the proposed project and work involved.
2. A breakdown of the work to be done under the DDOT transportation contract and/or by the railroad. Plans are to be submitted to the railroad company at various stages of project development.
3. A description of adjustments required for the railroad company's facilities and who will perform the work and the timing of the adjustment construction.
4. A determination of the cost responsibilities of the improvements.
5. An estimate for work or services to be performed by the railroad company or their contractor on a force account basis.
6. Provisions for the safety and protection of railroad operations and the requirement for insurance coverage of DDOT's contractor.
7. Any notices or time requirements for the provision of services by the railroad company.
8. The terms and conditions regarding future maintenance of the transportation improvement and/or changes made to the railroad's facilities.
9. The right to enter railroad property to commence construction and, if appropriate, the granting of a permanent easement for the construction, operation and maintenance of the transportation improvement.

Review comments should be incorporated into the Agreement if they are found to be acceptable to the railroad company. If the railroad company will not accept the changes, some agreeable alternative language will be pursued. As soon as the language of the Agreement is resolved, the Agreement should be executed by both parties with each receiving a fully executed original Agreement.

Chapter 13 – Railroad Companies

Typically, the Agreement gives DDOT a right of entry upon the railroad-owned land to construct the project. The right of entry alleviates construction delays due to valuation, negotiation and other acquisition-related problems. DDOT considers the railroad parcel to be acquired as “conditionally cleared” when the construction agreements have been executed by all parties.

13.4.1 Flagging Agreements

Flagging agreements generally are adequate if an existing Construction and Maintenance Agreement or easement covers the area of the proposed work limits.

13.4.2 Payments to Railroads

Typically, there are three types of payments:

Reimbursement for work to adjust rail facilities

Compensation for property rights acquired by DDOT to accommodate projects

Fees for temporary construction permits

13.4.3 Railroad Insurance Requirements

DDOT’s contractor must provide a certificate of Commercial General Liability Insurance, Business Automobile Policy Insurance and Workers Compensation Insurance to the railroad prior to commencement of work on railroad and shall name the railroad as an additional insured.

13.4.4 Easements

Railroad easements are different from standard easements because they contain covenants for operation, maintenance and expansion of railroad facilities.

13.5 **Railroad Force Account Work**

ROW certification will need to be created prior to accessing force account for construction. If the railroad company must modify its facilities to accommodate the project, the Agreement will specify what work is to be accomplished by DDOT (or their contractor) or the railroad company (or their contractor). Typical work accomplished by the railroad company can include relocation of the railroad communication cables, switch relocation, shortening siding tracks, resurfacing, etc. Usually, DDOT will include any grading for storm drainage in the transportation contract work. All work to be performed by the railroad company will be reimbursed on an actual cost basis with the railroad company providing documented billing to DDOT. A preliminary force account estimate shall be prepared and approved prior to any work being allowed.

Chapter 13 – Railroad Companies

Once the Agreement has been executed and the railroad force account estimate has been reviewed and approved, the railroad force account work should be programmed with the FHWA. The Agreement and estimate shall be sent to the OCFO with a request that the work be authorized by the FHWA and the amount authorized be placed under a project agreement with the FHWA.

Should the railroad force account work involve railroad construction work that should be completed prior to the start of the Agreement, the railroad company should authorize to proceed at the appropriate time frame. This could involve the relocation of railroad communication lines or track alignment changes. Other force account railroad work, such as flagging, should be authorized when the Agreement is awarded. If the ROW Unit authorizes early railroad construction work, IPMA or TPPA should be advised so that a construction inspector can be assigned to monitor the railroad's construction activities.

All billing received for railroad force account work shall be reviewed by the IPMA or TPPA construction inspector and processed for payment by the OCFO.

Chapter 13 – Railroad Companies

THIS PAGE INTENTIONALLY LEFT BLANK

Chapter 13 – Railroad Companies

Chapter Resources

Major Tasks

- Railroad Coordination

Reference

- Code of Federal Regulations (CFR)
<http://www.gpoaccess.gov/cfr/index.html>

Chapter 13 – Railroad Companies

Major Tasks – Railroad Coordination

| | |
|--|--|
| Early Notification of Project Development (Start of Environmental Assessment (EA) or Environmental Impact Study) | IPMA or TPPA |
| Notice of Public Meetings to Railroad Company | TPPA |
| Submit Alternatives to Railroad for Comments | ROW Unit IPMA |
| Advise Railroad of Draft EIS Availability, if applicable | ROW Unit IPMA |
| Advise Railroad of Findings of No Significant Impact (FONSI) or Record Of Decision (ROD) | ROW Unit IPMA |
| Provide 30 Percent Design Review Plans for Comments to Railroad | ROW Unit IPMA or TPPA or TOA |
| Provide 65 Percent Design Review Plans for Comments to Railroad | ROW Unit IPMA or TPPA or TOA |
| Provide Bridge/Structure Plans to Railroad for Comments | IPMA |
| Draft Railroad Construction Agreement and Circulate Within DDOT for Comments | ROW Unit IPMA or TPPA DDOT Office of General Counsel |
| Request Railroad Force Account Construction Estimate | ROW Unit IPMA or TPPA |
| Coordinate Construction Agreement with Railroad and Finalize for Approval | ROW Unit |
| Construction Agreement Signed by DDOT and Railroad | ROW Unit |
| Distribute Construction Agreement | ROW Unit IPMA or TPPA or TOA |

Chapter 13 – Railroad Companies

| | |
|---|---------------------------------|
| Request Programming of Railroad Force Account | ROW Unit OCFO FHWA |
| Receive FHWA Authorization and Project Agreement | OCFO FHWA ROW Unit |
| Railroad Authorized to Perform Work to be Accomplished Prior to Project Construction | ROW Unit IPMA or TPPA or TOA |
| Request IPMA, TPPA or TOA to Assign Construction Inspector to Monitor Railroad Work | ROW Unit IPMA or TPPA |
| Receive and Process Railroad Billings and Closeout Force Account Work at Project Completion | IPMA or TPPA or TOA ROW Unit |

Chapter 14 – Project Certification and Closeout

Summary

This chapter covers DDOT monitoring of ROW acquisition process; the reporting of current status to the various involved administrations; the certifying of ROW availability for construction; and completing of the ROW phase of a project. This process involves the ROW Unit as well as other offices of the District.

| Section Number | Section Name |
|----------------|--|
| 14.1 | Introduction |
| 14.2 | Right of Way Acquisition Status |
| 14.3 | Right of Way Certification for Project Advertisement |
| 14.4 | Project Closeout |

14.1 Introduction

A primary responsibility of the ROW Unit is to deliver a clear ROW in a timely manner for DDOT's construction program to proceed on schedule. As there are numerous administrations/units involved in the PDP, it is essential that all involved parties be informed on the progress of the developing project. This information would include the ROW Unit's progress towards acquiring all ROWs needed and relocating any displacees. On projects requiring ROW acquisition, the anticipated and actual dates of ROW clearance will establish the earliest date for advertisement.

Whenever Federal funds are involved in a project, a ROW Certification must be provided and included in the plans, specifications and estimate (PS&E) assembly that is submitted to the FHWA for approval and authorization.

A complete glossary of definitions and acronyms is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|-------------------------------------|--|
| Building, structure, or improvement | An item located on real property that cannot be removed without incurring a substantial loss in value to itself or to the underlying or related real property. |
| Certification | A statement issued by DDOT declaring that the right of access to areas of the project necessary for the contractor has been obtained and that DDOT has complied with all Federal and District laws, rules, regulations, and policies in acquiring new land and providing relocation assistance to any displaced occupants. The purpose of the ROW Certification is to document the construction project is ready for advertising and states: |

Chapter 14 – Project Certification and Closeout

- Real property interests have been, or are being, secured.
- Physical obstructions including utilities and railroads have been or will be removed, relocated, or protected as required for construction, operation, and maintenance of the proposed project.
- Right of way acquisition and relocation assistance program requirements were conducted in accordance with applicable federal and state laws and procedures.

| | |
|------|---|
| OCFO | District of Columbia’s Office of the Chief Financial Officer |
| FHWA | District of Columbia Division of the Federal Highway Administration |
| IPMA | DDOT’s Infrastructure Project Management Administration |
| TPPA | DDOT’s Transportation Policy and Planning Administration |
| TOA | DDOT’s Transportation Operation Administration |

14.2 Right of Way Acquisition Status

The ROW Status Report (see Chapter 2, Section 2.7) provides the IPMA, TPPA, TOA and the ROW Unit with complete and accurate information on the progress of obtaining ROW on a project. The negotiation status information must account for all ROW required for the project and must be updated to reflect any plan changes that have added or deleted parcels.

The Building Data Report (see Chapter 12, Section 12.3) will contain complete and accurate information regarding the disposition of buildings, structures and improvements located within the acquired ROW. Estimates for the cost of removal, the method of removal and clearing of parcel should be reflected on the report at least 120 days before the scheduled advertisement date.

14.3 Right of Way Certification for Construction Project Advertisement

Federal and District law assures landowners and displaced occupants (residents and owners) of specific rights and protections, and the delivery of certain entitlements before the possession of the property is taken. The most important entitlements are as follows:

- Landowners must have executed an option/agreement setting forth the amount of just compensation to be paid them or the amount of estimated just compensation must be deposited with the court for their benefit as outlined in Chapter 11, Section 11.3.

Chapter 14 – Project Certification and Closeout

- Displaced residents must be offered DSS housing or DDOT has made available to displacees adequate replacement housing that is within their financial means, and available for occupancy before being required to move in accordance with the URA.

Project advertisement for District and Federal funded projects is required when DDOT commits ROW to the terms of a construction contract. Bids submitted by contractors are based on DDOT's delivery of a clear ROW before the start of construction. If a contractor does not have access to a property because sufficient property rights are not acquired or certain properties remain occupied, claims for delay may result.

The ROW Certificate declares that DDOT has complied with all applicable District and Federal laws and regulations. There are three levels of certification corresponding to the status of ROW for Federally funded projects:¹

14.3.1. Certification No. I

This level of certification applies if all needed property rights are acquired, the ROW is completely clear of occupancies, and there is compliance with all laws and regulations.

The certification will contain statements attesting to the following:

- All property needed for the project ROW has been completely acquired and title is vested in the District.
- All buildings are vacant and available for removal and DDOT has physical possession and the right to remove or demolish these improvements and enter on all land.
- All personal property has been removed.
- All ROWs have been acquired, and all persons have been relocated in compliance with applicable Federal and District of Columbia regulations as amended.
- Arrangements have been made with railroad and/or utility companies, and all agreements are complete and satisfactory for construction.
- Hazardous waste contamination determinations have been made.

¹ 23 CFR 635.309

Chapter 14 – Project Certification and Closeout

14.3.2. Certification No. II

This level of certification applies when Certification No. I provisions have been met except for the closing of options/purchase agreements and/or eminent domain proceedings to determine just compensation are not completed for one or more properties. To request this certification, a right of entry for all property has been obtained, all land and improvements for necessary ROW has been vacated, and DDOT has physical possession of the property. The exceptions will be specified, the circumstances briefly explained, and compliance dates will be included within the certificate (See Example 14-1).

14.3.3. Certification No. III

This level of certification applies if there is compliance with Certification No. I provisions but there remains incomplete activities. These activities could be one or several displacees remaining on the property; a railroad agreement that is not executed; or a utility arrangement which is incomplete and/or there are properties for which acquisition is not completed or rights of entry secured. This certification is issued when it is projected that acquisition, family or business relocation, utility arrangement, or a railroad agreement will be completed by the date that the project is considered for award of contract.

The exceptions must be specified by parcel, displacee, utility company, railroad company, and the circumstances of each briefly discussed, and a projected completion date for remaining work specified. If an outstanding ROW cannot be acquired and residential and/or commercial occupied buildings vacated prior to the date that bids are received, deferral of the project is recommended.

Certification No. III must be approved by the Chief Engineer of IPMA or Associate Director of TPPA before a project can be advertised for bids, and must show the status of outstanding work before the construction contract is awarded. On Federally funded projects, the certificate is also subject to approval by the FHWA. Federal authorization for construction may not be provided on Certificate No. III projects until property rights are secured and residential property vacated.

Chapter 14 – Project Certification and Closeout

The FHWA may, in limited unusual circumstances and when determined in the public interest, authorize advertisement and award of contract with a Certificate No. III. This exception must never become the rule. Physical construction may also proceed, but the District shall ensure that occupants of residences, businesses, farms or non-profit organizations who have not yet moved from the ROW are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature. Whatever the case, a project agreement will not be executed; thus, DDOT cannot claim reimbursement for costs until certification issues are resolved.

Every effort should be made to acquire all ROWs; relocate every family, business and/or non-profit organization; secure the railroad agreement; and complete utility arrangements a minimum of 60 days prior to advertisement date in order to avoid using Certification No. III. These efforts shall be in full compliance with DDOT's procedures.

14.3.4 Project Design Changes

A ROW Certification must be updated when the project design changes, even if the ROW requirements have not changed. In cases of project design changes that affect ROW, the Project Manager should assure that adequate time is provided to meet the current advertisement schedule. If not, the Project Manager should request the necessary extension of time in the advertisement schedule to accommodate these changes, including acquisition of additional parcels and approval of the new ROW Certification.

14.3.5 Certification for Design/Build

See Chapter 15, Section 15.8.

14.3.6 Airspace Agreements

If airspace agreements are in effect within the project limits, an explanation of any arrangements required with the landowner or tenant must be included in the ROW Certification and the bid documents.

14.4 Project Closeout

The ROW phase of a project can not be closed out until all eminent domain cases have been resolved at trial or settled by agreement. Should either side file an appeal the project should

Chapter 14 – Project Certification and Closeout

remain open until it is resolved. ROW funding should also remain available through the eminent domain process as DDOT will be required to pay the award within a short time frame.

14.4.1 Preparation for Closing ROW Projects

Before submitting the request for final closing of a project, the ROW Unit should verify the following:

- All required ROW is acquired.
- All condemnation cases are closed by final judgment.
- All costs or expenses owed by DDOT are paid.

As a part of the final closeout submission, the ROW Unit should check ROW records as to the disposition of all parcels for which values, were approved and included in the preliminary ROW cost estimate, to determine whether the funding was modified. Where DDOT had requested Federal funding, the value associated with a soft match used in a federal aid project shall be considered. In this case, up to the full cost of the purchase shall serve as a soft match towards the District's share of a Title 23 funded project. (See Chapter 14, Section 14.4.1)

In accordance with Chapter 4, Section 4.1, if there are FHWA funds remaining after project completion, (after acquisition of all properties and funds obtained from the disposition of Surplus Property), these funds should be placed in the District's share of a Title 23 funded project. If parcels that are not to be acquired appear to have approved values, the ROW Unit should notify the OCFO to cancel the approved values and reduce the fund encumbrances accordingly.

14.4.2 Closing of the ROW Project

DDOT's closing submission shall be reviewed by the ROW Unit before being sent to the OCFO for the actual closeout and cancellation of any remaining funds. Before any project is closed, special attention should be given to ensure that all costs are accounted for and no outstanding utility adjustments or relocation assistance obligations exist. Note: It is difficult to reopen a project or establish a new project to process unpaid charges.

Chapter 14 – Project Certification and Closeout

THIS PAGE INTENTIONALLY LEFT BLANK

Chapter 14 – Project Certification and Closeout

Chapter Resources

Major Tasks

- Project Certification
- Project Closeout

Example

- Certification No. II (Example 14-1)

Forms

- Right of Way Status Report (see Chapter 2 - Form ROW STATUS)
- Building and Improvement Inventory (see Chapter 12 - Form BUILDING-REPORT)

Reference

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html

Chapter 14 – Project Certification and Closeout

Major Tasks – Project Certification

| | |
|--|----------|
| Maintain current status of Right of Way acquisition and relocation of displacees and distribute to IPMA & TPPA | ROW Unit |
| Review ROW status 90 days before project advertisement date for bids and determine clearance | ROW Unit |
| Provide updated building data report to IPMA or TPPA | ROW Unit |
| Review ROW status 60 days before project advertisement date and issue certification | ROW Unit |
| Update ROW Status Report with any additional clearance of parcels or displacees | ROW Unit |

Chapter 14 – Project Certification and Closeout

Major Tasks – Project Closeout

| | |
|--|------------------|
| Review appraised values compared to Project budget. Request budget/funding adjustment | ROW Unit OCFO |
| Review settlements and eminent domain filings with budget when approximately 70% parcels are complete. Request budget/funding adjustment | ROW Unit OCFO |
| Review settlements/eminent domain with budget at completion of negotiation request budget/funding adjustment, if appropriate | ROW Unit OCFO |
| At last settlement or eminent domain judgment – perform closeout accounting of all acquisitions | ROW Unit OCFO |

Chapter 14 – Project Certification and Closeout

(Example 14-1)

Date

M.
Division Administrator - DC
Federal Highway Administration
Address

SUBJECT: Certification No. II for Advertisement & Construction
Street:
Project:
Federal Project No.:
From:
To:

Dear M .

This is to certify that although all necessary rights-of-way have not been fully acquired, the right to occupy and use all rights-of-way required for the proper execution of the captioned project has been acquired.

No persons, businesses or nonprofit organizations were displaced by the right of way acquisition for this project; therefore, relocation assistance was not required. There are no railroads or buildings affected by the proposed construction.

In addition, to the best of our knowledge, the soil on all the right of way parcels acquired for this project is free of contaminants.

There are no known utility conflicts on this project.

Right of way has been acquired in accordance with current FHWA directives covering the acquisition of real property. It is satisfactory to advertise this project for construction bids and for construction to proceed with respect to right of way and utilities.

Sincerely,

Associate Director,
Transportation Policy and Planning Admin.

Chapter 15 – Design-Build Projects

Summary

Design-build is a construction contracting process/technique that outsources the completion of design, ROW acquisition, utility coordination and the actual construction of a transportation project out to procurement as a single contract. This chapter covers the manner in which any required ROW acquisition and/or relocation assistance services are to be provided by the design-build contractor (Contractor). The design-build process also includes the monitoring that is to be accomplished by the ROW Unit to ensure compliance with 23 CFR 710.313 and other 23 CFR requirements.

| Section Number | Section Name |
|----------------|--|
| 15.1 | Introduction |
| 15.2 | Preliminary Right of Way Engineering |
| 15.3 | Right of Way Scope for Design-Build Projects |
| 15.4 | Evaluation of Design-Build Proposals |
| 15.5 | Right of Way Plan |
| 15.6 | ROW and Relocation Payments |
| 15.7 | Eminent Domain Requirements |
| 15.8 | Right of Way Certifications |
| 15.9 | Final Submissions |

15.1 Introduction

The typical and earlier flow chart for a project development process for a transportation project that required the acquisition of ROW was structured as:

- Preliminary study
- Preliminary design
- Approved ROW design
- ROW acquisition
- Utility coordination
- Completion of construction plans
- Advertisement for Bid
- Award of Contract
- Construction with DDOT inspection
- Contractors Claims

Chapter 15 – Design-Build Projects

Historically under this method contractors have strictly interpreted the contract and design plans which has led to the need for engineering work to be reviewed and interpreted and/or potential claims for additional compensation. The above method was very linear and without flexibility. Based on this model the actual acquisition process was not supposed to begin until a formal notice to proceed was issued at the same time the plans for ROW were approved. Likewise the construction phase was not to begin until after the ROW and Utilities had been cleared for the entire project.

Under the design build contracting process, a project is created and scoped in accordance with normal PDP procedures; preliminary plans are developed, and the extent of the environmental documents are prepared based upon the magnitude of the project. This could involve a completed EAS developed with the NEPA process and prepared by the contractor.

FHWA's regulations in 23 CFR Part 636 for design-build contracting as mandated by section 1503 of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) allows contracting agencies to issue design-build request-for-proposal documents, award contracts, and issue notices-to-proceed for preliminary design work prior to the conclusion of the NEPA process. However, a design-build procurement solicitation should not be issued prior to a ROD or a FONSI.

Once the preliminary project development activities are complete, the schedule for a project can be updated and a determination made to use normal project development procedures or the design-build concept. Design-build contracting allows numerous activities to occur simultaneously and will generally result in the project construction being completed much earlier. It also reduces or eliminates contractor claims beyond the scope of the contract as the contractor has a contractual responsibility for the final design, ROW acquisition, utility coordination, complete plans and the construction and delivery of a completed facility. There may be cases where the DDOT ROW Unit, depending upon the availability of staff, elects to acquire the ROW on design-build contracts as opposed to it being included in the design-build contract. Also on design-build projects of less than 10 parcels DDOT ROW Unit may elect to undertake the acquisition process itself.

Chapter 15 – Design-Build Projects

A complete glossary of definitions and acronyms is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|-------------------|---|
| Design-Build | A project development and construction contracting process that allows a single procurement for the design through the construction phases of a project. |
| FONSI | Finding Of No Significant Impact. A possible result of an Environmental Assessment (EA) |
| NEPA | National Environmental Policy Act ¹ |
| PDP | Project Development Process. A methodology used by DDOT to construct a public improvement project. It includes all engineering studies, preparation of engineering drawings and specifications necessary to contract for the actual construction. |
| Project | The overall encompassing name for a proposed transportation improvement or maintenance action. Its scope can range from a traffic signal to a complete bridge replacement. |
| Right of Way Plan | The proposed methods to be used to secure required right of way including coordination, submission, and approval process |
| Uniform Act | Uniform Relocation Assistance and Real Property Acquisition Act ² |

15.2 Preliminary Right of Way Engineering

The ROW Unit should provide all of the interrelated services as outlined in Chapter 2 during the preliminary project development phase of a project, even if indications are that the project will be eventually advertised as a design-build procurement. Activities completed by the ROW Unit will allow the design-build bidders to provide a more clearly defined scope of work for the ROW activities.

15.3 Right of Way Scope for Design-Build Projects

The ROW scope of services and requirements will become a part of the overall scope of services for the design-build solicitation and ultimate contract. It should not be so restrictive that it eliminates the ability of the design-build contractor to propose cost and time saving options but needs to ensure that the rights of the affected landowners and residents are protected and that all applicable laws, rules and regulations are adhered to in accomplishing the ROW acquisition and providing relocation assistance services.

¹ 23 CFR Part 771

² 49 CFR Part 24

Chapter 15 – Design-Build Projects

The ROW acquisition process does not require that all details must be resolved at the scope or procurement stage. Adequate information regarding the design-build contractor's team who will be providing ROW acquisition and relocation assistance services is necessary for the ROW Unit's representative to advise the selection committee of the proposed team's qualifications to perform the required services. With regard to the actual performance of the ROW and relocation services, the scope should require the submission of a ROW Plan for review and approval by the ROW Unit Manger. The design-build contractor's ROW Plan will outline the schedule and submissions required for the ROW Unit's approval and monitoring techniques. The following sections are typical for a ROW scope:

15.3.1 Qualification of Team's Right of Way Firm

The design-build contractor will have or employ, qualified, competent personnel highly experienced in public ROW acquisition. This may be from their firm or a consulting firm, who is currently approved by the ROW Unit or who meets the requirements outlined in Chapter 16. The firm will be required to provide all services necessary to perform all title research, appraisal, review appraisal, negotiation, relocation assistance, closings and property management services. They will be required to complete the project in accordance with this manual, and in accordance with the requirements set forth in the URA as amended² and any District laws.

The design-build contractor's statement of qualification will name the ROW needs and acquisition team to include but not limited to

- ROW Project Manager,
- title company
- appraisers
- review appraiser
- negotiators
- relocation assistance specialists
- property management specialists
- closing agent.

The ROW Unit will evaluate the proposed ROW team and other qualification data to determine the team's qualification and ability to meet the overall schedule. No offers to purchase any ROWs shall be made until the ROW activities are authorized by DDOT. The

Chapter 15 – Design-Build Projects

design-build contractor shall also provide in their plan with regards to the following essential considerations:

- How will ROW acquisition and relocation services be managed by the prime contractor?
- The design-build contractor must submit an executed certification in its proposal that it has received a copy of the DDOT ROW Manual and will comply with those policy and procedures.
- What type of quality control methods will be employed to assure that all landowners' rights under the URA and DDOT requirements are being met?
- Outline the contractor plan for compliance with Title VI requirements
- Outline the contractor's project tracking system
- What safeguards will be in place to assure that occupied buildings or improvements are protected from unsafe conditions?
- How will prime contractor ensure that no coercive actions as described in 49 CFR 24.102(h) will jeopardize advancement of a ROW segment to the construction stage actions or any other actions that may be undertaken that could adversely affect the ROW process and compliance with governing DDOT and Federal requirements?
- What oversight will be expected of DDOT for the ROW acquisition part of the design-build contract?

15.3.2 Minimum Scope Requirement

The scope of services should be developed for the specific project requirements and the anticipated level of ROW acquisitions or relocation assistance services needed for each project. The following are some minimum requirements that should be submitted by the ROW Unit to proposal manager for inclusion in the design-build solicitation:

1. The design-build contractor must submit an executed certification in its proposal that it has received a copy of the DDOT ROW Manual and will comply with those policy and procedures.
2. Prior to commencing ROW activities, the design-build contractor will provide a written ROW Plan and if any displacements are anticipated, the Plan should include a Relocation Plan that provides for a reasonable time for the orderly

Chapter 15 – Design-Build Projects

relocation of residents and businesses on the project as provided in 49 CFR 24.205.

3. Based on the scope, complexity, local support and the team's ROW consultant's office location will determine the need to establish of a local ROW office, either on the project or a short distance from the project. The hours of operation of such an office should be customer oriented and convenient.
4. The design-build contractor must provide a ROW status progress report and a quality control system. The progress report shall reflect the status of appraisals, review appraisals, negotiations, relocation assistance, and condemnations. The status report must be kept current and provided to the ROW Unit bi-weekly.
5. Prior to authorizing acquisition activities, the design-build contractor shall submit to the ROW Unit a proposed schedule for ROW acquisition for review and approval. The schedule shall include information regarding the appraisal and review appraisal, time periods for negotiations, and when the relocation assistance program is to be completed, if applicable. The schedule shall indicate dates and time periods that ensure compliance with the URA.
6. The design-build contractor shall include the consultant's complete ROW phase cost in the response to the solicitation. The ROW plan will have to include safeguards in the process to prevent incentive payments to landowners. Any incentive payments made to displacees for relocation assistance must be uniformly applied as the URA requires fair and equitable treatment of all displacees.
7. Prepare, obtain execution of and record documents conveying title to property acquired on behalf of DDOT with the Register of Deeds and deliver all executed and recorded deeds and easements to DDOT. For all property purchased in conjunction with the project, title will be acquired either in fee simple or as a permanent easement and shall be conveyed to the District of Columbia (i.e., DDOT), free and clear of all liens and encumbrances except encumbrances permitted by the OAG. A title insurance policy naming the District shall be a part of the closing process and shall be provided to the ROW Unit within 60 days of the final parcel closing. The title policy may be cumulative and shall include all properties voluntarily conveyed and insured based upon the acquisition cost actually paid. Parcels acquired through eminent domain are not required to be included in a title insurance policy.

Chapter 15 – Design-Build Projects

8. The design-build contractor shall not begin construction on any parcel that will impair the safety or be coercive with respect to any unacquired property or individuals on the project (49 CFR 24.102(h)).
9. In the event the proposed ROW on a parcel is leased or occupied by a tenant, and the relocation assistance process has not been completed, written approval is required from the tenant prior to entry on the property for road or bridge construction. The contractor will be advised not to enter on the property for construction purposes unless a release is executed by the landowner and/or tenant or the contractor receives a written notice that the property has been vacated.
10. The design-build contractor will not disrupt utility services to any occupied properties on the project.
11. A right of entry agreement involving the area of proposed ROW may be obtained by the design-build contractor's consultant only after a detailed explanation of the landowner's right to just compensation and the acquisition process have been provided to the landowner and the landowner executes a statement setting forth that these rights have been explained and understood. If the landowner executes a right of entry agreement, the design-build contractor shall not enter upon the property until the environmental engineer, appraiser and review appraiser have viewed the property to be acquired and obtained photographs of the property in its existing condition.
12. The design-build contractor shall at all times provide for adequate access to all occupied properties to ensure emergency and personal vehicle access.

15.4 Evaluation of Design-Build Proposals

While it is not necessary that the ROW Unit's representative be on the selection committee, the selection committee will provide the proposal to the ROW Unit for evaluation. The ROW Unit will evaluate the proposal and provide comments and any concerns regarding the proposed ROW acquisition team's qualifications to acquire ROW and provide relocation assistance in accordance with the contract requirements. The ROW Unit should establish its criteria for evaluation of the design-build proposal similar to the criteria used for a consultant working on a DDOT ROW acquisition contract in a statement of qualifications to be included in the request for proposal. The consultant must have a project manager with a minimum of 10 years experience and a sufficient staff of ROW specialists with a minimum of 5 years in their discipline.

Chapter 15 – Design-Build Projects

In addition to determining the team's qualification, the proposed acquisition plan and consultant cost estimate should be reviewed to determine if the schedule is feasible and if the cost estimate is based on market value for such services. Any concerns should be brought to the selection committee's attention so that it can be addressed during the selection process or in contract negotiations.

15.5 Right of Way Plan

The design-build contract will require that the contractor submit a ROW Plan within 45 days of receiving a notice to proceed with the contract. The plan will be subject to the review and approval of the ROW Unit. The design-build contractor will work to refine the plan to make it acceptable to DDOT's ROW Unit. The ROW Plan should address the following items:

- The proposed Design-Build Acquisition Team should include the names of all subconsultants, for title abstracts; appraisals; review appraisals; environmental assessments; etc.
- ROW activities to occur during the PDP include the type of report to be prepared and submitted for review and approval by the ROW Unit (i.e., pre-acquisition relocation, planning report, updated ROW estimate, etc.).
- Schedule for submitting ROW plans for approval and authorization.
- The ROW acquisition process to be utilized and the proposed schedule, including all documents and submissions that require DDOT signatures and turn-around time frames.
- How the relocation plan will be implemented and the process for submitting benefit calculations for DDOT approval as well as the documents to be included in the package.
- All settlements, including those in amounts in excess of the approved appraised value and determination of just compensation will be reviewed and approved by ROW Unit Manager prior to any issuance of warrants in the amount of the increased settlement.
- If there are any ROW activities to be handled solely by ROW Unit, they will be set out and made a part of the design-build ROW plan.
- For costs beyond just compensation to the landowner, such as appraisals, environmental studies and surveys, the design-build contractor will bear all such costs as part of their contract.
- The need to use the eminent domain process and a listing of all documents to be included in the Declaration of Taking package.
- The review and processing of voluntary conveyances with a listing of all documents to be included in the package.

Chapter 15 – Design-Build Projects

- How ROW clearance will be certified for parcels and project phases. If the design-build contractor fails to acquire the needed ROW within the time limits of the contract, the design build contractor will be responsible for all costs incurred by the District to close the outstanding work unless the delays in acquisition are clearly a result of action or inaction by the District.
- How the status of acquisitions, relocations, and funding expenditures will be tracked and reported.
- When final files will be submitted and what documents will be included.

15.6 ROW and Relocation Payments

The actual cost of payments for property acquisition and payment of relocation benefits to displacees is so variable that it is unrealistic for the design-build contractor to provide a fixed price for these items in the contract. Compensation awards due to land owners under the eminent domain process are beyond the control of DDOT or the design-build contractor.

Unless there are unique circumstances that would warrant including payments to landowners or relocation benefits payments in the design-build contract, all payments shall be handled through a “ROW Allowance” basis passing through the design-build contractor to DDOT. All payments will be based on fully documented agreements; the approved just compensation; approved settlements; and/or the approved relocation benefit payments.

The cost to administer the ROW acquisition and relocation process shall be included in the design-build contractor’s fixed price for the overall contract. The ROW and related administrative cost shall include, but not limited to, the cost of title research, Phase I environmental site assessments (ESA), appraisal, review appraisal, negotiation, relocation assistance, closings, title insurance, property management and all coordination and project management. The ROW allowance cost should be included in the project pricing for budgeting purposes. The demolition cost should be included in the design-build contractor’s construction cost pricing, but hazardous material removal or mitigation should not be included. The removal or mitigation of hazardous material will be handled as a recognized environmental condition (REC) and will be paid for out of an Environmental Allowance. DDOT will be responsible for its internal costs to coordinate with the design-build contractor and provide its required reviews and approvals.

Chapter 15 – Design-Build Projects

The process for obtaining checks from DDOT’s ROW Unit for voluntary closings, eminent domain recording or relocation benefit payments will be established in the ROW Plan submitted by the design-build contractor and approved by the ROW Unit Manager.

As indicated above, the cost of a Phase I ESA for any property being acquired for the project is to be included in the fixed price for ROW administration. Should the Phase I ESA identify any environmental contamination issues, additional studies and mitigation may be necessary. The cost of these additional studies, the development of a mitigation plan and the mitigation itself will generally be set up in the design-build contract as a REC and will be allowed as a change order in the contract and paid for by DDOT. Using this process avoids placing risk of unidentifiable cost in the fixed design-build price.

15.7 Eminent Domain Requirements

These will be situations where it will not be possible for the design-build contractor’s ROW acquisition team to negotiate a voluntary conveyance of additional required ROW. The team shall make its best effort to negotiate an agreement in accordance with the processes outlined in this manual and shall make contacts as needed allowing the landowner at least 30 days to reach an agreement. When it becomes apparent that an agreement will not be reached in a timely manner, an eminent domain package and request to condemn shall be sent to the ROW Unit. The eminent domain packages shall contain the documents outlined in the approved ROW Plan.

15.8 Right of Way Certifications

Under design-build, the ROW certification may be on the basis of the contract for the project. The contract shall specify the procedures required for certification. The design-build contractor shall not enter upon any parcel or section of a project until the ROW Unit has received and accepted a ROW certification.

The ROW certification shall specify the parcel numbers and names of all landowners applicable to that particular certification and a statement that DDOT has legal possession of the properties based on a right of entry agreement, deed of conveyance, or declaration of taking. Further, if the properties acquired involve improvements, the certification letter must specify that the occupants have been offered relocation assistance, including replacement housing if applicable, and have vacated the improvements.

Chapter 15 – Design-Build Projects

Unless otherwise specified in the project contract, the design-build contractor will be responsible for the demolition and removal of all improvements acquired as the new rights of way. The disposal of any improvements acquired outside the limits of the new rights of way will be at the discretion of the ROW Unit Manager.

15.9 Final Submissions

The design-build contractor, in accordance with Section 15.8, shall certify the parcel clearances as the parcels or groups of parcels are clear and that the contractor intends to start construction in that area. Upon clearance of the last parcel or last relocation, the design-build contractor shall make a final submission of all documents to the ROW Unit.

While the details of the final submission should be included in the approved ROW Plan the following is a listing of the minimal items required:

- General correspondence folders, including status reports, etc.
- Individual parcel folders with all documents and correspondence required by this manual
- Individual relocation folders with all documents and correspondence required by this manual
- Status report of all displacees and the payment of the appropriate relocation benefits. If any benefit payments are to be made in the future the amount and date shall be indicated.
- One set of as-built plans or plats with the acquisitions highlighted and the date and recordation data indicated for each parcel
- Title insurance policy for all parcels acquired through voluntary conveyances.
- Spreadsheet with all parcels on which outstanding condemnation cases are still open and the current status.
- Tabulation of all expenditures requested of DDOT for landowner payments and relocation benefits.

Chapter 15 – Design-Build Projects

Chapter Resources

Reference

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html

Chapter 16 – Right of Way Consultant Services

Summary

This chapter covers the use of ROW consultants to supplement the ROW Unit and to provide specialty services needed for smaller projects and turn-key services needed for larger projects or multiple projects occurring in the same time frame. These services include ROW acquisition, title research, appraisal reports, review appraisal, hazardous material assessments, negotiations, relocation assistance, closing/settlement of transactions, and property management.

| Section Number | Section Name |
|----------------|---|
| 16.1 | Introduction |
| 16.2 | Need for Assistance |
| 16.3 | Right of Way Consultant Procurement Alternatives |
| 16.4 | Scope of Services |
| 16.5 | Pre-Qualification of Appraiser and Review Appraiser |
| 16.6 | Appraisal and Review Appraisal Contracting |
| 16.7 | Administration of Contracts |

16.1 Introduction

DDOT will accept full responsibility in accordance with all applicable Federal regulations, including Title 23 and Title 49 of the CFR to review and approve each transportation project, regardless of whether the project is being completed by DDOT or an outside consultant. In addition, the ROW Unit will provide oversight and direction to all consultants for federally funded projects to ensure compliance with such Federal regulations.

DDOT, in consultation with the OAG, contracts for the performance of ROW services when the ROW Unit resources are not sufficient to meet the proposed project schedules. DDOT normally contracts for services on a project basis, including the functions of:

- title research
- appraisal reports
- appraisal review negotiation
- relocation assistance
- deed/agreement closings
- property management

Chapter 16 – Right of Way Consultant Services

- closings

Appraisal services are often separately contracted on an individual project basis when ROW Unit performs the other ROW functions.

The use of consultants requires that the ROW Unit possess or develop the knowledge and skills in effective consultant project management and contract administration. Outside consultant services are contracted under the authority and control of the District's OCP. DDOT has developed these guidelines complying with the District's procurement policy which is applicable for the procurement and management of ROW services. The inclusion of businesses classified as local, small or disadvantaged to perform the required services is encouraged.

The policies contained in this chapter are intended to tailor consultant selection and contract management practices to the District of Columbia Code, applicable Federal law, Title VI of the Civil Rights Act of 1964,¹ and the District's Human Rights Act.² These policies are also intended to assure that consultants are employed under a consistently fair and equitable process. It is understood that a policy cannot anticipate the wide range of circumstances that can occur, and there is a need to provide for flexibility. If the application of procedures in this chapter would have an undesired result or be inconsistent with other policy or goals of DDOT, the matter should be brought to the attention of the ROW Unit Manager.

The most essential portion of the procurement and management of consultants is to have a well defined scope of services. This establishes the manner and expectations in how the services are to be performed; the responsibilities of the ROW Unit and the consultants; required approvals; and information to be submitted at various points in the process.

A complete glossary of definitions and acronyms is included as Appendix A in this manual. Some terms and acronyms used in this chapter are as follows:

| | |
|------|---|
| IDIQ | Indefinite Delivery, Indefinite Quantity, a contract for a specified period of time where specific assignments are made to the consultant |
| OAG | District of Columbia's Office of Attorney General |
| OCP | District of Columbia's Office of Contracting and Procurement |

¹ 42 USC 2000d-2000d-4

² DC Law 10-129

Chapter 16 – Right of Way Consultant Services

| | |
|------|---|
| OPM | District of Columbia’s Office of Property Management |
| RFP | Request for Proposals, a contract advertisement technique |
| TPPA | DDOT’s Transportation Policy and Planning Administration |

16.2 Need for Assistance

It is not efficient or practical to maintain a staff that is adequate in size to accommodate peak workloads or priority projects, therefore the use of ROW consultants will often be necessary. The following elements depend upon each other to determine the staffing and/or contracting needs for a project:

- **Size/Complexity of the Project**

A project may be small in size yet extremely complex, thereby requiring either a large number of staff and consultants or a myriad of professionals. Conversely, a project may be large and uncomplicated, only requiring a small staff and a limited number of consultant specialists.
- **Lead Time**

If the project’s lead time for ROW completion is primarily free from constraint, the ROW Unit staff may be sufficient with assistance in the appraisal discipline. There are instances where the need for ROW is more immediate and therefore staff and consultants must be available to meet the deadlines. In either instance, allocation of staff and consultants for the unexpected is proper in planning workload.
- **Budget**

The project budgets must allow for expenditures and payments for ROW Unit staff and consultant’s billable hours as well as unexpected contingencies.
- **Unique Aspects**

Projects may involve unique aspects that call for experts in various fields to be a part of the project acquisition team. Some projects involve relocation of displaced businesses and/or persons where qualified Relocation Specialists must assist with these activities. Other projects may require property management for various types of properties that may be needed for the project, which would be handled by a Property Management specialist. Property management services may be needed immediately and/or for a number of years after the acquisition(s). Other projects may involve major issues dealing with land conservation or historic preservation issues and other sensitive concerns not common on a typical ROW project.

Chapter 16 – Right of Way Consultant Services

Based on the elements listed above for all projects in which ROW acquisition is anticipated, the ROW Unit Manager will determine where and in which disciplines consultant assistance is needed. The request to use consultant services should be reviewed and approved by the Associate Director of TPPA. Consideration should also be given to required plan review and other coordination activities for projects in the preliminary stages of development.

As discussed in Chapter 1, OPM provides ROW acquisition and relocation assistance services in connection with the requirements of other DC departments. The ROW Unit Manager should consult with the OPM about the availability of OPM staff to provide services for a project after developing the projected work load and determining where staff assistance is required. Assistance could be requested in the entire acquisition project or in components of the project such as review appraisal. Should the project's time schedule and OPM's work load indicate that OPM's staff can perform the needed services then a Memorandum of Understanding (MOU) should be prepared and signed providing a description of services and DDOT funding.

When in-house assistance is not available and the need for consultant services is apparent, the ROW Unit Manager should develop a scope of services for services required for the project, defining the ROW functions to be contracted.

When the required services involve title research, appraisal reports or closing/settlement services, the ROW Unit Manager will meet with a representative of OAG to review the project. The complexities and specific requirements of the project will be reviewed.

At this meeting it will be determined if the OAG or DDOT will contract for the required services. The OAG's office should contract for the services if they believe the completion of the acquisition will likely end in the use of eminent domain and their attorney will manage the litigation.

Chapter 16 – Right of Way Consultant Services

16.3 Right of Way Consultant Procurement Alternatives

There are several methods available to the ROW Unit to obtain the services of a ROW consultant. Following the procedures described in Section 16.2, the ROW Unit Manager will determine which contracting method will be used for the specific project.

16.3.1 Contracts by other DC units

Should the ROW Unit's review of the project's consultant requirements with OPM and OAG result in a determination that OPM or OAG should contract and administer the consultant contract, a MOU will be prepared and signed between DDOT and the other DC agency. The MOU will provide for the scope of services to be provided, the review process, the time frame and transfer of funds from DDOT.

Upon execution of the MOU, OPM or OAG will contract for specific services in accordance with their established procedures. A meeting should be arranged when the Notice to Proceed is issued to the consultant, which should include the consultant, OPM or OAG and the ROW Unit staff to cover any changes in the project requirements and to establish the coordination, submittal and review process.

All final reports and other deliverables are to be provided to the ROW Unit for inclusion in the Project/Parcel file.

16.3.2 Indefinite Delivery, Indefinite Quantity Contracts

On a periodic basis, DDOT, collectively, through OCP will advertise a request for proposal (RFP) for the multiple disciplinary services required to accomplish all aspects of the transportation project development process. The RFP will establish an indefinite delivery, indefinite quantity (IDIQ) contract under which DDOT can assign projects or tasks to one of the contracted consulting firms. Usually, the contract time frame will cover 3 years and will have a maximum contract limit of \$1 million per year.

The various ROW services are included as one of the service disciplines included in the IDIQ contract. The ROW Unit Manager will be provided with a list of the consultant firms which are qualified to provide ROW services and will be able to use those firms when there has been a determination of need.

Chapter 16 – Right of Way Consultant Services

16.3.3 Project Specific Contract

While the IDIQ contract method should satisfy most needs for consultant ROW services, the ROW Unit Manager could request a project specific procurement. This could be done by including the ROW services with other project specific services being contracted by Transportation Policy and Planning Administration (TPPA), Infrastructure Project Management Administration (IPMA), or by having a separate RFP developed. The ROW Unit Manager should consider the cost of the procurement process in considering the advantages of a project specific contract.

16.3.4 Appraisal Specialty Contracts

Due to the licensing requirements and level of expertise needed to value real property for total or partial acquisitions, the appraisal and review appraisal functions will be contracted out on almost all projects. This could be on an appraisal only basis or included in the IDIQ or project specific contracts, when other ROW services are to be contracted out on a project.

Because of the constant need for appraisal or review appraisal services and the requirement that an independent firm provide these separate reports, the ROW Unit will coordinate with OAG to pre-qualify appraisers and review appraisers. Pre-qualification allows the ROW Unit Manager to utilize the services of either appraiser under a small dollar selection process.³

16.4 Scope of Services

A well defined scope of services is essential when contracting for consultant services. It establishes the product to be delivered, the manner of development, the time frame and any other expectations of the consultant. The scope of services will be a primary part of the actual consultant contract.

Included at the end of this Chapter are example scope of services for title research; appraisal reports; review appraisals; negotiation and relocation; and closing/settlement services. The ROW Unit should modify these requirements as needed to meet the project specifics. If the services are to be provided by OPM or OAG the scope of services documents should be provided to them for inclusion in their contract.

³ DC Code § 2-303.21

Chapter 16 – Right of Way Consultant Services

The scope of services can also be combined when a turn-key firm is to be contracted to manage and perform all required services.

16.5 Pre-Qualification of Appraiser and Review Appraiser

It is important that consultants be selected among firms that possess the qualifications and resources to perform the work adequately and on schedule. The complexity of the program and tight schedules require that contracts be awarded in an efficient and orderly manner. In order to achieve these goals, in consultation with the ROW Unit, OAG will pre-qualify appraisers and review appraisers.⁴ This pre-qualification process will provide all interested firms an objective and equitable basis under which to be evaluated.

DDOT will comply with Title VI of the Civil Rights Act of 1964 in all activities concerning pre-qualification and selection of consultants. No person will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the basis of race, color or national origin under any program or activity administered by the DDOT.²

16.6 Appraisal and Review Appraisal Contracting

After the ROW Unit's appraisal requirement study for a project has been approved appraisers or review appraisers approved by OAG should be contacted in accordance with the small purchase procurement procedures and be provided with a scope of the appraisals required. Any appraiser who desires to submit a proposal will be provided the relevant proposal format and one unmarked set of plans.

Written proposals, either via mail or electronic submission, should be obtained from at least three consultant appraisers. A signed and dated proposal is required from the successful appraiser and should be made a part of the contract and project file. The criteria for selecting an appraiser should be the same as outlined in this section.

This data will also contain pertinent project information including the total number and type of appraisals required. A marked set of plans will be available for review and explanation. Personnel from the ROW Unit will be prepared to answer questions that may be asked by participating appraisers.

⁴ DC Code § 2-303.2(d)

Chapter 16 – Right of Way Consultant Services

Appraisal contracts will be awarded based on the following factors:

- Demonstrated expertise in performing similar assignments
- Ability to submit appraisals on schedule
- Cost of services
- Evaluation of appraisers past performance
- Value of ongoing contracts with DDOT, OPM or OAG

A written recommendation will be forwarded to the Associate Director of TPPA for approval and a contract prepared and submitted to the fee appraiser for execution. Upon execution by all parties, a notice to proceed will be issued to the approved appraiser. The unsuccessful bidder's will be notified of DDOT's decision. The appraiser or review appraiser is not to begin an assignment until the approving authority notifies the appraiser to proceed in writing either via letter or e-mail.

16.7 Administration of Contracts

The contractual terms and conditions under which the consultant will perform the specified ROW services outlined in the scope of work will be included as part of the RFP for each contract or assignment awarded. The ROW Unit Manager will advise the consultant of the ROW Specialist assigned to the project after the contract has been executed and a notice to proceed has been issued.

The ROW Specialist will hold production meetings with key consultant project personnel monthly during the active stage of ROW acquisition and relocation assistance. The meetings will focus on the status of work in relation to the contract schedule. The consultant will identify any problems encountered during the project. Strategies and methods to resolve problems will be explored in a spirit of cooperation and open communication.

The ROW Specialist will inform the ROW Unit Manager of the status of the project on a regular and continuing basis. The ROW Specialist will process all requests for payments made by the consultant.

A supplement to the contract will be required if there are changes in the scope of work assigned to the consultant; these changes may arise if acquisition parcels are added after execution of the

Chapter 16 – Right of Way Consultant Services

contract. All information concerning a change in the scope of work, along with a recommendation, will be submitted to the ROW Unit Manager for review and approval before any additional work is initiated. The ROW Unit Manager will ensure that the consultant's request is prepared using the appropriate fee proposal format and contains documentation to support the request.

Ninety days prior to completion date of a consultant contract, the ROW Specialist will have the consultant identify (in writing, parcel by parcel) for all non-relocation issues and one-hundred twenty days for all relocation issues. Unfinished work must be explained (item by item) stating why the work is incomplete or whether it will be completed on time. The original copy of this report will be submitted to the ROW Unit Manager. The ROW Specialist will review the issues with the ROW Unit Manager and determine what should be done with regards to the outstanding items and the project schedule.

After the consultant has completed the contracted work, all documentation and files will be provided to the ROW Specialist. The ROW Specialist will prepare a Notice of Completion and forward it to the ROW Unit Manager. The consultant will be requested to prepare and submit the final billing on the contract.

Consultant Performance Evaluations are to be performed every 6 months from the notice to proceed and at contract completion for ROW acquisition contracts. Consultant performance evaluations for appraisal or review appraisal contracts lasting more than 6 months will follow the same guidelines. Appraisal or review appraisal contracts of less than 6 months are to be evaluated at the end of the contract.

The ROW Specialist will initiate a multi-disciplinary evaluation of a ROW acquisition consultant's performance. The evaluation will be performed by each of the functional areas included in the contract—normally the appraisal, review appraisal, negotiations, and relocation assistance. DDOT's Consultant Performance Evaluation Procedures (2002) will be followed, and forms PIRF and CPRF are to be submitted to the Project Management Support Division of the IPMA after review by the ROW Unit Manager.

Chapter 16 – Right of Way Consultant Services

Chapter Resources

Major Tasks

- Consultant Services

Examples

- Scope of Services – Title Research/ Settlement Agent (Example 16-1)
- Scope of Services – Appraisal Reports (Example 16-2)
- Scope of Services – Review Appraisal (Example 16-2A)
- Scope of Services – Negotiation and Relocation Assistance (Example 16-3)

References

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- District of Columbia Code
<http://dccode.westgroup.com>
- DDOT Consultant Performance Evaluation Procedure
Available from DDOT's Infrastructure Project Management Administration

Chapter 16 – Right of Way Consultant Services

Major Tasks – Consultant Services

| | |
|---|-------------------------|
| Receive advance notice of Project Funding for right of way authorization | TPPA OCFO |
| Review project plans to determine acquisition requirements | ROW Unit Manager |
| Determine need to outside appraisal and appraisal review services | ROW Unit OAG |
| Determine need for outside title research and settlement agent | ROW Unit OAG |
| Amend title scope of work (Example 16-1) for project | ROW Unit OAG |
| If procurement by OAG prepare memorandum of understanding (MOU) for reimbursement of OAG – transfer funds | ROW Unit OAG OCFO |
| If ROW Unit procurement select firm from on-call contract list or advertise RFP through OCP | ROW Unit OCP |
| Procure title research/settlement agency services and contract with selected firm | OAG |
| Coordinate notice to proceed with title services with project development | ROW Unit OAG |
| Amend appraisal scope of work (Example 16-2) for project specific requirements | ROW Unit OAG |
| If procurement by OAG prepare memorandum of understanding (MOU) for reimbursement of OAG – transfer funds | ROW Unit OAG OCFO |

Chapter 16 – Right of Way Consultant Services

| | |
|--|------------------------|
| If ROW Unit procurement select firm from on-call contract list or advertise RFP through OCP | ROW Unit OCP |
| Procure appraisal and appraisal review firms – contract with selected firms | OCP ROW Unit OAG |
| Coordinate notice to proceed with appraisal service with project development schedule and review services with appraisal due dates | ROW Unit OAG |
| Determine need for outside negotiation, relocation and project management services | ROW Unit |
| Amend scope of services (Example 16-3) for project specific project requirements | ROW Unit |
| Select firm from on-call contract list or advertise RFP through OCP | ROW Unit OCP |
| Procure negotiation, relocation and project management firm – contract with selected firm | OCP ROW Unit |
| Coordinate notice to proceed with project development schedule | |

Chapter 16 – Right of Way Consultant Services

[Example 16-1]

Scope of Services

Title Research and Settlement Agent

PART 1 PURPOSE

The Consultant will perform all services necessary to prepare title reports, title binders and close voluntary conveyances in connection with the right of way acquisitions for _____, Project _____, in accordance to the laws, rules, regulations, policies, and procedures of the District of Columbia and the District Department of Transportation.

PART 2 SCOPE OF SERVICES

A. It is the intent of this Contract that the Consultant, employing qualified, competent personnel, shall perform all services and research necessary to prepare title reports and title binders necessary for DDOT's acquisition of all real property interests, including fee simple as well as easements for rights of way from each parcel required for this Project. For those parcels where DDOT negotiates and signs a purchase agreement, the Consultant shall perform settlement services for the voluntary conveyances including the issuance of Title Insurance. All services shall be performed in accordance with the terms herein and the DDOT's Right of Way Policies and Procedures Manual, which is incorporated herein by reference.

B. The following services are required on this project.

1. Title Research and Reports

Title research shall be performed by Consultant for all real property interests from which right of way or easements are required. A full 60 year title abstract will be provided for all parcels from which fee simple right of way is to be conveyed. The Consultant shall provide an update of the title if more than 6 months has elapsed before an acquisition is finalized or if the ownership of the property has changed.

Status of Title reports and title binders are required on the following parcels, which are listed in order of priority.

| Parcel No. | Landowner | Date to be Completed |
|------------|-----------|----------------------|
|------------|-----------|----------------------|

Chapter 16 – Right of Way Consultant Services

2. Settlement Services

For those parcels listed in section 1 above, for which DDOT enters into a purchase contract, the Consultants shall provide settlement services to close the acquisitions. The closing will be based on the Purchase Agreement obtained from the Landowner(s) and approved by the DDOT. DDOT will provide funds to the Consultant's settlement agent in accordance with the compensation approved in the Agreement. The Consultant's settlement agent will obtain all of the necessary releases, approvals and will record the Instruments. A closing statement will be provided to the DDOT along with all other related documentation.

PART 3 DELIVERABLES

The Consultant shall complete all title research and deliver to DDOT and the Office of Attorney General (OAG) a Status of Title Report along with the chain of title abstract within 30 days of receiving the notice to proceed with a parcel.

The Consultant shall complete any update to previous title research and deliver to DDOT and the OAG an Updated Status of Title Report within 15 days of receiving the notice to proceed with a parcel.

For any parcel for which a Purchase Agreement is signed, The Consultant shall complete all title updates, obtain release for specified encumbrances and conduct the closing within 60 days of receiving the notice to proceed with a closing, unless delays are caused by others. The Consultant shall deliver to DDOT, with a copy to the OAG, all closing related documents and the title insurance policy.

Chapter 16 – Right of Way Consultant Services

[Example 16-2]

Scope of Services

Appraisal Reports

PART 1 PURPOSE

The Consultant will perform all services necessary to research, analyze, and evaluate real estate values and prepare Appraisal Reports in connection with the right of way acquisitions for _____, Project _____, in accordance to the laws, rules, regulations, policies, and procedures of the District of Columbia and the District Department of Transportation.

PART 2 SCOPE OF SERVICES

The Appraisal Consultant shall make a detailed inspection of the properties, and make such investigations and studies as are necessary to derive sound conclusions for the preparation of appraisal reports.

The Appraisal Consultant shall conform to recognized appraisal principles and practices of the appraisal profession in estimating the value of the properties. Evaluation of such property must also be according to judicially recognized methods of property evaluation in the District of Columbia. The appraisal must provide adequate factual data to support the conclusions reached as to value in sufficient detail to permit the reviewer to follow and understand the conclusion reached by the sub-consultant.

Upon completion of the inspection, investigations, and studies, the Appraisal Consultant shall furnish, and deliver to DDOT's ROW Unit, three copies of an appraisal report covering each parcel of real estate on which an appraisal is made, to include comparable sales.

All signatures in the report must be original and the Appraiser shall complete and execute Certificate of Appraiser, and attach a copy to the appraisal report.

The appraisal reports shall be based upon the land and interests therein to be acquired for the proposed construction. The Appraisal Consultant, through their appraisals, will be responsible for estimating and completing any ancillary appraisals necessary to determine the fair market values of properties.

Appraisal reports are required on the following parcels, which are listed in order of priority.

| Parcel No. | Landowner | Date to be Completed |
|------------|-----------|----------------------|
|------------|-----------|----------------------|

Chapter 16 – Right of Way Consultant Services

PART 3 DELIVERABLES

The Consultant shall complete the Appraisal Reports and deliver to the Review Appraiser, DDOT and the Office of Attorney General (OAG) by the date specified above

The Consultant shall complete any update to previous Appraisal Reports, when requested to do so, and deliver the updated Appraisal report to DDOT and/or the OAG, within 20 days of receiving the notice to prepare a update for a parcel.

Chapter 16 – Right of Way Consultant Services

[Example 16-2A]

Scope of Services Review Appraisal Reports

PART 1 PURPOSE

The Consultant will perform all services necessary to review the Appraisal Reports prepared by an independent appraisal firm in connection with the right of way acquisitions for _____, Project _____. All services shall be performed in accordance to the laws, rules, regulations, policies, and procedures of the District of Columbia and the District Department of Transportation.

PART 2 SCOPE OF SERVICES

The Review Appraisal Consultant shall inspect the properties and comparable sales and make such investigations and studies as are necessary to derive sound conclusions about the appraisal reports.

The Review Appraisal Consultant shall conform to recognized appraisal principles and practices of the appraisal profession in estimating the value of the properties. The appraisal report recommended for approval for a property must be according to judicially recognized methods of property evaluation in the District of Columbia.

Upon completion of the inspection, investigations, and studies, the Review Appraisal Consultant shall furnish, and deliver to DDOT's ROW Unit, a review appraisal report covering each parcel of real estate on which an appraisal is reviewed.

All signatures in the report must be original and the Review Appraiser shall complete and execute a Certificate and attach a copy to the appraisal report.

Review Appraisal reports are required on the following parcels, which are listed in order of priority.

| Parcel No. | Landowner |
|------------|-----------|
|------------|-----------|

PART 3 DELIVERABLES

The Consultant shall complete the Review Appraisal Report and deliver to DDOT and the Office of Attorney General (OAG) within 20 days of receiving the appraisal report for the Appraiser/

Chapter 16 – Right of Way Consultant Services

[Example 16-3]

Scope of Services

ROW Project Management, Negotiation and Relocation Assistance

PART 1 PURPOSE

The Consultant will perform all services necessary for completion of all real property interests, including fee simple and easement acquisition to acquire the necessary right of way for _____, Project _____, in accordance to the laws, rules, regulations, policies, and procedures of the District and the DDOT. These services shall include negotiating for all necessary real property interests; determining and calculating replacement housing payments; providing relocation assistance services; coordinating with DDOT on condemnations; and managing the overall acquisition process.

PART 2 SCOPE OF SERVICES

The consultant shall meet with DDOT's ROW Unit as needed and will provide progress reports throughout the life of the project. A right of way status spreadsheet will be provided indicating the status of each property acquisition, and shall be updated on a monthly basis unless otherwise requested.

The Consultant will initiate discussions with affected landowners regarding the acquisition of their properties. The Consultant will also ascertain the status of any tenant occupancy. Goodwill discussions will continue until the offer to purchase is made and negotiations begin.

Negotiations on each parcel shall be based upon appraisals that have been approved by the District and upon plans as submitted to the Consultant.

The Consultant shall make a detailed study of the properties in relation to the plans and the approved appraisals after which necessary documents such as the offer letter, offer acceptance agreement, right of entry, etc., are to be prepared by the Consultant and reviewed with DDOT's ROW Unit and the OAG.

The Consultant's acquisition agent shall contact the landowner explaining in detail the effects of the proposed acquisition on the land of the landowner. A bona fide offer based on the approved appraisal is to be made to the landowner in an effort to secure the needed real property interests for the right of way. Negotiations will be made in person where practical. The negotiator shall attempt to answer any question raised by the landowner relative to the acquisition and its process. If the negotiator is unable to answer the question, the necessary research or assistance is to be conducted or sought in order to provide the landowner with the correct answer. The landowner will be given a reasonable period of time following answers to questions being provided, to consider the offer and make a decision. Depending on the complexities of the proposed acquisition, the period

Chapter 16 – Right of Way Consultant Services

for acceptance or rejecting the offer should be no more than 30 days. In the event the landowner does not respond, this shall be considered a rejection of the offer.

The Consultant's acquisition agent shall prepare an acquisition report (final report of negotiations) at the conclusion of negotiations. This report is to include all data assembled in the landowner contacts. This report shall be submitted to DDOT's ROW Unit along with other documents required for the proper conclusion of the acquisition.

The Consultant may negotiate to acquire a property above the approved appraised value, provided justification is provided in writing to DDOT. For settlements over \$1,000.00 above the appraised value of a property, the Consultant must justify and secure the approval in writing from DDOT prior to the acceptance of an agreement with the landowner.

Negotiations are required on the following parcels, which are listed in order of priority.

| Parcel No. | Landowner | Date to be Completed |
|------------|-----------|----------------------|
|------------|-----------|----------------------|

The Consultant shall provide Relocation Assistance Services to landowners and tenants that will be displaced as a result of the right of way acquisition. These services shall be performed in accordance with the URA and any other applicable District rules or regulations.

In coordination with the appraisal process, the Consultant will make the initial contact with the displacees and conduct an interview to determine the nature of the relocation and the displacees' requirements. The available relocation assistance financial benefit options will be explained. The proposed schedule for the property acquisition will be provided.

The Consultant working with local real estate brokers will review the market for potential available replacement sites and review sites with the displacees. Upon the solution of a replacement site, the relocation specialist will make a final calculation of the estimated benefits.

The Consultant shall submit the Replacement Housing Payment and/or Moving Cost computations to DDOT'S ROW Unit for review. Upon completion of the review and approval, DDOT's ROW Unit will provide the approved Replacement Housing Payments and Moving Cost to the Consultant.

The Consultant will obtain estimates of moving costs for each displacee and review the proposals with the displacee. The displacee will be given the option to move themselves, for the payment based on the federal approved room schedule, or to utilize the selected moving company.

Upon completion of the relocation, the Consultant will inspect the vacated property to insure that all personal/business property has been removed and that no hazardous materials, other than those that are a part of the improvement, buildings or soil, have been left behind by the displacees. Upon a satisfactory inspection, the Consultant will accept

Chapter 16 – Right of Way Consultant Services

the keys and control of the property on behalf of DDOT. The Consultant shall also inspect the replacement facility to verify the completion of the relocation and that the dwelling meets Decent, Safe & Sanitary standards.

The Consultant shall obtain from the displacees the receipts on monies spent and shall submit same to DDOT'S ROW Unit requesting checks for the payment of the relocation benefits and will provide the payment to the displacee.

Relocation Assistance services are required for the displacees on the following parcels, which are listed in order of priority.

| Parcel No. | Landowner | Displacee |
|------------|-----------|-----------|
|------------|-----------|-----------|

PART 3 DELIVERABLES

The Consultant shall manage the right of way acquisition phase of the project so that all real property interests are acquired and all displacees are relocated within the time frame specified above. For each parcel negotiated, the Consultant shall complete and deliver to DDOT and the Office of Attorney General (OAG) an Acquisition Report outlining the negotiations and reporting a voluntary conveyance agreement or a recommendation to condemn under eminent domain.

For each displaced person or business, the Consultant shall provide a complete document folder of the relocation assistance provided and all payments computed and made. This shall be submitted within 30 days of the final payment being made to the displacee.

Chapter 17 – Property (Asset) Management – Post Construction

Summary

This chapter covers Property Management (PM) functions occurring after construction involving management and disposition of DDOT’s real property assets. As noted in Chapter 12, PM functions are separated by the time frame in which they occur. Chapter 12 covers those PM functions occurring during the PDP up to the initiation of the actual project construction.

| Section Number | Section Name |
|----------------|--|
| 17.1 | Introduction |
| 17.2 | Property Status |
| 17.3 | Property Inventory |
| 17.4 | Management of Operating Right of Way |
| 17.5 | Management of Excess Parcels and Airspace |
| 17.6 | Determination of Surplus Property Status |
| 17.7 | Review of Property Disposal Request and Preparation of Surplus Property Disposal Package |
| 17.8 | Conveyance of Surplus Property |
| 17.9 | Approvals and Closing |
| 17.10 | Financial Accounting of Funds Received |

17.1 Introduction

DDOT acquires and owns ROW for construction, operation and maintenance of transportation facilities. A transportation network is a dynamic system that changes and evolves over time. Property acquired for a project may not be needed until years later as a result of these changing needs. Conversely, property originally acquired for a project may no longer be needed for a project because of changes to the project or changed transportation purposes. Property is also acquired which is incidental to project needs. In addition, because property lines do not always align with the path of a project, DDOT may acquire property that is excess to the direct needs of the project. Many of these properties have been determined to be uneconomic residue parcels to the previous owner. (See Chapter 6 and 7)

Chapter 12 covers the property management activities occurring prior to the actual project construction. This includes continuation rent (Section 12.7) to current tenants and rental of properties when the anticipated project advertisement date is more than 6 months after DDOT’s

Chapter 17 – Property (Asset) Management – Post Construction

property management specialist or other assigned representative of DDOT (PM Specialist) takes possession of a property (Section 12.8). It also includes the management and disposition of buildings, structures, and other improvements vacated by the occupants and turned over to DDOT.

Post-construction property management involves real property that has been incorporated into the street or highway system's operating ROW and parcels of real property owned or controlled by DDOT that may or may not be required presently or in the foreseeable future for the safe and proper operation and maintenance of the road or highway facility (See 23 CFR 710), which would include excess parcels, including access control and airspace as outlined below. Any buildings, structures and/or improvements located in the operating ROW are managed by the PM Specialist for the ROW Unit, unless and until transferred to another unit of the District government, the Federal government or disposed of to a third party.

At the point in time where property changes from pre-construction to post-construction varies by the project's needs and the property type. Any excess parcel or airspace parcel outside of the proposed and/or existing ROW, which is not to be used in connection with a project's limits, is considered to be a post-construction asset as soon as the property is vacated by any displacee. The ROW Unit is in control of all DDOT property regardless of the project stage.

The PM Specialist for the ROW Unit is responsible for the disposal of excess parcels or airspace once they are classified as surplus property in accordance with the procedures outlined in Section 17.6 below. Once an excess parcel or airspace has been classified as surplus property, the disposal procedures outlined in Section 17.7 will be followed.

The disposal of surplus property, including access rights, as outlined in 23 CFR 710, has the following benefits:

1. Provides monetary return to the District for transportation or other purposes, as applicable. For Federally funded projects, funds acquired through disposal of surplus property are placed in a transportation fund for future DDOT projects in accordance with Title 23. For projects which do not utilize Federal funds, compensation received for the disposal of surplus property may be used for any public purpose.
2. Returns property to the local tax base.
3. Relieves DDOT of maintenance cost and responsibility.

Chapter 17 – Property (Asset) Management – Post Construction

4. Reduces liability exposure.

The following sections will define or outline requirements as well as describe the need to classify real property as excess parcels, airspace or surplus property. It is not possible to anticipate and develop policy for all circumstances and conditions that may arise. The ROW Unit Manager will provide interpretations or extensions of this policy as requested or as the need arises.

A complete glossary of definitions and acronyms used in this manual is included as Appendix A. Some terms and acronyms used in this chapter are as follows:

| | |
|-------|--|
| FMV | Fair Market Value – See Chapter 6.1 for detailed definition. |
| PM | Property Management. A discipline performed as a part of ROW functions of DDOT. It involves taking possession and managing real property and improvements acquired or transferred to DDOT. |
| PMI | Property Management Inventory. An electronic system used to track excess and surplus properties, air rights, and general lease agreements. |
| PSMB | DDOT’s Public Space Management Branch |
| PR&CD | DDOT’s TPPA’s Plan Review & Compliance Division |

17.2 Property Status

Because there are various types of real property assets, DDOT must have different procedures to manage the process and provide a high level of services to District residents as well as the general public.

The following sections describe the types of real property assets managed by DDOT.

17.2.1 Operating Right of Way

The operating right of way consists of the land upon which an operating transportation facility is situated, usually bounded by proposed or existing ROW lines on each side. Newly acquired property may be combined with the existing street or highway ROW to establish new boundaries of the operating ROW. These ROW limits are generally reflected on any new transportation project plans or plats.

Chapter 17 – Property (Asset) Management – Post Construction

17.2.2 Excess Parcels

Excess parcels are located outside the proposed or existing ROW line and most are acquired because they represent an uneconomic remnant (See Chapters 6 and 7) to the former owner of a larger parcel. Excess parcels are also created when the proposed ROW line for the project is such that existing ROW is no longer required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility as street or highway ROW (See 23 CFR 710).

17.2.3 Airspace

Airspace is that area located above, below or adjacent to a street or highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

17.2.4 Surplus Property

Surplus property can be any excess parcel or airspace that is owned by DDOT and is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, including operating street or highway ROW (See 23 CFR 710), used for other DDOT operations or for any transportation purpose, including wetlands, greenbelts, wildlife habitats and scenic vistas. Surplus property may be small acreage parcels which cannot be independently developed or may be an assembled grouping that has sufficient size for independent development. Excess parcels or airspace that has no independent value can be sold, typically to the adjacent property owner(s) for assemblage with their property. The appraiser would determine the fair market value of the parcel according to its contributing value. If the adjacent property owners elect not to acquire the property, it will remain on the property inventory as “not disposable”.

Surplus property classification will be made in accordance with the procedures outlined below in Sections 17.6 must be followed. In addition, once DDOT submits approval to FHWA to classify an excess parcel or airspace as surplus property, FHWA must issue its Surplus property will be disposed of in accordance with the procedures outlined below in Section 17.7.

Chapter 17 – Property (Asset) Management – Post Construction

17.3

Property Inventory

The ROW Unit will assign a Property Management Inventory (PMI) number to each excess parcel or airspace. If there are multiple excess parcels or airspace created as a result of the acquisition of a single property, each one should be assigned a PMI number. An excess parcel that is adjacent to another excess parcel will also be assigned a group number so that all pieces of the larger tract can be considered at the same time. When DDOT acquires a property, any excess area or residue not required for the project should be assigned a PMI number and entered into the PMI including recordation information. The PMI number should be placed on the file cover with instructions: “Do Not Destroy contains a Residue”. Prior to circulating property to agencies for a surplus determination, the PMI file shall be entered into the data base including:

1. Project Number
2. PMI Number
3. Plan Sheet Number
4. Identification of the previous property owner name
5. Recordation information
6. Zoning
7. Square Footage
8. Appraisal Date
9. Appraised Value
10. Name of Requestor
11. Date of request
12. Documentation of each contact

A computerized inventory record of DDOT-owned excess parcels and airspace is to be maintained by the ROW Unit on a continuously updated basis. In addition, the records to be kept in the project files will include:

- Information regarding the disposal of all buildings, structures, and improvements;
- Rental income and sale or salvage of improvements
- Record of property management expenses and rental payments received
- Records for properties acquired with Title 23 CFR Federal funding. PMI numbers for Properties associated with Federal projects shall have a suffix beginning with 23.

This information shall be provided to FHWA on an annual basis.

Chapter 17 – Property (Asset) Management – Post Construction

17.4 Management of Operating Right of Way

The operating ROW of a street or highway consists of all the land area between the established existing and proposed ROW line on each parallel side. For most streets in the District, it is a consistent width that was established when the District was platted.

From a property management perspective, the street ROW is separated into areas if different types of encroachments are permitted. These areas are travel lanes, including any medians, parking lanes and sidewalk space.

17.4.1 Travel Lanes

The most common encroachment of travel lanes and median area in the ROW is for the installation of utility facilities. If the request is approved, a permit is issued for the utility installation, including any temporary lane closures that may be necessary. The permit includes any terms and conditions regarding the performance of the utility work and the restoration of the street. A final inspection is performed to close out the permit. Another type of permitted use of the travel lanes includes a temporary permit for street closures during special events.

17.4.2 Parking Lanes

The most common encroachment requested for the parking lanes is for utility installations and temporary closure during construction on an adjacent property. The temporary closure of parking spaces is covered under a permit with a requirement that DDOT be compensated for the use of that area.

17.4.3 Sidewalk Space

Because the width of sidewalk spaces vary from street to street, permitted encroachments also vary. Permitted uses include temporary closure for construction on the adjacent property, permanent installation of underground utilities or service vaults, use for restaurant seating and service from an adjacent restaurant, etc. These uses are covered by a permit; any permanent use requires the payment of compensation to DDOT, unless alternate arrangements are approved by DDOT Director.

A request by an adjacent landowner or others to use the operating ROW is coordinated by

Chapter 17 – Property (Asset) Management – Post Construction

DDOT’s Plan Review and Compliance Division. Where appropriate, permission is granted through a permit, lease or other agreement.

17.5 Management of Excess Parcels and Airspace

If an excess parcel or airspace is added to the property management inventory, the source of funding used to acquire the original property should be indicated. This is primarily relevant for projects funded with federal Title 23 CFR transportation funds. In the case of jurisdictional transfers, a “N/A” will be entered into the entry field for the fund source of the PMI. If the PM Specialist determines that an excess parcel or airspace should be retained by DDOT, the PM Specialist will discuss with the various administrations to confirm that such excess parcels or airspace should be retained for current or future transportation use, and such parcels will not be circulated for a Determination of Surplus Property. For all other excess parcels or airspace, a determination must be made, in accordance with the procedures outlined in Section 17.6 below, as to whether or not an excess parcel or airspace is going to be classified as surplus property or should be retained for possible future use by DDOT. After an excess parcel or airspace has been classified as surplus property in accordance with the procedures of 17.6 below, it will be managed as described in this section. If an excess parcel or airspace is retained for possible future transportation use, but there is no immediate transportation use for the excess parcel or airspace, it may be leased or used by a governmental entity for an interim use or may be leased to a non-governmental entity for an interim use. Any excess parcel or airspace relinquished to a governmental entity for an interim use may not be disposed of by that governmental entity and must be returned to DDOT upon completion of the intended use.

The use of excess parcels or airspace will be tracked on the PMI system whether its use is for another District or Federal agency, non-profit or private use. For short term use by a non-profit or private entity, a permit may be utilized. For any use over 90 days, a lease agreement is recommended.

17.6 Determination of Surplus Property Status

DDOT will conduct an internal review to determine whether to recommend the property as excess property to be surplus, subject to FHWA final approval in accordance with Section 17.6.7.

Chapter 17 – Property (Asset) Management – Post Construction

17.6.1 Surplus Property

The determination of whether an excess parcel or airspace will be classified as surplus property can either be initiated by (1) the ROW Unit's PM Specialist in the ordinary course of sorting through a list of such excess parcels or airspace and recommending whether they should be classified as surplus property (Surplus Process) or by (2) a request by a governmental or non-governmental entity (Applicant) to lease or purchase excess parcels or airspace which has been classified as surplus property in accordance with 23 CFR 710.409 (Property Disposal Request).

The Applicant's Property Disposal Request requires an approval by DDOT, as well as issuance of a final approval by FHWA that (1) the excess parcel or airspace should be classified as surplus property and (2) the surplus property should be conveyed to the Applicant. For a Property Disposal Request, the Applicant should provide the following information to DDOT so that the ROW Unit can initiate the determination of surplus property status:

1. Proposed use of the surplus property.
2. Description of the surplus property outlined on a detailed drawing. The information must include a current title report with a review of property records, verification of District ownership, including, but not limited to airspace and easements.
3. In accordance with 23 CFR 710 and applicable Federal guidelines, the Applicant should submit information to enable DDOT to analyze maintenance, safety, design, planning, ROW, environment, access management, and traffic operations issues. This should include a preliminary design plan and an engineering study to confirm that the Applicant's request addresses all the issues raised above.
4. An application fee of \$10,000. The application fee shall be credited against the purchase price at closing, if all approval are obtained and the Applicant acquires the property.

In either a determination of surplus property or a Property Disposal Request, which will include the determination of surplus property, the approval to classify excess parcels or airspace as surplus property will be made in accordance with the procedures outlined

Chapter 17 – Property (Asset) Management – Post Construction

below in Section 17.6.3. For a Property Disposal Request, the approval of the request must also be made in accordance with the procedures outlined in Section 17.7 below.

17.6.2 DDOT Internal Circulation for Potential Classification as Surplus Property

The Director of DDOT will circulate an inter-office memorandum for the potential classification of the excess parcel or airspace as surplus property in the PMI system. The memorandum should include a marked plat showing the exact area to be conveyed along with a time line for a response. The notice will be circulated to the following DDOT administrations for approvals as outlined below:

- Transportation Policy and Planning Administration (TPPA) for planning policy impacts, plan review, right of way and environmental issues
- Infrastructure Project Management Administration (IPMA) for maintenance, access management, design, engineering, construction and safety issues
- Transportation Operation Administration (TOA) for traffic operations and safety issues
- Mass Transit Administration (MTA) for policy issues relating to mass transit, including Washington Metropolitan Area Transit Authority (WMATA)
- Urban Forestry Administration (UFA) for environmental issues

In determining whether the excess parcel or airspace should be classified as surplus property, each of the administrations will provide written documentation to recommend retaining or disposing of the excess parcel or airspace along with their area of responsibility for their recommendation. If an administration recommends retaining the excess parcel or airspace, the documentation should provide the specific purpose for retention, along with marking the area requested for retention on the plat. The ROW Unit Manager will review the responses received with the Associate Director of TPPA, however, if there is not full concurrence among the administrations, a meeting will be held to resolve any concerns. At the meeting, any comments or concerns should be addressed and a final recommendation made that the excess parcel or airspace should or should not be classified as surplus property. A final notice will be sent to the non-responding administrations, which will be provided with an additional 10 days to set forth their objections to classify the excess parcel or airspace as surplus property.

Chapter 17 – Property (Asset) Management – Post Construction

In determining whether the excess parcel or airspace should be retained or classified as surplus property, the following should be considered:

- The requirements of 23 CFR.
- No probability of expansion within the foreseeable future that would require use of the subject property for current or future transportation purposes.
- The safe operation and maintenance of the street or highway facility is in no manner placed in jeopardy.
- Whether the subject property is situated entirely outside the ROW limits for a completed street or highway facility and whether the access control line is entirely within such ROW limits

17.6.3 Retention of Excess Parcel or Airspace or Classification as Surplus Property

The Director of DDOT or his designee will have final authority to determine whether the excess parcel or airspace should be retained by DDOT or (2) classified as surplus property. If DDOT determines that the excess parcel or airspace may be needed presently or in the foreseeable future for the safe and proper operation and maintenance of the road or highway facility, the excess parcel or airspace will be retained and managed in accordance with the procedures outlined in Section 17.5. If the Determination of Surplus Property was initiated by an Applicant, and DDOT decides to retain the excess parcel or airspace, the Applicant will be so advised in writing. If DDOT determines that the excess parcel or airspace is surplus property, then the procedures outlined in Section 17.6.4 below shall be followed.

17.6.4 Circulation of Approval of Surplus Property to Agencies

When DDOT approves classifying the excess parcel or airspace as surplus property, DDOT will then circulate the surplus property approval to the following agencies so that they can make a request to acquire the surplus property:

- City Administrator
- Deputy Mayor's Office for Planning and Economic Development
- Department of Parks and Recreation
- National Park Service
- National Capitol Planning Commission
- DC Water and Sewer Authority

Chapter 17 – Property (Asset) Management – Post Construction

- DC Department of Public Works
- Other governmental agencies, as applicable.

The notice will provide an adequate description of the parcel under consideration. The DDOT group and/or PMI numbers of the surplus property will be used on all correspondence for tracking purposes.

17.6.5 Agency Request to Use or Acquire Surplus Property

If one of the agencies makes a request to use or acquire the surplus property, the agency will submit a written request to the ROW Unit describing the proposed use of the surplus property. The Director of DDOT or his designee will have authority to recommend approval to permit the requesting agency to use or acquire the surplus property or to deny the request. If DDOT recommends approval of the request for the agency to use or acquire the surplus property, DDOT will submit its recommendation for approval to FHWA for issuance of its final approval. Once FHWA has approved the request to use or convey the surplus property as outlined in Section 17.6.7, the procedures to use or acquire the surplus property outlined in Section 17.8.1 will be followed for a transfer of jurisdiction to another agency. If the agency acquires the surplus property for a short-term lease, as outlined in Section 17.8.2. Finally, if the agency acquires the surplus property for a long-term lease or sale, the procedures outlined in Section 17.8.3 will be followed. If the relinquishment of a roadbed is requested, the Federal Highway Administrator is required to approve such a request in accordance with 23 CFR 620.203(g). If FHWA does not approve the request, and the Determination of Surplus Property was initiated by an Applicant, the Applicant will be advised in writing that the surplus property will not be available for disposal to the Applicant.

17.6.6 No Request by Agency to Use or Acquire Surplus Property

If none of the agencies make a request to use or acquire the surplus property, and an Applicant has not submitted a Property Disposal Request, then DDOT's approval to classify the surplus property will be submitted to FHWA for issuance of its final approval. In the event the District has retained the surplus property for more than three years, then a updated environmental analysis will be required before the surplus property is disposed.

Chapter 17 – Property (Asset) Management – Post Construction

17.6.7 FHWA Final Approval or Denial of DDOT Surplus Property Request

If FHWA issues its final approval of DDOT's approval to classify the excess parcel or Airspace as surplus property, DDOT may then dispose of the surplus property which will not be required presently or in the foreseeable future for the safe and proper operation and maintenance of the road or highway facility. Such disposal shall be conducted in a manner that is in accordance with the procedures outlined in **§ 10-801 of the District of Columbia Official Code entitled Sales of Public Lands as outlined below.**

(a) Except for real property disposed of pursuant to § 6-1005(c), the Mayor is authorized and empowered, in his discretion, for the best interests of the District of Columbia ("District"), and with the approval of the Council by resolution, to sell, convey, lease (inclusive of options) for a period of greater than 20 years, exchange, or otherwise dispose of real property, in whole or in part, now or hereafter owned in fee simple by the District, whether purchased with appropriated, grant, or other funds, the proceeds of general obligation bonds or tax revenue anticipation notes issued by the District government, or United States Treasury Notes, or obtained by any other means including exchange, condemnation, eminent domain, gift, dedication, donation, devise or assignment, for municipal, community development, or other public purpose, which the Council finds to be no longer required for public purposes.

(b) The Mayor, in order to carry out the provisions of this chapter, shall transmit to the Council a proposed resolution that contains a finding that the real property is no longer required for public purposes and a description of the real property to be disposed of and the proposed method of disposition, which shall be one of the following:

- (1) Public or private sale to the highest bidder;
- (2) Negotiated sale to a for-profit or non-profit entity for specifically designated purposes;
- (3) A lease for a period of greater than 20 years;
- (4) A combination sale/leaseback for specifically designated purposes;
- (5) An exchange of interests in real property; or

Chapter 17 – Property (Asset) Management – Post Construction

(6) Any other means the Mayor finds to be in the best interests of the District.

(b-1)(1) A proposed resolution to provide for the disposition of real property transmitted to the Council pursuant to subsection (b) of this section shall be accompanied by an analysis prepared by the Mayor of the economic factors that were considered in proposing the disposition of the real property, including, when appropriate the chosen method of disposition, and how competition was maximized.

(2) The analysis under this subsection shall describe the manner in which economic factors were weighted and evaluated, including estimates of the monetary benefits and costs to the District that will result from the disposition. These benefits shall include revenues, fees, and other payments to the District, as well as the creation of jobs.

(c) The proposed resolution to provide for the disposition of real property pursuant to subsection (b) of this section shall be submitted to the Council for a 90-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed disposition of the property, in whole or in part, by resolution within the 90-day period, the proposed resolution shall be deemed disapproved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(d) Approval of the disposition of the real property by the Council shall expire 2 years after the effective date of the resolution of approval. If the Mayor determines prior to the end of the 2-year period that the property cannot be disposed of within the 2-year period, the Mayor may submit to the Council, no later than 60 days prior to the end of the 2-year period, a resolution seeking additional time for the disposition of the property, and shall include with the resolution a detailed status report on efforts made toward disposition of the property as well as the reasons for the inability to dispose of the property within the 2-year period. If the Council does not take action to approve or disapprove the resolution within 30 days of receipt of the resolution, not including Saturdays, Sundays, legal holidays, or days of Council recess, the resolution shall be deemed approved as well as being consistent with the requirements of 23 CFR Part 200.9 along with 49 CFR Part

Chapter 17 – Property (Asset) Management – Post Construction

21 to comply with Title VI requirements, If FHWA denies the request, the Determination of Surplus Property process terminates.

17.7 **Review of Property Disposal Request and Preparation of Surplus Property Disposal Package**

17.7.1 FHWA Final Approval of both Surplus Property and Property Disposal Request Required

If the Determination of Surplus Status was initiated by an Applicant in Section 17.6.1 above, and DDOT approves (1) classification of the property as surplus property and (2) submits the Surplus Property Disposal Package described below in Section 17.7.4 and Section 17.7.5 to FHWA for its final approval if the property was acquired with Federal funds, then **both** the classification of the excess parcel or airspace as surplus property and the Property Disposal Request from the winning bidder must receive final approval by FHWA so that the winning bidder in accordance with the procedures of 17.6.7 may acquire the surplus property. If FHWA issues its final approval of the classification of the surplus property and the Property Disposal Request, then DDOT may dispose of the surplus property to the winning bidder. If FHWA denies the Property Disposal Request, then the process terminates.

A Property Disposal Request will be submitted to the Associate Director of TPPA, who will initiate the processing by the ROW Unit. The request could either be submitted by the Applicant before the surplus property classification has been made, in which case the Property Disposal Request triggers the surplus property classification process or after an excess parcel or airspace has been classified as surplus property.

17.7.2 Appraisal of Surplus Property

After reviewing the Applicant's Property Disposal Request, as outlined in Section 17.6.1, if DDOT approves of the Property Disposal Request, an appraisal of FMV will be required by a licensed appraiser on a list approved by OAG and then selected by the ROW Unit Manager. The ROW Unit will determine the scope of work for the appraisal, and review the scope of work with the Applicant to ensure that all appropriate factors are considered. In the event the disposition is particularly complex or the appraised value exceeds \$500,000, DDOT may require a second appraisal, in DDOT's sole discretion. Once the appraisal is completed, the appraisal will be reviewed internally or by an independent review appraiser. The appraiser will submit a copy of the appraisal to the ROW Unit.

Chapter 17 – Property (Asset) Management – Post Construction

The appraisal will be reviewed by a review appraiser approved by OAG. After the review appraisal has been completed, and the determination of FMV has been established by the appraisal, DDOT will approve the FMV. (See Chapter 6)

17.7.3 Disposal of Surplus Property at less than Fair Market Value

FHWA may grant an exception to the FMV requirement if the surplus property will be used for a social, environmental, or economic purpose per 23 CFR 710.403. These disposals require that a reversion clause be placed on the deed, easement or lease whereby the surplus property would revert to the DDOT if the approved purpose for which the surplus property was sold originally ceases as outlined in 23 CFR 710.409(d). FHWA may approve the exception in the following situations upon written submission:

1. The government agency clearly shows that an exception is in the public interest for social, environmental, or economic purposes; non-proprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation.
2. Use by public utilities as outlined in 23 CFR Part 645;
3. Railroads may be accommodated in accordance with 23 CFR Part 646;
4. Bikeways and pedestrian walkways in accordance with 23 CFR Part 652;
5. Use for transportation projects eligible for assistance in accordance with 23 CFR Part 403.

17.7.4 Surplus Property Disposal Package Requirements for Applicant

The Surplus Property Disposal Package will include information and documents prepared by the Applicant and submitted to the ROW Unit for review as outlined below. For surplus property which includes airspace, the Applicant will provide the additional information outlined in item 6 in this Section.

The Applicant will provide:

1. Detailed engineering plans of proposed buildings and improvements including an ALTA/ASCM survey, an acquisition deed and a certified plat of verifying DDOT ownership of the proposed surplus property. The plat will outline the proposed conveyance area with a color coded legend depicting the various parcels and rights which the Applicant proposes to acquire.

Chapter 17 – Property (Asset) Management – Post Construction

2. Security analysis of the transportation facility.
3. Funding for the appropriate documentation to comply with NEPA and other applicable environmental laws for all Federal actions, including where the street, highway or airspace on the Federal Aid system is involved. The appropriate level of NEPA and other environmental documents needed for the project will be determined with DDOT and FHWA approval. These documents shall be prepared in accordance with the DDOT Environmental Policy & Process Manual and FHWA regulations. Approval from FHWA and DDOT will be needed for the applicant to produce the environmental documents. In such instances the CEQ regulations related to third party contracting for NEPA documents have to be met.
4. Traffic impact analysis of the proposed use on the existing transportation facility. DDOT's review should indicate the methodology that DDOT's traffic engineers used to analyze and/or certify the results contained in the applicant's traffic study. Check with Kathleen
5. Proposal for Interstate Access Point Approval Request (IAPA), if applicable.
6. For a Property Disposal Request which includes airspace, the Applicant will be required to provide an adequately detailed three dimensional presentation of the space to be used and the facility to be constructed. The requirements outlined in 23 CFR 710 Subpart D, 23 CFR 710.405 but will comply with the Airspace Guidelines found at <http://www.fhwa.dot.gov/realestate/index.htm>.
7. The Applicant will provide drafts of all necessary real estate, land use documents, including but not limited to:
 - a. Land disposal agreement
 - b. Declaration of Covenants
 - c. Easements and leases, where the provisions of 23 CFR 710.407 will apply so that the lease or easement will also include provisions governing safety and integrity of the facility, lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold DDOT and the FHWA harmless, nondiscrimination, access by DDOT and the FHWA for inspection, maintenance, and reconstruction of the facility.
 - d. Deed, a metes and bounds description, which shall be used to create a legal description of the surplus property
 - e. Construction & Use Covenant

Chapter 17 – Property (Asset) Management – Post Construction

f. Any other applicable documents

The real estate and land use documents outlined above will require language specifically tailored for the particular conveyance, whether the conveyance is a long term lease, short term lease, permanent easements, deed of covenants, deed of conveyance or air space and must be prepared in accordance with the applicable sections of the federal regulations¹, federal guidance and District of Columbia code. The real estate and land use documents will include language and provisions to address all requirements listed herein. The real estate and land use documents and all other applicable documents should, at a minimum, include:

- A description of the proposed use including the proposed design of any facilities to be constructed.
- Exact rights and uses granted with any limitations.
- Provisions for access to the DDOT street or operating right of way.
- Provisions for access to an Interstate will require an Interstate Access Plan Approval to either request interstate access or eliminate such access.
- Inspection requirements
- Insurance requirements
- Security requirements, restricted uses
- Discussion of the compensation performance milestones (these milestones should include development activities as well as actual construction, i.e. final construction drawings by date/year)
- Performance bonds
- Provisions for termination of the agreement.
- Inspection, maintenance or reconstruction requirements.

In any conveyance where the approved use for which the real property was originally sold ceases, the applicant must apply for the new proposed use, which must be approved by DDOT and FHWA. A reversion clause will be placed on the deed whereby the property would revert to the DDOT if the approved use is discontinued, regardless of whether to a District agency or an Applicant.

¹ 23 CFR 710.405

Chapter 17 – Property (Asset) Management – Post Construction

Surplus property may be conveyed to an Applicant through a short-term lease as outlined in 17.8.2 below, or a long-term lease or sale as outlined in 17.8.3 below.

17.7.5 Surplus Property Disposal Package Requirements for DDOT

The Surplus Property Disposal Package will also include the following documents to be provided by DDOT to FHWA:

The ROW Unit will obtain property documents, including but not limited to a current title report, including air space and easements, if applicable. In addition, a current appraisal and review appraisal must also be provided.

The designated District agency will prepare the following statements for approval by the Associate Director of TPPA:

1. Statement that the surplus property proposed for lease or sale will not be required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. As part of this statement, DDOT will prepare an analysis to determine the appropriate conveyance structure to lease or sell the surplus property, or convey an easement, if applicable.
2. Statement that the surplus property proposed for lease or sale is not suitable for park, recreational or conservation use and/or statement that DPR and NPS have been informed of the existence of the surplus property and have not submitted a request and offer to acquire the surplus property for park, recreation or conservation use.
3. Statement that the proposed use of the surplus property for the intended purposes will insure the continued integrity of the transportation facility, including the tunnels, retaining walls, street or highway, modified if appropriate and approved by the Chief Engineer of IPMA. The plans or drawing must adequately demonstrate the relationship between proposed use and the transportation facility.
4. Statement that the security analysis and traffic impact analysis provided by the Applicant on the transportation facility, which has been reviewed, modified if appropriate and approved by the Chief Traffic Engineer of IPMA.

Chapter 17 – Property (Asset) Management – Post Construction

5. Statement that the environmental analysis and documentation required per NEPA, DC Environmental Policy Act (DCEPA), and other applicable environmental laws and regulations have been reviewed and approved by the Associate Director of TPPA.
6. Statement that the Justification Report (IJR) in accordance with the DDOT policy and the FHWA Interstate Access Point Approval Process (IAPA) policy when proposing changes to access points or adding or eliminating access points from the interstate system, if applicable, has been approved by TPPA Associate Director and DDOT Chief Engineer.
7. Statement that the proposed compensation or benefits represent FMV, based on an appraisal or that less than FMV is justified when the overall benefits are in the public interest².

If the Property Disposal Request includes airspace which has been classified as surplus property, the following additional documents and statements will be included:

8. Statement that such airspace occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23.
 9. Statement which will affirmatively provide for adherence to all policy requirements contained in this Section and conform to the provisions in the FHWA's Airspace Guidelines found at <http://www.fhwa.dot.gov/realestate/index.htm>. The guidelines include legal, planning, environmental, design, construction, maintenance, insurance and safety requirements.
10. In accordance with 23 CFR 710.405, a statement that DDOT has acquired sufficient legal right, title, and interest in the ROW of a federally funded highway to permit the occupancy, use or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic as provided in 23 CFR 1.23; and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the street or highway facility for non-highway purposes.
11. The proposed airspace agreement will be included in the Surplus Property Disposal Package.

² 23CFR710.403

Chapter 17 – Property (Asset) Management – Post Construction

17.7.6 Surplus Property Disposal Package Submittal to FHWA

Once the Surplus Property Disposal Package has been completed and approved by DDOT, then the Surplus Property Disposal Package will be submitted to FHWA for final approval or disapproval of both DDOT's approval to classify the excess parcel or airspace as surplus property and the Applicant's Property Disposal Request.

17.7.7 FHWA Final Approval of Classification as Surplus Property and Property Disposal Request

After FHWA has issued its final approval of both DDOT's approval to classify the excess parcel or airspace as surplus property and the Applicant's Property Disposal Request, then OAG will review, negotiate revisions and approve all of the real estate and land use documents required to acquire the surplus property as outlined in Section 17.7.4, item 7. All real estate and land use documents are subject to final FHWA approval.

17.8 Conveyance of Surplus Property

17.8.1 Transfers of Jurisdiction

If an agency has made a request to use or acquire the surplus property, DDOT has approved the request and FHWA has approved the Property Disposal Request as outlined in Section 17.6.7 above, the surplus property may be disposed of to a Federal or District agency through a transfer of jurisdiction or land exchange.

If the title to the surplus property is vested in the District or if the title is vested in the United States, but the District has jurisdictional control of the surplus property, then it may be transferred to a federal agency in accordance with Section 10-111 of the District of Columbia Code and 23 CFR 710.601.

In these cases, the ROW Unit requests that the Office of the Surveyor initiate the transfer of jurisdiction. The surveyor prepares the plat and file for circulation to all agencies and administrations concerned. If no objection is received, the surveyor completes the Plat of Transfer of Jurisdiction and sends it to the appropriate Federal agency for signature.

Chapter 17 – Property (Asset) Management – Post Construction

Any objection received will be reviewed and resolved with that agency or administration and the Plat will be revised. Prior to the consummation of any transfer, the proposed transfer must be recommended and approved by the NCPC. Upon DC Council approval, the plat is returned to the surveyor for official recording. Copies of the approved plat of Transfer of Jurisdiction are provided to the ROW Unit.

Surplus property may be conveyed to an Applicant through a short-term lease as outlined in 17.8.2 below, or a long-term lease or sale as outlined in 17.8.3 below.

17.8.2 Short-Term Lease of Surplus Property

When it is determined to be in the interests of the District, a surplus property may be leased on a short-term basis (i.e. less than 20 years). Such leases may be executed by the Mayor or his designee without the need for DC Council approval.

17.8.3 Long Term Lease or Sale of Surplus Property

A surplus property may be disposed of through a deed conveying a fee-simple interest, deed conveying a fee-simple interest with an easement reservation or a lease for a term in excess of 20 years. A long term lease is preferred when the surplus property is airspace. Such dispositions are effected in accordance with the provisions of Section 10-801 of the District of Columbia Code as outlined above. A lease in excess of 20 years will be considered a disposition of the surplus property for purposes of 23 CFR 710 Subpart D and as described in 40 U.S.C. 8734 sale of real estate owned in fee simple by the District must be approved by the DC City Council and the NCPC.

17.9 Approvals and Closing

Once executed, the requisite property documents will be executed and returned to the ROW Unit Manager. If the surplus property is being leased, the ROW Unit Manager will distribute copies of the lease to all involved DDOT units and District agencies. The ROW Unit Manager will provide executed copies to the Applicant and coordinate the implementation of the proposed use.

The ROW Unit will add the appropriate information to the property inventory and arrange for the monitoring of any payment schedule.

Chapter 17 – Property (Asset) Management – Post Construction

Chapter Resources

Major Tasks

- Disposal of Surplus Property Disposal Process
- Request for Lease or Sale of Airspace

Example

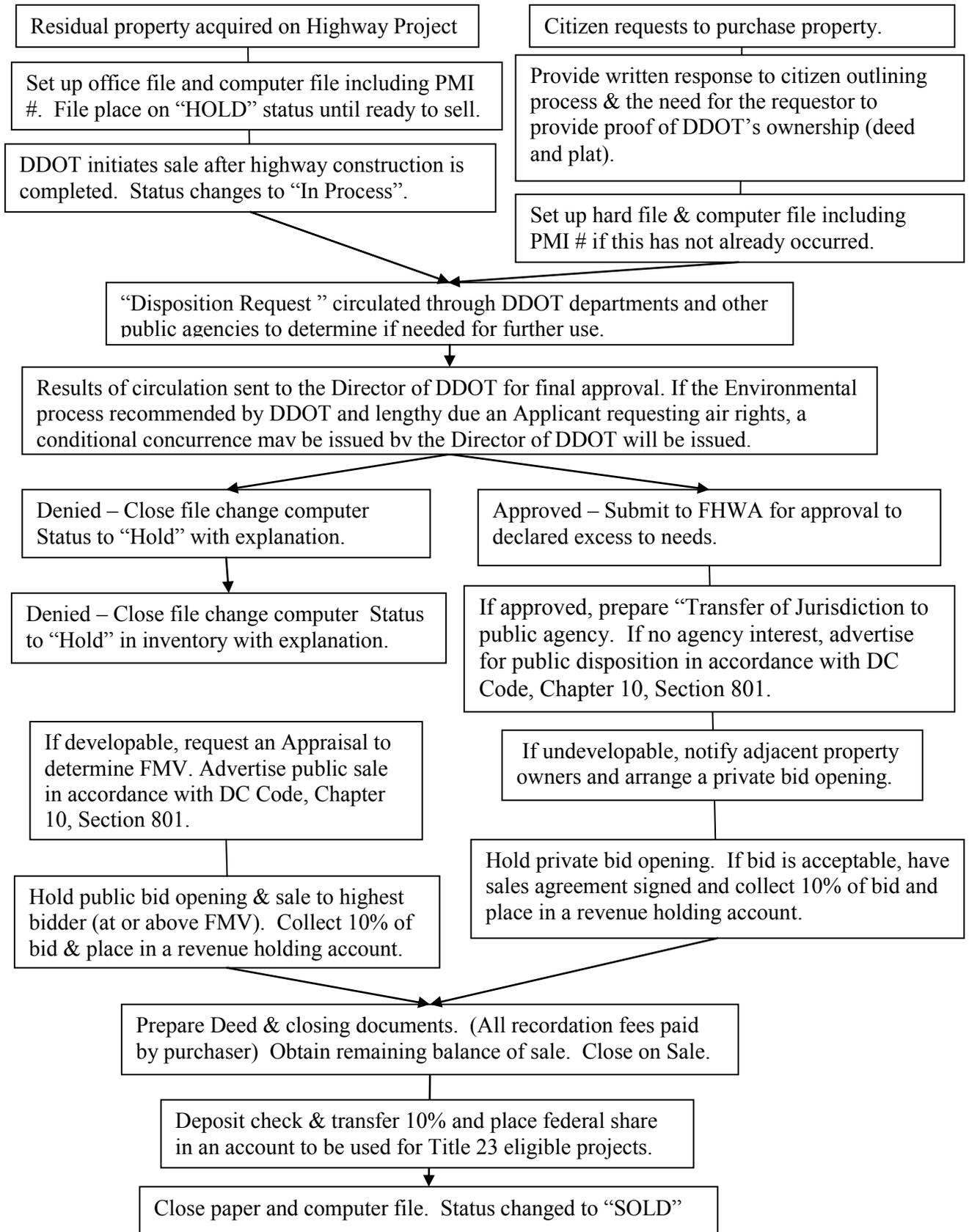
- Circulation Letter (see Example 17-1)

References

- Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
- Airspace Guidelines to 23CFR710.405-710-407
www.fhwa.dot.gov/realestate/airguide.htm
- District of Columbia Code
<http://dcode.westgroup.com>
- District of Columbia
Federal State Agreement entered on September 7, 1967
- District of Columbia
Building Code Referenced in Federal State Agreement

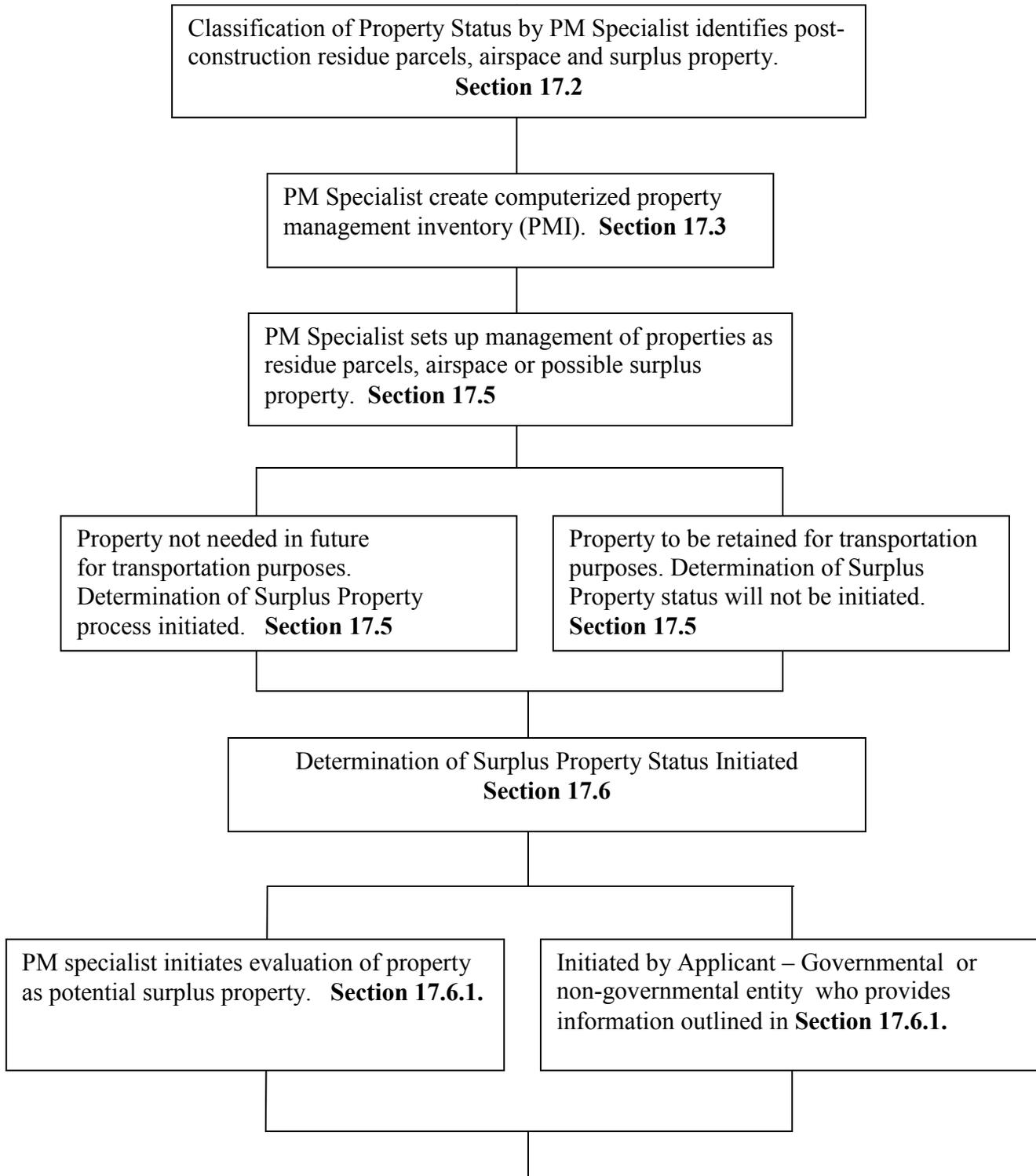
Chapter 17 – Property (Asset) Management – Post Construction

Major Task Surplus Property Disposal Process

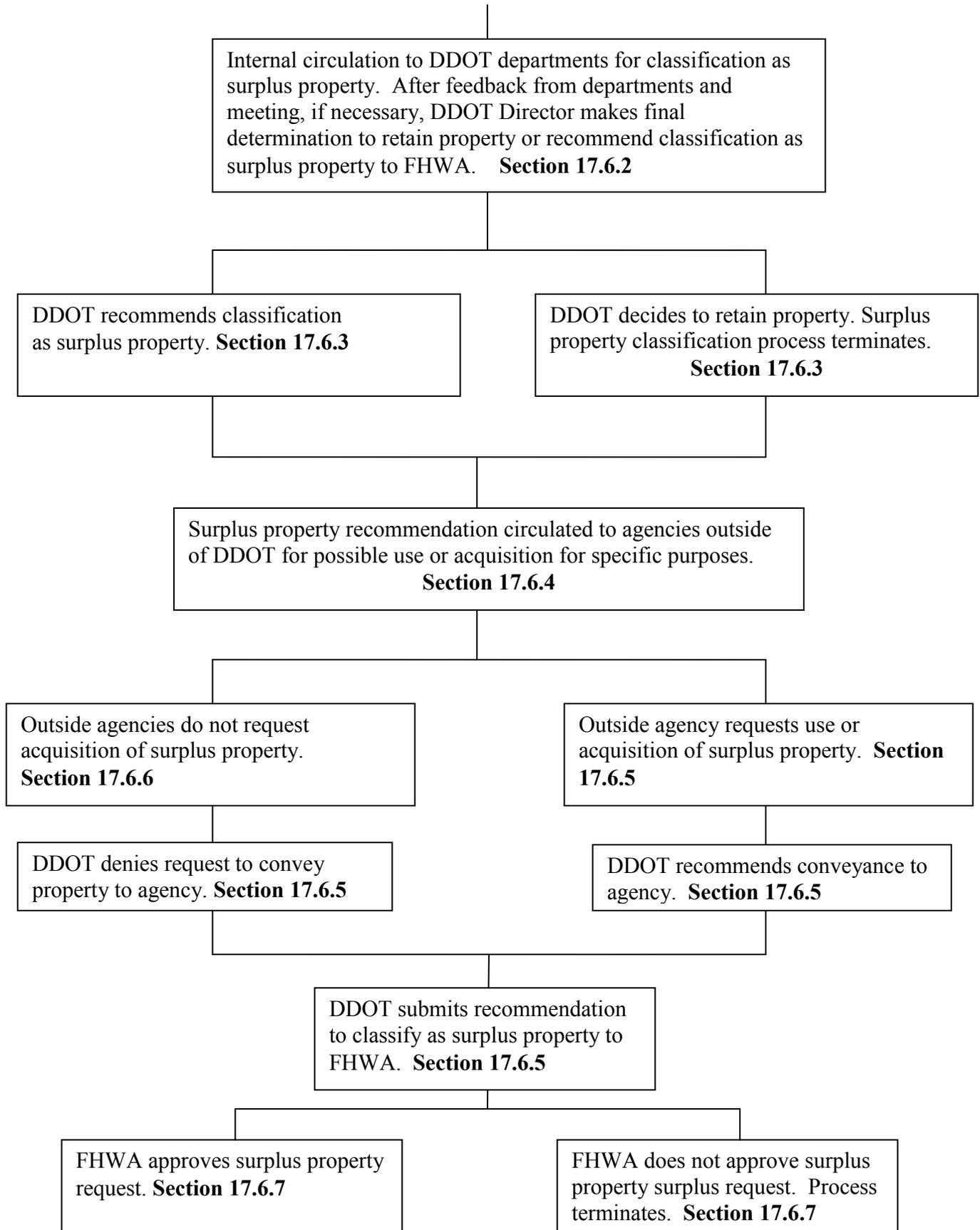


Chapter 17 – Property (Asset) Management – Post Construction

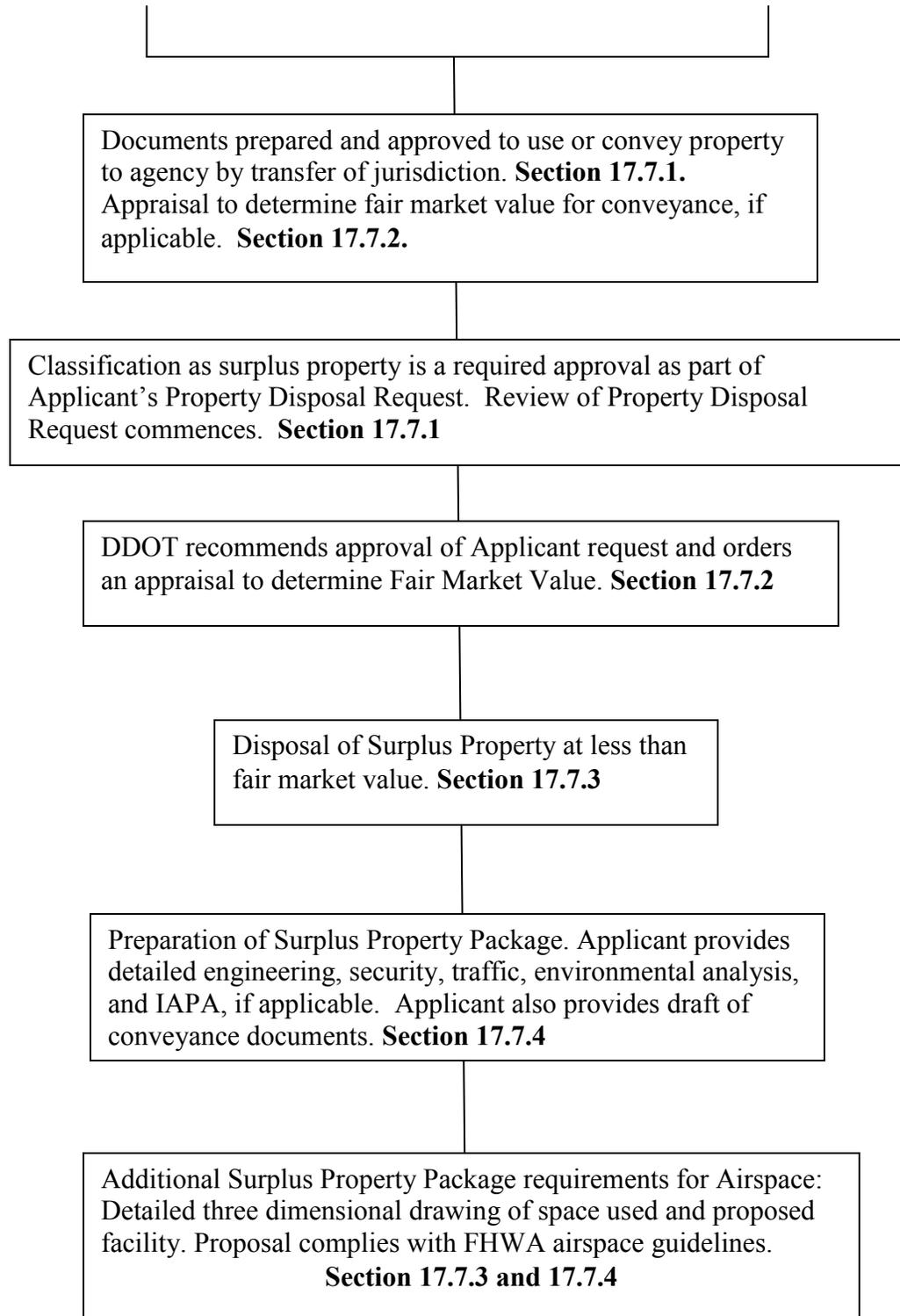
Major Task Request for Lease or Sale of Airspace



Chapter 17 – Property (Asset) Management – Post Construction



Chapter 17 – Property (Asset) Management – Post Construction



Chapter 17 – Property (Asset) Management – Post Construction

(Example 17-1)

| | |
|--|----------------------------------|
| MEMORANDUM | |
| DATE: | Street: |
| TO: DDOT IPMA Representative DDOT MTA Representative DDOT TPPA Representative DDOT TOA Representative DDOT Urban Forestry Administration DC Department of Public Works Representative DC Office of Property Management Representative DC Office of Parks and Rec. Representative [Ward Representative] as appropriate [Deputy Mayor P&ED] as appropriate | Project: Federal Project No.: |
| FROM: ROW Unit Manager | |
| RE: Residue/Surplus Property (Address of Property) (Former Property Owner and Parcel) | |

The Right of Way Unit of DDOT is considering the sale/lease of the property described above and marked in RED on the attached plan.

We have no objection to the disposal or use of this property from a right of way standpoint. Please review this request and indicate your recommendation below.

Please contact _____ at _____ regarding any questions or additional information needed.

We would like to have your comments by _____.

Attachments

| |
|--|
| TO: ROW Unit Manager |
| I have reviewed this request and recommend the following: |
| <input type="checkbox"/> Approve for Sale / Lease |
| <input type="checkbox"/> Retain for Future Needs |
| Signed: _____ |
| Date: _____ |
| Comments: _____ |
| |
| |
| |

Appendix A-1 Acronyms – Right of Way Manual

| | |
|-----------------------|---|
| AASHTO | American Association of State Highway and Transportation Officials |
| ACM | Asbestos Containing Material |
| ACT | The Uniform Relocation Assistance and Real Property Acquisition Act |
| AICP | American Institute of Certified Planners |
| ASA | American Society of Appraisers |
| CAD | Capital Accounting Division |
| CE | Categorical Exclusion |
| CEQ | Council on Environmental Quality |
| CFR | Code of Federal Regulations |
| CIP | Capital Improvement Program |
| CLRP | Constrained Long Range Plan |
| COG | Metropolitan Washington Council of Governments |
| DC | District of Columbia |
| DC COUNCIL | Council of the District of Columbia |
| DDOT | District Department of Transportation |
| DHCD | DC Department of Housing and Community Development |
| DMPED | Deputy Mayor for Planning and Economic Development |
| DPW | District of Columbia's Department of Public Works |
| EA | Environmental Assessment |
| EHA | DC Department of Health – Environmental Health Administration |
| EIS | Environmental Impact Statement |
| EPA | Environmental Protection Agency |

Appendix A-1 Acronyms – Right of Way Manual

| | |
|--------------|---|
| ESA | Environmental Site Assessment |
| FEMA | Federal Emergency Management Agency |
| FHWA | Federal Highway Administration |
| FMIS | Fiscal Management Information System |
| FMV | Fair Market Value |
| FOIA | Freedom of Information Act |
| FONSI | Finding of No Significant Impact |
| HLR | Housing of Last Resort |
| HUD | Housing and Urban Development |
| IDIQ | Indefinite Delivery, Indefinite Quantity |
| INS | Immigration and Naturalization Service |
| IPMA | DDOT's Infrastructure Project Management Administration |
| IRS | Internal Revenue Service |
| MOU | Memorandum of Understanding |
| NCPC | National Capital Planning Commission |
| NEPA | National Environmental Policy Act |
| NHPA | National Historic Preservation Act |
| NPS | National Park Service of the United States of America |
| NTP | Notice to Proceed |
| OAG | Office of the Attorney General of the District of Columbia |
| OCFO | Office of the Chief Financial Officer of the District of Columbia |
| OCP | Office of Contracting and Procurement of the District of Columbia |
| OGC | DDOT's Office of General Counsel |

Appendix A-1 Acronyms – Right of Way Manual

| | |
|------------------|---|
| OP | District Office of Planning |
| OPM | Office of Property Management of the District of Columbia |
| OTR | Office of Tax and Revenue |
| PDP | Project Development Process |
| PE | Preliminary Engineering |
| PIN | Parcel and Improvement Identification Numbers |
| PM | Property Management |
| PMI | Property Management Inventory |
| PR&CD | DDOT's / TPPA's Plan Review & Compliance Division |
| PSMA | DDOT's Public Space Management Administration |
| PSPD | DDOT's Public Space Permitting Division |
| RFP | Request for Proposals |
| RHP | Replacement Housing Payments |
| ROD | Record of Decision |
| ROW | Right of Way |
| RPA | Relocation Planning Analysis |
| SOW | Scope of Work |
| SSL | Square-Suffix-Lot |
| TIF | Tax Increment Financing |
| TIP | Transportation Improvement Program |
| TOA | DDOT's Transportation Operation Administration |
| TPB | Transportation Planning Board |
| TPPA | DDOT's Transportation Policy and Planning Administration |
| TSA | DDOT's Traffic Services Administration |

Appendix A-1 Acronyms – Right of Way Manual

| | |
|----------------|--|
| U.S.C. | United States Code |
| U.S.T. | Underground storage tank |
| UASFLA | Uniform Appraisal Standard for Federal Land Acquisition |
| UFA | Urban Forestry Administration |
| USA | Government of the United States of America (also US) |
| USPAP | Uniform Standards of Professional Appraisal Practice |
| VA | Veterans Administration |
| WASHCOG | Metropolitan Washington Council of Governments |
| WMATA | Washington Metropolitan Area Transit Authority |

Appendix A-2 Definitions - Right of Way Manual

ABANDONMENT – Cessation of use of right of way or activity thereon with no intention to reclaim or use again for highway purposes.

ABSTRACT OF TITLE – A document showing the condensed history of the title to property, containing portions of all conveyances or other pertinent instruments relating to the estate or interest in the property, and all liens, charges, encumbrances, and releases.

ACCESS CONTROL – A section of the highway right of way along which the right of ingress and egress from the abutting property is denied.

ACKNOWLEDGMENT – The signatures to deeds and certain other writings must be acknowledged or “proved” by the makers of such instruments before a notary or other officer designated by law, or before witness. See “Recordation”.

ACQUISITION – The process of acquiring real property or a needed interest in real property.

ACQUISITION AGENT – The primary contact person that represents DDOT in negotiating with the landowners.

ACQUISITION APPRAISAL – A complete appraisal report format for partial acquisitions comprised of land or land and minor improvements. The acquisition appraisal may not be used if there are incurable damages to the remaining property, changes in zoning, or changes in highest and best use.

ACT – The Uniform Relocation Assistance and Real Property Acquisition Policies Act of the United States Title 49 Code of Federal Regulations (CFR) Part 24.

ADMINISTRATOR – The one appointed by the court to settle the affairs of a deceased person who left no will. Administrators cannot convey real estate (except an “administrator” with the will annexed, who is appointed by the court to carry out the provisions of a will after executors have died or been removed).

AFFIDAVIT – A written declaration made under oath before a notary public.

AGENCY – The Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

1. **Acquiring Agency:** A State Agency, which has the authority to acquire property by eminent domain under State Law, and a State Agency or person which does not have such authority.
2. **Displacing Agency:** Any Federal agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.
3. **Federal Agency:** Any department, Agency or instrumentality in the executive branch of the government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any

Appendix A-2 Definitions - Right of Way Manual

- person who has the authority to acquire property by eminent domain under Federal law.
4. **State Agency:** Any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more.

AGENT – A person or company that acts on behalf of another to transact business.

AIR RIGHTS – A property right which allows the owner to use space, at specified heights, above the existing surface.

AIRSPACE – The space located above and/or below a highway or another transportation facility's established grade line lying and within the horizontal limits of the right of way or project boundaries.

ALIEN not lawfully present in the U.S. – A person who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

1. A person present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (*8 U.S.C. 1101 et seq.*) and whose stay in the United States has not been authorized by the United States Attorney General; and,
2. A person who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

ALIGNMENT – Any one, several, or combination of several proposed locations for a transportation project.

APPRAISAL – A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

ARM'S LENGTH TRANSACTION – A transaction between unrelated parties under no duress.

“AS IF VACANT” – A base case scenario for assessing the highest and best use of a property; without improvements.

- ASSESSMENT** –
1. The official valuation of property for ad valorem taxation.
 2. A single charge levied against a parcel of real estate to defray the cost of a public improvement that presumably will benefit only the properties it serves; e.g., assessment for the installation of sidewalks, curbs, or sewer and water lines.
 3. An official determination of the amount to be paid by or to the owners of real estate to defray the cost of a public improvement that is presumed to benefit the properties it serves in an amount at least equal to the cost of the improvement; e.g.,

Appendix A-2 Definitions - Right of Way Manual

assessment of benefits and/or damages for public sewer or water lines. See also fractional assessment; special assessment.

BUILDINGS, STRUCTURES OR OTHER IMPROVEMENTS - An item located on real property that cannot be removed without incurring a substantial loss in value to itself or to the underlying or related real property

BUILDING – Structures and other related items located on real property

BUSINESS – Any lawful activity, except a farm operation, that is conducted:

1. primarily for the sale of services to the public; or
2. primarily for the purchase, sale, lease, rental or any combination of these, of personal or real property, or both, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or
3. primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
4. by a non-profit organization that has established a non-profit status under applicable Federal or District law

BUYOUT – The purchase of the entire holdings or interests of an owner

CARVE OUT – The method used in making a typical homesite 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.

CE – Categorical Exclusion – Lowest Federal environmental impact classification. The CE is fully described in 23 CFR 771.117

CERTIFICATION – A statement issued by DDOT declaring that the right of access to areas of the project necessary for the Contractor to construct the project has been obtained and that DDOT has complied with all Federal and District laws, rules, regulations, and policies in acquiring new land and in providing relocation assistance to any displaced person.

CFR – Code of Federal Regulations – The codification of general and permanent rules published in the Federal Register (FR) by the departments and agencies of the Federal government.

CITIZEN – A person that is either a citizen of the United States or a non-citizen national.

CLAIM – A term used to identify individual properties from which right of way or easements must be acquired

CLEARANCE LETTER – A letter issued by DDOT indicating that the right of access to all areas of the project necessary for the construction has been obtained

Appendix A-2 Definitions - Right of Way Manual

CLOUD ON TITLE – Any condition revealed by a title search that adversely affects the title to real estate.

COMPARABLE REPLACEMENT HOUSING – a dwelling that is:

1. Decent, safe and sanitary (DSS) (also defined below).
2. Functionally equivalent to the displacement dwelling in that it performs the same function and provides the same utility. While every feature of a displacement dwelling need not be present, the principal features must be provided. Functional equivalency reflects the range of purposes for which the various physical features of a building may be used. Special consideration will be given to the number of rooms, and area of living space. DDOT may consider reasonable trade offs for specific features when the replacement unit is equal to or better than the displacement dwelling.
3. Adequate in size to accommodate the displacee.
4. In an area not subject to unreasonable adverse environmental conditions.
5. In a location, generally not less desirable than the displacement dwelling with respect to public utilities, commercial and public facilities, and is reasonable accessible to the displacee's place of employment.
6. On a site typical in size for residential use, with normal site improvements (The site need not include features such as swimming pools or outbuildings).
7. Currently available to the displaced person on the private market. However, a publicly owned or assisted unit may be comparable for a person displaced from the same type of unit. In such cases any requirements of the public housing assistant program relating to the size of the replacement dwelling shall apply.
8. Within financial means of the displaced person.

Comparable replacement housing is the standard for replacement housing that DDOT is obligated to make available to displaced persons. It is also the standard for establishing owner and rental purchase supplement benefits

CONDEMNATION – The process by which real property is taken for public uses by the District's power of eminent domain, upon the payment of just compensation, but without the consent of the private owner

CONSEQUENTIAL DAMAGES – Generally those damages that have resulted from the taking of property and the construction of the public improvement that are not compensable. See also compensable damages; damages.

CONTRIBUTE MATERIALLY – Means that during the past two taxable years prior to the taxable year in which the displacement occurs, or during such other period as DDOT determines to be more equitable, a business or farm operation:

1. Had average annual gross receipts of at least \$5,000; or
2. Had average annual net earnings of at least \$1,000; or
3. Contributed at least 33.3 percent of the owner's or operator's average annual gross income from all sources.

Appendix A-2 Definitions - Right of Way Manual

If the application of the above criteria creates an inequity or hardship in any given case, DDOT may approve the use of other criteria as determined appropriate

CONTRIBUTORY VALUE – The dollar amount that buildings, structures, or other improvements contribute to the fair market value of the total real property

CONTROLLED ACCESS LINE – A line bordering street or freeway right of way (ROW) along which the right of ingress and egress from abutting property is denied

CONVEYANCE – The undivided right to possession by one or more persons transferred to one or more different persons

DC – The government of the District of Columbia (see also **District**)

DDOT – District Department of Transportation as established by the government of the District of Columbia. (Also, referred to as STD (State Transportation Department) in Federal transportation regulations)

DECENT, SAFE, AND SANITARY – (DSS) – Meets local housing and occupancy codes, is structurally sound, weather tight, and in good repair; meets local housing and occupancy codes. However, any of the following standards, which are not met by the local code, shall apply unless waived for good cause by the FHWA. The dwelling shall:

1. Be structurally sound, weather tight, and in good repair;
2. Contain a safe electrical wiring system adequate for lighting and other devices;
3. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees Fahrenheit) for a displaced person;
4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person(s). The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes. In addition, DDOT shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes;
5. Shall 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 in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully useable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator;
6. Contains unobstructed egress to safe, open space at a ground level;
7. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person;

This is the qualitative and safety standard to which displacees must relocate in order to qualify for replacement housing payment benefits provided by DDOT. Decent, safe, and sanitary is also an element in the definition of comparable replacement housing defined above.

Appendix A-2 Definitions - Right of Way Manual

DECLARATION OF TAKING – Pleadings filed with the court by which legal title to real property passes from private owner to the government of the District of Columbia in a condemnation action

DEED – A signed instrument in writing, duly executed and delivered, providing for the transfer and conveyance of real estate

DEED OF TRUST – A legal instrument, similar to a mortgage, which, when executed and delivered, conveys or transfers property title to a trustee.

DEDICATION– The setting apart by the owner and acceptance by the public of property for highway use, in accordance with statutory or common law provisions

DESCRIPTION – The exact location of a piece of property stated in terms of lot, block, tract, part lot, metes and bounds and/or recorded instrument

DESIGN-BUILD – Is a project development and construction contracting technique that allows a single procurement for the design and construction of a project.

DISCLAIMER – A written declaration that the landowner(s) has no interest or rights with regard to a specified item affixed to their real property

DISTRICT – The government of the District of Columbia (see also **DC**)

DISPLACED PERSON – Any person who moves from real property or moves personal property from real property as a direct result of the initiation of negotiations for the acquisition of the property; the acquisition of real property, in whole or in part, for a project; as a direct result of rehabilitation or demolition for a project; or as a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. If the move occurs after a written order to vacate is issued, the occupant is considered a displaced person even though the property is not acquired.

DONATION – The voluntary conveyance of private property to public ownership and use, without compensation to the owner.

DRAINAGE EASEMENT – The right to drain surface water from one owner's land over the land of one or more adjacent owners.

DWELLING – The place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house, a single family unit in a two-family, multi-family, or multi-purpose property; a unit of condominium or cooperatives housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

DWELLING SITE – A land area that is typical in size for dwellings located in the same neighborhood or rural area.

Appendix A-2 Definitions - Right of Way Manual

EA – Environmental Assessment – Environmental study undertaken by DDOT to clearly establish environmental impact of a project. The EA is fully described in 23 CFR 771.119.

EASEMENT – An interest in real property that conveys use, but not ownership, of a portion of an owner's property. Access or right of way easements may be acquired by private parties or public utilities. Governments dedicate conservation, open space, and preservation easements.

EIS – Environmental Impact Statement – A comprehensive study of social, environmental and economic impacts of a proposed project and evaluation of all reasonable alternatives. The EIS is fully described in 23 CFR 771.123 through 127.

EMINENT DOMAIN – The right of government to take private property for public use upon the payment of just compensation. The Fifth Amendment of the U.S. Constitution, also known as the takings clause, guarantees payment of just compensation upon appropriation of private property.

ENCROACHMENT – Any structure or object that protrudes beyond a property's legal boundary, into a neighboring property.

ENCUMBRANCE – Any legal claim, liability, restriction or obstruction against property ownership.

EQUITY – The economic resource of the property owed to the property owner.

ESA – Environmental Site Assessment – A multiple stage investigation of potentially hazardous material contamination.

ESCHEAT – The right of the government that gives the District titular ownership of a property when its owner dies without a will or any ascertainable heirs.

ESCROW – Property or money held by a third party with specific instruction or requirements regarding the release of same.

ESTATE – In real estate, the ownership interest which an individual has in real property.

ESTATE IN REVERSION – A future estate created for a person/persons after a precedent particular estate has been demised or terminated.

EVICTION FOR CAUSE – An eviction related to non-compliance with the terms of the lease or occupancy agreement.

EXCESS LAND – Property that DDOT purchased or obtained that has been determined to be no longer needed as a part of the project right of way.

Appendix A-2 Definitions - Right of Way Manual

EXECUTOR – An individual or trust institution designated in a will or appointed by a court to settle the estate of a deceased person.

FAIR MARKET VALUE – The price which a willing and informed buyer will pay a willing and informed seller, under no unusual external pressure, for a property.

FAMILY – Two or more individuals, one of whom is the head of a household plus all other individuals, regardless of blood or legal ties, who live with and are considered part of the family unit. Where two or more individuals occupy the same dwelling with no identifiable head of household, they shall be treated as one family for replacement housing purposes.

FEE APPRAISER – An independent appraiser who furnishes services to the District on an individual contract basis for an agreed fee.

FEE SIMPLE – Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

FHWA – District of Columbia Division of the Federal Highway Administration of the US Department of Transportation.

FINANCIAL MEANS – of the displaced person means:

1. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all eligible incidental expenses.
2. A replacement dwelling rented by an eligible displaced person is considered to be within their financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displaced dwelling.
3. 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 rental housing is considered to be within the person's financial means if DDOT pays that portion of the monthly housing costs of a replacement dwelling. Such rental assistance must be paid under last resort housing.

FIXED PAYMENT – A fixed moving cost payment as an alternative to a payment for actual moving and related expenses.

FONSI – Finding of No Significant Impact – A finding that a proposed project will not have a significant impact on the environment. The FONSI is fully described in 23 CFR 771.121.

Appendix A-2 Definitions - Right of Way Manual

FORECLOSURE – A legal procedure whereby property used as a security for a debt is sold to satisfy the debt in the event of a default in payment under the terms of the loan document.

FUNCTIONALLY EQUIVARIANT – A displacement dwelling that performs the same function, and provides the same utility.

GENERAL BENEFIT – Advantage accruing from a given transportation improvement to a community as a whole, applying to all property similarly situated.

GENERAL WARRANTY – A statement included in a deed whereby the owners (grantors) covenants to defend the title and possession of the estate conveyed.

GRANTEE – One to whom a grant or conveyance is made.

GRANTOR – One by whom a grant or conveyance is made.

GUARANTEE TITLE – A title, the validity of which is insured by an abstract, title, or indemnity company. Also referred to as an insured title.

HIGHEST AND BEST USE – The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

HOUSEHOLD INCOME – The total income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age.

HOUSING OF LAST RESORT – Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in §24.401 or §24.402, as appropriate, the Agency shall provide additional or alternative assistance. Any decision to provide last resort housing assistance must be adequately justified.

IDIQ – Indefinite Delivery, Indefinite Quantity - A contract for a specified period of time where specific assignments are made to the consultant.

IMPROVEMENT – Refers to additions to or betterments of real property that enhance its value or involve the expenditure of labor or money and are designed to make the real property more useful or valuable as distinguished from ordinary repairs.

INCIDENTAL EXPENSES – Closing and other costs incidental to the purchase of a replacement dwelling.

Appendix A-2 Definitions - Right of Way Manual

INCREASED INTEREST PAYMENT – The amount which will reduce the mortgage balance on a new mortgage to an amount that will be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling.

INFANT – A person under 18 years of age.

INITIATION OF NEGOTIATIONS FOR A PARCEL – The date DDOT or their representative makes the first personal contact with the owner of a parcel or property to be acquired or his designated representative where price is discussed.

JOINT TENANCY – As estate held by two or more persons jointly with an equal right in both or all to enjoy the same during their lifetimes. Joint tenancy is created by the taking of identical interests acquired simultaneously in the same property from the same source and by the same conveyance. A conveyance to two or more persons as joint tenants creates a tenancy without survivorship unless the intention to create survivorship is expressed on the face of the granting instrument. Where the intention to create survivorship is not expressed upon the death of an owner, their interest passes to their heirs or devisees.

JUST COMPENSATION – The amount the District will pay to acquire private property for public use. Amount cannot be lower than the approved appraisal report amount as the fair market value. The Fifth Amendment of the Constitution of the United States mandates a payment of just compensation for the acquisition of private property for public use.

LEAD TIME – The period between the planning stages and completion of right of way (ROW) acquisition of all require properties.

LEASE – An agreement between a property owner or property manager and a tenant for the use of real estate for a length of time.

LEGAL SETTLEMENT – A settlement made by a legal representative of DDOT.

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.

LESSEE – The person to whom a property is rented or leased – called tenant in most residential leases.

LESSOR – A person who rents or leases property to another.

LIEN – A charge against property in which the property is the security for payment of a debt.

LOSSES DUE TO NEGLIGENCE – Losses not eligible for reimbursement if such loss is the responsibility of the displacee, the displacee's agent or employees.

Appendix A-2 Definitions - Right of Way Manual

MARK – A person who cannot write his name may execute a deed or other writing by making, before a witness, a character which is usually a cross mark, which should be identified by a witness. Such a person may also execute a deed or other writing by touching the wrist or hand of another while the latter signs the name of the former.

MARKET VALUE – Is the amount in cash, or in terms reasonably equivalent to cash, for which all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, sold from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration. to all available economic uses of the property at the time of the appraisal. In so far as DDOT’s policy is concerned “Market Value and “Fair Market Value” are synonymous.

MAYOR – Mayor of the District of Columbia.

MOBILE HOMES – Includes manufactured homes and recreational vehicles used as residences.

MORTGAGE – 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, in any, secured thereby.

NEGOTIATION – The process by which property is sought to be acquired for highway purposes through meeting, discussions and final agreement upon the terms of a voluntary transfer of such property.

NEGOTIATION LIST – A list that includes properties that are affected directly by the transportation project and would require the acquisition of property rights to complete the project.

NEPA – National Environmental Policy Act as defined by 23 CFR 771.

NON-PROFIT ORGANIZATION – An organization that incorporated under the applicable laws of a state as a non-profit organization and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. § 501).

OCCUPANCY REQUIREMENTS FOR DISPLACEMENT OR REPLACEMENT DWELLING – No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

1. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or DDOT; or
2. Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by DDOT.

Appendix A-2 Definitions - Right of Way Manual

OFFER LETTER – A document in which a formal offer is made to purchase right of way or easement for a public purpose, with the payment of just compensation.

OPTION / PURCHASE AGREEMENT – A written agreement granting a privilege to acquire a real property or interest therein at a fixed price within a specified period.

OWNER – Any person, corporation, agency or body who purchases or holds any of the following interests in real property:

1. 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 date of acquisition;
2. An interest in a cooperative housing project which includes the right to occupy a dwelling; or
3. A contract to purchase any of the interests or estates described in the preceding two descriptions of interest in real property.

PARCEL – A unit of land not separated by any other ownership, either private or public. If the land on both sides of a street is in the same ownership, then that owner has two parcels of land and each must be assigned a different parcel number.

PARCEL PLAT – A map of a single parcel of property or portion thereof needed for transportation purposes, showing the boundaries, areas, the remainder improvements, access, ownership, and other pertinent information.

PARTIAL TAKING – The acquisition of a portion of a parcel of real property.

PDP – Project Development Process - A methodology used by DDOT to construct a public improvement project. It includes all engineering studies, preparation of engineering drawings and specifications necessary to contract for the actual construction.

PE – Preliminary Engineering - All activities required to develop engineering studies and plans for the construction of transportation improvement projects.

PERSON – Any individual, family, partnership, corporation or association.

PERSON NOT DISPLACED – The following is a nonexclusive listing of persons who do not qualify as displaced persons:

1. A person who moves before the initiation of negotiations (see 49 CFR 24.403(d)), unless DDOT determines that the person was displaced as a direct result of the program or project;
2. A person who initially enters into occupancy of the property after the date of its acquisition for the project;
3. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;
4. A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by DDOT in accordance with any guidelines established by the Federal agency funding the project;
5. An owner-occupant who moves as a result of an acquisition of real property as described in 49 CFR 24.101(a)(2) or 49 CFR 24.101(1) or (2), or as a result of the

Appendix A-2 Definitions - Right of Way Manual

- rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federally-assisted project is subject to this part.);
6. A person whom DDOT determines is not displaced as a direct result of a partial acquisition;
 7. A person who, after receiving a notice of relocation eligibility (described at 49 CFR 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and DDOT agrees to reimburse the person for any expense incurred to satisfy binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;
 8. An owner-occupant who conveys his or her property, as described in 49 CFR 24.101(a)(2) or 49 CFR 24.101(b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, DDOT will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;
 9. A person who retains the right of use and occupancy of the real property for life following its acquisitions by DDOT;
 10. An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Public Law (Pub. L.) 93-477, Appropriations for National Park System, or Pub. L. 93-303, land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;
 11. A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in 49 CFR 24.206. However, advisory assistance may be provided to unlawful occupants at the option of DDOT in order to facilitate the project;
 12. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 49 CFR 24.208; and
 13. Tenants required to move as a result of the sale of their dwelling to a person using the downpayment assistance provided under the American Dream Downpayment Initiative (ADDI) authorized by Section 102 of the American Dream Downpayment Act (Pub. L. 108-186; codified at 42 U.S.C. 12821).

PERSONAL PROPERTY – Generally, property that can be moved and that is not permanently attached to real property.

PLANTING EASEMENT – An easement for reshaping street side areas and establishing, maintaining and controlling plant growth thereon.

POWER OF ATTORNEY – A legal instrument in which a person authorizes another to act as his or her attorney or agent.

PM - Property Management - A discipline performed as a part of right of way functions of DDOT. Involves taking possession and managing real property and improvements acquired or transferred to DDOT.

Appendix A-2 Definitions - Right of Way Manual

PMI –Property Management Inventory – an electronic system used to track residue and surplus properties; air right; and general lease agreements.

PROJECT – The overall encompassing name for a proposed transportation improvement or maintenance action. Its scope can range from a traffic signal to a complete bridge replacement.

PROJECT MANAGER – As referred to herein, is the manager responsible for the overall project development, usually located in DDOT’s infrastructure, planning, or operations administrations.

PURCHASE / OPTION AGREEMENT – A written agreement granting a privilege to acquire a real property or interest therein at a fixed price within a specified period.

PURCHASE SUPPLEMENT – The amount which, when added to the acquisition value, equals the cost of comparable replacement housing.

QUITCLAIM DEED – An instrument by which any right, title, interest or claim which one person may have in or to an estate held by himself or another, is released, relinquished or conveyed to another. No warranty of any kind is made as to the title of the land or interest so released or conveyed.

REAL ESTATE – An identified parcel or tract of land, including improvements, if any.

REAL PROPERTY – Land and any and all building, structures and improvements permanently attached thereto.

RECORDATION – Every contract or conveyance in respect to real estate is void as to subsequent purchases unless it has been acknowledged by or proved as to the signer and duly recorded among the Land Records of the District of Columbia.

RELEASE – Land conveyed or bound under a Deed of Trust (q.v.) remains, generally, so bound until evidence of the satisfaction of the debt has been noted on the margin of the page of the Deed Book wherein the Deed of Trust is recorded, or until same has been released by deed. The beneficiary as well as the trustees must join in the execution of a deed releasing land previously conveyed in trust.

RELEASE OF EASEMENT – A legal document whereby the owner of an easement on a property releases all or a part of that easement back to the utility company.

RELOCATION PLANNING ANALYSIS REPORT – An evaluation of a project’s displacement of families and businesses, the availability of replacement sites and the plan to provide relocation assistance services.

REMAINDER – The portion of a parcel retained by the owner after a part of such parcel has been acquired.

Appendix A-2 Definitions - Right of Way Manual

REMNANT – A remainder so small or irregular that it usually has little or no economic value to the owner. See Uneconomic Remnant.

RENT – Fixed periodic payment made by a tenant or occupant of property to the owner for the possession and use of the property.

RENT BY AGREEMENT – Used when a short term continuation of occupancy is allowed by DDOT beyond the normal vacancy date.

RENT SUPPLEMENT – The amount which equals 42 times the difference between base monthly rental of a displacement dwelling including utilities and the monthly rent of a comparable dwelling including utilities.

REPLACEMENT HOUSING PAYMENT – The total of the amounts established for a displacee under the definitions listed in this section.

RESIDUE PARCEL – A remainder which DDOT has discretionary authorization by statute to purchase by either agreement or eminent domain.

RESTRICTIONS – Limitations on the use of property usually written into the deed or lease.

RETENTION RIGHTS OF IMPROVEMENTS – Option of the owner to keep and to remove items normally considered as realty from property the owner sells to DDOT.

RETENTION VALUE – Value established on the basis of supportable comparable values through an analysis of previous public sales and should be the highest price expected to be received on a realty item if it were retained by the owner.

REVIEW APPRAISER – An appraiser who examines the reports of other appraisers to determine whether their conclusions are consistent with the data reported and with other generally known information.

RFP – Request for Proposals - An advertised request for submission of proposals to perform services under a contract.

RIGHT OF ENTRY – Right granted by the owner to permit DDOT or its agents to enter upon a property to perform certain work prior to the acquisition of the proposed right of way or easement.

RIGHT OF IMMEDIATE POSSESSION – The right to occupy property for transportation purposes, after preliminary steps for acquisition have been taken and before final settlement.

RIGHT OF WAY – A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a transportation facility.

Appendix A-2 Definitions - Right of Way Manual

RIGHT OF WAY ACCESS – The possession of a legal right to enter real property to carry out the intended use. May be obtained through a deed, eminent domain, option or purchase agreement or a right of entry agreement.

RIGHT OF WAY ESTIMATE – An approximation of the total market value of property including damages, if any, required for the transportation project.

RIGHT OF WAY PLAN – The proposed methods to be used to secure required right of way including coordination, submission, and approval process.

RIPARIAN RIGHTS – The rights of a person owning land bordering on a stream or other body of water in or its banks, bed, or waters. Title to the beds of tidal, navigable waters lies in with the NPS. Private property lines end at the ordinary low-water mark, but the riparian owner may erect and maintain wharves, piers, and bulkheads beyond the low-water mark, subject to regulations imposed by law. The bed of a non-navigable stream belongs to the owners of the land through which it flows.

ROW UNIT – Right of Way Unit - An organizational unit of the DDOT that is specifically charged with acquiring right of way (ROW) and easements necessary for the construction for the construction of transportation improvement projects.

SALVAGE VALUE – The probable sale 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 period of 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.

SCENIC EASEMENT – An easement for conservation and development of street views and natural features.

SCOPE OF WORK – Defines the general parameters of the appraisal, it includes the type and extent of research and analysis in an appraisal assignment.

SETBACK LINE – A line outside the right of way, established by public authority, on the street side of which the erection of buildings or other permanent improvements is controlled.

SEVERANCE DAMAGES – Loss in value of the remainder of a parcel resulting from an acquisition that divides the property into two separate sections.

SIGHT LINE EASEMENT – An easement for maintaining or improving the sight distance.

SLOPE EASEMENT – An easement for cuts or fills slopes.

SPECIAL BENEFIT – Advantage accruing from a given transportation improvement to specific property and not to others generally.

Appendix A-2 Definitions - Right of Way Manual

SSL – Square-Suffix-Lot — The identification system used by the District of Columbia to identify real property.

STRUCTURE – Includes other things that are built covering or upon a space of land, not designed for occupancy, such as fences, monuments, fixtures, and paving, regardless of whether considered real or personal property under local laws. An item which can be readily moved without incurring a substantial loss in value to itself or the underlying or related real property is not a structure. Items such as motor vehicles, vessels, trailers with only temporary hookups and not used as a permanent residence, merchandise, household goods and small fixtures, machinery and equipment that can readily be moved without any loss in value to the item or real property are not structures.

SUBJECT – The parcel of real property being valued for acquisition by DDOT.

SUBSIDIZED HOUSING – A program of the federal and/or local government whereby the cost of housing is partially paid by the agency for qualifying low income families.

SURPLUS PARCEL – Any property that is owned by DDOT and is not a part of the operating street or freeway right of way (ROW) or used for other DDOT operations.

TEMPORARY RELOCATION – A situation that occurs when the displacement will be for only a specific period of time and the displaced family or business can return to occupancy.

TENANTS BY THE ENTIRETIES –A tenancy by the entireties is characterized by the ownership of one piece of property by a husband and a wife who law fictionally treats the husband and wife as one person. However, a tenancy by entireties between a husband and a wife exists only when it manifestly appears on the face of the granting instrument that a tenancy by the entireties is intended. Where a tenancy by the entireties does exist, neither the husband nor wife can sell their interest without the consent of the other.

TENANCY IN COMMON – The holding of an estate in land by several persons, by several and distinct titles, but by unity of possession. It is immaterial, for the purpose of creating a tenancy in common, whether the owners obtain their titles simultaneously or from the same person, but since they hold separate interests they need not have equal interest in the property. Each tenant in common is thereby the owner of an undivided share of the whole, and remains a tenant in common until he conveys or alienates his undivided share or until his share is given him by partition. When a tenancy in common estate has been created there is not any right of survivorship. Upon the death of a tenant in common his interest passes to his heirs or devisees rather than to the surviving co-tenants.

TITLE –An instrument which proves evidence of legal ownership of property.

TITLE BINDER – A preliminary report issued by a Title Company listing issues with a property title and exceptions which must be resolved or excepted in order for a title insurance policy to be issued.

Appendix A-2 Definitions - Right of Way Manual

TITLE CHAIN – A document showing the condensed history of the title to a property for the specified period of time. Such research is used to prepare the Title Report and/or Title Binder.

TITLE COMPANY – A business employing an attorney whose practice is real property conveyances and title research.

TITLE OPTION – An analysis and interpretation of a title search concerning present ownership, encumbrances, clouds on title, and other infirmities.

TITLE REPORT – An investigation of public record and documents to ascertain the history and present status of title to real property, including ownership, liens, encumbrances, and other interests.

TITLE SEARCH – An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, charges, encumbrances, and other interests.

TURNKEY – Services supplied in a condition ready for immediate use.

U.S.T. – Underground storage tank, usually used for petroleum products.

UNECONOMIC REMNANT – A portion of the acquired land that is of little or no value or utility to the owner of the acquired property. DDOT must offer to purchase the uneconomic remnant however; the owner can refuse the offer and retain the remnant.

UNIFORM ACT – The Uniform Relocation Assistance and Real Property Acquisition Act as specified in 49 CFR 24.

UNLAWFUL OCCUPANT – A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under District law.

U.S.C. – United States Code - The codification of general and permanent laws of the United States.

UTILITY COSTS – Expenses for electricity, gas, other heating and cooking fuels, water and sewer.

UTILITY RELOCATION – The adjustment of a utility facility and includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures.

VACATION DATE – Final date given to property owner/occupier of land that they have to leave the subject property.

Appendix A-2 Definitions - Right of Way Manual

WAIVER APPRAISAL – A determination of value of real property estimated at \$10,000 or less made.

WAIVERS – The Federal agency funding the project may waive any requirements in the regulations not required by law if it determines that the waiver will not reduce any assistance or protection provided to an owner or displacee. Any request for a waiver shall be justified on a case by case basis.

WARD – one of the eight political subdivisions (areas) that the District of Columbia is divided into.

WARRANTY DEED – A deed containing covenants by the grantor, for himself and his heirs, to the grantee and his heirs, to warrant and defend the title and possession of estate conveyed.

WETLANDS – A lowland area that is saturated with moisture and is a natural habitat for wildlife. Specific criteria for wetland delineation are established by government regulations.

ZONING – The division of an area into districts and the public regulation of the character and intensity of use of the land and improvements thereon.

Appendix B –Alphabetical Listing of Right of Way Forms and Examples

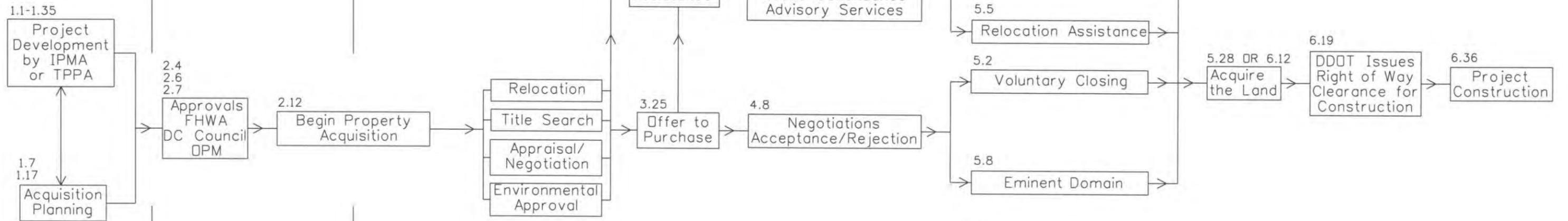
| <u>Forms</u> | <u>Chapter</u> | <u>Page #</u> |
|--|----------------|-------------------|
| Acquisition Appraisal (Form ACQ APP)..... | 6 | 59-77 |
| Appraisal Cost Estimate Report (Form APP-EST)..... | 6 | 57 |
| Appraisal Update (Form ACQ APP UPDATE)..... | 6 | 78-83 |
| Basic Administration Report (Form ADMIN REPORT)..... | 6 | 58 |
| Building and Improvement Report (Form BUILDING)..... | 12 | 29-31 |
| Closing Statement Form (Form CLOSE)..... | 11 | 14 |
| Comparable Replacement Dwelling (Form COMP RHP)..... | 10 | 114-115 |
| Decent, Safe & Sanitary Inspection Report (Form DSS)..... | 10 | 114-115 |
| Fixed Payment in Lieu of Actual Moving Expenses (HUD-40056)..... | 10 | HUD-40056 |
| Improvement Record (Form IMRP INSP)..... | 12 | 34 |
| Interest Expense Calculation (Form MORT. DIFF.)..... | 10 | 116-118 |
| Landowner’s Reimbursable Closing Costs (Form L/O REIMB)..... | 11 | 15 |
| Move Claim (Form HUD-40054 & HUD-40055)..... | 10 | HUD-40054 & 40055 |
| Move Reimbursement Application (Form MOVE APPLY)..... | 10 | 119 |
| Negotiated Sales Agreement (Form SALES)..... | 12 | 35-36 |
| Occupancy Affidavit (Form OCCUPY)..... | 10 | 120 |
| Relocation Project Log (Form LOG)..... | 10 | 121 |
| Replacement Housing Payment Claim (Form HUD-40057)..... | 10 | HUD-40057 |
| Rental Assistance or Down Payment Claim (Form HUD-40058)..... | 10 | HUD-40058 |
| Retention Value (Form RETENTION)..... | 12 | 32-33 |
| Review Appraisal Report (Form REVIEW REPORT)..... | 7 | 17-18 |
| Right of Way Acquisition Report (Form ACQ-REPORT)..... | 8 | 62-68 |
| Right of Way Status Report (form ROW STATUS)..... | 2 | 22-26 |
| Sales Data Sheet (Form SALES DATA)..... | 6 | 83-87 |
| Site Occupant Interview Form (Form INTERVIEW)..... | 10 | 112-113 |
| Title Chain Form (Form Title-CHAIN)..... | 5 | 17 |
| Title Report Form (Form TITLE-REPORT)..... | 5 | 13-14 |
| Title Update Form (Form TITLE-UPDATE)..... | 5 | 15-16 |

Appendix B –Alphabetical Listing of Right of Way Forms and Examples

| <u>Examples</u> | <u>Chapter</u> | <u>Page #</u> |
|--|----------------|---------------|
| Appraisal Checklist (Example 6-2)..... | 6 | 55 |
| Appraisal Inspection Contact Letter (Example 6-1) | 6 | 54 |
| Appraiser Certification (Example 6-3) | 6 | 56 |
| Approval of Offer of Just Compensation Letter (Example 8-3)..... | 8 | 54 |
| Certification No. II (Example 14.1)..... | 14 | 11 |
| Circulation Letter (Example 17.1) | 17 | 28 |
| Code of Ethics of the International Right of Way Association (Example 1-1) . | 1 | 15 |
| DDOT Organizational Chart (Example 1-2)..... | 1 | 16 |
| Disclaimer of Partial Property Inventory (Example 8-5)..... | 8 | 56 |
| Early Notification Letter (Goodwill) (Example 8-1)..... | 8 | 51 |
| Mortgage Information Sheet (Example 8-4)..... | 8 | 55 |
| Ninety (90) –Day Assurance Vacation Letter (Example 10-2) | 10 | 108 |
| Offer of Comparable Replacement Housing (Example 10-3) | 10 | 109-110 |
| Offer to Purchase Letter (Example 8-2)..... | 8 | 52-53 |
| Posting Unknown Owner (Example 8-8)..... | 8 | 61 |
| Pre-acquisition Relocation Planning Analysis Report (Example 10-1) | 10 | 105-107 |
| Preliminary Right of Way Cost Estimate (Example 2-1) | 2 | 20-21 |
| Purchase of Tenant-Owned Improvement Agreement (Example 8-7) | 8 | 59-60 |
| Relocation Contact Report (Example 10-4)..... | 10 | 111 |
| Relocation Planning Analysis Report (Example 10-1)..... | 10 | 105-107 |
| Review Appraiser’s Certification (Example 7-1) | 7 | 16 |
| Scope of Work – Title Research/Settlement Agent (Example 16-1)..... | 16 | 13-14 |
| Scope of Work – Appraisal Reports (Example 16-2) | 16 | 15-16 |
| Scope of Work – Review Appraisal (Example 16-2A) | 16 | 17 |
| Scope of Work – Negotiation/Relocation Assistance (Example 16-3)..... | 16 | 18-20 |
| Second Letter (Example 11-1)..... | 11 | 13 |
| Tenant Retention of Improvements (Example 8-6) | 8 | 57-58 |

Appendix C – Right of Way Acquisition Process Flow Chart

Eight Sheet Flow Chart



For Details See Sheets 1 & 1A

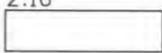
For Details See Sheet 2

For Details See Sheet 3

For Details See Sheet 4

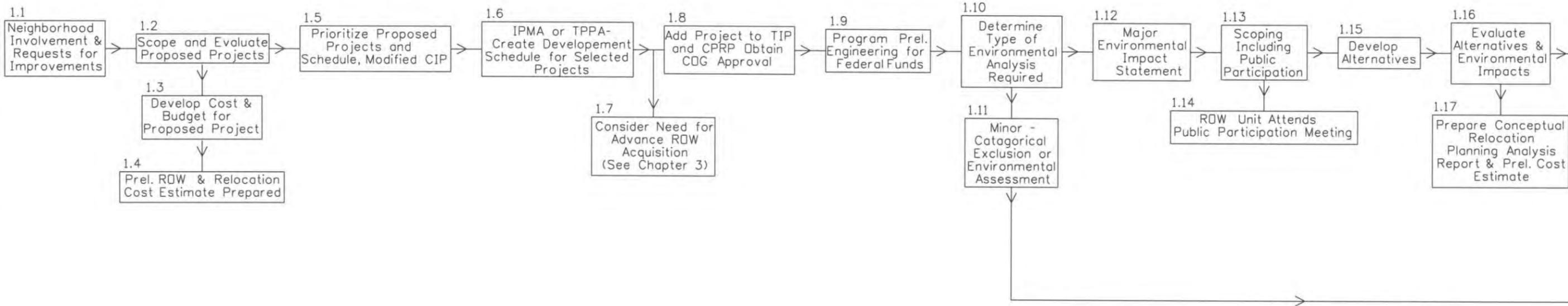
For Details See Sheets 5 & 6

LEGEND

2.16  Refers to ROW Flow Chart Task

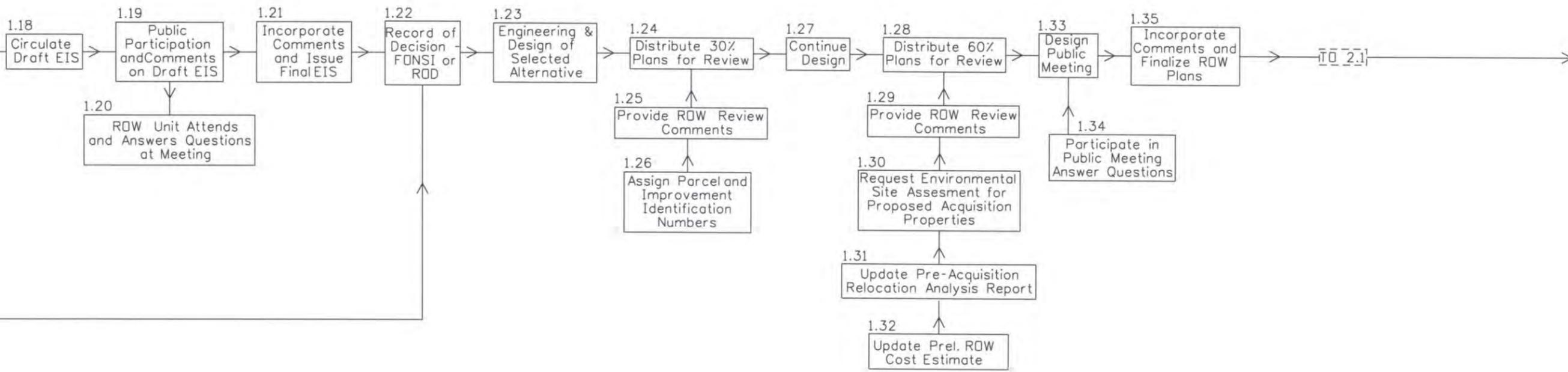
PROJECT DEVELOPEMENT

Inception to Right of Way Notice to Proceed

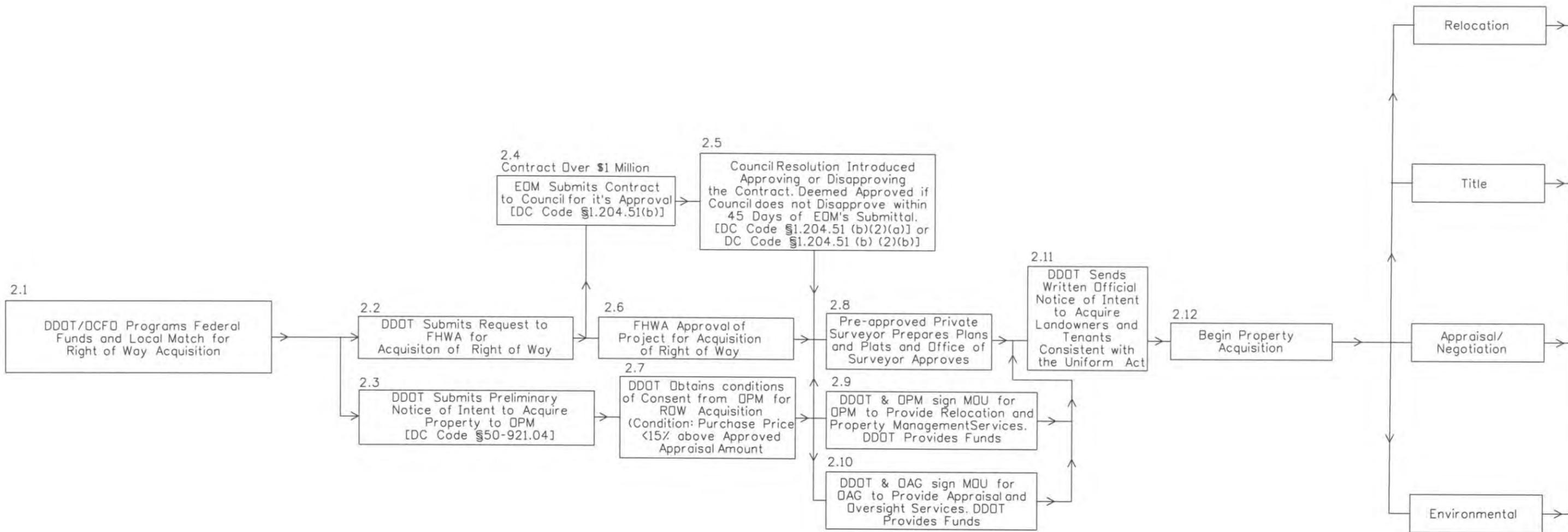


PROJECT DEVELOPEMENT

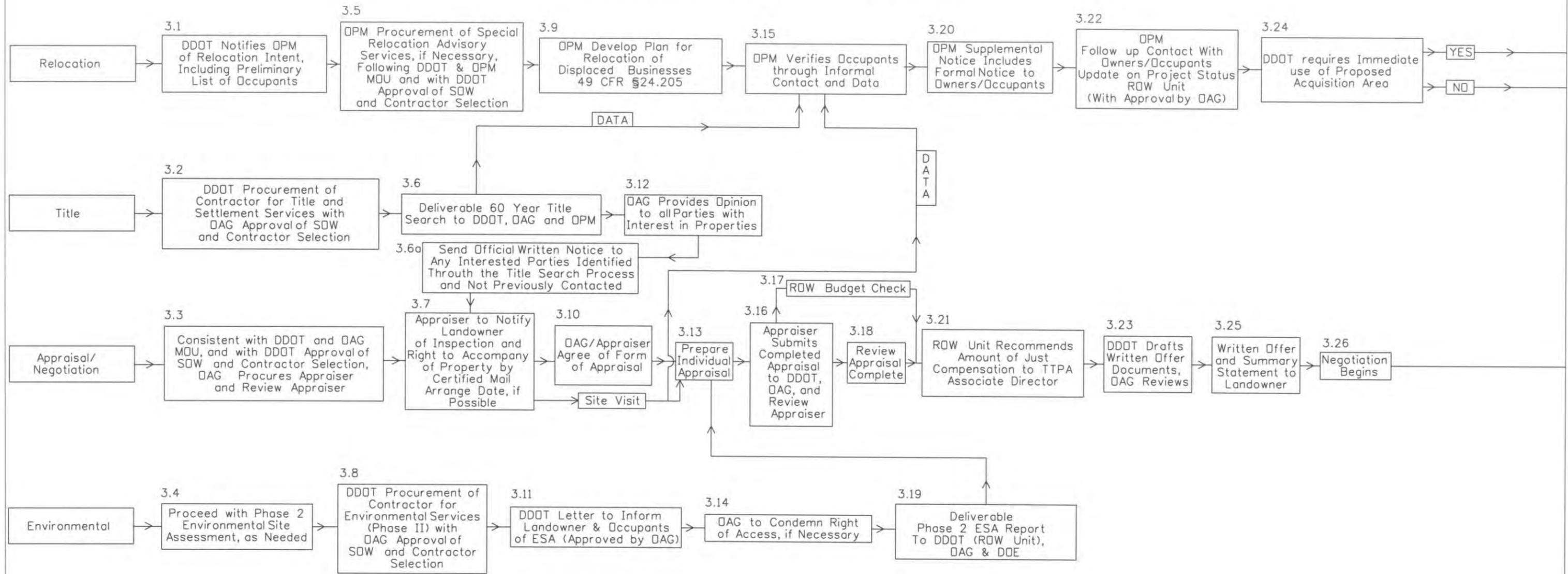
Inception to Right of Way Notice to Proceed



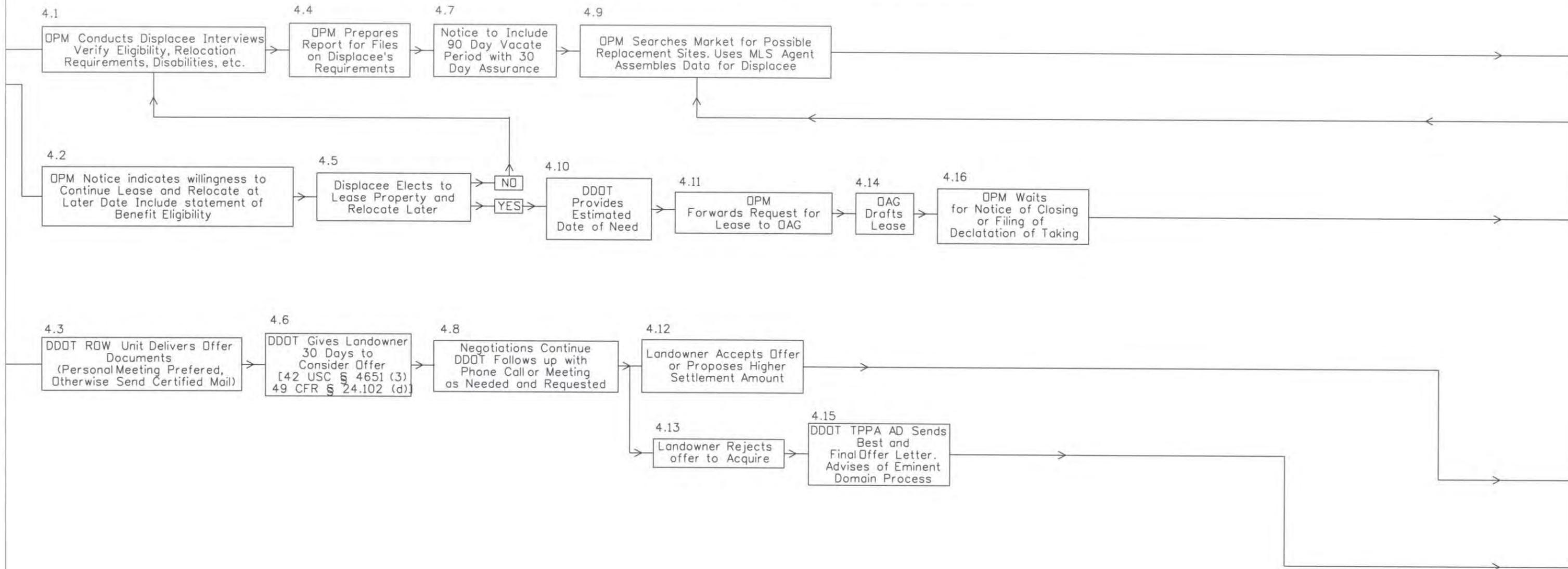
ROW ACQUISITION APPROVALS

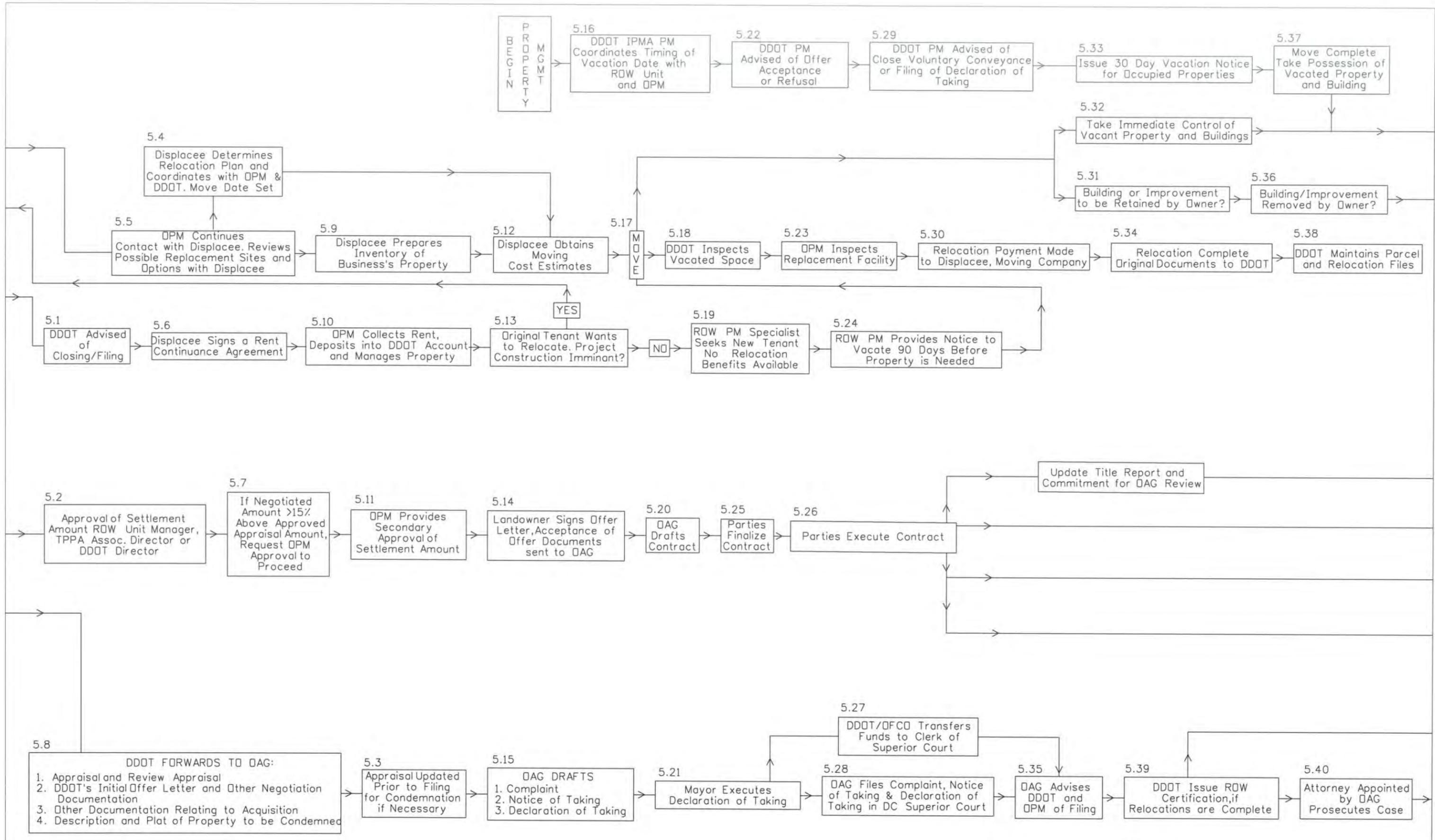


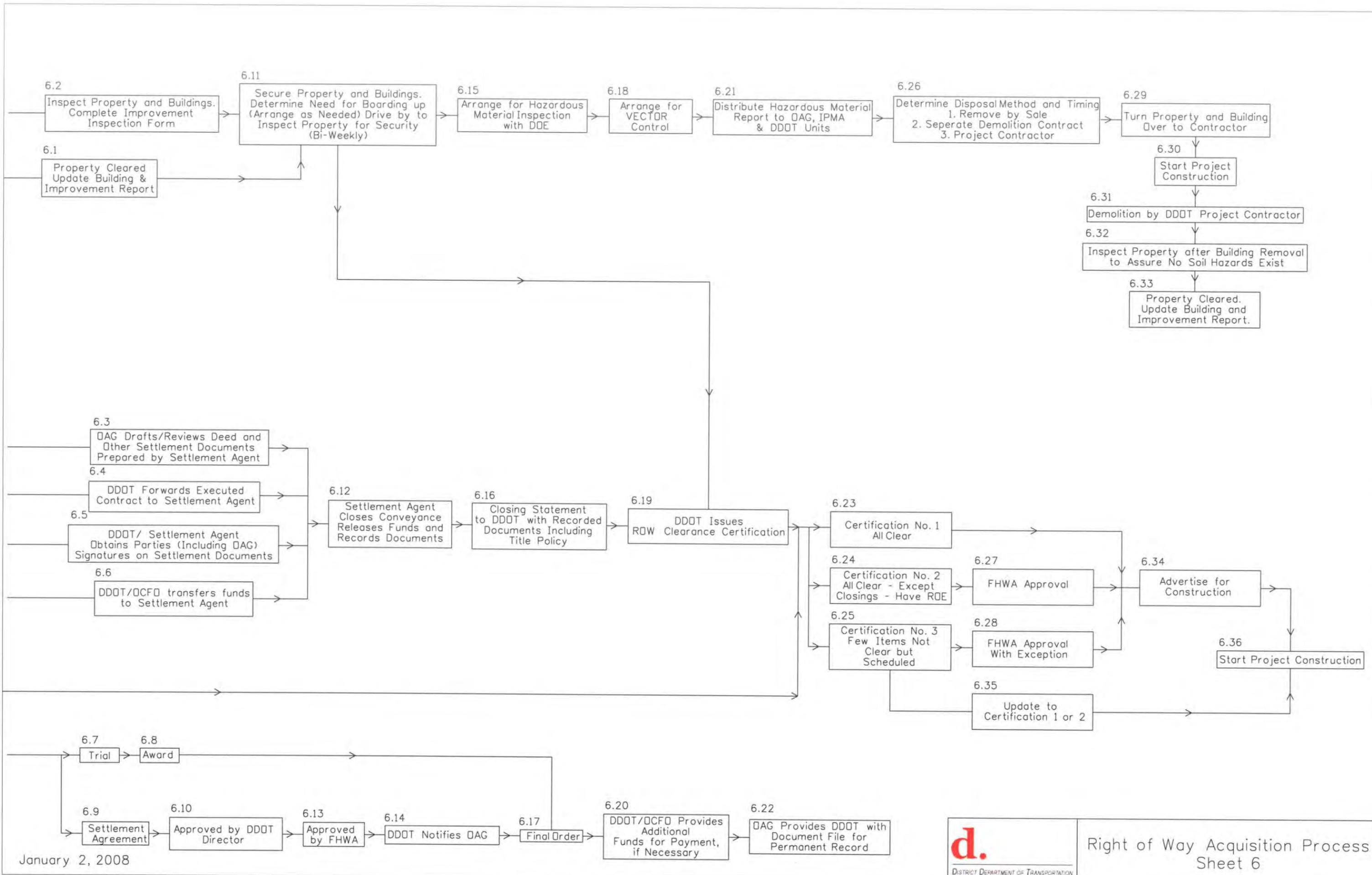
ACQUISITION PROCESS



ACQUISITION PROCESS







January 2, 2008



DISTRICT DEPARTMENT OF TRANSPORTATION

Section 1 - Title Research

Right Of Way Process

Section 1.1 - Private Property

Section 1.1.1 - Fee Total Take

| Cost of Acquisition | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|--|---|------------------------|--|
| < \$10,000 | When the proposed acquisition involves the total taking of fee simple interest | 23 CFR 710.201 (e) On federally assisted highway projects the acquiring agency shall acquire right of way of such nature and extent as are adequate for the construction, operation and maintenance of the project | Current Owner Run-Down | A current owner Run-Down is a review of the land records by a ROW agent and it only covers the period of time that the current owner has owned the property. |
| >\$10,000<\$50,000 | | | Title Insurance | |
| >\$50,000 | | | Title Insurance | |

Section 1.1.2 - Fee Partial Take

| Cost of Acquisition | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|--|-------------------------|------------------------|----------|
| < \$10,000 | When the proposed acquisition involves taking of a portion of the property in fee simple | 23 CFR 710.201 (e) | Current Owner Run-Down | |
| >\$10,000<\$50,000 | | | Title Insurance | |
| >\$50,000 | | | Title Insurance | |

Section 1.1.3 - Permanent Easement

| Cost of Acquisition | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|--|-------------------------|------------------------|----------|
| < \$10,000 | When the proposed acquisition involves only the acquisition of a permanent or perpetual easement for a specific propose. | 23 CFR 710.201 (e) | Current Owner Run-Down | |
| >\$10,000<\$50,000 | | | Title Insurance | |
| >\$50,000 | | | Title Insurance | |

Section 1.1.4 - Temporary Easement

| Cost of Acquisition | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|--|-------------------------|------------------------|----------|
| < \$10,000 | When the proposed acquisition involves only the temporary use of property for a specific time frame. | 23 CFR 710.201 (e) | Current Owner Run-Down | |
| >\$10,000<\$50,000 | | | Current Owner Run-Down | |
| >\$50,000 | | | Title Insurance | |

Section 1.1.5 Eminent Domain

| Cost of Acquisition | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|--|-------------------------|---------------------------|----------|
| < \$10,000 | When a voluntary conveyance of any type of right of way cannot be obtained | 23 CFR 710.201 (e) | Full 60 year title search | |
| >\$10,000<\$50,000 | | | Full 60 year title search | |
| >\$50,000 | | | Full 60 year title search | |



Right of Way Process

Section 2 - Appraisals

Section 2.1 - Qualifications

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------------------------|---|---|-------------------------------------|---|
| Appraiser (Level A) | A person with licenses and experience in valuating real estate according to established standards | 49 CFR 24.103 (d) (1) & (2) Agency shall establish minimum qualifications consistent with scope of work. Fee appraiser must be certified or licensed. | Establish Appraiser Qualifications. | No state requires MAI designation. |
| Senior Appraiser (Level B) | The highest qualified appraiser | Same as Level A | Establish Appraiser Qualifications. | Require all appraisers to be General licensed appraisers based on the complexity level of the District's markets. |
| Appraiser Trainee (Level C) | An appraiser that has licensing knowledge but not experience | Same as Level A | Allow only to assist | |
| DOT Staff Appraiser | An appraiser that is employed by the DOT | 49 CFR 24.103 (d) (1) Does not have to be state licensed or certified | Staff not justified | |

Section 2.2 - Pre-Qualification

| Type | Description | Federal CFR Requirement | DDOT Policy | Comments |
|------------------|---|-------------------------|--|----------|
| Consultant | Process of establishing appraisal expertise and experience. Specific Appraisal certifications required. | Not required | | |
| Consultant panel | Listing of DOT approved fee appraisers | Not required | District should develop prequalified consultant panel to expedite schedules. | |

Section 2.3 - Pre-Appraisal Time Study/Cost Estimates

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|---|---|---|--|
| | Process of establishing the scope of work, appraisal complexity and schedule for each acquisition | 49 CFR 24 103 (a) (1) Agency should contribute to process by developing scope and complexities. | DDOT to prepare a pre-appraisal scope and complexity report | VDOT requires the actual appraiser to be identified in RFP response. |

Section 2.4 - Valuation Formats

| Type | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------------------|---|------------------------------------|--|----------|
| Minimum Offer | | \$100 to \$500 is eligible expense | \$500 minimum offer | |
| Waiver Appraisal | Administrative format with a limited ceiling | 49 CFR 24.102 (c) (2) | Use appraisal waiver with a value report for acquisitions anticipated to be less than \$10,000 | |
| Acquisition Appraisal | single approach to value and no damages | 49 CFR 24.103 | Use an acquisition appraisal for partial taking of uncomplicated property where estimated value is anticipated to be less than \$50,000. | |
| Narrative Appraisal | All applicable approaches to value. Before and after values are included. | 49 CFR 24.103 | Use in all other cases. | |
| Number of Appraisal | Have independent appraisals made of same acquisition for comparison purposes. | N/A | Use one appraisal except when landowner provides a legitimate appraisal and values are significantly different. | |

Section 2.5 - Sales Brochure

| Type | Description | Federal CFR Requirement | DDOT Policy | Comments |
|------------------------|--|-------------------------|---|----------|
| Numerous Parcels/Cases | Bound brochure with pictures, plats, sales information and applicable cost information | N/A | Use a sales brochure if more than one appraisal is assigned to a project involving more than 5 appraisals of a similar classification | |
| Few Parcels/Cases | Sales may be attached to individual appraisals | N/A | | |

Section 2.6 - Land Owner Contacts

| Type | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------------------|--|---|--|----------|
| Inspection and letter | Invitation for landowner to accompany appraiser on inspection. | 49 CFR 102 (c) (1) Must allow owner to accompany appraiser | Certified letter to be sent inviting landowner to accompany Appraiser on inspection. | |

Section 2.7 - Specialty Appraisals

| Type | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--------------|--|-------------------------|---|----------|
| Equipment | Involves real property attributes that are beyond the appraisers expertise | 49 CFR 24.103 | Appraiser to secure expert to prepare cost estimate | |
| Signs | Valuation of on/off premise signs and leases | 49 CFR 24.103 | Appraiser to secure expert cost estimate | |
| Cost to Cure | Compensating or making property whole in the after take situation. | | Appraiser to secure contractor estimate. Use engineer/planner for complicated issues. | |

Section 2.8 - Supporting Studies

| Type | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-------------------------|---|-------------------------|---|----------------------------------|
| Land Planning | Utilize expert planners in determining highest and best use theories. | 49 CFR 24.103 | Utilize land planner for complicated issues on density, etc. | |
| Engineering Evaluations | Loss of parking studies, parking realignments, movement of travel, etc. | 49 CFR 24.103 | Utilize Engineering firms currently on board to save time. | Necessary for many condemnations |
| Encroachment Studies | Establishing damages justifications and considerations based on effects of construction | | Maintain archive of studies utilizing damage studies from surrounding jurisdictions | Necessary for many condemnations |

2.9 - Update Appraisal

| Type | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-------------|--|---|---|----------|
| Out of date | Update required when negotiation or approval process is delayed. | 49 CFR 24.102 (g) For a significant delay or material change | Require an updated appraisal if offer is not made within 6 months of date of valuation. | |

Section 2.10 - Eminent Domain - Witness

| Type | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------|--|-------------------------|---|----------|
| Pre-Trail | Eminent domain proceedings - Appraisal updates, etc. | | Establish requirement in the appraisal contract | |
| Trail | Eminent domain proceedings - Testimony | | Establish requirement in the appraisal contract | |
| Payment | by DOT or fee attorney | | | |



Right of Way Process

Section 3 - Appraisal Review

3.1 - Qualifications

| Function | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--------------------------|--|-------------------------|---|--|
| Staff | Ability to review and approve complex appraisal reports. | 49 CFR 24.103 (d) | Outsource- not enough work to justify specialty staff positions | |
| Fee | Normally a qualified, licensed senior appraiser required. Court savvy. | 49 CFR 24.103 (d) (2) | DDOT should contract for review appraiser from an independent firm. | DDOT could contract annually for an on-call review appraiser or require a ROW consultant to include an independent review subconsultant. |
| Evaluation of Appraisers | Evaluations for work quality and schedule adherence. | | Use established consultant review process | |

3.2 - Review Comments

| Function | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------------------|--|-------------------------|--|--|
| Approve with Comments | Must review and approve appraisal for compliance and quality. Recommends appraisal for negotiations. | 49 CFR 24.104 (b) | Reviewer to request changes and then recommend approval to DOT. | |
| Determination of Fact | Ability of reviewer to adjust appraisals with justification. Can rewrite or change portion of appraisal. Must certify. | 49 CFR 24.104 | Reviewer should be required to write a DOF in not in agreement with final appraisal. | Ohio can have a second review if necessary |

3.3 - Approval of Appraisal

| Function | Description | Federal CFR Requirement | DDOT Policy | Comments |
|----------------|--|---|--|----------|
| Recommendation | Appraisal valuation in compliance and recommend to next mgt. level | 49 CFR 24.104 (c.) | Completed review or D.O.F. is submitted to ROW Project Manager to review and approve. | |
| DOT Approval | R/W Manager approves appraisal and value for negotiation. | 49 CFR 24.104 (d) - Agency official must establish amount of just compensation. | ROW Project manager to review and approve if less than \$500,000. Otherwise prepares submission to DC Real Estate Review Committee for review.. DDOT signs letter to landowner verifying offer of just compensation. | |



Right-Of-Way Process

Section 4 - Acquisition/Negotiation

Section 4.1 - Goodwill

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|--|--|--|----------|
| | This is a contact made with the landowner prior to the appraisal or offer to acquire | 49 CFR 24.102 (b) Notify as soon as feasible. | Present ROW information of public meetings. Send out early letters with willingness to meet. | |

Section 4.2 - Documents Provided with offer

| Type | Description | Federal CFR Requirement | DDOT Policy | Comments |
|------------------------|---|--|---|----------|
| Plats | Metes and bounds drawing of take | 49 CFR 24.102 (e) (2) | Utilize plats for conveyance | |
| Plans | Highway plans, profiles and crosssections. | 49 CFR 24.102 (e) (2) | Provide detail plans to landowners | |
| Instruments | Prepared for project-option, purchase contract or deed and utility easement deed | 49 CFR 24.102 (e) (2) | Instruments to be prepared by DC Office of Attorney General | |
| Offer Letter - Value | A summary statement signed by the agency | | Use a separate signed statement of just compensation | |
| Offer Letter - General | Letter from acquisition agent outlining project details and making an offer to purchase | 49 CFR 24.102 (f) | Agent to add cover letter with more details on project | |
| Copy of Appraisal | The approved appraisal | 49 CFR 24.102 The owner shall be given a summary statement of the basis of the offer with value breakdown | ?? | |
| Copy of Title Report | Title binder in Title Report | | Provide to landowners | |
| Tax ID | Form to obtain tax id number | | Use form W-9 | |
| Mortgage Information | Form to obtain mortgages information for closing | | Obtain mortgage information with account number | |

Section 4.3 - Offer

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|----------------|--|-------------------------|--|----------|
| Assembly | List of items left with offer package | | Package should include offer letter with just compensation, plats and plans, landowner information brochure, legal description, plans with acquisition highlighted and a cover letter with project details | |
| Right of Entry | Agreement to allow project construction prior to reaching an agreement | | Allow for the use of right of entry agreements to meet early schedule | |

Section 4.4 - Negotiation Contacts

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------------|---|---|--|----------|
| Face to Face | Acquisition agent meets with landowner | 49 CFR 24.102 (f) Make all reasonable effort to contact landowners | Use face to face with all residential acquisitions | |
| Mail | Acquisition agent mails assembly to landowner | | Use mail for initial contact with corporations | |
| Tenant Owned Improvements | Landowner does not own improvements | 49 CFR 24.105 | Negotiate with fee owner unless a disclaimer is signed. Consult with OAG if agreement is not reached with all parties. | |
| Duration | How many contacts should be made | 49 CFR 24.102 (f) ...reasonable opportunity to consider offer | 14 days after all questions have been answered | |
| Second Letter | Formal advise of proceeding to eminent | | Must advise before eminent domain is | |

Section 4.5 - Engineering Issues

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------|--|-------------------------|--|----------|
| Requests | Questions raised by landowner during negotiation | | Agent must explain proposed highway plans in layman terms, must obtain answers to plan questions, requiring evaluations. | |
| Revisions | Official changes to highway plans | | Plan revision by Design Engineer to be evaluated for R/W impact and explained to landowner. Offer must be revised if agent believes value is affected. Plan changes requested by landowner must be coordinated with Design Engineer and formal revision provided to landowner. | |

Section 4.6 - Agreement

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--------------------------|--|-------------------------|--|----------|
| Admin. Settlement | Agreement by landowner to just compensation in excess of appraised value | 49 CFR 24.102 (i) | Provide ROW agent with blanket authority for a 50% (not to exceed \$2,500) increase. | |
| Option/Purchase Contract | | | Used documents provided by OAG | |
| Easements | May be permanent or temporary or for utility relocation | | | |

Section 4.7 - Refusal

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|----------------------|---|-------------------------|---|----------|
| Close-out Letter | Letter advising landowner that DOT will file under Eminent Domain | | ROW agent advise landowner of final decision deadline | |
| Condemnation Package | The declaration of taking under Eminent Domain | | Provide Declaration of Taking to OAG | |

Section 4.8 - Reports

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--------------------|--------------------------------|---|---|----------|
| Daily Diary | Yearly book with agents notes | 49. CFR 24.9 Agency to maintain adequate records of its acquisition activities | Agent to document all contact in an individual Acquisition Report | |
| Acquisition Report | Formal summary of negotiations | 49. CFR 24.9 Agency to maintain adequate records of its acquisition activities | Use a report format to document all contact and relevant information, | |



Right Of Way Process

Section 5 - Closings

Section 5.1.1 - Fee Total Take

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|--|---|--|----------|
| | When the proposed acquisition involves the total taking of fee simple interest | 23 CFR 710.201(e) On Federally assisted highway projects the acquiring agency shall acquire right of way of such nature and extent as are adequate for the construction, operation and maintenance of the project | Satisfy conditions of title binder and obtain title insurance. | |

Section 5.1.2 - Fee Partial Take

| Range | Description | Federal CFR Requirement | Recommended Policy | Comments |
|-----------|---|-------------------------|--|----------|
| < \$1,000 | When the proposed acquisition involves a partial taking of a property in fee simple | 23 CFR 710.203 (e) | Satisfy conditions of title binder and obtain title insurance. | |
| >\$1,000 | | | Satisfy conditions of title binder and obtain title insurance. | |

Section 5.1.3 - Permanent Easement

| Range | Description | Federal CFR Requirement | Recommended Policy | Comments |
|-----------|--|-------------------------|--|----------|
| <\$10,000 | When the proposed acquisition involves only the acquisition of a permanent or perpetual easement for a specific purpose. | 23 CFR 710.203 (e) | Satisfy conditions of title binder and obtain title insurance. | |
| >\$10,000 | | | Satisfy conditions of title binder and obtain title insurance. | |

Section 5.1.4 - Temporary Easement

| Range | Description | Federal CFR Requirement | Recommended Policy | Comments |
|-----------|--|-------------------------|--|----------|
| <\$10,000 | When the proposed acquisition involves only the temporary use of property for a specific time frame. | 23 CFR 710.203 (e) | Close subject to deeds of trust. Require taxes and judgments to be paid. | |
| >\$10,000 | | | Close subject to deeds of trust. Require taxes and judgments to be paid. | |

Section 5.1.5 Eminent Domain

| | Description | Federal CFR Requirement | Recommended Policy | Comments |
|--|--|-------------------------|------------------------------|----------|
| | When a voluntary conveyance of any type of right of way cannot be obtained | 23 CFR 710.203 (e) | As prescribed by the DC Code | |

Section 5.2 - Federal Land

| Agency | Description | Federal CFR Requirement | Recommended Policy | Comments |
|-----------------------|--|-------------------------|--|----------|
| National Park Service | When the proposed acquisition requires land owned by the USA | 23 CFR 710.203 (e) | Continue to coordinate directly with N.P.S. on jurisdiction transfers. | |
| Other US Agencies | | | Prepare project ROW requirements and request FHWA to coordinate. | |

Section 5.3 - Other State/DC Agencies

| | Description | Federal CFR Requirement | Recommended Policy | Comments |
|--|--|-------------------------|---|----------|
| | when the proposed acquisition requires land from another DC agency | 23 CFR 710.203 (e) | Continue to coordinate with controlling unit and record transfer of control through D.C. Surveyor Office. | |



DISTRICT DEPARTMENT OF TRANSPORTATION

Right of Way Process

Section 6 - Relocation Assistance

6.2.1 - Relocation Planning Report

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|------------------------|---|--|---|----------|
| Conceptual Stage | Estimate of homes, businesses, families and individuals is provided along with availability of replacement sites and affect on community for each alignment | 49 CFR 24.205 (a) Agency shall plan for timely and orderly relocation | Prepare in connection with NEPA process o independently if FONSI is warranted | |
| Pre -Acquisition Stage | Estimates of homes, businesses, families and individuals being relocated is provided along with availability of replacement sites. | 49 CFR 24.205 (a) Agency shall plan for timely and orderly relocation | Prepare in conjunction with pre-acquisition ROW estimate | |

6.2.3 - Public Meetings

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-------------------------------|--|-------------------------|---|----------|
| Informational Public Hearings | Information is provided as to the effects on the community as result of relocations. | | Have ROW Specialist available to answer questions | |

6.3.1 - Written Notices

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------------------------|--|-------------------------|----------------------------|----------|
| Intent to Acquire | Letter advising displacee their property will be acquired and they are considered eligible for benefits. Issued prior to benefits being calculated in cases where occupant needs to move immediately | 49 CFR 24.203 (b) | Follow Federal Regulations | |
| Replacement Housing Payment | Advises displacee of monetary benefits | | Follow Federal Regulations | |
| 90 Day Assurance | Provides displacee they will have no less than 90 days to vacate | 49 CFR 24.203 (c) | Follow Federal Regulations | |

6.4.1 - Relocation Advisory Services

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|---|-------------------------|---|----------|
| Eligibility | Refer to Federal Highway Definition of a Displaced Person | 49 CFR 24.205 | Follow Federal Regulations | |
| Relocation Office Service Requirements | Fully staffed relocation office at the project location | | Establish a field office on projects with 5 or more residential relocations | |

6.5.1 - Moving Costs (Residential)

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------------------|---|---------------------------|--|----------|
| Fixed Costs | Based on number of rooms in house, basements and attics, and exterior appurtenances | 49 CFR 24.301 (b) (2) (i) | Utilize Federal Schedule | |
| Move Schedule | Approved per room moving schedule | | Utilize Federal Schedule | |
| Actual Cost Self Move | Documentation for move based on hours and inventory or amount of low bid | 49 CFR 24.301 (b) | Do not allow | |
| Commercial Move | Obtain bids from reputable moving companies | 49 CFR 24.301 (b) | Obtain 2 bids and accept best overall response | |

6.6.1 - Moving Costs - Businesses, Farms, Non-Profits

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------------------|---|-------------------------|--|----------|
| Moving Costs | Based on actual moving costs, commercial bids, or moving cost finding | 49 CFR 24.301 (d) | Base on bids received for all types of work involved | |
| Search Costs Limit | Maximum paid for finding replacement site | 49 CFR 24.301 (g) (17) | \$2,500 | |
| Reestablishment Limit | Upper limit established for expenses incurred in preparing new site | 49 CFR 24.304 | \$10,000 (can DC increase limit by law?) | |

6.6.2 - Certified Inventory

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|---|-------------------------|---|----------|
| Personal Property | Any item not permanently affixed to the property | 49 CFR 24.301 (d) | Determination to be made by appraiser, approved by ROW unit Manager | |
| Real Estate | Any item considered permanently affixed to the property | | Determination to be made by appraiser, approved by ROW unit Manager | |

6.6.3 - Actual Moving Costs

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|--|-------------------------|--------------------------|----------|
| Eligible | Any expenses deemed necessary to move from one location to another | 49 CFR 24.301 (g) | Follow Federal Guideline | |
| Ineligible | Any item not considered as personal property | 49 CFR 24.301 (h) | Follow Federal Guideline | |

6.6.4 - Bulk Personal Property

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-------------------------------|--|-------------------------|--------------------------|----------|
| Requirement for Reimbursement | Large items such as firewood, sand, gravel | 49 CFR 24.301 (g) (18) | Follow Federal Guideline | |

6.6.5 - Actual Direct Losses of Tangible Personal Property

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|---|-------------------------|--------------------------|----------|
| Requirement | Allowable when a person elects to not move personal property due to it becoming obsolete or expensive to move (only for business, farm or non-profit) | 49 CFR 24.301 (g) (14) | Follow Federal Guideline | |

6.6.6 - Search Expenses

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|---|-------------------------|----------------------------|----------|
| Limitations | Amount allowed for searching for a replacement site | 49 CFR 24.301 (g) (17) | \$2,500 with documentation | |

6.6.7 - Reestablishment Expenses

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|---|-------------------------|--------------------------|----------|
| Eligibility | Any business, farm or non-profit required to relocate | 49 CFR 24.304 | Follow Federal Guideline | |
| Allowable Expenses | Reasonable costs relating to moving the business, farm or non-profit, i.e. repairs or improvements required by law, permits, and other items as indicated by the Federal Highway Administration | 49 CFR 24.304 | Follow Federal Guideline | |
| Maximum Payment | Allowable reimbursement | 49 CFR 24.304 | up to \$10,000 | |

6.6.8 - Fixed Payment

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|------------------------|---|-------------------------|--|----------|
| Eligibility | Any business, farm or non-profit who qualifies as a displacee and meets additional criteria | 49 CFR 24.305 | | |
| Minimum Payment | | 49 CFR 24.305 | \$1,000 | |
| Maximum Payment | | 49 CFR 24.305 | \$20,000 | |
| Required Documentation | Proof of income | 49 CFR 24.305 | Tax returns for 2 complete years or Certified financial statements | |

6.7.1 - Replacements Housing Payments (Governed by Uniform Act - NO VARIANCES)

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---|---------------------------------------|-------------------------|--------------------------|----------|
| Occupant - Eligibility | | 49 CFR 24.401 | Follow Federal Guideline | |
| Calculation Method | | | Follow Federal Guideline | |
| Minimum/Maximum | | | Follow Federal Guideline | |
| Major Exterior Attributes Calculation Method | | | Follow Federal Guideline | |
| Highest and Best Use Other than Residential Calculation | | | Follow Federal Guideline | |
| Mixed Use Properties Calculation | | | Follow Federal Guideline | |
| Partial Take Calculations | | | Follow Federal Guideline | |
| Down Payment Assistance | Amount Agency Agrees to pay Displacee | | \$5,250 | |

6.8.9 - Payment to Partial Owner

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|--|-------------------------|--|----------|
| Calculation | How a payment to more than one owner is calculated | | According to legal proportionate share | |

6.8.10 - Increased Interest Payment

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|---|-------------------------|---------------------------|----------|
| Calculation | How to compensate for an increased interest amount from original loan | 49 CFR 24.401 (d) | Buydown Calculator Method | |

6.8.11 - Incidental Expenses

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-------------------------|---|-------------------------|--------------------------|----------|
| Eligible Reimbursements | Normal and Customary Closing Expenses as required by law and the lender | 49 CFR 24.401 (e) | Follow Federal Guideline | |

| | | | | |
|--------------------------|--|-------------------|---|--|
| Limits on Reimbursements | Caps for certain reimbursable expenses | 49 CFR 24.401 (e) | Title Insurance and recording fees limited to comparable; origination fee and points based on existing mortgage | |
|--------------------------|--|-------------------|---|--|

******6.9.1 - Rental Replacement Housing Payments (Governed by FHA - NO VARIANCE)**

6.10.1 - Mobile Homes

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|---------------------|---|-------------------------|--------------------------|----------|
| Personal Property | Still on wheels and not permanently affixed to land | 49 CFR 24.501 | Follow Federal Guideline | |
| Real Estate | Permanently affixed to land | | Follow Federal Guideline | |

6.11.1 - Last Resort Housing

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|--|-------------------------|---|----------|
| Plan Requirements | When comparable replacement housing cannot be located within the limits of \$22,500 for owners and \$5,250 for tenants | 49 CFR 24.404 | Follow Federal Guideline | |
| Last Resort Housing Payment Disbursement | How the check is distributed | | Owner - Directly to owner or lender; Tenant - Directly to displacee | |

6.12.1 - Relocation Records

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-----------------------------------|--|-------------------------|---|----------|
| Type for each phase of relocation | Documentation for displacee data, explanation of benefits, amount of benefits and claim for payments is required | 49 CFR 24.207 (a) | Document all contacts with displacee and benefit applications | |
| Relocation Audit | To insure consistency among States | 49 CFR 24.603 | Establish Quality Control Review Process | |

6.13 - Relocation Appeals

| Type/Classification | Description | Federal CFR Requirement | DDOT Policy | Comments |
|----------------------|---|-------------------------|--|----------|
| Interim | Procedure to be followed when displacees appeal approved payments | 49 CFR 24.10 | Informal hearing by District ROW Manager. | |
| Review Board Hearing | Formal DOT Hearing | | Second step is to assign a hearing officer to review file and interview relocatee. Submits written reports | |
| Final | Last action before a judicial case | 49 CFR 24.10 | Director, Dept. of Transportation | |



Right Of Way Process

Section 7 - Property Management (Acquisition Phase)

7.1 - Improvements

7.1.1 - Identification Number

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|--|-------------------------|--|----------|
| | Bldg. & other improvement identification | | Use a system to identify improvements within the take and track status, disposal or demolition | |

7.1.2 - Retention

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|-------------|-------------------------|---|----------|
| | By owner | | Owner may negotiate to retain if improvement can be moved in an appropriate time frame. | |

7.1.3 - Method of Disposal

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|----------------------------|-------------------------|---|----------|
| | Buildings and improvements | | Attempt to sell any items of value. Use advance demolition contract to remove improvements as soon as possible after acquisition. | |

7.1.4 - Inspection

7.1.4 (a) - Vacation

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|---------------------|-------------------------|--|----------|
| | building acceptance | | ROW agent to inspect vacant building before accepting keys and control | |

7.1.4 (b) (i) - Soil

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|-------------|------------------------|-------------------------|--|----------|
| Remediation | identification/removal | | Soil contamination identified in Phase 1 or 2 ESA to be addressed during negotiation and in purchase agreement | |

7.1.4 (b) (ii) - Improvements

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|----------|-------------------------------|-------------------------|--|----------|
| Asbestos | Identification and/or removal | | Inspection to be made after improvement is vacant. | |
| Lead | Identification | | Inspection to be made after improvement is vacant. | |

7.1.5 - Demolition

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|--|---|-------------------------|---|----------|
| | Contracted for removal and monitoring hazardous material removal. | | Establish an on call contract for all removal of a yearly period. | |

| | Description | Federal CFR Requirement | DDOT Policy | Comments |
|------------------|-------------|-------------------------|--|----------|
| On Call | | | Establish an on-call contract for all removal of a yearly period | |
| Project Specific | | | May use project specific advertised contracts for large volumes of improvements. | |



Right of Way Process

Section 8 - Right of Way Consultant Services

8.1 - Determination of Need

| | Description | Federal CFR Requirement | Maryland SHA | Ohio DOT | Virginia DOT |
|--------------|-------------|-------------------------|--------------|----------|--------------|
| Services | | | | | |
| Professional | | | | | |

8.2 - Consultant Prequalification

8.2.1 - Prequalification Process

| | Description | Federal CFR Requirement | Maryland SHA | Ohio DOT | Virginia DOT |
|--|-------------|-------------------------|--------------|----------|--------------|
| | | | | | |

8.2.2 - Review Committee

| | Description | Federal CFR Requirement | Maryland SHA | Ohio DOT | Virginia DOT |
|--|-------------|-------------------------|--------------|----------|--------------|
| | | | | | |

8.2.3 - Minimum Qualifications

| | Description | Federal CFR Requirement | Maryland SHA | Ohio DOT | Virginia DOT |
|-----------------------------|-------------|-------------------------|--------------|----------|--------------|
| General Firm Qualifications | | | | | |

| | | | | | | | |
|-----------------------|--|--|--|--|--|--|--|
| Appraisers | | | | | | | |
| Relocation Specialist | | | | | | | |
| Negotiators | | | | | | | |
| Project Managers | | | | | | | |

8.2.4 - Pre-Award Financial Audit

| | | | | | |
|--|-------------|-------------------------|--------------|----------|--------------|
| | Description | Federal CFR Requirement | Maryland SHA | Ohio DOT | Virginia DOT |
| | | | | | |

8.2.5 - Application for Prequalification

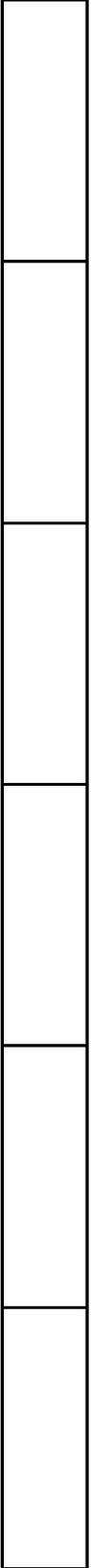
| | | | | | |
|--|-------------|-------------------------|--------------|----------|--------------|
| | Description | Federal CFR Requirement | Maryland SHA | Ohio DOT | Virginia DOT |
| | | | | | |

8.2.6 - Expiration of Prequalification

| | | | | | |
|--|-------------|-------------------------|--------------|----------|--------------|
| | Description | Federal CFR Requirement | Maryland SHA | Ohio DOT | Virginia DOT |
| | | | | | |

8.2.7 - Appeals

| | | | | | |
|--|-------------|-------------------------|--------------|----------|--------------|
| | Description | Federal CFR Requirement | Maryland SHA | Ohio DOT | Virginia DOT |
| | | | | | |



| | | |
|----------------|--------------------|----------|
| Current DC DOT | Recommended Policy | Comments |
| | | |
| | | |

| | | |
|----------------|--------------------|----------|
| Current DC DOT | Recommended Policy | Comments |
| | | |
| | | |

| | | |
|----------------|--------------------|----------|
| Current DC DOT | Recommended Policy | Comments |
| | | |
| | | |

| | | |
|----------------|--------------------|----------|
| Current DC DOT | Recommended Policy | Comments |
| | | |
| | | |

| | | | |
|--|--|--|--|
| | | | |
| | | | |
| | | | |
| | | | |

| | | |
|----------------|--------------------|----------|
| Current DC DOT | Recommended Policy | Comments |
| | | |

| | | |
|----------------|--------------------|----------|
| Current DC DOT | Recommended Policy | Comments |
| | | |

| | | |
|----------------|--------------------|----------|
| Current DC DOT | Recommended Policy | Comments |
| | | |

| | | |
|----------------|--------------------|----------|
| Current DC DOT | Recommended Policy | Comments |
| | | |



